

D.R. NO. 99-10

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

In the Matter of

BOROUGH OF HARVEY CEDARS,

Public Employer,

-and-

LOCAL UNION NO. 701, I.B.T.

Docket No. RO-99-62

Petitioner,

-and-

PUBLIC EMPLOYEES SERVICE UNION, LOCAL 702,

Intervenor.

**SYNOPSIS**

The Director of Representation dismisses a petition for certification filed within twelve months of the employer's formal voluntary recognition of a majority representative. The Director rejects the petitioner's claim that the recognition was tainted by the recognized representative's misrepresentations and intimidation to the employees in securing employee authorizations.

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Appearances:

For the Public Employer  
Masch & Cerefice, attorneys  
(John W. Cerefice, of counsel)

For the Petitioner  
Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, attorneys  
(James M. Mets, of counsel)

For the Intervenor  
Gregory Feeney

**DECISION**

On October 28, 1998, International Brotherhood of Teamsters Local No. 701 ("IBT") filed a Petition for Certification seeking to represent approximately five blue collar employees employed by the Borough of Harvey Cedars in its department of public works.

On November 4, 1998, Public Employees Service Union Local 702 ("PESU") sought to intervene in this matter as the employees' current representative. It objects to the IBT Petition. PESU asserts that the Borough granted it voluntary recognition in accordance with N.J.A.C. 19:11-3.1 on September 29, 1998, and that this recognition bars the IBT's Petition as untimely.

The Borough takes no position concerning which organization should represent its employees. It asserts that it properly granted recognition in accordance with N.J.A.C. 19:11-3.1.

We have conducted an administrative investigation in accordance with N.J.A.C. 19:11-2.6 to determine the facts. On November 20, 1998, the assigned staff agent convened an investigatory conference with the parties.<sup>1/</sup> On February 19, 1999, I sent the parties a letter summarizing the parties positions and setting forth the apparent facts in this matter and advised that, absent additional facts, I intended to dismiss IBT's petition. No additional submissions were made. I find the following facts.

On September 8, 1998, four of the five Borough public works employees signed authorization cards for Local 702. The cards contain a clear statement that the signer "request(s) and accept(s) membership" in Local 702, PESU, and "authorize(s) it to represent [the employee] and act on [his/her] behalf to negotiate

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<sup>1/</sup> The Borough did not participate in the conference.

and conclude all agreements as to hours of labor, wages and all other conditions of employment."

By letter of September 11, 1998, PESU Business Agent Gregory Feeney asked the Borough to recognize PESU as the exclusive representative for the Borough's public works employees. PESU simultaneously filed a Petition for Certification (docket number RO-99-33) with this Commission. Borough Clerk Gloria Shannon responded by letter dated September 29, 1998, stating that the Borough's Board of Commissioners would recognize PESU as the bargaining representative for the Borough's public works employees. The Borough posted a notice advising its public works employees that it intended to grant PESU exclusive recognition without an election. It further advised that any public works employee wishing to object should contact Commissioner Judith Gerken.

On October 8, 1998, Feeney wrote to Shannon, acknowledging the September 29 recognition and requesting a meeting to begin collective negotiations. PESU then withdrew its representation petition; the withdrawal was approved on October 19, 1998.

IBT submitted a document signed by four Borough employees and dated November 19, 1998, stating:

We, the undersigned employees of the Public Works Department of Harvey Cedars do not wish to be represented by [PESU] Local 702.

We feel we were misinformed of their Union and its affiliations.

After signing cards, before being able to research their union size, its affiliations, and past history, we felt intimidated when told we were signing with them for a year, no matter what.

At this time, we would like the cards we have signed for Local 701 of the International Brotherhood of Teamsters to be our sole and only representation in bargaining with the Harvey Cedars administration.

The Borough submitted a certification from its Public Works Commissioner Judith Gerkens, describing the steps taken by the Borough to comply with the provisions of N.J.A.C. 19:11-3.1.

IBT contends that PESU was not the freely chosen majority representative of the Harvey Cedars DPW employees. It argues that PESU's voluntary recognition should be set aside and an election conducted among the employees to determine who should be the majority representative.

PESU maintains that its September 29, 1998 recognition as the employees' majority representative conformed with the requirements of N.J.A.C. 19:11-3.1(b), and therefore entitles it to a twelve-month insulated period free from representation challenges by rival employee organizations. It argues that the IBT petition is barred by the recognition and should be dismissed in accordance with N.J.A.C. 19:11-2.8(b) and Clinton Tp. Bd. of Ed., D.R. No. 82-44, 8 NJPER 206 (¶13086 1982).

IBT urges that we set aside PESU's voluntary recognition and conduct an election among the employees to determine the representative. It asserts that the employees were misled into authorizing PESU to represent them; PESU falsely represented

itself as an AFL-CIO affiliate; but for PESU misrepresentations, the employees would not have authorized PESU to obtain recognition; and the employees expressed in writing that they want to be represented by IBT.

IBT cites several Commission cases finding that challenges to the procurement of authorization cards should be resolved through a free and fair election. Borough of Paramus, D.R. No. 95-11, 21 NJPER 25 (¶26015 1994), citing Essex Cty., D.R. No. 85-25, 11 NJPER 433 (¶16149 1985); City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984). Additionally, citing N.J. Const. Art. 1, ¶19 and N.J.S.A. 34:13A-6(d), IBT argues that employees are entitled to be represented by an organization of their own choosing and maintains that an election should be ordered.

#### ANALYSIS

Voluntary recognition of a majority representative may be obtained in accordance with N.J.A.C. 19:11-3.1 which requires, in relevant part, the following:

(b) The Commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.8 (Timeliness of Petitions), provided the following criteria have been satisfied before the written grant of such recognition by a public employer:

1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit;

2. The public employer conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least 10 consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit;

3. The public employer served written notification on any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification was made at least 10 days before the grant of recognition and contained the information set forth in (b)2 above;

4. Another employee organization has not within the 10-day period notified the public employer, in writing, of a claim to represent any of the employees in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the Director of Representation;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved.

One of the "certain privileges" accorded by the foregoing is set forth at N.J.A.C. 19:11-2.8(b) which provides;

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered 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.)

Read together, the regulations provide that where an employer voluntarily recognizes an employee organization and strictly adheres to each element of N.J.A.C. 19:11-3.1(b), the employee organization will enjoy an irrebuttable presumption of continuing majority status for a one-year period after formal recognition has been granted. See generally, Barnegat Bd. of Ed., D.R. 88-31, 14 NJPER 160 (¶19065 1988) adopted P.E.R.C. No. 88-79, 14 NJPER 223 (¶19081 1988), mot. for recon den., P.E.R.C. No. 88-91, 14 NJPER 256 (¶19096 1988); Essex Cty. Educational Services Commission, P.E.R.C. No. 86-68, 12 NJPER 13 (¶17004 1985); Salem City Bd. of Ed., P.E.R.C. No. 81-6, 6 NJPER 371 (¶11190 1980); Clinton Tp. Bd. of Ed. Therefore, pursuant to N.J.A.C. 19:11-2.8(b), a representation petition will not be considered timely filed for a one-year period from the grant of such formal recognition.

The facts of this case are similar to those in Clinton Tp. Bd. of Ed. There, a teacher's union petitioned to add school secretarial personnel to an existing teacher's unit. The Director of Representation dismissed the petition as untimely because the secretarial personnel were represented by a unit that was formally, voluntarily recognized by the Board of Education as the exclusive representative. The voluntary recognition occurred within the twelve (12) months preceding the teacher's petition. Citing Clearview Reg. H.S. Bd. of Ed., D.R. 78-2, 3 NJPER 248 (1977), the Director found that " . . . the existing employer-employee



relationship is disrupted by the filing of the Petition, and is therefore entitled to the protection of the recognition bar rules." Clinton Tp. Bd. of Ed., 8 NJPER at 206.

In this case, IBT does not challenge the Borough and PESU's compliance with the requirements of N.J.A.C. 19:11-3.1. Even assuming IBT did challenge the Borough's compliance with 19:11-3.1, I find that the Borough's actions have complied with the elements required by this Rule provision.

IBT seeks to collaterally attack the method by which PESU secured its showing of interest by alleging that PESU engaged in misrepresentation and intimidation. IBT offers no evidence of misrepresentation or intimidation other than the allegations contained in the November 19, 1998 "petition" of four public works employees, almost two months after PESU was granted voluntary recognition. It appears that even the employees concede that they made an uninformed decision about representation in September and then, after recognition was granted, changed their minds.

Equally important, the November 19, 1998 employee "petition" does not create a dispute regarding misrepresentation as IBT contends. In it, the employees concede that they signed authorization cards designating PESU as their majority representative before they researched PESU's size, affiliation, and past history. The "petition" does not rebut that the Borough satisfied itself that PESU was the freely chosen majority representative of the employees or that the Borough acted in

accordance with N.J.A.C. 19:11-3.1. Rather, the petition merely reflects that certain of those employees subsequently changed their minds regarding PESU. IBT offers no evidence of the date, time, place or persons who allegedly made the misrepresentations or engaged in intimidating conduct.

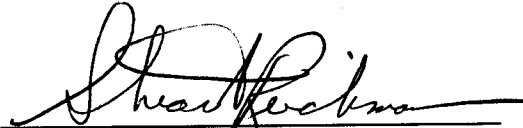
While IBT correctly notes that N.J. Const. Art. 1, ¶19 and N.J.S.A. 34:13A-6(d) grant public employees the right to organize, negotiate and present grievances and proposals through representatives of their own choosing, that right is balanced by the parties' right to stability in the negotiations relationship. Clearview. A recognition bar, like a certification bar created when employees choose a majority representative in a secret ballot election, is based on the presumption that employees have freely selected the organization of their choice. Once selected by the employees, that organization enjoys a 12-month insulated period, free from competing representation claims, to provide it with an opportunity to negotiate its first collective agreement with the employer. During that first 12-month period the incumbent is not subject to challenges to its representational status, either by another employee organization or by employee attempts to decertify it. If the incumbent fails to secure its first contract during the one-year insulated period (assuming the employer fulfilled its obligation to negotiate in good faith), the employees are then free to petition for decertification or seek an alternate representative.

Here, there is no basis to set aside PESU's recognition, or to permit the employees a second chance within the insulated period to choose an employee organization. I find that IBT's representation petition is untimely. Moreover, I find that IBT lacks standing to collaterally attack PESU's conduct in securing authorization cards.

ORDER

The Petition for Certification is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: March 9, 1999  
Trenton, New Jersey