

D.R. NO. 78-45

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

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Public Employer,

-and-

TEAMSTERS LOCAL NO. 286,

DOCKET NO. RO-78-144

Petitioner,

-and-

JERSEY CITY TEACHER AIDES 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 pursuant to N.J.A.C. 19:11-2.8(b), the "Certification Bar" rule. The Petition was filed within the one-year period following the issuance of a Commission Certification of Representative and the record reflects no evidence of unusual circumstances.

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ASSOCIATION,  
Intervenor.

Appearances:

For the Public Employer  
Krieiger & Chodash, Esqs.  
(Brian Flynn, of Counsel)

For the Petitioner  
Pat Nardolilli, Business Representative

For the Intervenor  
Philip Feintuch, Esq.

DECISION

On February 22, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Local No. 286, (the "Teamsters") seeking to represent a collective negotiations unit consisting of all teachers aides (school

board aides, title I aides, community aides, liason officers) employed by the Jersey City Board of Education (the "Board") . The Petition is supported by a valid showing of interest.

The undersigned has caused an investigation to be conducted in this matter pursuant to N.J.A.C. 19:11-2.2 and 2.6. On the basis of the investigation to date, the undersigned finds and determines as follows:

1. On June 22, 1977, an election was conducted by the Commission pursuant to an Agreement for Consent Election, among employees in the unit described as consisting of "all teachers aides, including title I aides employed by the Jersey City Board of Education." The results of that election indicated that of 192 eligible voters, a majority of valid ballots were cast for representation by the Jersey City Teachers Aides Association, affiliated with the Jersey City Education Association <sup>1/</sup> (the "Association"). Subsequently, on July 6, 1977, the Commission issued a Certification of Representative, certifying the Association as the exclusive negotiations representative of all employees in the above described unit.

2. N.J.A.C. 19:11-2.8(b) provides that "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..."

1/ Further, a majority of the eligible voters voted for the Association.

3. It has been represented to the Commission without dispute that teachers aides including title I aides constitute the vast majority of employees in the proposed unit.

4. On March 21, 1978, the undersigned advised the Teamsters of the existence of the Commission's certification, and the applicability of the certification bar rule, supra, to the instant matter. The undersigned requested that the Teamsters withdraw the instant Petition.

5. On March 27, 1978, the Teamsters replied to the Commission, stating that it would not withdraw its Petition and requesting a hearing. In its submission the Teamsters enclosed a copy of a "petition", dated in early December 1977, and signed by employees identified as teachers aides, requesting that the Board cease negotiations with the Association. In this petition the employees refer to various reasons in support of their request. These reasons generally embody dissatisfaction as to the employees' access and input into Association meetings and negotiations. The petition also states that "On or about June 22, 1977 the bargaining agent held an election in which they accepted affiliation with J.C.E.A. acknowledging them as bargaining agents for all board teacher aides." In reference to this election the petition states that "...the majority were not notified or afforded an opportunity for participating." 2/

2/ The undersigned is unable to determine whether the above reference to an election relates to an internal affiliation election or to the Commission's election held on that date. In either case, the Commission's election provided all aides

The certification bar rule is an integral part of the Commission's overall policy of seeking to achieve labor peace and stability in employer-employee relations. The purpose of the rule is to provide a reasonable opportunity and a stable environment in which the freely chosen representative of employees and the employer may negotiate a written agreement covering terms and conditions of employment. The rule provides a period of one year for this purpose. Accordingly, during this post-certification period, the majority representative is given an opportunity to carry out its mandate without an immediate threat to produce results under exigent pressures. Such exigent pressures may serve to undermine the ability of the majority representative to carry out its statutory duties to represent its members and negotiate in good faith. This protection also inures to the employer insofar as the employer may negotiate in good faith with the majority representative knowing that there is a reasonable degree

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2/ (Cont'd)

with the opportunity to vote for the selection or rejection of Association as negotiations agent. The Association clearly appeared on the Commission ballot as "JERSEY CITY TEACHERS ASSOCIATION, AFFILIATED WITH J.C.E.A." Commission Notices of Election were delivered to the Board for posting on June 16, 1977. The hours of the election were from 12 noon to 4 p.m.; and employees were assigned to vote at one of four voting locations. There were no post-election objections filed with the Commission. Further, as noted in footnote 1, a majority of the eligible employees in the voting unit cast ballots for the Association. A fortiori, a majority of eligible voters participated in the election.

of finality to the employees' choice. <sup>3/</sup>

The application of certification bar rule does not serve to eliminate other available remedies for employees who take issue with the manner in which the chosen majority representative is conducting its representation. The Commission's unfair practice proceedings forum is available to employees to remedy any breach of a statutory duty on the part of the majority representative. Further, outside of Commission processes, the employees may use internal processes to achieve change within the selected employee organization.

Finally, it is important to note that the concept of

<sup>3/</sup> The United States Supreme Court affirmed a Court of Appeals order of enforcement of the National Labor Relations Board's application of its own certification bar rule in Brooks v. NLRB, 348 U.S. 96 (1954). In that decision the Supreme Court noted the reasoning of the Board and the courts as follows: "(a) In the political and business spheres, by an election the voters are bound by their choice for a fixed time. This promotes a sense of responsibility in the electorate and needed coherence in administration. These considerations are equally relevant to healthy labor relations. (b) Since an election is a solemn and costly occasion, conducted under safeguards to voluntary choice, revocation of authority should occur by a procedure no less solemn than that of the initial designation. A petition for a public meeting in which those voting for and against unionism are disclosed to management, and in which the influences of mass psychology are present is not comparable to the privacy and independence of the voting booth. (c) A union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hothouse results or be turned out. (d) It is scarcely conducive to bargaining in good faith for an employer to know that, if he dillydallies or subtly undermines, union strength may erode and thereby relieve him of his statutory duties at any time, while if he works conscientiously toward agreement, the rank and file may, at the last moment repudiate their agent. (e) In situations, not wholly rare, where unions are competing, raiding and strife will be minimized if elections are not at the hazard of informal and short-term recall."

the certification bar rule is not one of blind application. As noted by the United States Supreme Court in Brooks v. NLRB, supra, n. 3, the rule may be obviated if certain "unusual circumstances" are present. Employee dissatisfaction with the internal governings of the majority exclusive representative, or with the progress and achievements of negotiation, however, do not amount to unusual circumstances which should alter the employer's and majority representative's negotiations responsibilities pursuant to a recently issued certification of representative.

The facts in the instant matter indicate that this Petition was filed within the one year period following the certification issued on July 6, 1977 as to this unit. Inasmuch as no unusual circumstances have been alleged or established by factual submissions, the certification bar is applicable and the instant Petition is untimely.

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: May 26, 1978  
Trenton, New Jersey