

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

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Public Employer

-and-

HAMILTON TOWNSHIP SCHOOL
SOCIAL WORKERS ASSOCIATION,

DOCKET NO. RO-78-103

Petitioner,

-and-

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition for Certification of Public Employee Representative as not having been timely filed. The Director rejects Petitioner's claim that, since mediation was conducted during the September-October 1977 filing period and the contract was not executed until October 19, 1977, the open period for filing petitions, September 1 through October 15, was stayed for an equivalent period of time subsequent to the execution of the agreement.

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Appearances:

For the Public Employer
Thomas Fitzpatrick, Director of Personnel

For the Petitioner
Dietrich, Allen & St. John
(Charles P. Allen, Jr., of Counsel)

For the Intervenor
Joel S. Selikoff, Esq.

DECISION

On November 18, 1977, 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 the Hamilton Township School Social Workers Association (the "Petitioner"). The Petitioner seeks a

secret ballot election among employees in a proposed unit consisting of all school social workers employed in Hamilton Township Public Schools. The Hamilton Township Education Association (the "Association") is the current collective negotiations representative for a negotiations unit of professional employees which includes all social workers.

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties were advised of their obligations under the Commission's rules, and were afforded an opportunity thereunder to present documentary and other evidence, as well as statements of position relating to the Petition. On the basis of 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 factual issues exist which may more appropriately be resolved after a hearing. The specific evidence proffered to date appears to relate solely to the legal conclusions to be drawn from the substantiated facts. Accordingly, pursuant to N.J.A.C. 19:11-2.6, 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 Hamilton Township Board of Education (the "Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the

"Act"), is the employer of the employees described herein, and is subject to the provisions of the Act.

3. The Hamilton Township School Social Workers Association and the Hamilton Township Education Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. Hamilton Township School Social Workers Association having filed a Petition for Certification of Public Employee Representative, and there being no agreement for a secret ballot election, a dispute exists and the matter is appropriately before the undersigned.

5. The instant Petition was filed on November 18, 1977.

6. The Board and the Association are currently and were at the time of the filing of the Petition parties to a written collective negotiations agreement executed on October 19, 1977 and effective July 1, 1977 through June 30, 1980.

7. Both the Hamilton Township Board of Education and the Hamilton Township Education Association object to a secret ballot election on the basis that the current agreement between these parties, effective July 1, 1977 through June 30, 1980, constitutes a contract bar to the processing of this Petition, pursuant to N.J.A.C. 19:11-2.8(c)(3). ^{1/}

1/ N.J.A.C.19:11-2.8(c)(3) provides that:

"(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; (3) In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement."

8. By letter dated January 5, 1978, the undersigned advised the parties that under N.J.A.C. 19:11-2.8(c)(3) it appeared that the Petition was not timely filed and could not be processed at this time. The undersigned stated that, in the absence of the presentation of documentary or other evidence which would raise substantial and material factual issues warranting the convening of an evidentiary hearing, he would issue a determination based upon the investigation. The undersigned afforded the parties a further opportunity to proffer any additional evidence as well as statements of position which would raise substantial and material factual issues in this matter.

9. In response to the Board's and the Association's claim of a contract bar, and to the undersigned's letter of January 5, 1978, the Petitioner asserts that, since mediation was conducted during the September-October filing period and the current contract was not executed until October 19, 1977, the cut-off date for filing petitions, October 15, 1977, was stayed for a period equivalent to the initial filing time.

10. The Petitioner's statement appears to relate solely to the legal conclusions to be drawn from the substantiated facts. It does not place in dispute any substantial and material factual issues. Accordingly, the Petitioner's statement will be considered on the basis of the undisputed facts ascertained in the administrative investigation herein.

The right of public employees to file petitions raising questions as to their representation is restricted by the Commission

in four situations described in N.J.A.C. 19:11-2.8. These situations are (1) where there has been an election within the preceding 12 month period, (2) where there has been a recognition during the preceding 12 month period, (3) where the Commission has issued a Certification of Representative during the preceding 12 months and (4) where a petition has been filed during a period in which there is an "existing written agreement containing substantive terms and conditions of employment" covering the employees. The bar created by the existing written agreement is called a "contract bar". Where there is a contract bar, employees may raise a question concerning their representation only during certain "open" or "window" periods delineated in N.J.A.C. 19:11-2.8(c).

The undersigned determines that the Petitioner's analysis of the application of the contract bar rule cannot be sustained since, based on the facts herein, it erroneously identifies the open period for the timely filing of the instant Petition, and it incorrectly attempts to establish a tolling period principle for filing of petitions based upon the pendency of negotiations between the employer and the incumbent exclusive representative during the open period.

The undersigned takes administrative notice of Commission records in Docket No. RO-77-63 which indicate that the Hamilton Township Education Association was certified on December 3, 1976 as the exclusive representative in a negotiations unit of professional employees, including all social

workers. Accordingly, for the 12 month period beginning December 3, 1976 and certainly during the September through October 15, 1977 period, there existed a Commission certification bar, pursuant to N.J.A.C. 19:11-2.8(b), to the filing of a Petition. Thus, the September 1 - October 15 period of 1977 was not an open period. The certification bar was extinguished and the contract bar became controlling, when the parties entered into their contractual agreement. See In re Deptford Township Board of Education, E.D. No. 5 (1970). The agreement, executed October 19, 1977, and in effect on the date the instant Petition was filed, terminates on June 30, 1980. Accordingly, the open period available to a petitioner to raise its question concerning representation before the Commission does not commence until September 1, 1979.

Although the undersigned has determined above that the September 1 - October 15, 1977 period was not an open period and, consequently, there is no relevance herein to the argument advanced by the petitioner that negotiations during an open period tolls the open period until a later time, nevertheless; the undersigned will restate the Commission's policy in this area. The Petitioner's argument that the status of negotiations tolls the open period until a later time is predicated on the premise that there is a negotiations bar which would prevent and postpone or at least suspend the open period until after an agreement is executed. This is not the case. The Commission has determined that the status of negotiations

between an employer and an exclusive representative does not bar the filing of a petition during an open period. In re Township of Franklin, P.E.R.C. No. 64 (1971). Rather, the Commission's rules envision that the parties to the collective negotiations relationship may often be engaged in active negotiations when the open period commences. See N.J.A.C. 12-2.1. See also, In re Passaic County Board of Chosen Freeholders, D.R. No. 77-7, 3 NJPER 22 (1976).

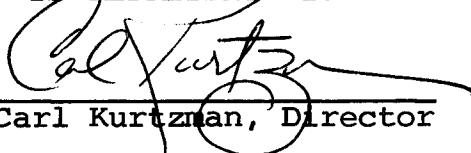
The open period for challenges to representation is designed to provide opportunities for employees to seek a change in their collective negotiations representative while at the same time providing stability to the existing collective negotiations relationship, where the parties are operating under an existing written agreement. The Commission has determined that the contract bar rule provides a reasonable means to accomplish this result. See In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248, 251 (1977). Significantly, under the contract bar rule, the time period between the execution of an agreement and the start of the open period and the period of time between the close of the open period and the date of the expiration of an agreement are insulated periods which protect the parties to the existing relationship from challenges raising a question concerning representation. These insulated periods are provided in order to permit the parties to the existing relationship to administer an agreement, and to consummate a successor agreement during a particularly

crucial period, without concern for the instability created by an attack on representation. If the parties fail to achieve an agreement by the time the existing agreement has expired, the Commission's rules then permit the filing of petitions during the period extending from the expiration of the old agreement until a successor agreement has been executed. It flows from this concern, as well as all of the above discussion, that the Commission, in designing its rules, has rejected the Petitioner's argument that the status of negotiations during the open period delays the operation of the open period to a later period of time. To the contrary, the execution of a successor agreement forecloses, rather than permits, the subsequent filing of Petitions of Certification of Public Employee Representative.

The facts in this case indicate that negotiations and the execution of an agreement took place during an insulated period, a period protected by a certification bar. Upon the execution of the agreement, the contract bar was created which forecloses the filing of a representation petition from the date of execution of the agreement through August 31, 1979 and establishes the timely period for the filing of a representation petition as September 1 - October 15, 1979.

Accordingly, for the reasons stated above, the undersigned determines that the instant Petition has not been timely filed and the Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: March 3, 1978
Trenton, New Jersey