

D.R. NO. 99-3

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

In the Matter of

COUNTY OF MONMOUTH/MONMOUTH COUNTY
RECLAMATION CENTER,

Public Employer,

-and-

IUE LOCAL 417, AFL-CIO,

Docket Nos. RO-99-5
RO-99-6

Petitioner,

-and-

PESU LOCAL 702,

Intervenor.

SYNOPSIS

The Director of Representation dismisses two representation petitions filed by IUE Local 417 on the grounds that they were untimely. The incumbent union, PESU Local 702, had contracts with the employer that barred the processing of the petitions. The fact that PESU and the employer had reopened negotiations midcontract did not operate to remove the contract bar.

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Appearances:

For the Public Employer
Robert J. Hrebek, attorney

For the Petitioner
Kennedy, Schwartz & Cure, attorneys
(Ira Cure, of counsel)

For the Intervenor
Guazzo, Rushfield & Guazzo, attorneys
(Mark C. Rushfield, of counsel)

DECISION

On July 13, 1998, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, Local 417 (IUE) filed Petitions for Certification of Public Employee Representative with the Public Employment Relations Commission (Commission). The IUE seeks to represent a collective negotiations

unit of blue-collar employees employed by Monmouth County (docket number RO-99-5) and another unit of blue-collar employees employed by the Monmouth County Reclamation Center (docket number RO-99-6).

The petitioned-for employees are currently represented by Public Employees Service Union, Local 702 (PESU). On July 20, 1998, PESU intervened in these matters on the basis of its collective negotiations agreements with the County for each of the petitioned-for units, covering the period of January 1, 1997 through December 31, 1999. N.J.A.C. 19:11-2.7.

PESU maintains that the subject petitions are untimely pursuant to N.J.A.C. 19:11-2.8(c), and should be dismissed. The County takes no position.

IUE contends that the PESU's current contracts should not bar its petitions. It alleges that, pursuant to a reopener clause in each agreement, the County and PESU intend to reopen negotiations on a wide range of issues.

We have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. On the basis of the administrative investigation, we have found the following facts:

The County and PESU are parties to collective negotiations agreements covering each of these units for the period January 1, 1997 through December 31, 1999.

Each of the PESU's agreements provides in Article 6, "Salaries", as follows:

Section 3. The Union shall have the right to open negotiations under this contract on the issue of wages in 1999.

It is agreed that should the Board of Chosen Freeholders grant a longevity program generally to its unrepresented employees, then negotiations will be re-opened on application of the said longevity program to this Unit.

The IUE initially asserted that the contracts between PESU and the County should not bar the instant petition because the parties intended to engage in mid-term negotiations over "a range of issues beyond salary and benefits."

On August 28, 1998, I advised the parties of the results of the administrative investigation and set forth an analysis of the pertinent issues. The parties were provided an additional opportunity to present any evidence which might raise substantial and material factual issues and were provided an opportunity to submit any additional statements of position. In the absence of any such submissions, I indicated that I intended to dismiss the IUE's petitions.

On September 8, 1998, I received an affidavit from Kevin Tauro, President of IUE Local 417, requesting a hearing on this matter. In his affidavit, Mr. Tauro averred that he has knowledge that the County and PESU have been negotiating mid-term over a range of issues other than wages, including a two year premature extension of the collective agreements.

N.J.A.C. 19:11-2.8 provides in pertinent part 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:

2. In a case involving employees of a county or a municipality, any agency of a county or municipality or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

The IUE petitions were filed on July 13, 1998 -- during the second year of the three year PESU agreements. As noted above, the Commission's Rules provide that representation petitions may be filed only during certain time periods. These Rules seek to strike a balance between employees' statutory rights to select or reject a negotiations representative and the parties' rights to labor peace and stability. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). That balance would not be served by processing an untimely petition. Based on the above-cited Rule, IUE's petitions are untimely unless the reopened negotiations operate to lift the contract bar. I find that, consistent with long-standing Commission precedent, the provisions in the PESU's collective agreements to reopen negotiations on designated items do not act to disturb the contracts' effect as a bar to the IUE's representation petitions.

A contractual salary or benefit reopener clause does not remove the contract as a bar to an otherwise untimely filed representation petition. See Lakewood Bd. of Ed., D.R. No. 86-12, 12 NJPER 216, 217 (¶17087 1986). Similarly, a mid-term renegotiation or modification of a contract, whether or not the agreement expressly permits a modification, if done by mutual consent of the

parties during the original term of the contract, does not remove the contract as a bar to a prematurely filed petition. Ocean Cty., D.R. No. 82-31, 8 NJPER 66 (¶13027 1981). The parties may mutually agree to reopen negotiations on any issues midcontract without risking "opening up" its contract to a rival union's representation petition. Ocean Cty. Our caselaw in this area is modeled after the private sector cases, to which we may look for guidance. Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409 (1970). In Ocean Cty., we cited Deluxe Metal Mfg. Co., 121 NLRB 995, 42 LRRM 1470, 1476 (1958), which stated,

A mid-term modification provision, regardless of its scope will not remove a contract as a bar unless the parties actually terminate the contract. The Board believes it best to permit the parties to modify or amend any of the substantive provisions of their contract, in accordance with any modification clause -- whether broad or narrow in scope -- or by mutual assent at any time during its term. Thus, no mid-term modification clause, nor any action pursuant thereto short of actual termination, will remove a contract as a bar, except where a notice is given immediately prior to the automatic renewal date of such a contract. [Ocean Cty. at 68.]

Here, the IUE has alleged that the County and PESU intended to negotiate or are currently engaged in negotiations over a range of issues including the premature extension of the term of the respective agreements. Assuming this to be true, the contracts continue to serve at this time as a bar to a rival union's representation petition. Thus, IUE's petitions are still untimely.


In New England Telephone and Telegraph Co., 179 NLRB No. 93, 72 LRRM 1392 (1969), the National Labor Relations Board discussed its premature extension doctrine:

In determining when a petition has been timely filed, the Board has consistently sought to provide guidance as to the appropriate time to organize and seek a change of representatives, and to secure to employees the right to change representatives at reasonable intervals. The Board concluded that stability in labor relations would be facilitated by using reasonable guidelines as to timeliness of petitions. To this end, we have long held that a new contract for a longer period signed during the term of a previously executed agreement that would bar a petition, can itself prevent the processing of a rival petition only for the remainder of the period when the prior contract would have been such a bar.

Thus, engaging in negotiations, alone, is of no consequence. However, if the County and PESU do agree to extend the original term of the agreements, they continue to benefit from the contract bar for only that period established by the term of the original contract, not to exceed three years. N.J.A.C. 19:11-2.8(d). Thus, for the IUE's petitions to be timely filed, even if the contracts are extended, the petitions must be filed during the open period which under our Rules is not less than 90 days and not more than 120 days before the original expiration date of these three-year contracts. See Deluxe Metal Mfg. Co., supra; Pacific Coast Assn. of Pulp & Paper Mfrs., 121 NLRB 990, 42 LRRM 1477 (1958).

Here, IUE's petitions were untimely filed on July 13, 1998. Accordingly, I dismiss the petitions.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Stuart Reichman, Director

DATED: October 2, 1998
Trenton, New Jersey