

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

In the Matter of

CITY OF VINELAND POLICE
DEPARTMENT,

Public Employer,

-and-

FRATERNAL ORDER OF POLICE,
CUMBERLAND LODGE NO. 8,

DOCKET NO. RO-82-118

Petitioner,

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 266,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition for Certification of Public Employee Representative filed by the FOP. The City and the PBA alleged that the Petition was not timely filed because a written agreement was in effect which acts as a bar to the filing of the instant Petition. The Director finds that the City and the PBA met with an interest arbitrator and entered into an agreement which became the basis of the arbitrator's issuance of a "consent award" by the arbitrator. The Director determines that the "consent award" containing substantive terms and conditions of employment for a fixed period of time, constituted a written agreement pursuant to N.J.A.C. 19:11-2.8(c).

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Appearances:

For the Public Employer
Tuso, Gruccio, Buonadonna, Giovinazzi
and Butler, attorneys
(Lawrence A. Pepper, Jr., of counsel)

For the Petitioner
Ferrara & Waldman, attorneys
(Michael A. Ferrara, Jr., of counsel)

For the Intervenor
Ralph H. Colflesh, Jr., attorney

DECISION

On December 9, 1981, the Fraternal Order of Police, Cumberland Lodge No. 8 ("FOP"), filed a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, with the Public Employment Relations

Commission ("Commission"), seeking to represent a collective negotiations unit of all patrolmen employed by the City of Vineland Police Department ("City"), excluding superior officers and civilian employees. The Policemen's Benevolent Association, Local No. 266 ("PBA") is the incumbent exclusive negotiations representative of that unit as a result of a certification of representative issued to the PBA by the Commission on December 1, 1980.

The sole issue in dispute between the parties is whether the Petition has been timely filed pursuant to N.J.A.C. 19:11-2.8. The FOP asserts that the Petition has been timely filed, and requests that a secret ballot election be conducted by the Commission among the employees to determine the exclusive representative. The City and the PBA claim that the Petition was not filed in a timely period by virtue of the existence of a contractual consent award issued by an interest arbitrator which does not expire until December 31, 1983.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations raised by the filing of the Petition, in order to determine the facts.

On the basis of the administrative investigation to date, 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 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 by the parties.

2. The City of Vineland is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1, 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. The Fraternal Order of Police, Cumberland Lodge No. 8 and the Policemen's Benevolent Association, Local No. 266, are employee representatives within the meaning of the Act and are subject to its provisions.

4. On December 9, 1981, the FOP filed the instant Petition seeking to represent patrolmen employed by the Vineland Police Department.

5. The City and the PBA allege that the Petition is not timely filed because a written agreement was in effect between the parties which acts as a bar to the filing of the Petition.

6. On December 1, 1980, the PBA was certified as the exclusive representative of patrolmen of the City as a result of a Commission-conducted secret ballot election. Prior thereto, the FOP had been the exclusive representative, and had a collective negotiations agreement with the City which expired December 31, 1980.

On August 19, 1981, representatives of the PBA and the City met with an interest arbitrator assigned by the Commission.

On that date, the PBA and City representatives executed a "consent award" with respect to outstanding disputed negotiations issues. The next day, August 20, 1981, the interest arbitrator formalized the handwritten memorandum into an order embodying the consent award. The consent award sets forth terms and conditions of employment effective January 1, 1981 through December 31, 1983.

7. N.J.A.C. 19:11-2.8, bars the filing of certification petitions during the period of an existing written agreement containing substantive terms and conditions of employment unless such petition is filed during a designated "window" period.

N.J.A.C. 19:11-2.8 provides in relevant part:

(c) 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.

Prior Commission decisions have elaborated upon the meaning of the phrase, "an existing written agreement containing substantive terms and conditions of employment." In In re Transport of New Jersey, D.R. No. 82-38, 8 NJPER 154 (¶ 13067 1982), the undersigned held that in order for the rule to become operative,

an agreement must be reduced to writing and signed by the parties. In In re Cty. of Middlesex, D.R. No. 82-38, 6 NJPER 355 (¶ 11179 1980), req. for review denied P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980), the undersigned, applying the criteria spelled out by the National Labor Relations Board ^{1/} in Appalacian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958), found that a memorandum of agreement may operate as a bar to the filing of a petition: (1) if it contains substantive terms and conditions of employment; and (2) if it has been ratified, where ratification is required by the memorandum's terms. Where the parties have utilized interest arbitration as a mechanism to resolve their contractual dispute, an arbitrator's award may satisfy the requirements of the rule. In re Hudson Cty. Bd. of Chosen Freeholders, D.R. No. 78-14, 3 NJPER 295 (1977).

In In re City of Jersey City, E.D. No. 78 (1975), the Executive Director determined that a memorandum of agreement which covered a number of substantive terms and conditions of employment, including salaries for the two years, an increase in longevity, shift differential, guaranteed overtime, holidays, vacations, and clothing allowance, and which provided for the continuance of all other prior contractual provisions satisfied the requirements of "an existing written agreement" within the meaning of N.J.A.C. 19:11-2.8(c).

In In re Cty. of Ocean, D.R. No. 82-31, 8 NJPER 66 (¶ 13027 1981), the undersigned, again applying National Labor

^{1/} The New Jersey Supreme Court in Lullo v. International Assoc. of Firefighters, 55 N.J. 409 (1970) stated that the Commission should be guided by National Labor Relations Board law and policy in its own decisions concerning representation matters.

Relations Board policy, held that provisions of a collective negotiations agreement which permit mid-term modifications, do not remove the contract as a bar to the filing of a petition, and "open up" the contract to an otherwise prematurely filed petition.

In the instant matter, the City and the PBA met with the interest arbitrator on August 19, 1981 and entered into an agreement which became the basis for the arbitrator's issuance of a "consent award." The agreement is in writing and signed by a representative of each party and sets forth substantive terms and conditions of employment for a fixed period of time including a salary increase for each of the three years, additional days off, vacations, belt beepers, work week, an agency shop provision, and a method for the calculation of the new salary guides. No ratification of the agreement was specifically required by the parties, and in fact, the arbitrator issued his formal consent award, which contained the agreed upon provisions, on August 20, 1981.

As noted in the Middlesex Cty. and Jersey City matters, supra, a written agreement between the parties need not take the form of a formalized, typed collective negotiations contract in order to bar the filing of a representation petition. Here, the opening language of the written agreement between the parties states, "The City of Vineland and PBA #266 hereby agree to the following consent award: ... "

The undersigned does not find merit in the Petitioner's argument that the agreement is not clear and unambiguous, and therefore may not bar its petition. The agreement, which was

handwritten by the arbitrator, as well as the arbitrator's typed consent award, which issued prior to the filing of the Petition, contains a clear formula for the construction of the new salary guides, based on the agreement of the parties. The computation of the guide requires a mere mechanical application of formula spelled out in the consent award. ^{2/} The FOP's claims in this regard are not specific and, similarly, not supported by any factual assertion.

Finally, apart from the sufficiency of the August 19, 1981 written agreement as a bar to the instant Petition, there is the award of the arbitrator of August 20, 1981. In In re Hudson Cty. Bd. of Chosen Freeholders, supra, the undersigned determined that an arbitrator's award, containing substantive terms and conditions of employment for a fixed period of time, acted as a written agreement which is sufficient to bar the filing of a petition for certification under N.J.A.C. 19:11-2.8(c). Similarly, the award herein acts as a bar, particularly in light of the statutory mandate of N.J.S.A. 34:13A-16 et seq. that the arbitrator's award resolve all outstanding disputed negotiations issues.

On April 12, 1982, the parties were advised by the undersigned that on the basis of the administrative investigation, it appeared that the Petition for Certification of Public Employee Representative had not been timely filed in accordance with the Commission's rules. The undersigned reminded the parties of their obligations under N.J.A.C. 19:11-2.6 to present documentary

^{2/} Moreover, the arbitrator retained jurisdiction of the matter pending completion of the salary guides.

or other evidence as well as statements of position related to the instant Petition, and afforded an additional opportunity to the parties to proffer any supplementary evidence or statements of position relevant to the instant Petition. The parties were further advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned would thereafter dismiss the instant Petition.

On April 20, 1982, the FOP, through its attorney, requested and was granted, an extension of time to provide supplementary evidence by April 27, 1982. The undersigned has not received any further evidentiary proffer from the FOP, nor a reply from the other parties to his April 12 letter.

Accordingly, there being no presentation of facts placing in dispute any substantial and material factual issues, the undersigned determines that the Petition has not been timely filed pursuant to N.J.A.C. 19:11-2.8(c), and the Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: May 14, 1982
Trenton, New Jersey