

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

TOWNSHIP OF UPPER,

Public Employer,

-and-

DOCKET NO. RO-80-121

COUNCIL 71, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that a secret ballot election be conducted among all employees including professional employees to determine whether they desire to be represented for the purpose of collective negotiations by AFSCME. The Township claimed that its grant of recognition to an employee organization within the past year was a bar to the processing of the Petition. The Director, however, notes that the contract subsequently executed with the recognized representative extinguished any recognition bar, and that AFSCME's Petition was timely since it was filed after the expiration of the contract.

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Appearances:

For the Public Employer
Rubin & Waldron, attorneys
(Robert F. McKee & James A. Waldron of counsel)

For the Petitioner
Russell Weiss, staff representative

DECISION AND DIRECTION OF ELECTION

On January 4, 1980, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by Council 71, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") with respect to certain employees employed by the Township of Upper (the "Township"). ^{1/} The undersigned has

1/ AFSCME seeks to represent employees in a proposed negotiations unit described as follows: "Included: All Township employees including professionals. Excluded: Confidential Employees, Managerial Executives, Police, Craft Employees, and Supervisors within the meaning of the Act." There are approximately 20 employees in the proposed unit.

caused an administrative investigation to be conducted into the matters and allegations involved in the Petition in order to determine the facts. Based upon stipulations entered into between the parties defining the appropriate negotiations unit, and further providing that the Township raised no issues to bar an election, the undersigned, on February 4, 1980, stated an intent to direct an election in the absence of substantial and material disputed factual issues. However, by letter dated February 21, 1980, the Township has claimed that the Petition is barred by a recognition granted to an employee organization within the past year. Accordingly, the results of the administrative investigation are set forth in full below.

Based upon the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material disputed factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute.

2. The Township of Upper is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. Council 71, American Federation of State, County and Municipal Employees, AFL-CIO, is an employee representative within the meaning of the Act and is subject to its provisions.

4. On December 5, 1979, AFSCME filed a certification petition with the Commission seeking a collective negotiations unit comprised of all white collar and blue collar Township employees excluding professional employees. The Township objected to the petition, claiming that: (1) a community of interest did not exist between white collar and blue collar employees; and (2) a collective negotiations agreement "may still exist" with Cape May Council No. 19, New Jersey Civil Service Association ("Council 19"), and thus may bar the processing of the Petition.

The Township certified the posting of the Commission's standard Notice to Public Employees, provided a list of employees, and provided copies of two collective negotiations agreements -- the first with Council 19, and the second with "Township Employees."

In the agreement with Council 19 the Township recognized Council 19 as the exclusive representative of employees who were allowed to participate in a previous Commission election.^{2/} This agreement was effective for calendar year 1974, and provided for the agreement's continuation from year-to-year in the absence of a 60 day notice of intention to change, modify or terminate

2/ On February 2, 1973, pursuant to a stipulation between the Township and Council 19 as to the appropriate collective negotiations unit and a consent election agreement, a secret ballot election was conducted by the Commission resulting in the certification of Council 19 as the majority representative of Township employees in a unit comprised of all blue collar and white collar employees, excluding professional employees.

the agreement. The Township has provided an amendment to the above agreement, dated January 30, 1978, which contained modifications of certain provisions effective for calendar year 1978, and which provided for the expiration of the contract on December 31, 1978.

The second contract, which was entered into on May 7, 1979, contains a recognition clause in which: "The Township recognized the employees as the exclusive collective negotiating agent for all employees." [sic] The terms of the agreement are effective January 1, 1979 through December 31, 1979. ^{3/} The agreement is signed by 13 individual employees of the Public Works Department.

5. An informal conference was convened among the parties and the Commission staff agent assigned to the investigation on January 4, 1980. At the conference, the parties executed a stipulation providing, in part, that should the Commission order an election, the unit shall be comprised of all Township employees including professional employees. The Township, while not consenting to an election, stated that it "raises no issues which would bar the holding of such election."

Contemporaneously, AFSCME withdrew its initially filed petition and submitted, in its place, the instant Petition for Certification of Public Employee Representative seeking a unit

^{3/} The agreement provides a grievance procedure which may be invoked by aggrieved individuals. Other than the terminology "the employees", the various contractual provisions, including the grievance procedure, do not identify any specifically named employee organization as the employee representative.

of all Township white collar and blue collar employees including professional employees.

6. On February 4, 1980, the undersigned stated an intent to direct an election based upon the administrative investigation.

7. On February 26, 1980, by letter dated February 21, 1980, the Township filed a statement asserting that, on May 5, 1979, it had recognized "an employee organization as the exclusive representative of a majority of the employees in the bargaining unit sought to be represented by AFSCME ... " By virtue of this recognition, which the Township asserts was accorded in conformance with N.J.A.C. 19:11-3.1, the Township claims that there is a recognition bar pursuant to N.J.A.C. 19:11-2.8(b) and the Petition should be dismissed.

The Township has not provided documentation which would support the claim that it granted recognition in accordance with the procedures outlined in N.J.A.C. 19:11-3.1. However, assuming for the limited purposes herein that such recognition was granted to an employee organization within the year prior to the filing of AFSCME's January 4 Petition, the undersigned must consider the relevance of the written agreement subsequently entered into between the Township and the employee organization. Where, pursuant to a recognition or certification, the parties successfully negotiate and conclude a collective negotiations agreement, the recognition or certification bar

is extinguished and the Commission's contract bar rules become operative. In re Deptford Tp. Bd. of Ed., E.D. No. 5 (1970). It follows that if a bar exists to the processing of the AFSCME Petition, it is a contract bar pursuant to N.J.A.C. 19:11-2.8 (c)(2). Since the Township's written agreement with "the employees" expired on December 31, 1979, it does not bar the processing of the Petition, which was filed on January 4, 1980. ^{5/}

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. The undersigned finds that the appropriate unit for collective negotiations is: All employees, including professional employees, of the Township of Upper, but excluding managerial executives, confidential employees, police and craft employees and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6, the undersigned directs that an election be conducted among the employees described above. Additionally, professional employees shall be provided with a professional option ballot in accordance with N.J.S.A. 34:13A-6(d). The election shall be conducted no later than thirty (30) days from the date set forth below.

^{5/} The Township has confirmed the posting of the Commission Notice to Public Employees relating to the January 4, 1980 Petition. No other employee representative has sought to intervene in this Petition.

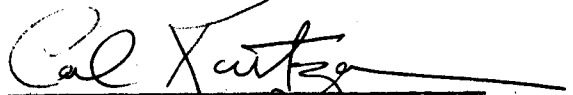
Those eligible to vote are those employees who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Township is directed to file with the undersigned and with AFSCME an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with AFSCME with a statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Council 71, American Federation of State, County and Municipal Employees, AFL-CIO.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: March 13, 1980
Trenton, New Jersey