

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

In the Matter of

MOUNT OLIVE TOWNSHIP  
BOARD OF EDUCATION,

Public Employer,

-and-

DIANNE MEEHAN,

DOCKET NO. RD-83-6

Petitioner,

-and-

LOCAL 11, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,

Intervenor.

SYNOPSIS

The Director of Representation rules upon certain claims raised by an incumbent representative in opposition to the processing of a decertification petition which, it argues, was not timely filed. The Director finds that the certification of representative issued to the incumbent the previous year could bar the filing of a Petition only for a period of one year from its issuance date, notwithstanding the employer's appeal of the issuance of the certification. The effectiveness of the certification of representative was not stayed by the Commission during the appeal period. Second, a written memorandum of understanding entered into between the incumbent representative and the employer, prior to the filing of the Petition, was not adequate to stand by itself as a sufficient written agreement which would bar a decertification petition. However, the Director orders that the processing of the Petition be pended in order to permit the incumbent to litigate an unfair practice charge alleging that the employer, prior to the filing of the decertification petition, wrongly refused to reduce a negotiated agreement to writing and wrongly assisted the decertification effort by favoring employees who supported the Petition in their terms and conditions of employment.

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Appearances:

For the Public Employer  
Green & Dzwilewski, attorneys  
(Paul Green of counsel)

For the Petitioner  
Dianne Meehan, pro se

For the Intervenor  
Schneider, Cohen, Solomon & DeMarzio  
(Bruce D. Leder of counsel)

DECISION

On October 27, 1982, <sup>1/</sup> a Petition for Decertification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission

<sup>1/</sup> The Petition was originally submitted to the Commission on October 18, and was deemed filed with the submission of an adequate showing of interest on October 27, 1982.

("Commission") by Diane Meehan ("Petitioner"), on behalf of certain employees, seeking a secret ballot election to determine whether bus drivers employed by the Mount Olive Township Board of Education ("Board") wish to continue to be represented by Teamsters Local No. 11 ("Local 11") for purposes of collective negotiations or to have no representative.

In accordance with N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. In the course of the investigation Local 11 interposed several representation and unfair practice issues which form the basis of its claim that the Petition should be dismissed. The instant decision is issued solely with respect to the clearly defined representation issues. As indicated by an accompanying Complaint and Notice of Hearing, the unfair practice charge issues will be considered separately.

On the basis of the administrative 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 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. The Mount Olive Township 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. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. Local 11, International Brotherhood of Teamsters, is an employee representative within the meaning of the Act, and is subject to its provisions. Local 11 is the certified majority representative of a collective negotiations unit of full-time and part-time bus drivers employed by the Mount Olive Township Board of Education.

4. Local 11 alleges that the instant decertification petition is not timely filed in accordance with the requirements of N.J.A.C. 19:11-2.8 because (1) "Local 11 was not certified until January 12, 1982"; and (2) "a memorandum of understanding was executed by the parties on June 17, 1982." Local 11 has further referred to certain unfair practice charges it filed against the Board subsequent to the filing of the instant Petition. These charges allege that the Board should have reduced an agreed upon contract with Local 11 to writing prior to the filing of the Petition, that the Board has discriminated against Local 11 supporters, and has improperly favored employees opposed to Local 11 in their terms and conditions of employment. Local 11 has urged that the representation petition herein be "blocked" while its charges are pursued.

5. The Board of Education takes no position with regard to the Petition.

6. Commission rules govern the timely filing of petitions which raise questions concerning representation. N.J.A.C. 19:11-2.8 sets forth the appropriate time periods. When an employee representative has recently been certified or recognized, N.J.A.C. 19:11-2.8(b), the "certification bar" rule, provides:

Where there is a certified or recognized representative, a petition for certification or decertification will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative).

When employees are covered by a written negotiated agreement covering their working conditions, N.J.A.C. 19:11-2.8(c), the "contract bar" rule, provides:

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.

Under Commission interpretation, the certification bar is extinguished and it is replaced by the contract bar if a written agreement is entered into during the certification year. In re Deptford Tp. Bd. of Ed., E.D. No. 5 (1970); In re Hamilton Tp. Bd. of Ed., D.R. No. 78-36, 4 NJPER 134 (¶ 4067 1978).

In essence, Local 11's argument is that when the Petition was filed on October 27, 1982, the contract bar period was operative either by virtue of a June 17 memorandum of understanding, standing alone, or by virtue of an agreed upon three year contract which, according to its unfair practice charge, should have been executed by the Board. Alternatively, Local 11 argues that if there was no operative contract bar, the original certification bar rule was operative when the Petition was filed and remained operative until January 1983, notwithstanding the fact that it was issued 15 months earlier. Local 11's contract bar arguments and its certification bar argument will be examined respectively.

The Commission has previously been requested to consider whether a Memorandum of Agreement, as opposed to a formal collective negotiations agreement, can constitute an "existing written agreement containing substantive terms and conditions of employment" for the purpose of determining whether a contract bar exists. See In re Mercer Cty. Superintendent of Elections, D.R. No. 82-40, 8 NJPER 157 (¶ 13069 1982), In re County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶ 11179 1980) req. for review denied P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980), and In re City of Jersey City,

E.D. No. 79 (1975). In this regard, the Commission has been guided by the experience and determination of the National Labor Relations Board ("Board"), as expressed in Appalacian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958). The Board stated therein:

Another related subject is the requirement, for contract bar purposes, that to bar a petition a collective bargaining agreement must contain substantial terms and conditions of employment. This is a general rule which the Board affirms. In reexamining the application of this general rule, however, the Board finds that an exception has developed which tends to lessen its effectiveness. Thus, an agreement limited to wages only, and containing no other terms and conditions of employment has been up held as a bar. The Board has reconsidered this exception, and finds that it is inconsistent with the basic premise that only a contract embodying the substantial terms and conditions of employment tends to stabilize the bargaining relationship. Failure to make such provisions leaves the parties in a continuous state of uncertainty with respect to material and pertinent aspects of their labor relations during the lifetime of the agreement, with the direct consequence of rendering the contract incapable of providing the stability contemplated by the Act. The Board is mindful of the fact that at times the execution of a contract such as one limited to wages only or to some terms which could not be deemed substantial may serve at least as a temporary expedient in resolving a conflict. Experience demonstrates, however, that real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems. It is felt that objectivity based on known standards should replace the uncertainty of subjective reasons and explanations, and that the elimination of this

exception will provide a surer and more predictable policy to guide those who come before the Board. Accordingly, the rule is restated as follows: to serve as a bar, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; it will not constitute a bar if it is limited to wages only, or to one or several provisions not deemed substantial." (footnotes omitted) (emphasis added)

The document herein referred to as the "Memorandum of Understanding," which Local 11 claims should operate to bar a petition, is dated June 17, 1982, and is signed by representatives of the Board and Local 11. It contains seven provisions including percentage salary increases for 1981-82, 1982-83, and 1983-84. No grievance procedure <sup>2/</sup> or recognition clause is contained therein, nor do the terms of the Agreement refer back to any previous written agreements covering terms and conditions of employment. Provision No. 5 provides that work assignments by seniority are "to be worked out." Provision No. 6 states "All language must still be resolved." The Memorandum is subject to ratification, although Local 11 claims that the Memorandum was ratified prior to the filing of the instant Petition. Finally, there is no explicit expiration date of the Memorandum Agreement.

Based upon the foregoing, and the requirements of the aforesaid decisions, it appears to the undersigned that the Memorandum of Understanding signed by the parties on June 17, 1982,

<sup>2/</sup> The fourth provision of the Memorandum of Agreement contains the following reference: "Binding Arb - reopener conditioned on Sect. Cust and Cafe Ees." [sic]



did not state substantial terms and conditions of employment with a degree of sufficiency necessary to stabilize the parties' negotiations relationship. Reducing the terms contained in the Memorandum to a formalized written contract appears to be more than a ministerial act. A critical element, i.e., an explicit expiration date, is lacking. In re City of Atlantic City, P.E.R.C. No. 82-81, 8 NJPER 137 (¶ 13059 1982). Although the Board has not provided a statement, there is no evidence that the Board ratified the agreement. In re County of Middlesex, supra. Accordingly, the Understanding is not a sufficient written agreement for purposes of triggering the application of the contract bar rule.

Turning to the certification bar argument, Commission records reveal that a Decision and Certification of Representative was issued on October 22, 1981, certifying Local 11 as the exclusive representative of the collective negotiations unit of full-time and part-time bus drivers employed by the Mt. Olive Board of Education. See Mt. Olive Bd. of Ed., D.R. No. 82-16, 7 NJPER 636 (¶ 12286 1981). It would, therefore, appear that the Petition, which was filed October 27, 1982, was filed in accordance with the provisions of N.J.A.C. 19:11-2.8(b). Local 11, however, asserts that the certification year should be measured from January 12, 1982, the date the Commission ruled upon a request for review of the undersigned's decision filed by the Board. Local 11 states that the Board attorney, in late October 1982:

... requested that negotiations be held in abeyance due to the fact that the Board was

intending to request a review of the Director's decision to the Commission. The attorney for the Board stated that if he were successful, negotiations would be for naught. Rather than file an unfair practice charge over the Board's refusal to negotiate, or to fight a request for a stay brought by the Board, Local 11 voluntarily agreed to the stay.

The difficulty with accepting Local 11's argument is its theory that the voluntary agreement between Local 11 and the Board not to negotiate somehow negates the filing rights granted under the rule to employees or other employee representatives. It would appear that the Commission has reserved to itself the wisdom of delaying the effectiveness of a certification of representation. N.J.A.C. 19:11-8.2 provides in this regard:

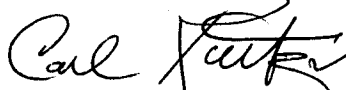
... the filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the director of representation.

Accordingly, the undersigned rejects Local 11's certification bar argument.

For the above reasons the undersigned determines that neither the Memorandum of Understanding nor Local 11's voluntary agreement to refrain from seeking negotiations during the initial two months of its certification present bars to the consideration of the instant Petition. However, as noted above, Local 11 has raised a claim in the unfair practice forum that the Board, even prior to the filing of the instant Petition, had an obligation to

reduce an agreed upon contract to writing. The charging party has submitted certain evidentiary materials to the undersigned to support its claim. After review of these materials, the undersigned has exercised his discretion to pend the further processing of the instant representation matter in order to permit the litigation of the charges. The charges raise significant factual and legal issues which may very well impact upon the application of the aforesaid provisions of N.J.A.C. 19:11-2.8. The entirety of Local 11's unfair practice charges may be litigated pursuant to the Complaint and Notice of Hearing issuing simultaneously herewith.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Carl Kurtzman, Director

DATED: May 5, 1983  
Trenton, New Jersey