

D.R. NO. 85-12

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

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

ALFRED GIORDANO AND MARIA MORES,

DOCKET NO. RD-85-6

Petitioner,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 2299, AFL-CIO,

Intervenor.

SYNOPSIS

The Petitioner filed a Petition for Decertification of Public Employee Representative on October 3, 1984 affecting employees included in a collective negotiations unit covered by an Agreement which expired on December 31, 1984. The Commission Designee held that the open period for the filing of such decertification petitions for municipal employees for calendar year 1984 terminated on October 2, 1984, and, consequently, dismissed the petition on the grounds that a contract bar was in effect at the time the petition was filed. The Commission Designee rejected the Petitioner's arguments that its petition should be found to be timely (1) because of the difficulty Petitioner experienced in contacting other than a small group of unit employees at any one time and (2) because the open period included a legal holiday (Labor Day).

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Appearances

For the Public Employer
Jacob Weiss, L.R.O.

For the Petitioner
Alfred Giordano, pro se
Maria Mores, pro se

For the Intervenor
Michael Lanni, Executive Director

DECISION

On October 3, 1984, a Petition for Decertification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by Mr. Alfred D. Giordano and Ms. Maria Mores ("Petitioner"), on behalf of certain employees employed by the City of Newark. The petition seeks to raise a question concerning the continued majority status of the current exclusive representative, the American Federation of State, County and Municipal Employees, Local 2299, AFL-CIO ("Local 2299").

In accordance with N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into this matter and the allegations set forth in the petition in order to determine the facts. The investigation has revealed the following:

1. The City of Newark 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 subject to its provisions, and is the employer of the employees who are the subject of this petition.

2. Local 2299 is an employee representative within the meaning of the Act, is subject to its provisions and is the certified majority representative of a collective negotiations unit comprised of all inspectors employed by the City of Newark.

3. The Petitioner has filed a petition for decertification of public employee representative asserting that the certified representative no longer represents a majority of the employees and that the employees no longer desire to be represented for the purpose of collective negotiations by the certified majority representative or by any other employee representative. The petition is supported by an adequate showing of interest.

4. In correspondence dated October 29, 1984, the Executive Director of the American Federation of State, County and Municipal Employees, Council 52, AFL-CIO, on behalf of Local 2299, advised the Commission that it takes the position that the petition filed in the instant matter is not timely, because a contract bar exists. A copy of the contract between the City of Newark and Local 2299 effective January 1, 1982 through December 31, 1984 was submitted to the Commission by AFSCME, Council 52. The signature page for said contract was

provided to the Commission through a subsequent supplementary submission on November 5, 1984.

5. On October 16, 1984, a Commission staff agent sent the Petitioner a letter advising him that N.J.A.C. 19:11-2.8(c) provides, in relevant part, the following:

During the period of an existing written agreement containing substantive terms and conditions of employment having a term of three years or less, a petition for certification of public employee representative normally will not be considered timely filed unless: ... (2) In a case involving employees of a county or 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....

The open period for filing representation petitions for municipal employees ended at close of business (5:00 p.m.) on October 2, 1984, where the petitioned-for employees are included in a collective negotiations unit covered by an agreement which expires on December 31, 1984. The Petitioner was then advised that it appeared that the petition, filed on October 3, 1984, was not timely filed pursuant to the above-cited rule section.

6. On October 19, 1984, the Petitioner submitted a letter to the Commission in response to the Commission staff agent's October 16, 1984 letter, wherein it argued that its petition should not be found to be untimely on the grounds that unit employees are assigned to several different agencies located at disparate work sites and this circumstance, combined with the fact that such employees are primarily assigned to work in the field, makes it virtually impossible to contact other than a small group of employees at any one time. The

Petitioner further argues that a petition filed on October 3 should be considered timely because the open period included a legal holiday (Labor Day) which was "excluded from applicability to employees of the school district."

7. In correspondence dated December 3, 1984, the Commission Designee for Representation Proceedings, through his Chief Assistant, advised the parties hereto that he was inclined to find that a contract bar existed which would have the effect of preventing further processing of the instant petition. The parties were invited to file statements of position in response to the December 3, 1984 correspondence. The parties were reminded of their obligations under N.J.A.C. 19:11-2.6(a) to present documentary and other evidence relative to the instant matter.

8. On December 11, 1984, the Commission received a letter, dated December 10, 1984, in response to the correspondences from the Chief Assistant. The Petitioner sought further consideration on the ground that the Chief Assistant did not address the argument that its petition for Decertification of Public Employee Representative, filed on October 3, 1984, should be considered timely because the open period included a legal holiday. I find that the Petitioner's December 10, 1984 letter raises no new arguments or issues which it had not already argued in its October 19, 1984 letter.

As a matter of policy, "...the Commission adheres to a rigid application of the contract bar period." In re City of Atlantic City, D.R. No. 82-19, 7 NJPER 642 (¶ 12289 1981). However, it is also recognized that the Commission's contract bar rule does not absolutely prevent the filing of representation petitions during the term of an "existing written agreement." Thus, the Commission may opt to refrain

from applying the contract bar rule in circumstances where a contract's duration is not clearly defined; see, In re East Brunswick Board of Education, D.R. No. 80-39, 6 NJPER 308 (§ 11148 1980); or in other extreme circumstances which might warrant the waiving of a contract bar rule in a particular matter; see, In re City of Atlantic City, supra; see also, In re Roselle Park Board of Education, D.R. No. 81-44, 7 NJPER 327 (§ 12144 1981).

I disagree with the Petitioner's argument that the open period was improperly calculated. N.J.A.C. 19:10-2.1(a), entitled "Time for Filing Papers", states:

In computing any period of time prescribed by or allowed by these rules or by order of the Commission or officer conducting the proceedings, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

It is clear from the face of the rule that the only time a legal holiday is not counted in the period of time for the filing of papers with the Commission is when the last day of the period for the filing of such papers falls on a Saturday, Sunday or legal holiday or when the period of time prescribed or allowed is less than seven days. In the instant matter, the last day for the Petitioner to file the petition (October 2, 1984) was neither a Saturday, Sunday nor a legal holiday. Further, since the Petitioner is allowed a thirty day period (the "open period") within which to file its petition, legal holidays and

weekend days are included in the computation of the filing period. Legal holidays would not be included in the computations only when the filing period is less than seven days. The Commission has held that "[a]ll [employee] organizations...ought to be held knowledgeable and accountable to the requirements of Commission filing rules which affect their operations." Therefore, the Petitioner "...must assume the responsibility for assuring timely receipt of the petition...." In re Essex County Hospital Center, D.R. No. 83-2, 8 NJPER 460, 461 (¶ 13216 1982).

The undersigned is also inclined to reject the Petitioner's argument that extenuating circumstances warrant an extension of the filing period in this case because unit employees are assigned to different agencies located at separate work sites; and because such employees work primarily in the field, this circumstance results in their presence at the work site for only a brief period of time each day. The undersigned notes that N.J.A.C. 19:10-1.1 states that "showings of interest" with regard to a petition for decertification

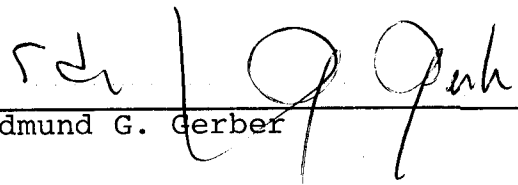
...shall consist of written petitions, signed and dated by employees, normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

In this case, the Petitioner is contending that it should be granted an extension of the filing time because six months was an insufficient period of time in which to contact the requisite thirty percent of unit employees in the instant matter; thirty percent of approximately 75 unit employees. Adoption of the Petitioner's argument constitutes

an invitation to the Commission to follow filing rules which are premised upon the myriad circumstances in which each petitioning party may find itself. The Commission has rejected such an approach to showings of interest; see, In re Essex County Hospital Center, supra., and I reject it again now.

Accordingly, on the basis of the foregoing, I find a valid contract bar to exist in the instant matter. The petition for Decertification of Public Employee Representative filed by the Petitioner is hereby dismissed.

BY ORDER OF THE COMMISSION DESIGNEE


Edmund G. Gerber

DATED: December 31, 1984
Trenton, New Jersey