

D.R. No. 2008-1

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

In the Matter of

TOWNSHIP OF MORRIS,

Public Employer,

-and-

Docket No. RO-2007-078

PBA LOCAL 133 SOA,

Petitioner,

-and-

FOP LODGE 136,

Intervenor.

SYNOPSIS

The Director of Representation dismisses the PBA's April 25, 2007 Petition for Certification of Public Employee Representative as untimely. The Director finds that the Employer and Incumbent FOP executed and ratified a memorandum of agreement (MOA) containing the employees' terms and conditions of employment prior to the PBA's filing of the April 25 petition. The MOA did not require ratification and the employer's March 19, 2007 approval of the parties' MOA in executive session along with the FOP's April 24 ratification was sufficient to trigger the Commission's contact bar rule.

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Intervenor.

Appearances:

For the Public Employer,
Laufer, Knapp, Torzewski, Dalena and Sposaro, attorneys
(Frederick M. Knapp, of counsel)

For the Petitioner,
Loccke, Correia, Schlager, Linsky & Bukosky, attorneys
(Marcia J. Tapia, of counsel)

For the Intervenor,
Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

DECISION

On April 25, 2007, the Morris Township PBA Local No. 133 (PBA) filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, seeking to represent "all full-time superior officers holding the title of sergeant, detective sergeant, lieutenant, detective

lieutenant and captain" employed by Morris Township (Township). On May 8, 2007, the PBA amended the petition to show that its organization, Local No. 133 SOA admits only supervisors to membership, and that it seeks to represent "all full-time and regularly employed part-time officers" holding the titles sought in the earlier filing.

On May 11, 2007, NJ FOP/Labor Council filed a request to intervene, together with supporting documents, on behalf of FOP Lodge #136 Morris Township Police (FOP), the incumbent majority representative of the petitioned-for employees.

The Township and the FOP oppose an election in the proposed unit. Each contends that the April 25th petition is untimely; specifically, that on March 19, 2007, they signed a memorandum of agreement extending from January 1, 2006 through December 31, 2009 and incorporating all terms and conditions of employment of the employees in the petitioned-for unit. The Township asserts that on the same date, and following the signing of the memorandum, the Township Committee approved the agreement in executive session. The FOP asserts that its members ratified the agreement on April 24, 2007, one day before the PBA's petition was filed.

The PBA argues that the March 19, 2007 memorandum of agreement was "not fully executed and ratified" before it filed the petition on April 25. The PBA contends that the agreement

was not executed and ratified until the Township Committee publicly approved the memorandum at an open public meeting on May 9, 2007.

We have conducted an administrative investigation into this matter to determine the facts. The parties have filed letters, certifications, and other documents supporting their respective views on the petition. On June 19, 2007, I wrote to PBA counsel, setting forth tentative conclusions based upon my review of the parties' submissions. I specifically advised that absent the PBA's withdrawal of the petition or the filing of a supplemental letter by June 29, together with supporting certifications, I would dismiss the petition as untimely. The PBA requested and was granted until July 2, 2007 to file a reply. On July 2, the PBA filed its reply.

The disposition of the petition is properly based upon our administrative investigation. No disputed substantial material facts require convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.

1. The Township and FOP have signed a series of collective negotiations agreements covering sergeants, detective sergeants, lieutenants, detective lieutenants and captains, the last one extending from January 1, 2003 through December 31, 2005.

2. On October 16, 2007, the FOP filed a Petition to Initiate Compulsory Interest Arbitration (IA-2007-21). An

interest arbitrator was selected by agreement and she designated January 17, 2007 as a "session for mediation" in an effort to resolve "the bargaining impasse." On March 19, 2007, the arbitrator presided over a second "mediation session" which resulted in a memorandum of agreement (extending from January 1, 2006 through December 31, 2009) executed that day by representatives of both the Township and FOP. The memorandum included provisions regarding prescription and dental benefits, compensatory and sick leave time off, stipends, wage increases and changes to the grievance procedure.

3. The memorandum's terms do not require ratification.

4. On March 19, 2007, after the memorandum was signed by both parties, the Township Committee, nevertheless, met in executive session and approved the memorandum.

5. On March 26, 2007, the interest arbitrator issued a letter confirming in a relevant portion that ". . . Morris Township and the FOP superiors were able to reach a mediated settlement of their negotiations impasse."

6. On April 24, 2007, the FOP membership ratified the memorandum of agreement.

7. On April 25, 2007, the PBA filed a representation petition. On May 8, it filed an amended petition.

8. On May 9, 2007, the Township Committee held a public meeting (pursuant to the Open Public Meetings Act (N.J.S.A. 19:14

et seq.), during which it approved by resolution the March 19 agreement between the Township and the FOP.

Analysis

N.J.A.C. 19:11-2.8 bars the filing of a representation petition during the period of "an existing written agreement containing substantive terms and conditions of employment" unless it is filed during a "window" period. In County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980), the Commission held that a memorandum of agreement will operate as a bar to the filing of a petition: if it contains substantive terms and conditions of employment and if it has been ratified, where ratification is required by the memorandum's terms. See also, Appalachian Shale Products Co., 121 N.L.R.B. 1160, 42 LRRM 1506 (1958); City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985).

On March 19, 2007, more than one month before the PBA petition was filed, the Township and the FOP signed a memorandum of agreement covering and incorporating by reference essentially all terms and conditions of employment for a finite term. By its provisions, the memorandum does not require ratification by either party. A signed memorandum of agreement which does not, by its terms, require ratification will bar a subsequently filed petition. See City of Egg Harbor, D.R. No. 91-2, 16 NJPER 424

(¶21178 1990). Despite the fact that the memorandum did not require ratification, the Township duly ratified the memorandum on March 19, when the Township Committee, in executive session (and in compliance with the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-12b(4)), approved the fully executed memorandum of agreement. Nothing in the certification submitted by the PBA contradicts the series of events which took place on March 19, 2007.

The PBA has not supported its contention that a vote at an open public meeting was necessary to complete ratification. An employer's and incumbent representative's agreement on terms and conditions of employment provides stability and predictability. That relationship should not be subjected to disruption caused by a subsequent representation petition. Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977).

In this matter, the employer and incumbent representative have negotiated in good faith over a period of time; entered into interest arbitration and reached a settlement of their dispute; executed a memorandum of agreement containing the terms and conditions of employment; and ratified their agreement (pursuant to their perceived obligation). The Commission's duty to preserve labor stability is paramount. The rights of employees to select their negotiations representatives must be balanced against the employer's, majority representative's, and public's

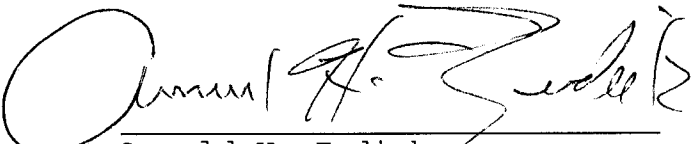
concern that existing negotiations relationships (evidenced by an executed agreement) be free from untimely and continuous disruptions. Clearview; See also, Village of Ridgewood, D.R. No. 98-13, 24 NJPER 186 (¶29090 1998).

Accordingly, I find that the Township and FOP signed and ratified a memorandum of agreement sufficient to trigger the application of the Commission's contract bar rule. The PBA's April 25, 2007 representation petition was, therefore, untimely and must be dismissed.

ORDER

The PBA Petition for Certification of Public Employee Representative filed on April 25, 2007 is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: July 18, 2007
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by July 30, 2007.