

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DEPTFORD TOWNSHIP BOARD OF EDUCATION

Public Employer

and

TEAMSTERS LOCAL UNION NO. 676,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN, AND
HELPERS OF AMERICA

Docket No. RO-11

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of Deptford Township Board of Education, a hearing was held on November 24, 1969 before Hearing Officer Howard M. Golob at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Thereafter, on April 7, 1970 the Hearing Officer issued his Report and Recommendations. No exceptions have been filed to this Report and Recommendations. The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and finds on the facts in this case:

1. The Deptford Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. Teamsters Local Union No. 676, I.B.T. is an employee representative within the meaning of the Act.
3. The Employer refuses to recognize the Petitioner as the exclusive representative of the employees petitioned for on the ground that the employees are already represented by Deptford Township Maintenance, Janitor, Groundsmen Employee Association. There is therefore a

question concerning the representation of public employees and the matter is properly before the Commission for determination.

4. In the absence of exceptions, we adopt the Hearing Officer's Report and Recommendations with the following comments. We agree with the Hearing Officer's interpretation and application of Section 19:11-5 (b) and (d) of the Commission's Rules and Regulations. The one year recognition bar provided for in sub-section (b) is intended to give a newly recognized or certified employee organization and the Employer a reasonable length of time in which to consummate an initial collective negotiating agreement free from the competing claims of other organizations. When parties are brought together in negotiations for the first time, they should be permitted a period of freedom in which to adjust to and stabilize the situation; one year is considered to be a reasonable period. If, however, the parties accomplish in less time the intended objective, i.e. a contract, their one year immunity, or whatever portion thereof remains, should be extinguished since the reason for it no longer exists. The parties then become like any other contracting party and sub-section (d) of the rule in question should apply so that an essential concern of the Act, the right of employees to seek representation or choose a different representative, can be effectuated, if the employees so desire, through a properly filed petition. Accordingly, the undersigned finds as did the Hearing Officer, that the timeliness of the instant petition, filed within one year of the Board's recognition of the Association, is determined by sub-section (d) rather than (b). When so measured, the petition is timely filed with respect to the Association's contract.

The undersigned finds it unnecessary to consider the question of whether the Association is defunct. The Hearing Officer found that

the Association was and is a viable employee organization, a finding to which no exception was taken and which therefore is adopted. It follows then that the Association contract is to be given effect with respect to Section 19:11-15(c) of the Rules, which forbids the conduct of an election within the first 12 months of the effective term of an agreement. Consequently, no election may be conducted before June 30, 1970. It also follows that the Association is entitled, as party to the contract, to be placed on the ballot.

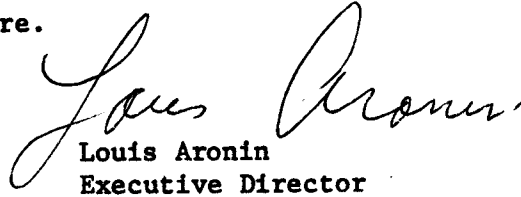
5. The appropriate collective negotiating unit is: "All maintenance, janitorial and groundsman staff employed by the Deptford Township Board of Education, excluding office clerical, professional and craft employees, policemen, managerial executives and supervisors within the meaning of the Act."
6. The undersigned directs that a secret ballot election shall be conducted among the employees in the appropriate unit described above. The election shall be conducted as soon as possible after June 30, 1970 but no later than July 15, 1970.

Those eligible to vote are employees set forth in paragraph 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the

Teamsters Local Union No. 676, the Deptford Township Maintenance, Janitor, Groundsmen Employee Association, or neither.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.


Louis Aronin
Executive Director

DATED: June 9, 1970
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Public Employer

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Docket No. RO-11

TEAMSTERS LOCAL UNION NO. 676,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA

Petitioner,

and

DEPTFORD TOWNSHIP MAINTENANCE
JANITOR, GROUNDSMEN EMPLOYEE ASSOCIATION

Party to the Contract

Appearances: Martin F. Caufield, Solicitor for the Deptford Township
Board of Education

Plone, Tomar, Parks and Seliger by Robert F. O'Brien, Esq. for
Teamsters Local Union No. 676, International Brotherhood of
Teamsters, Chauffeurs, Warehousemen and Helpers of America

Octavius Paynter for the Deptford Township Maintenance,
Janitor, Groundsmen, Employees Association

REPORT AND RECOMMENDATION

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission on November 3, 1969, a hearing was held on November 24, 1969 before the undersigned. At this hearing all parties were afforded an opportunity to present witnesses, cross examine witnesses and to argue orally. The Deptford Township Maintenance, Janitors, Groundsmen Employees Association (hereinafter known as the Association), made an appearance claiming an interest in the instant proceedings but did not take an active part in the hearing. (It is noted that the president of the Association, who represented the Association, is employed by the Board of Education as a janitor.) During the hearing the following was ascertained:

The employees of Deptford Township employed as maintenance men, janitors and groundsmen voted among themselves to form an organization to deal with the school board. Soon afterwards it sent a letter to the school board requesting recognition.

On December 13, 1968 the Association again demanded recognition. Included with this written correspondence was a list of the membership, which composed a majority of the employees on the janitorial staff. Thereafter on December 17, 1968 the Association was recognized by the Board as the exclusive representative of the janitors, maintenance and groundsmen.

On August 6, 1969, the Association and the Board entered into an agreement effective as of July 1, 1969 to continue into effect until June 30, 1970. This agreement contains terms and conditions of employment.

In October of 1969 with the approval of the Association's president, a member of the negotiating committee wrote all members of the Association advising them that a special meeting would be held at which time a vote would be taken to determine whether the membership wished to abolish and disband the Association and to affiliate with Teamsters Local Union 676, petitioner herein.

On October 25, 1969, approximately 36 of the 46 employees in the negotiating unit attended this special meeting. A secret ballot vote was taken and the employees voted 32-0 in favor of abolishing and disbanding the Association and associating with the petitioner. The president of the Association was unable to attend this meeting.

THE ISSUES

1. Whether the recognition was valid?
2. Whether the petition filed by Local 676 is timely or whether it is barred by the recognition and/or the contract.
3. Assuming the recognition or contract is a bar is the Association

defunct within the meaning of labor relations i.e. an employee representative unable or unwilling to represent the employees?

4. Assuming the petition is timely and an election is appropriate what is the earliest date the election may be held?

POSITION OF THE PARTIES

The Board takes the position that there is a contract and the petition is untimely.

The petitioner takes the position that 1) the initial recognition was not in accordance with the Rules and Regulations of the Commission and 2) perhaps the more important argument, the Association is no longer in existence and is defunct and the contract does not bar an election.

The Association president takes the position that if the membership feels that they want an election, the officers are not to say no. The president also stated that he has yet to have a meeting where he was informed that the Association was disbanded, but as far as he was concerned the Association is operating under the negotiated contract, as it has to. The president of the Association also testified at the hearing that as of that date the monies in the treasury of the Association have not been distributed.

APPLICABLE RULE

19:11-15 Timeliness of Petitions

(a) Where there is no recognized or certified majority representative of the employees, a petition for certification of public employee representative will be considered timely filed provided there has been no valid election within the preceding twelve-month period in the requested negotiating unit or any subdivision thereof.

(b) Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding twelve (12) months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to Section 19:11-14.

(c) No election shall be conducted within 12 months after the effective date of an agreement provided such agreement is for a period of 12 months or more.

(d) During the period of an existing written agreement containing substantive terms and conditions of employment, a petition for certification of public employee representative or a petition for decertification of public employee representative involving those employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier, unless unusual circumstances exist which will substantially affect the unit or the majority representation. In the absence of a budget submission date the period shall be measured from the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier.

When an agreement has been extended more than 120 days prior to the aforementioned measuring dates, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

ANALYSIS

With regard to petitioner's argument that the recognition was improper because it did not comport to the rules, suffice it to say that the rules took effect on August 29, 1969, subsequent to the recognition. Moreover, other than the notice posting, it was within the spirit of the law, i.e. recognition of an employee representative who represented a majority of those employees in an appropriate unit.

With regard to the recognition and/or contract bar, subsection (b) was intended to give the recognized or certified representative sufficient time to negotiate a collective negotiating agreement with the public employer, i.e. one year without interference to execute such an agreement. It was also intended, though, that if an agreement was reached and there was no further need for this protection, then subsection (b) is to be merged with and superseded by subsection (d) and a rival petition could be filed at an appropriate time, i.e. 150 to 120 days before

the budget submission date of the public employer or the expiration or renewal date of such agreement, whichever is earlier.

In the instant matter, as the petition was filed on September 29, 1969 and this date is within the open period that a petition may be filed, i.e. between 150 to 120 days prior to the budget submission date, which I will take administrative notice occurred February 11, 1970 the petition is timely.

With regard to the question of defunctness, it is noted that the president for the Association has stated that the Association is willing to represent the employees in the petitioned for unit. It is noted in passing that the date of the election to disband the Association postdated the filing of the petition.

With regard to the earliest possible date that an election may be held, it is not clear to me what was intended by subsection (c) of the Rule in question. In any event based upon the Rule, the election may not be held within one year from the date the contract was effective, i.e. June 30, 1969.

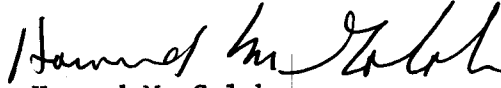
RECOMMENDATION

Accordingly, based upon the foregoing, I recommend that an election be held among the employees of the Deptford Township Board of Education so assigned to the maintenance, janitorial, groundsman staff excluding the Maintenance Supervisor, office clerical employees, craft employees, professional employees, policemen, managerial executives and supervisors within the meaning of the Act.

As petitioner is an employee representative within the meaning of the Act and as the Association is also an employee representative within the meaning of the Act as it is in existence and not defunct, I recommend that the employees be given the choice to vote between Teamsters Local No. 676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

and Helpers of America; Deptford Township Maintenance, Janitor, Groundsmen
Employees Association; or neither.

RESPECTFULLY SUBMITTED



Howard M. Golob
Hearing Officer

DATED: April 7, 1970

Trenton, New Jersey