

D.R. NO. 84-23

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

CITY OF NEWARK,

Public Employer,

-and-

LOCAL 6, I.L.A., AFL-CIO,

DOCKET NO. RO-84-89

Petitioner,

-and-

LOCAL 945, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Intervenor.

SYNOPSIS

The Administrator of Representation Proceedings, on the basis of an administrative investigation, directs an election among all blue collar employees employed by the City of Newark. The Administrator finds that a memorandum of agreement submitted by the City and the incumbent representative does not constitute a bar to a representation petition pursuant to N.J.A.C. 19:11-2.8, because the agreement is limited solely to the economic terms of a successor collective negotiations agreement.

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Appearances:

For the Public Employer
Rosalind Bressler, Assistant Corporation Counsel

For the Petitioner
Guy Perry, President

For the Intervenor
Rothbard, Harris & Oxfeld, attorneys
(Emil Oxfeld of counsel)

DECISION AND DIRECTION OF ELECTION

On April 23, 1984 ^{1/} Local 6, I.L.A., AFL-CIO ("Local 6") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission

1/ Although the Petition was submitted on April 13, 1984, Petitioner's showing of interest was not qualified until April 23, 1984. The Commission initiated the processing of the Petition on April 25, 1984.

("Commission") seeking to represent certain public works employees of the City of Newark ("City"). Teamsters Local 945 ("Local 945") is the certified representative for the petitioned-for employees and has intervened in the instant proceeding.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations in the Petition. On May 7, 1984, a Commission staff agent convened an investigatory conference among the parties. At the conference, and by letter dated May 8, 1984, the staff agent summarized the issues discussed at the conference, requesting written statements of position, intended to clarify certain issues, and reminding the City of its obligation to provide the Commission with an alphabetized list of employees described in the Petition together with their job classifications for the payroll period immediately proceeding the staff agent's letter. ^{2/}

There is no agreement for consent election. The City and Local 945 claim that an existing written agreement bars the filing of the Petition in accordance with N.J.A.C. 19:11-2.8. ^{3/}

^{2/} Upon receipt of the payroll list, the adequacy of Petitioner's showing of interest was verified.

^{3/} N.J.A.C. 19:11-2.8 provides:

(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 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.

Based on the administrative investigation the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. 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 the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. Local 6, I.L.A., AFL-CIO and Teamsters Local 945 are employee representatives within the meaning of the Act and are subject to its provisions.

4. Local 945 is the certified representative of all blue collar employees employed by the City of Newark, pursuant to an election conducted by the Commission on April 15, 1971. A collective negotiations agreement between Local 945 and the City expired on December 31, 1983.

5. Local 6 has advised the Commission that it seeks to represent a unit identical to that unit represented by Local 945.

6. Local 945 and the City assert that the Petition should be dismissed because it is barred by a successor agreement entered into by the City and Local 945 on April 13, 1984. Appendix "A," attached hereto and made a part hereof.

Accordingly, the continued processing of the Petition depends solely on the determination of the contract bar issue presented.

An examination of Appendix "A" reveals that the agreement reached by the City and Local 945 is, by its own terms, solely an "economic agreement." The agreement contains six provisions. The first five relate to salary increases, insurance coverage, uniform and title provisions and length of workweek. The sixth and final statement states: "All other economic conditions as covered in the previous contract stay the same."

The Commission has held that a Memorandum of Agreement may constitute an "existing written agreement" which bars a petition pursuant to N.J.A.C. 19:11-2.8(c) if it contains substantial terms and conditions of employment and if it has been ratified, where ratification is required by the memorandum. In re Cty. of Middlesex, P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980). See also In re City of Jersey City, E.D. No. 79 (1975). To constitute a bar to a representation petition, an agreement need not embody all conceivable terms and conditions of employment, so long as the contract is

"...so complete as to substantially stabilize labor relations between the parties" and ...
"chart[s] with adequate precision the course of the bargaining relationship [so that] the parties

can look to the actual terms and conditions of the contract for guidance in their day-to-day problems." Stur-Dee Health Products, 298 NLRB No. 138, 104 LRRM 1012, 1013 (1980). (footnotes omitted)

See also, In re Mercer Cty. Superintendent of Elections, D.R. No. 82-40, 8 NJPER 157 (§ 13069 1982).

By letter of May 24, 1984, the undersigned reviewed the above contract bar analysis with the parties, and indicated that it appeared to the undersigned that the successor "memorandum of agreement" did not contain sufficient substantial terms and conditions of employment which would provide a stable labor relationship between the parties and which would give employees guidance in their day-to-day problems. Rather, it appeared that a successor agreement had not been fully negotiated since there appeared to be no agreement concerning noneconomic items.

Accordingly, the undersigned advised the parties that it appeared that Appendix "A" did not constitute a written agreement which would bar Local 6's Petition pursuant to N.J.A.C. 19:11-2.8(c), and provided the parties with an additional opportunity to submit documentary evidence or legal authority to the contrary.

All parties submitted additional materials. Local 945 submitted an affidavit from its Business Representative who averred that an agreement between Local 945 and the City as to noneconomic terms had been reached prior to January 1, 1984, that subsequent negotiations concerned only economic terms and conditions and that the latter negotiations were concluded in late March 1984, as

memorialized in Appendix "A". The City relies on the affidavit of its Labor Relations and Compensation Officer, who avers facts identical to those stated in the affidavit submitted by Local 945. Local 6 submitted a statement, in which it agrees with the proposed findings of the undersigned and it urges an immediate election procedure.

The affidavits and arguments submitted by Local 945 and the City are not persuasive. While Local 945 and the City stated that an agreement was reached concerning noneconomic terms prior to January 1984, neither party has submitted a copy of an "existing written agreement" to support that contention. That is, assuming that oral agreement as to noneconomic terms and conditions of employment was reached, such an agreement cannot serve as a bar to a representation petition pursuant to N.J.A.C. 19:11-2.8(c) because the agreement was not memorialized in writing. Accordingly, the undersigned concludes that Appendix "A" submitted by Local 945 and the City does not constitute a written agreement which bars Local 6's Petition.

Therefore, the undersigned finds that the appropriate unit is: All blue collar employees employed by the City of Newark but excluding managerial executives, confidential employees, professional employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6, the undersigned directs that an election be conducted among the employees described above.

The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

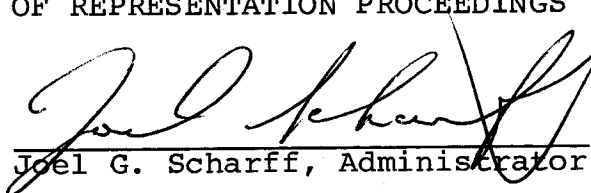
Pursuant to N.J.A.C. 19:11-9.6, the City of Newark is directed to file with the undersigned and with Local 6 and Local 945, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with Local 6 and Local 945 with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Local 6, I.L.A., AFL-CIO, Local 945, International Brotherhood

of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or neither.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: June 6, 1984
Trenton, New Jersey

The following represents the economic agreement between the City of Newark and Local 945, Teamsters, for years 1984 and 1985.

1. For all titles represented by Local 945 a .37¢ increase across the board for 1984 and .37¢ increase across the board in 1985.
2. A change over from Blue Shield 750 Series to 14/20 series.
3. All employees represented by Local 945, Teamsters, who presently do not receive uniforms with ratification of this contract shall receive uniforms.

Employees shall be required to maintain said uniforms.

4. All employees in the title of Laborer shall receive a salary increase as shown in Appendix B for years 1984 and 1985.

Effective January 1, 1984, all designations after the title of Laborer shall be dropped and the City of Newark shall have a single uniform title of Laborer.

Employees who presently work in a title of Laborer, Public Buildings, effective January 1, 1985 shall work a forty (40) hour week.

5. Employees who are presently employed in the title of Laborer, R.C., shall receive an additional \$100 one time bonus payable in 1984.
6. All other economic conditions as covered in the previous contract stay the same.

City of Newark

Local 945, Teamsters

Jacob Weiss 4/13/84 Missie Neal
Labor Relations Officer