

D.R. No. 2008-2

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

In the Matter of

HUDSON COUNTY,

Public Employer,

-and-

HUDSON COUNTY UNION LOCAL ONE
AMALGAMATED,

Docket No. RO-2007-082

Petitioner,

and

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO

Intervenor.

SYNOPSIS

The Director of Representation dismisses a representation petition filed by Hudson County Union Local One Amalgamated. The Director finds the petition to be barred by a collective agreement separately ratified and executed by the County and District 1199J, NUHHCE before Local One filed the petition.

The Director further found that the parties' agreement did not require the County's meeting minutes to have been formally adopted or for the County Executive to have "signed off" on the agreement for it to be effective. Concerning Local One's allegations that numerous unit employees were unable to participate in the ratification vote, the Director finds that the Commission will not intercede in intra-union disputes absent allegations and proof that an unfair practice has been committed.

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Appearances:

For the County,
Donato J. Battista, County Counsel
(Louis C. Rosen, Deputy County Counsel)

For the Petitioner,
Sciarra and Catrambone, attorneys
(Charles Sciarra, of counsel)

For the Intervenor,
Oxford Cohen, attorneys
(Arnold Shep Cohen, of counsel)

DECISION

On May 16, 2007, Hudson County Union Local One Amalgamated (Local One), filed a representation petition, supported by an adequate showing of interest, seeking to represent a negotiations unit of only service and maintenance employees of the County of Hudson (County). Specifically, Local One seeks an election to

determine the representative of just "service and maintenance [employees] in negotiations road unit, bridges, all parks, maintenance, hospital attendants, [and] all departments considered service and maintenance." The petition was accompanied by a list of 39 titles sought to be represented and excluded "all other departments not considered service and maintenance." The petitioned-for employees as well as other County employees are currently represented by District 1199J, NUHHCE, AFSCME, AFL-CIO (District 1199J) in a broad-based unit. District 1199J's request to intervene in the petition was approved by the Director of Representation on May 24, 2007.

The County and District 1199J object to an election, contending that the petition is time-barred. Both assert that they signed and separately ratified a memorandum of agreement before Local One filed its petition. The County has filed a copy of a resolution, approved by its Freeholders on May 10, 2007, ratifying a May 9 memorandum of agreement signed by the County and District 1199J, ". . . subject to ratification of the Union." District 1199J State Director of Nursing/Public Sector Grisel M. Lopez, filed a certification providing that a memorandum of agreement covering the period of July 1, 2006 through June 30, 2011 was signed by District 1199J and the County of Hudson on May 9, 2007; ratified by the membership on May 15 by a vote of 274 in favor and 86 opposed; and that she notified Patrick Sheil, the

County's Personnel Director, on May 15 (by hand-delivered letter) that the agreement had been ratified.

Local One alleges that on May 10, 2007, the County Freeholders did not approve the memorandum of agreement and that the Hudson County Executive did not formally "sign off" before the petition was filed. Local One contends that the County's failure to provide it a copy of the "final agenda" for the May 10 Freeholder meeting (pursuant to its request under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.) demonstrates the omissions.

Local One also contends that numerous employees were not given the opportunity to vote on the proposed agreement. It asserts that some parks department employees were unable to vote because they were not transported to the voting location; hospital employees were unable to vote because they were out on sick leave; and that bridges department employees did not vote at all. It also contends that the County and District 1199J have colluded over the last one and a half years "to keep the hard working employees from choosing who they want to represent them." Local One filed a certification by a County employee attesting that he was neither apprised of nor given the opportunity to vote on the proposed contract because the ratification vote was taken on the date of his suspension from work.

On June 28, the County filed a reply disputing Local One's argument that formal adoption of meeting minutes must accompany

or follow ratification of the agreement. The County also filed the minutes of the May 10 meeting, on which Board Clerk Alberto G. Santos signed this handwritten notation: "June 20 - Please note that these minutes have not yet been approved by the Board of Freeholders."

We have conducted an administrative investigation. See N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

1. On May 16, 2006, after an election and a rerun election among unit employees, the Director of Representation certified District 1199J as the representative of "all blue collar and white collar employees employed by Hudson County" (RO 2006-059). More than 240 job titles were listed on an attachment to the certification.

2. On May 9, 2007, following a negotiations session with a Commission mediator, the County and District 1199J signed a memorandum of agreement which, by its terms, was to be incorporated with the parties' previous collective negotiations agreement and a previous memorandum of agreement. The May 9 memorandum extended retroactively to July 1, 2006 through June 30, 2011 and set forth terms and conditions of employment, including periodic salary increases and specified that it was ". . . subject to ratification by the Hudson County Board of Chosen Freeholders and by the membership of District 1199J." The memorandum was signed by District 1199J President Susan M. Cleary, and County Director of Personnel Patrick Sheil. It also

specified that, "(e)xcept as noted, all provisions are effective upon ratification of the Freeholders."

3. On May 10, 2007, the memorandum was listed as an agenda item on that day's meeting of the Hudson County Board of Chosen Freeholders. The Board ratified the memorandum, along with all other agenda items, upon a roll call vote on motion, as Resolution No. 200-5-2007. The resolution specified that "the aforementioned memorandum of agreement is deemed acceptable to the County, subject to the ratification of the Union."

4. From May 10 through May 15, 2007, District 1199J collected secret ballot votes on the memorandum from its membership. On May 15, 2007, the votes were tallied. The final tally was 274 in favor of and 86 opposed to ratification. Later on May 15, 2007, Grisel Lopez, State Director Nursing/Public Sector for District 1199J, hand-delivered a letter to Patrick Sheil, advising that the membership had ratified the memorandum.

5. On May 16, Local One filed its representation petition.

6. On June 10, 2007, Local One representative Anthony Lopez submitted a completed government records request form to the County, seeking a copy of the final agenda and minutes of the May 10 Freeholders' meeting.

7. On June 19, Assistant County Counsel Neil Carroll issued a letter to Lopez about the OPRA request, writing that the Freeholders had not yet received the minutes from the May 10

meeting but anticipated adopting them at their June 28 meeting, and that they would be made available to him after adoption.

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).

Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), explained the rationale for the temporal restrictions on the filing of representation petitions set forth in N.J.A.C. 19:11-2.8, including the Commission's contract bar rule:

A contract bar has . . . been established which limits the filing of petitions during the period in which employees are covered by a written agreement. The adoption of the contract bar rule represents the Commission's concern that the filing of a petition raising a question concerning representation often disrupts the stability and the predictability of the negotiations relationship which the parties sought to create by agreement. While

the ability to select or to refrain from selecting an employee representative is a matter within the public interest, so too is the public concern that an existing negotiations relationship not be subject to continuous and untimely disruptions. Therefore, the Commission has constructed a contract bar rule to provide for the protection of both parties during the period of an existing written agreement.
[3 NJPER at 251]

An agreement or contract which bars an otherwise timely representation petition must set forth substantive terms and conditions of employment sufficient to stabilize the bargaining relationship. See City of Wildwood, D.R. No. 88-22, 14 NJPER 77 (¶19028 1987); Appalachian Shale Products Co. The agreement must be written, signed by both parties and extend for a finite term. See Mercer Cty. Supt. of Elections, D.R. No. 82-40, 8 NJPER 157 (¶13069 1982); New Jersey Transport Information Center, D.R. No. 82-38, 8 NJPER 154 (¶13067 1982); County of Middlesex; City of Egg Harbor, D.R. No. 91-2, 16 NJPER 424 (¶21178 1990); Springfield Bd. of Ed., D.R. No. 89-3, 14 NJPER 583 (¶19248 1988); County of Camden, D.R. No. 88-3, 13 NJPER 663 (¶18251 1987).

In this matter, the County and District 1199J negotiated in good faith over a period of time; entered into mediation and reached a settlement of their dispute; executed a memorandum of agreement setting forth terms and conditions of employment for a finite period; and ratified the agreement pursuant to its terms. Contrary to Local One's argument that the contract was not

effectively ratified because the May 10 meeting minutes were not "adopted," or that the County Executive had not timely "signed-off," I find no indication in the parties' agreement that either or both of those actions were required. The agreement was fully ratified on May 15, 2007.

The five-year collective agreement covering the period of July 1, 2006 through June 30, 2011 satisfies all the contract bar requirements. It stabilizes the parties negotiations relationship for a finite term. (N.J.A.C. 19:11-2.8(d) provides that "an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition filed any time after the end of the third year of the agreement").

I find that the County and District 1199J signed and ratified a memorandum of agreement sufficient to trigger the application of the Commission's contract bar rule. Local One's representation petition filed on May 16 is, therefore, untimely and must be dismissed.

Local One alleges that numerous unit employees did not participate in the ratification vote. Unions and other private organizations are given wide latitude in adopting rules for internal governance. Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (Law Div. 1978). The Commission will not intercede in intra-union disputes unrelated to allegations and proof that an unfair practice has been committed. See Teamsters Local 331

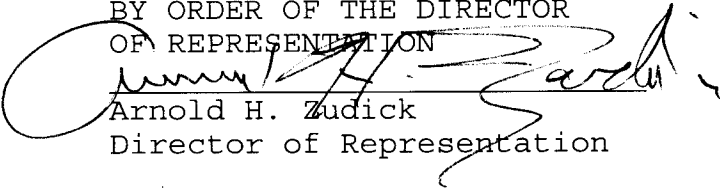
(McLaughlin), P.E.R.C. 2001-30, 27 NJPER 25, 27 (¶32014 2000)
(the Commission "cannot police how a union conducts a ratification vote absent factual allegations tying specific ratification misconduct to a specific breach of the duty of fair representation in negotiations").

Finally, I note that the petition seeks an election among only a portion of the bargaining unit previously certified. Having determined the petition is not timely filed, I need not address issues raised by the proposed "severance."

ORDER

Hudson County Union Local One Amalgamated's Petition for Certification of Public Employee Representative filed on May 16, 2007 is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Arnold H. Zudick
Director of Representation

DATED: August 3, 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 August 13, 2007.