

D.R. NO. 81-1

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

In the Matter of

COUNTY OF MIDDLESEX,

Public Employer,

-and-

MIDDLESEX COUNCIL #7, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

DOCKET NO. RO-80-182

Petitioner,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all white and blue collar nonprofessional employees at the County Youth Detention Center to ascertain whether they desire to be represented by Middlesex Council #7, NJCSA, or CWA, AFL-CIO or neither. The Director rejects the claims by the employer and CWA, the incumbent representative, that the Petition is barred because they reached an agreement in their negotiations prior to the filing of the representation Petition. The Director notes that a letter of agreement executed by County and CWA negotiators did not bar a representation Petition since the document indicated the necessity for ratification of the agreement. The Director concludes that the language of the letter of agreement is controlling and declines CWA's request for an evidentiary hearing to explain the intent of the parties and to explore the authority of the County negotiators.

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Appearances:

For the Public Employer
Henry Orszulski, Labor Relations Specialist

For the Petitioner
Borrus, Goldin & Foley, attorneys
(James Clarkin, III of counsel)

For the Intervenor
Ronald Smith, Representative

DECISION AND DIRECTION OF ELECTION

On April 30, 1980, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Middlesex Council #7, New Jersey

Civil Service Association ("Council 7") with respect to a proposed collective negotiations unit comprised of all white and blue collar nonprofessional employees employed by the County of Middlesex (the "County") at the Youth Detention Center. The Communication Workers of America ("CWA"), the current exclusive representative of an existing unit of blue and white collar employees, has intervened in this matter.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary 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 by the parties.

2. The County of Middlesex 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 at the at the County Youth Detention Center and is subject to the provisions of the Act.

2. Middlesex Council #7, New Jersey Civil Service Association and Communications Workers of America, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. Council 7 seeks to represent all blue and white collar nonprofessional employees employed by the County at the Youth Detention Center. CWA is the current exclusive representative of a unit comprised of these employees.

5. Both the County and CWA assert that the instant Petition has not been timely filed pursuant to N.J.A.C. 19:11-2.8(c)(2). This Commission rule provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

2. In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement.

The County alleges that the instant Petition is not timely because (a) its previous collective negotiations agreement with CWA, which expired December 31, 1979, continues to be in effect until a new agreement is reached pursuant to the successor clause of that agreement; and (b) full agreement was reached with CWA concerning this unit on January 15, 1980.

CWA has submitted a document dated January 22, 1980, which it contends is a "letter of agreement" fixing terms and

conditions of employment for 1980. ^{1/} CWA asserts that this document operates as a bar to the filing of the instant Petition as it is a binding successor agreement entered into before the filing of the Petition.

6. On June 3, 1980, the undersigned advised the parties that it appeared that the Petition was timely filed. First, the undersigned observed that the successor clause in the 1979 agreement did not operate as a bar to the instant Petition. See In re Tp. of Franklin, P.E.R.C. No. 64 (1971), wherein the Commission found that a provision which provides that terms of the agreement are to remain in full force and effect until a new contract is agreed upon does not bar the filing of a petition. The Commission therein reasoned that such a provision would have the effect of permanently barring any potential petitioner from filing a timely petition. Second, the undersigned advised that an oral agreement which the parties may have reached in January 1980 would not be sufficient to invoke the operation of the contract bar rule. Lastly, the undersigned stated that, by its terms, the January 22, 1980 letter of agreement required ratification by both parties

^{1/} The letter states, in relevant part: "The following conditions were agreed to by both sides for recommendation." The five conditions listed are: a negotiated wage increase of 8% across the board; a shift differential; an allowance for higher in grade work; a clothing allowance; and extended medical coverage. The letter of agreement also states the duration of the agreement and contains four signatures -- purportedly those of County and CWA negotiators. A copy of the letter is attached hereto and made a part hereof.

before it could operate as a bar. Since ratification by the Freeholder Board had not occurred prior to the filing of the instant Petition, the agreement would not act as a bar.

7. On June 10, 1980, CWA filed a response to the undersigned's June 3 letter. CWA asserts that ratification was not a condition precedent to the agreement, that the word "recommendation" contained in the January 22, 1980 letter of agreement is not synonymous with "ratification," and that there was no requirement that the Freeholder Board ratify the terms of the letter of agreement. CWA requests a hearing to clarify the term "recommendation" and to establish that "there was no requirement for ratification by the Board of Freeholders, who were committed to adopt a resolution as a mere legal formality."

8. In a response dated June 13, 1980, Council 7 states that the letter of January 22, 1980, does not operate as a bar to the instant Petition, as it is incomplete regarding a final salary guide and was not ratified by the Freeholder Board. Petitioner asserts that no hearing is necessary.

9. The issues before the undersigned are whether the January 22, 1980 "letter of agreement" operates as a bar to a representation petition, pursuant to the aforementioned contract-bar rule, and whether a hearing is required in this matter. Since the New Jersey Supreme Court has stated in Lullo v. International Association of Firefighters, 55 N.J. 409 (1970) that the Commission should utilize NLRB law and policy as a guide to its own decisions

and since there has been no reason demonstrated why the Commission should deviate from NLRB contract bar precedent, the undersigned has been guided by the criteria spelled out by the NLRB in Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958) regarding post-contract-expiration memoranda of agreement. See also, In re City of Jersey City, E.D. No. 78 (1975). In Appalachian Shale, the NLRB held that a memorandum of agreement may operate as a bar to a petition (1) if it contains substantial terms and conditions of employment; and, (2) if it has been ratified, where ratification is required by the memorandum's terms.

In the present case, Council 7 claims that the letter of agreement is not complete as it does not contain a complete and final salary guide. The undersigned dismisses this claim. The first item of the letter states: "Negotiated wage increase - 8% across the board". Applying the 8% increase to the existing salary guide is a mere mechanical formality. The letter clearly and unambiguously states the amount and application of the negotiated increase. The other items, including the duration of the agreement, are similarly clear and in conjunction with the unchanged provisions of the expired agreement, the memorandum provides substantial terms and conditions of employment as contemplated by Appalachian Shale.

Turning to the CWA's request for a hearing, the undersigned is constrained to reject that request for the reasons contained in Appalachian Shale. Preliminarily, the undersigned

observes that the primary concern herein is not the enforceability of the letter of agreement. The significant concern is whether the agreement, by its written terms, is sufficient to invoke the protections afforded by the contract bar rule. For example, under Board policy a formal collective negotiations agreement may be enforceable as to its terms, but if its duration is indefinite it will not bar a petition.

The Board has established a simple standard in Appalachian Shale to determine whether a memorandum is sufficient to afford the parties contract bar protection. If a memorandum containing substantial terms is completely silent as to ratification, it bars a petition. If the language of the memorandum requires ratification as a condition precedent to contract validity, the memorandum is ineffectual as a bar unless it is ratified prior to the filing of a petition. By creating a rule which requires the plain language of the contract to speak for itself, the Board seeks to avoid protracted investigatory hearings which would necessitate the weighing of conflicting parol testimony as to the alleged understanding of the parties at or about the time of the contract negotiations, regarding the need for prior ratification.

In adopting the NLRB approach the undersigned finds that the word "recommendation" in the letter of agreement speaks for itself and cannot mean anything other than that the negotiators agreed to present the negotiated terms to their respective constituents for ratification. Therefore, by its terms, the letter

of agreement required ratification prior to the filing of the representation Petition. As the Freeholder Board had not ratified it as of April 30, 1980, the letter of agreement does not operate as a bar to the instant Petition.

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. Therefore, the undersigned finds that the appropriate unit is: all white and blue collar nonprofessional employees, but excluding managerial executives, confidential employees, professional and craft employees, police employees and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above 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

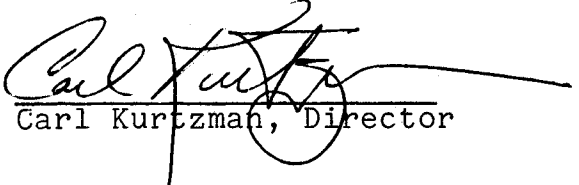
been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with Middlesex Council #7, NJCSA, and Communications Workers of America, AFL-CIO, 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 shall be simultaneously filed with Middlesex Council #7, NJCSA, and Communications Workers of America, AFL-CIO with statements 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 the Middlesex Council #7, NJCSA, or CWA, AFL-CIO, or neither.

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: July 8, 1980
Trenton, New Jersey

January 22, 1980

Re: Juvenile Detention Home
1980 Contract Negotiations

We of labor relations have concluded negotiations with the Juvenile Detention center and (C.W.A. Communication Worker of America).

The following conditions were agreed to by both sides for recommendation:

1. Negotiated wage increase - 8% across the board.
2. Shift differential - 2nd shift 20¢ per hour for shift hours worked - 15¢ per hour for the third shift for the shift hours worked.
3. Higher in grade work - additional 50¢ for the hours worked.
4. Clothing allowance - buy out \$225.00 to be applied to the Base rate. (Cooks will be paid a pro rata share of \$75.00- buy out).
5. Two year Contract with a wage reopener and 5 selected issues to be addressed at negotiations.
6. Extended Medical Coverage - Drug Prescription, Dental and Vision Care (9 months - 3 X 3). Also emanating County Policy changes to be applied for all full-time employees in this bargaining unit if and when they occur.
7. Guy Pellicane, Pete Kovalski were in attendance and agreed to conditions as stipulated.

[Handwritten signatures]
John DeVico, Lillian Schradt, C. W. [unclear]