

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

In the Matter of

MANALAPAN-ENGLISHTOWN REGIONAL
BOARD OF EDUCATION,

Public Employer,

-and-

MANALAPAN-ENGLISHTOWN REGIONAL
SCHOOLS SUPPORTIVE STAFF
ASSOCIATION, NJEA,

DOCKET NO. RO-81-4

Petitioner,

-and-

LOCAL 142, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed during the operative period of a written agreement covering terms and conditions of employment. The Director rejects consideration of the Petitioner's claims that the contract was not legally entered into by the employer and the incumbent representative because the employer did not follow Sunshine Law requirements and because the incumbent did not represent a majority of employees when the agreement was entered into. The Director concludes that the Sunshine Law claims are appropriate for consideration in a judicial forum and that the absence of majority status claims are appropriately addressed in an unfair practice forum. The Director cites National Labor Relations Board policy under which the National Labor Relations Board prohibits the litigation of claims concerning the majority status of employee representatives in contract bar proceedings.

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EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Intervenor.

Appearances:

For the Public Employer
Cassetta, Brandon Associates
(Raymond Cassetta, Consultant)

For the Petitioner
Chamlin, Schottland, Rosen & Cavanaugh, attorneys
(Michael Schottland, of counsel)

For the Intervenor
Lou Saladino, Business Representative

DECISION

On July 1, 1980, a Petition for Certification of
Public Employee Representative, accompanied by an adequate
showing of interest, was filed with the Public Employment

Relations Commission (the "Commission") by the Manalapan-Englishtown Regional Schools Supportive Staff Association, New Jersey Education Association (the "Association"). The Association is seeking to represent custodians, maintenance, cafeteria aides, cooks, cashiers, and grounds crew employed by the Manalapan-Englishtown Regional Board of Education (the "Board"). Local 142, Office and Professional Employees International Union, AFL-CIO ("Local 142") is the current exclusive representative of the above unit of employees and has intervened in the instant matter.

Both the Board and Local 142 have provided the Commission with a copy of a written agreement covering the terms and conditions of employment of employees in the above unit, executed on June 27, 1980 and effective July 1, 1980. The Board and Local 142 urge that the Petition be dismissed as not timely filed under the Commission's rules.

On the basis of the administrative investigation into this matter, the undersigned finds and determines as follows:

1. The Manalapan-Englishtown Regional Board of Education 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 proceeding, and is subject to the provisions of the Act.

2. Manalapan-Englishtown Regional Schools Supportive Staff Association, New Jersey Education Association and Local 142, Office and Professional Employees International Union, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

3. On July 1, 1980, the Association filed a Petition for Certification of Public Employee Representative seeking to represent custodians, maintenance, cafeteria aides, cooks, cashiers, and grounds crew employed by the Manalapan-Englishtown Regional Board of Education. Local 142 is currently the exclusive representative of a unit comprised of these employees.

4. On June 27, 1980, the Board and Local 142 entered into a collective negotiations agreement covering the above employees, effective July 1, 1980 to June 30, 1982. The Board and Local 142 both allege that the Association's Petition is not timely filed since the Petition was filed during the period of an existing written agreement covering the employees involved.

N.J.A.C. 19:11-2.8(c) provides, in pertinent part:

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.

5. On August 15, 1980, the undersigned advised the Association of the contract bar claim asserted by the Board and Local 142 and stated that the written agreement appeared to constitute a full and complete collective negotiations agreement. The undersigned stated that in the absence of substantial and material disputed factual issues, the representation petition filed by the Association would be dismissed on the basis of the investigation.

6. On August 19, 1980, the Association responded to the undersigned's correspondence and urged that the Commission consider the contents of two complaints which it had filed in the Superior Court, Chancery Division on August 7 and August 8, 1980 against the Board and Local 142. The Association stated: "It is our position that in light of the contents of the complaints, the fact of their pendency, together with the contents of the exhibits, the Commission should entertain the representation case at this juncture." The Association also requests a "full plenary hearing" in the representation matter.

The complaints filed in the Chancery Division allege, essentially, that the agreement entered into by the Board and Local 142 on June 27, 1980, should be set aside

because the Board did not properly consider the agreement at a public meeting and because the Board improperly entered into the agreement with knowledge that the Association represented a majority of unit employees. The Association also alleges that Local 142 was aware that it "no longer represented the interest of its local membership."

7. On September 15, 1980, the Board filed a statement of position in opposition to the Association's request and again urged that the Commission apply the contract bar rule and dismiss the Association's petition.

The issue before the undersigned is whether the allegations in these civil action complaints against the Board and Local 142 should be litigated in a representation proceeding as a defense to the claim that a written agreement should bar the processing of a representation petition. There is no dispute that the agreement substantively constitutes a sufficient written agreement covering terms and conditions of employment to act as a bar under the Commission's contract bar rule. The dispute revolves around the Association's claim that the agreement executed by the Board and Local 142 is invalid. If it is determined that the Association's arguments are inappropriate for consideration in the representation context, the instant Petition must be dismissed.

Consistent with the Supreme Court's instruction in Lullo v. Int'l. Assn. of Fire Fighters, 55 N.J. 409 (1970),

the undersigned has turned to the experience and adjudication of the National Labor Relations Board ("NLRB") which has also adopted contract bar rules. The NLRB, in the context of a contract bar determination, has considered the issue now placed before the undersigned, i.e. the alleged illegality of a written agreement, and has determined that it will not consider in a representation proceeding claims that the incumbent did not represent a majority of employees when the employer and incumbent entered into the agreement constituting the bar. In Electro Metallurgical Co., 72 NLRB No. 253, 19 LRRM 1291 (1947), the NLRB stated:

As to the contention that the Intervenor did not, on the date when the contract was executed, represent a majority of the employees in the unit, it is the practice of the Board in representation cases, at least so far as the question of a bar to a proceeding is concerned, to presume the legality of a collective bargaining agreement and to refuse to admit evidence on the question whether, at the time the contract was executed, a majority of the employees covered by such contract, had designated the contracting union as their bargaining representative (Matter of Wilmington Terminal Warehouse Company, et al., 68 N.L.R.B. 299 [18 LRRM 1127]; Matter of the Lamson Brothers Company, 59 N.L.R.B. 1561 [15 LRR Man. 209]). Accordingly, we find that this position of the Petitioner is untenable.

In NLRB v. Pepsi Cola Bottling Co., 79 LRRM 2324 (1972), the Sixth Circuit Court of Appeals, in agreement with the NLRB

policy, stated: "The only avenue for attacking the validity of an existing contract was the unfair labor practice proceeding "


The undersigned agrees with the NLRB that litigation in a contract bar representation proceeding should not include challenges to the legality of an agreement on the basis that the employer was not negotiating with the representative of a majority of employees when it concluded the agreement constituting the bar. Disputes concerning this claim are appropriately addressed as unfair practice charges. Where such claims are filed contemporaneously with the representation petition, the representation proceeding may be consolidated with the charges or may be held in abeyance. However, in the absence of an unfair practice charge, the validity of the contract is presumed and the representation petition will be dismissed. ^{1/}

Additionally, the undersigned declines to consider in a representation proceeding, the claims by the Association that the Board's failure to abide by Sunshine Law procedural requirements renders the contract unlawful. These claims are appropriately considered in a judicial forum.

^{1/} This procedure is consistent with the procedure outlined in a recent matter, In re Borough of Closter, D.R. No. 81-12, 6 NJPER ____ (¶ 1980), concerning the interplay of post-election representation proceedings and unfair practice charges. Closter addresses the propriety of litigating the legality of the discharge of an employee in a representation proceeding. See also In re Spray Sales and Sierra Rollers, 225 NLRB No. 157, 93 LRRM 1025 (1976), n.6, in which the NLRB compared the similar reasoning it has adopted in the contexts of both the contract bar issues herein and the discharge for cause issues involved in Spray Sales.

Accordingly, for the above reasons, the undersigned dismisses the instant Petition. Dismissal of the instant Petition is without prejudice to the filing of another petition by the Association in the event that the agreement is voided by a court or in the event that the Commission, in an unfair practice proceeding, orders that the contract not be asserted as a bar to an election.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: October 10, 1980
 Trenton, New Jersey