

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

In the Matter of

COUNTY OF ATLANTIC,

Public Employer,

-and-

TEAMSTERS UNION LOCAL 331,
a/w IBTCWHA,

DOCKET NO. RO-81-67

Petitioner,

-and-

LOCAL 2252, COUNCIL 71
AFSCME, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, declines Petitioner's motion to amend its petition and dismisses its Petition for Certification of Public Employee Representative. The Petitioner proposed the creation of a countywide negotiations unit during a "open period" for the filing of certification petitions. The administrative investigation revealed that the Petitioner's showing of interest was inadequate. Shortly after the filing of the certification petition, however, the Petitioner sought to amend its Petition to be coextensive with existing units of county personnel. The request for amendment was filed during an "insulated period." The Director declines the request for an amendment since the initial Petition did not raise a valid question concerning representation.

D.R. NO. 81-19

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AFSCME, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer, Carroll, Panepinto,
Pachman, Williamson & Paolino, Esqs.
(Martin R. Pachman, of Counsel)

For the Petitioner, Howard J. Casper, Esq.

For the Intervenor, Russell Weiss, Staff
Representative, AFSCME, Council 71

DECISION

On September 30, 1980 a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Union Local 331, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Teamsters") with respect to a proposed unit comprised of all employees of the County of Atlantic (the "County"). Locals 2252, 2302 and 2309, Council 71, American Federation of State,

County and Municipal Employees ("AFSCME") are the exclusive representatives of three units of County employees who are among the petitioned-for employees and have intervened in the instant matter. On October 5, 1980, the Teamsters sought to amend its Petition to seek units coextensive with those represented by AFSCME.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the petition in order to determine the facts. On the basis of the investigation, 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 issues have been placed in dispute by the parties.

2. The County of Atlantic 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 this petition and is subject to the provisions of the Act.

3. Teamsters Union Local 331 affiliated with IBTCWHA and Locals 2252, 2302 and 2309, Council 71, AFSCME, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. On September 30, 1980, the Teamsters filed a Petition for Certification of Public Employee Representative seeking a unit comprised of all County employees excluding employees who are currently represented in Teamster negotiation units and those employees excluded by the Act.

5. AFSCME is the current exclusive representative of employees in three county-wide negotiation units: a) all non-supervisory employees within the Atlantic County Division of Welfare; b) all non-supervisory employees within the Department of Health and Institutions and c) all non-supervisory white collar employees of the County of Atlantic excluding those in (a) or (b) above. The County has advised that other negotiations units of employees, not represented by AFSCME, are present in the County. It would appear that employees in these units would also be involved in the petition filed on September 30, 1980 by the Teamsters.

6. The County and AFSCME oppose the Teamsters petition, asserting that the appropriate units for the representation of the petitioned-for employees are those that are extant.

7. On October 5, 1980, the Teamsters sought to amend its petition to correspond to the existing unit structure represented by AFSCME.

8. The County and AFSCME oppose the amendment, asserting that it essentially constitutes the filing of a new petition which would be time barred under Commission rules. In this regard,

N.J.A.C. 19:2.8(c)(2) provides that certification petitions involving employees of a County shall be filed during the period of 90 to 120 days prior to the expiration of a current agreement covering such employees. The County and AFSCME are currently parties to collective negotiations agreements which expire on December 31, 1980.

9. In correspondence dated November 14, 1980 and filed November 17, 1980, the Teamsters argues that its petition, as amended, should be processed. The Teamsters states "if you will look at the original petition, as well as the amendment, you will find that there is no prejudice to any of the parties herein and the amended Petition simply more clearly defines the unit being sought. The unit being sought is smaller than the original Petition, and accordingly no one will suffer as a result of your allowance of the amendment."

10. The County, in a letter dated November 17, 1980, and filed November 19, 1980, objects in part to the Teamsters' claim that there would be no prejudice to the parties by the acceptance of the amended petition. The County states:

While petitioner boldly asserts that there is "no prejudice to the parties involved" by its attempted circumvention of the timeliness rules, those rules were adopted for a very specific purpose, and in furtherance of the very specific goal of affording parties, including a public employer, a measure of stability in its employee relations....We believe, that the County is entitled to a period of stability following the expiration of the thirty (30) day open period, in order to allow us to negotiate an agreement in a manner which is timely in order to afford both ourselves and our employees an appropriate

employee relations transition from one calendar year to the next. To permit a petitioner who filed an admittedly inappropriate petition on the last day of the window period, which itself contained inaccurate, insufficient and improper information, to thereafter file a totally new petition seeking totally new bargaining units, purporting to cover employees with a percentage difference of one hundred percent (100%), and call that an amendment, would completely destroy the concept of a window period. Any organization could file a totally spurious petition at any time, during the window period, and thereafter seek to amend its petition to comport to (a) reality, (b) its showing of interest, or (c) all of the above, with no regard to the timeliness rule.

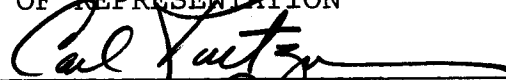
For the reasons that follow, the undersigned determines that the Teamsters' request to amend its petition must be denied. The undersigned has previously addressed the question of requests filed during the insulated period to amend certification petitions which were filed during a timely open period. See In re Holmdel Township Board of Education, D.R. No. 80-29, ___ NJPER ___ (¶ _____ 1980). The Holmdel matter involved a request, similar to the one involved herein, that the petition be amended to seek separately the same employees who were initially petitioned-for in a broader negotiations unit. The undersigned stated the Commission's policy that "once a valid question concerning representation has been raised concerning employees the petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." Commission policy requires that a petition raise a valid question concerning representation during the open period since, in the absence thereof, the contract

bar rules are designed to provide the employer and the majority representative with an insulated period before the expiration of an agreement to negotiate a successor thereto.

Unlike the Holmdel matter above, the petition filed by the Teamsters during the open period did not raise a valid question concerning representation. The Commission's investigation has revealed that the showing of interest submitted by the Teamsters in support of its petition is inadequate.^{1/} Accordingly, the Teamsters' petition was not accompanied by an adequate showing of interest and did not raise a valid question concerning representation among employees in the unit petitioned-for.^{2/}

For the above reasons, therefore, the undersigned dismisses the instant petition. Dismissal of the instant petition is without prejudice to the filing of another petition by the Teamsters in the event that the Commission, in an unfair practice proceeding, awards an appropriate remedy which would permit the filing of a new petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman

Director of Representation Proceedings

DATED: Trenton, New Jersey
December 9, 1980

- ^{1/} The Teamsters were advised of the deficiency in its showing of interest prior to its filing of the request to amend its petition on November 5, 1980.
- ^{2/} The undersigned notes that the Teamsters filed an unfair practice charge on September 23, 1980, Commission Docket No. CO-81-82, alleging that AFSCME made certain wrongful statements to employees which resulted in the Teamsters' inability to solicit and collect authorization cards to accompany a petition for certification of public employee representative. Under separate cover, the undersigned has today issued a Complaint and Notice of Hearing with respect to this unfair practice charge.