

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

In the Matter of

TRANSPORT OF NEW JERSEY,

Public Employer,

-and-

UTILITY CO-WORKERS ASSOCIATION,

DOCKET NO. RO-82-12

Petitioner,

-and-

AMALGAMATED TRANSIT UNION, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a petition which seeks to sever one portion of employees from a larger unit which has been recognized by the employer. Commission policy favors the establishment of broad-based functional units and rejects the claims for narrowly defined units based on specific occupational distinctions. The Director also finds that Petitioner has not presented an evidentiary proffer to support any claim that the current relationship is unstable or that the incumbent organization has not provided responsible representation.

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Appearances:

For the Public Employer
Kenneth S. Levy, Deputy Attorney General

For the Petitioner
Parsonnet, Duggan & Pykon, attorneys
(Victor Parsonnet of counsel)

For the Intervenor
Weitzman, Brady & Weitzman, attorneys
(Richard P. Weitzman of counsel)

DECISION

On August 11, 1981, a Petition for Certification of Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Utility Co-Workers Association (the "Petitioner" or "Association") seeking to represent all information operators and clerks employed in the Information Center of Transport of New Jersey ("TNJ").

Division 819, Amalgamated Transit Union, AFL-CIO ("ATU") is currently the exclusive representative of a negotiations unit which includes the petitioned-for employees, and has intervened in this matter pursuant to N.J.A.C. 19:11-2.7.

Both TNJ and ATU decline to enter into an Agreement for Consent Election, in part claiming that the Petition has not been filed during a timely period, and alternatively arguing that the severance of the petitioned-for employees from the current unit is inappropriate.

In accordance with N.J.A.C., 19:11-2.6, 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.

Based upon the administrative investigation to date, 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. Transport of New Jersey 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 employed in the Information Center and is subject to the provisions of the Act.

3. Utility Co-Workers Association and Division 819, Amalgamated Transit Union, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. On August 11, 1981, the Association filed a Petition for Certification of Public Employee Representative seeking to represent all information operators and clerks within the Information Center of the TNJ. ATU is the current representative of a negotiations unit in which these employees are included.

5. TNJ and ATU allege that the petition is not timely filed, that a contract bar exists and that the unit sought is inappropriate.

6. The previous collective negotiations agreement between TNJ and ATU expired March 23, 1981.

7. At an informal conference conducted by a Commission staff agent, TNJ submitted an unsigned, undated draft copy of a negotiated agreement between it and ATU covering the period from March 24, 1981 through March 23, 1984.

Subsequently, by letter dated September 18, 1982, and served upon all parties, ATU advised the Commission that the petitioned-for employees have been represented by the ATU, and furthermore, that ATU and TNJ had reached agreement on a current collective negotiations agreement covering the employees during the early part of June 1981, after several months of extended negotiations.

However, ATU stated "There is no Memorandum of Agreement (as such) since the parties reached understandings as to various

paragraphs of the Collective Bargaining Agreement during the period preceding June 1981 ... The Union membership ratified the new contract which has been prepared in draft form and is awaiting signature." The ATU goes on to note that "the Agreement is effective as of March 24, 1981, for a duration through March 23, 1984."

ATU and TNJ object to the Petition herein relying on the "contract bar" rule contained in N.J.A.C. 19:11-2.8(c) which provides, in pertinent part:

During the period of an existing written agreement, containing substantive terms and conditions of employment for a period of three years or less, a petition will not be considered timely filed ...

For the following reasons, it appears that ATU's and TNJ's reliance on the contract bar rule in the instant matter is misplaced. In order for the contract bar rule to become operative a written agreement must exist when the Petition is filed. In the instant matter, the previous contract between ATU and TNJ had expired on March 23, 1981.

TNJ argues that "for all practical purposes" a successor agreement existed between it and ATU, which was ratified in June 1981 -- two months before the instant Petition was filed. Admittedly, however, this "agreement" was not reduced to writing when the Petition was filed; nor were TNJ and the ATU parties to a written memorandum of agreement pending execution of a formal successor agreement. In re County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶ 11179 1980), req. for review den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980); In re City of Jersey City,

E.D. No. 78 (1975). As the undersigned observed in the Middlesex County matter, in applying the contract bar rule the Commission is not concerned with the enforceability of the agreement between the union and the employer, but whether it may bar the filing of a Petition by a third party which raises a question concerning representation. The contract bar rule, in short, provides that an oral or unexecuted agreement will not act as a bar to such a petition.

Accordingly, the undersigned cannot accept the claim of ATU and TNJ that a contract bar exists in the instant matter. However, while it appears that the Association's Petition cannot be barred on the basis of timeliness, there nevertheless exists a question concerning the severance of a group of employees from an already existing appropriate unit.

The unit of information operators and clerks sought by the Petitioner is one portion of the larger unit which has been recognized by the employer. This Petition is an attempt to sever the petitioned-for employees from the extant unit. At the investigatory conference conducted by a Commission staff agent, the Petitioner was apprised of the Commission's policy favoring the establishment of a broad-based functional unit and rejecting the claims for narrowly defined units based upon specific occupational distinctions. The Petitioner was advised of the Commission's standards for severing employees from an appropriate collective negotiations unit.

In In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1975), the Commission stated:

The underlying question is a policy one: Assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

Accordingly, based upon the factors described above, it would appear that the Petitioner has not placed factual claims before the undersigned which would warrant the further processing of this matter. The Petitioner has sought to sever a group of employees from the existing unit but has not presented an evidentiary proffer to support any claim that the current relationship is unstable or that the incumbent organization has not provided responsible representation.

By letter dated December 18, 1981, the undersigned afforded the parties an opportunity to submit documentary and other evidence, including statements of position, which might raise substantial and material factual issues warranting the convening of an evidentiary hearing pursuant to N.J.A.C. 19:11-2.6. The parties were further advised that in the absence of substantial and material factual issues, the undersigned would be inclined to dismiss the instant Petition. No further evidentiary proffer has been submitted to the undersigned.

Accordingly, in the absence of any further evidentiary proffer, the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 2, 1982
Trenton, New Jersey