

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS BOARD OF EDUCATION,

Public Employer,

-and-

PARSIPPANY-TROY HILLS AREA SUPERVISORS  
ASSOCIATION,

Docket No. RO-79-6

Petitioner,

-and-

PARSIPPANY-TROY HILLS EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Parsippany-Troy Hills Area Supervisors Association has filed a representation petition asking to represent a unit consisting of Secondary Area Subject Supervisors - i.e. Secondary Subject Area Chairman - which title is currently included in the unit represented by the Parsippany-Troy Hills Education Association. At a prehearing conference conducted by the Commission Hearing Officer assigned to this matter all parties stipulated to certain preliminary procedural issues in dispute:

(1) Was the Petition filed in the within case timely under PERC regulation or under the principle of contract bar or other rule and regulation of the Commission?

(2) Should the question of whether the Parsippany-Troy Hills [Secondary] Subject Area Chairmen in the high school should remain part of the Parsippany-Troy Hills Education Association or be permitted to establish a separate unit or be placed in another unit, have been instituted by a Certification of Public Employee Representative Petition or by a Clarification of Unit Petition?

Since a final decision on these preliminary procedural issues is determinative of whether a hearing can be conducted on the substantive issues in dispute, the Hearing Officer's interlocutory Report and Recommendation will be submitted to the Director of Representation for a final administrative determination.

The Hearing Officer recommends: (1) that the Petition be found timely since it was filed after the expiration date of the then current contract and prior to the execution date of a subsequent, but retroactive, contract; (2) that this representation petition be found the appropriate procedural means for determining whether the Secondary Subject Area Chairmen desire to be represented by the Parsippany-Troy Hills Area Supervisors Association. Accordingly, it is recommended that the instant matter should proceed to hearing on the substantive issues in dispute.

A Hearing Officer's Report and Recommendation is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Intervenor.

Appearances:

For the Public Employer  
Murray, Granello & Kenney, Esqs.  
(Malachi J. Kenney, Esq., of Counsel)

For the Petitioner  
Korchun and Malone, Esqs.  
(John F. Malone, Esq., of Counsel)

For the Intervenor  
John W. Davis, UniServ Field Representative, N.J.E.A.

HEARING OFFICER'S REPORT  
AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on July 7, 1978, by the Parsippany-Troy Hills Area Supervisors Association (the "Petitioner") for a unit of all Secondary Area Subject Supervisors - i.e.,

Secondary Subject Area Chairman 1/ - employed by the Parsippany-Troy Hills Board of Education (the "Board"). The Parsippany-Troy Hills Education Association (the "Intervenor"), having submitted a recently expired collective negotiations agreement covering the employees involved, is herein granted Intervenor status pursuant to N.J.A.C. 19:11-2.7.

At a prehearing conference conducted on January 30, 1979, by the Hearing Officer, all parties agreed on the following stipulations:

1) The Parsippany-Troy Hills Board of Education is a public employer within the meaning of the Public Employment Relations Act and is the employer of the members of the Parsippany-Troy Hills Area Supervisors Association and the members of the Parsippany-Troy Hills Education Association.

2) The Parsippany-Troy Hills Education Association is an employee organization within the meaning of the Public Employment Relations Act.

3) The Parsippany-Troy Hills Education Association represents a unit which includes classroom teachers and area chairmen.

4) The last contract between the P-TH Board of Education and the P-TH Ed. Assn. expired on June 30, 1978. A memorandum of agreement regarding the agreement for the 1978-79 and 1979-80 contract periods was executed on July 13, 1978. The Certification of Public Employee Representation Petition filed in the within case was executed June 19, 1978 and filed with the Public Employment Relations Commission on July 7, 1978.

5) The following issue was determined to be ~~legal business only~~ and will be decided upon the submission of briefs by the parties. 2/

Was the Petition filed in the within case timely under PERC regulations or under the principal of contract bar?

1/ Although the Petitioner denominates the title sought to be represented as "Secondary Area Subject Supervisors," it appears from the recognition clause of the contract between the Board and Intervenor, and the other documents submitted, that the correct title is "Secondary Subject Area Chairmen."

2/ Pursuant to a procedure agreed upon at the prehearing conference, the Intervenor, by letter dated February 21, 1979, requested that stipulation #5 be amended to read as follows: after the words (contract bar) "or other rule and regulation of the P.E.R.C."

6) The following issue was determined to be a legal issue only and will be decided upon the submission of briefs by the parties.

Should the question of whether the P-TH subject area chairmen in the high school should remain part of the P-TH Ed. Assn. or be permitted to establish a separate unit or be placed in another unit, have been instituted by RO (Certification of Public Employee Representative) Petition or by CU (Clarification of Unit) Petition?

7) The preliminary legal questions as set forth in Stipulations #5 and #6 above will be submitted to the Hearing Officer for recommendation and to the Director for decision in advance of the scheduling or conducting of hearings on the factual issues. If the disposition of the legal issues is such that a hearing is appropriate, a hearing will be scheduled on the following issues: 3/

7.1 Are the subject area chairmen supervisors as defined in the Public Employment Relations Act? 4/

7.2 Is there an "established practice" of inclusion of the area chairmen in the teachers unit? 5/

7.3 If the area chairmen are supervisors, is it most appropriate to include the supervisors in the administrators unit? 6/

8) In the event that the Director decides the procedural arguments under #5 and #6 above in favor of the Petitioner i.e. that the Petition was timely and that the RO Petition is appropriate, then the parties waive the right to request review by the Commission of

3/ The Intervenor requested that stipulation #7 be amended to read as follows: add after the fifth line ending with (factual issues) "that appropriate procedures for filing exceptions prior to submission to the director be included."

4/ The Hearing Officer, not being limited by the parties' stipulations of issues - see In re Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (Para 10091, 1979) - finds as a further issue whether there is a sufficient conflict of interest between Secondary Subject Area Chairmen and classroom teachers to justify their removal from the unit represented by the Intervenor.

5/ The Intervenor requested that stipulation #7.2 be amended to read as follows: add after the word (unit) "as provided by the Public Employment Relations Commission's rules and prior decision determinations."

6/ By letter, dated February 14, 1979, the Board requested that stipulation #7.3 be amended to read as follows:

"If the area chairmen are supervisors within the meaning of N.J.S.A. 34:13A5.3 and thereby excluded from representation in the P-TH Ed. Assn. unit, is the most appropriate unit the current administrators unit or a separate unit of the subject area chairmen?"

such interlocutory decisions; but, reserve the right to raise these issues before the Commission on appeal upon final determination of the case on its merits. <sup>7/</sup>

Pursuant to stipulations #5 and #6 the Petitioner, Intervenor and Board submitted briefs on these preliminary procedural issues on April 24, 1979, April 25, 1979 and May 29, 1979, <sup>8/</sup> respectively. The Petitioner asserts that under N.J.A.C. 19:11-2.8(c) <sup>9/</sup> the rule of contract bar applies only during the period of an existing written agreement. Since the contract between the Board and Intervenor expired on June 20, 1978, and a new contract was not executed until July 13, 1978, the Petitioner contends that the principle of contract bar is inapplicable to this June 30th to July 13th period and, therefore, this Petition, having been filed on July 7, 1978, is timely. Further, the Petitioner argues that, as an employee organization, it is

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<sup>7/</sup> By letter, dated February 23, 1979, the Hearing Officer requested notification of any objections to the proposed amendments to the stipulations. Having received no responses, the undersigned assumes that the amendments are acceptable to all parties.

<sup>8/</sup> Due to extenuating circumstances the undersigned agreed to an extension of time for the Board's submission of its brief.

<sup>9/</sup> N.J.A.C. 19:11-2.8(c) states as follows:

(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:

1. In a case involving employees of the State of New Jersey, any agency thereof, or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

2. In a case involving employees of a county or a municipality, any agency thereof, 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;

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.

seeking Commission determination of whether a majority of the employees in question desire its certification as their representative. The Petition should thus be found proper under N.J.A.C. 19:11-1.1(a)(1) <sup>10/</sup> which states that a representation petition may be filed by any employee organization claiming to be the exclusive representative of public employees.

The Intervenor contends that there were successive contracts between itself and the Board covering the periods July 1, 1977 through June 30, 1980, and that the instant petition was "filed" on June 19, 1978, during the existence of the former agreement. Further, it is argued that under Commission rules a representation petition is timely only when filed during the "open period" from September 1st to October 15th, within the last twelve months of an existing agreement, and under NLRB standards is timely only when filed no more than 90 days and not less than 60 days prior to the expiration of the contract. Finally, the Intervenor asserts that, since a retroactive successor agreement was executed only six days after the filing of this Petition, its further processing would be disruptive of a stable, existing contract relationship, contrary to the intent of the Act. With regard to the form of the Petition, the Intervenor analyzes it as being, in reality, an attempt to "clarify" the existing unit through the exclusion of the instant title as supervisory, thereby enabling the establishment of a separate supervisors unit.

The Board contends that under N.J.A.C. 19:11-2.8(c)(3) timeliness regulations for school district representation petitions are established on a

10/ N.J.A.C. 19:11-1.1 Petitions

(a) Rules concerning who may file are as follows:

1. A petition for certification of public employee representative (RO) may be filed by any public employee or group of public employees, or by any individual or employee organization claiming to be the exclusive representative of public employees.

different basis than for other public employees. For these other employees the "open period" is fixed in direct relationship to the expiration date of the existing agreement, while for school district employees the "open period" is fixed at the beginning of the school year, September 11 to October 15, during the last year the agreement, regardless of when the contract actually expires. Since the school fiscal year begins on July 1st, the **instructional** year begins in September, and the budget for the succeeding year is completed during the December to January period, the Board argues that the Commission's purpose in providing only this open period is to ensure that representation issues are resolved early in the school year, thereby providing an extended period of stability to permit intelligent planning by both the Board and the Intervenor for the succeeding year. The Board does not contest the appropriateness of the form of the Petition.

The parties stipulated that the contract between the Board and Intervenor expired on June 30, 1978, that a successor, retroactive contract was not executed until July 13, 1978, and the Petition was executed on June 19, 1978, and filed with the Commission on July 7, 1978. Under N.J.A.C. 19:11-2.8 the date the Petition is filed with the Commission is determinative of timeliness questions; while the execution date of a contract, not its commencement date, is determinative of when a contract is in existence. Accordingly, the Hearing Officer ~~finds, that the Petition was filed during a period when no contract existed between the Board and Intervenor.~~

In a recent decision, where a representation petition had been filed after the expiration of a contract, the Director of Representation dealt with the argument that there is only a single opportunity to file a petition; during the "open period" established by N.J.A.C. 19:11-2.8(c). The Director,



in rejecting this argument, concluded that it "misconstrues the nature of the "contract bar" which is intended to insulate only existing agreements." <sup>11/</sup> The purpose of the "contract bar" doctrine is to stabilize the employer-union relationship during the term of the parties' contract by preventing rival union representation petitions. Since ~~this need for stability must be balanced against the right of employees to representation of their choice,~~ the purpose of ~~this "bar" expires with the contract.~~ Accordingly, where the current contract has expired and a petition has been filed, but the employer and incumbent representative have continued their relationship through the subsequent execution of a retro-active, successor agreement, this fact does not negate the timeliness of the prior filed petition. <sup>12/</sup> To hold otherwise would give the incumbent union an undue advantage, thereby severely limiting the ability of employees to change their representative.

Moreover, the Hearing Officer finds these principles equally applicable to employees of school districts, there being no distinction from other public employees to justify a different timeliness rule. The Commission has held that in a school district, "the Commission's rules then permit the filing of [representation] petitions during the period extending from the expiration of the old agreement until a successor agreement has been executed." <sup>13/</sup> The Hearing Officer assumes that the different scheduling of the "open period" for school district employees is based on the fact that these employees normally work only ten months a year, from September to June, and that the timing of their contracts reflects this fact. Accordingly, the Hearing Officer con-

<sup>11/</sup> In re Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (Para 10091, 1979).

<sup>12/</sup> Deluxe Metal Furniture Co., 121 NLRB 995, 42 LRRM 147 (1958). In re Hamilton Twp. Bd. of Ed., D.R. No. 78-36, 4 NJPER 134 (Para 4062 1978); In re Township of Franklin, P.E.R.C. No. 64, 1971.


<sup>13/</sup> In re Hamilton Twp. Bd. of Ed., supra, at page 135.

cludes that this difference in the "open period" does not evince any intent of the Commission to create separate principles of "contract bar" and timeliness for school district employees. The Hearing Officer, therefore, recommends that the Petition be found timely.

With regard to the form of the Petition, the Director of Representation, in distinguishing between representation petitions and clarification of unit petitions, has stated that: "An employee-filed Petition for Certification of Public Employee Representative ("RO" Petition)...is utilized in a variety of situations where public employees desire to exercise their statutory right to select an exclusive representative. This petition may be filed in instances, among others, where...represented employees seek to change their negotiations representative;... ["CU" petition] is designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected." <sup>14/</sup> (Emphasis added.) It is thus necessary to look at the question presented in the petition to determine which form is appropriate. In the instant Petition the Petitioner is seeking Commission determination of whether a majority of the employees in question, who are currently represented by the Intervenor, wish to change their negotiations representative. Under Clearview, then, this "RO" Petition is clearly appropriate. The fact that it may result in the removal of this allegedly supervisory title from the Intervenor's unit is only a consequential effect of the representation question presented in this Petition. Therefore, the Hearing Officer recommends that this Representation Petition be found the appropriate procedural means for determining whether the Secondary Subject

<sup>14/</sup> In re Clearview Regional High School Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) at pages 250 and 251.

Area Chairmen desire to be represented by the Parsippany-Troy Hills Area Supervisors Association. Accordingly, it is recommended that the instant matter should proceed to hearing on the substantive issues in dispute.

  
Dennis J. Alessi  
Hearing Officer

DATED: Trenton, New Jersey  
August 22, 1979