

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

In the Matter of

JERSEY CITY MEDICAL CENTER,

Public Employer,

-and-

LOCAL 4, NATIONAL UNION OF
SECURITY OFFICERS,

DOCKET NO. RO-80-19

Petitioner,

-and-

LOCAL 2254, COUNCIL 52,
AFSCME, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that a memorandum of understanding which contains substantial terms and conditions of employment and a clearly stated duration and a ratification requirement which has been satisfied by the parties meets the requirement of a written agreement pursuant to N.J.A.C. 19:11-2.8(c) and acts as a bar to the filing of the instant Petition. The Director determines that, since the Act and the Commission's rules are designed to insulate a police/nonpolice unit during the term of a collective negotiations agreement, then equally forceful considerations are present to insulate a guard/nonguard unit, which is not statutorily prohibited, from a petition raising a question concerning representation during the period of an existing agreement. For these reasons the Director determines that the Petition has not been timely filed and dismisses the Petition.

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Appearances:

For the Public Employer
John J. Doyle, Personnel Manager

For the Petitioner
Arnold E. Brown, Esq.

For the Intervenor
Michael Lanni, Executive Director

DECISION

On August 7, 1979, 1/ a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Local 4, National

1/ The Petition, although received by the Commission on August 6, 1979, was not accompanied by the required showing of interest. Upon the receipt of the showing of interest on August 7, 1979, the Petition was perfected, and at this time, deemed filed.

Union of Security Officers ("Local 4") with respect to a proposed unit of all regular full-time and part-time security guards employed by the Jersey City Medical Center (the "Center"). Local 2254, Council 52, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME") currently represents security guards within a unit of all nonsupervisory blue collar and white collar Center employees. The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition in order to determine the facts.

Based upon the administrative investigation to date, 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 disputed 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. Jersey City Medical Center is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. Local 4, National Union of Security Officers and Local 2254, Council 52, American Federation of State, County and Municipal Employees, AFL-CIO are employee representatives within

the meaning of the Act and are subject to its provisions.

4. Local 4 seeks an election with respect to a proposed unit of all regular full-time and part-time security guards employed by the Center. The security guards are currently included in a nonsupervisory blue collar and white collar negotiations unit represented by AFSCME.

5. Both AFSCME and the Center assert that they entered into a memorandum of understanding, and ratified same, prior to the filing of the instant Petition. Accordingly, both argue that the Commission's "contract bar" rule, N.J.A.C. 19:11-2.8(c)(2), precludes the processing of Local 4's Petition.

6. Local 4 asserts that the above memorandum of understanding does not qualify as a written agreement upon which a contract bar claim may be asserted because it contains indefinite provisions and does not represent the final contractual document intended by the Center and AFSCME. Additionally, Local 4 contends that the current unit represented by AFSCME is inappropriate in that it contains both security guards and non-guards. Citing National Labor Relations Board policy, Local 4 states that the contract bar rule may not be asserted where the existing collective negotiations unit is inappropriate.

7. Accordingly, a Petition for Certification of Public Employee Representative having been filed, and there existing a dispute, the instant matter is properly before the undersigned for determination.

8. The memorandum of understanding between the Center and AFSCME, which memorandum is attached hereto and made a part hereof, was executed by representatives of the Center and AFSCME on July 18, 1979. AFSCME has affirmed that the memorandum was ratified on July 26, 1979 by the membership of Local 2254. The Center affirms that its board of management approved the memorandum on August 2, 1979. The instant Petition was filed on August 7, 1979.

9. N.J.A.C. 19:11-2.8(c) provides in relevant part:

(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 of such agreement;

10. Based upon the above facts and for the reasons set forth below, it appears to the undersigned that the ratified memorandum of understanding meets the requirement of a written agreement pursuant to N.J.A.C. 19:11-2.8(c) and that the instant Petition is barred.

In Appalachian Shale Products Company, 121 NLRB No. 149, 42 LRRM 1506 (1958), the Board reiterated its policy that a

document need not be reduced to the formality generally associated with collective negotiations contractual agreements in order to qualify as a contract which would bar the processing of a petition. The Board stated that informal written agreements were sufficient to bar the processing of petitions where the agreements incorporated substantial terms and conditions of employment and where any ratifications required by the agreement have been achieved prior to the filing of a petition.

In In re City of Jersey City, E.D. No. 78 (1975), the Commission's Executive Director found that a memorandum of agreement constituted a sufficient "written agreement," within the meaning of N.J.A.C. 19:11-2.8, where the memorandum contained substantive terms and conditions of employment for a stated term and by its terms required only formal execution to form a complete contract.

The circumstances of the instant matter, similarly, are appropriate for application of the Commission's contract bar rule. The memorandum of understanding entered into by the Center and AFSCME is a written document and contains substantial terms and conditions of employment. The memorandum of understanding lists all contractual changes from the prior agreement and by its terms continues all prior contract terms except as modified by the memorandum. Although Local 4 claims that the term of the agreement is indefinite, it appears to the undersigned that the term of the

agreement set forth in the memorandum is clearly stated. The first provision of the memorandum provides for a two year agreement (1979 and 1980). Many of the remaining provisions of the memorandum make reference to an effective date of January 1, 1979, for the commencement of the terms set forth therein. The agreement is intended to replace a contract between the Center and AFSCME which terminated on December 31, 1978. Accordingly, the undersigned concludes that the memorandum of understanding sets forth a stated term of two full calendar years commencing January 1, 1979.

Item 14 of the memorandum provides that its terms are subject to ratification by both sides -- the Board of Managers, for the Center; the rank and file, for AFSCME. The ratification requirement has been satisfied by the parties. ^{2/}

Regarding the unit appropriateness argument, the undersigned has previously considered the claim, in In re Bergen Community College, D.R. No. 79-32, 5 NJPER 181 (¶ 10098 1979), that the Commission's contract bar rule should not be applied where the contract covers a unit which includes both security guards and non-guards. In that proceeding, the petitioner also argued that §9 of the National Labor Relations Act prohibits the inclusion of guards and non-guards in the same negotiations unit. The undersigned

^{2/} Local 2254's President has provided an affidavit of ratification on July 26, 1979 by the Local's membership. The Center's Chief of Personnel and Labor Relations has provided a formal statement relating to the voting ratification of the memorandum of agreement by the Board of Managers on August 2, 1979.

advised the petitioner that the guard/non-guard proscription in the NLRA was not carried forth as a statutory prohibition in the New Jersey Employer-Employee Relations Act, but, rather, the EERA merely prohibits the inclusion of police and nonpolice in the same negotiations unit. Thereafter, the petitioner claimed that the security guards were in fact police within the intendment of the Act. The undersigned found that even assuming that security guards were police, the existing contract would still bar the processing of the petition inasmuch as the inclusion of police employees in units with nonpolice employees presents a "special circumstance" ^{3/} which should not be disturbed during the period of an existing agreement. From the above, it appears to the undersigned that since the Act and the Commission's rules are designed to insulate a police/nonpolice unit during the terms of a collective negotiations agreement, then equally forceful considerations are present to insulate a guard/non-guard unit, which is not statutorily prohibited, from a petition raising a question concerning representation during the period of an existing agreement.

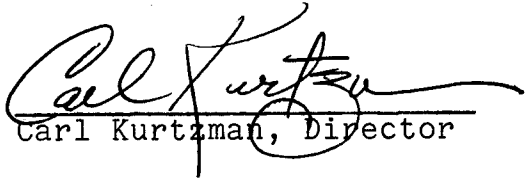
12. On October 12, 1979, the undersigned advised the parties of the above analysis and reminded the parties of their obligations pursuant to N.J.A.C. 19:11-2.6. Specifically, the Petitioner was provided the opportunity to provide additional documentary or other evidence as well as statements of position

^{3/} Although units comprised of police and nonpolice are generally precluded under the Act, N.J.S.A. 34:13A-5.3 provides statutory exceptions which permit the continued existence of mixed units of police and nonpolice where established practice, prior agreement, or special circumstances dictate the contrary.

as to why the instant Petition should not be dismissed. The undersigned has not been provided with any additional documentation or argument.

Accordingly, for the reasons stated above, the undersigned determines that the instant Petition has not been timely filed pursuant to N.J.A.C. 19:11-2.8(c)(2), and the instant Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 29, 1979
Trenton, New Jersey

JERSEY CITY MEDICAL CENTER

-AND-

LOCAL 2254, COUNCIL 52, AFSCME

MEMORANDUM OF UNDERSTANDING

1. Two-year agreement (1979 and 1980).
2. Salaries shall be increased by \$700 effective January 1, 1979 and an additional \$700 effective January 1, 1980 for all members of the unit.
3. All specialists* except Respiratory personnel, shall receive an additional increase of two grades or \$843, whichever is less, retroactive to January 1, 1979.
4. Helpers shall receive an additional \$400 added to their salary effective in first year of agreement. Retro to Jan. 1, 1979.
5. Uniformed staff shall receive a one-time lump sum payment of \$200 to pay for uniforms that may have been purchased in 1978. Uniform clause in prior agreement shall continue.
6. Longevity clause shall be amended to provide for \$200 increase after 20 years of service.
7. Agency shop clause to be inserted in contract.
8. Disability increased to \$90 per week. New hires eligible after one year. Same pro-rata reduction for sick time credit and vacation as UNO agreement, Article XXVII, Section 5, last sentence.
9. New employees, during first ninety days of employment, shall have no recourse to grievance procedure, if terminated.
10. E.M.T. night shift personnel supper break procedure to be reviewed in a good faith effort by both sides to resolve alleged restriction on not leaving area, consistent with emergency nature of duties.

*X-RAY, EKG, EEG, EMT, Paramedic and Laboratory Technician Personnel

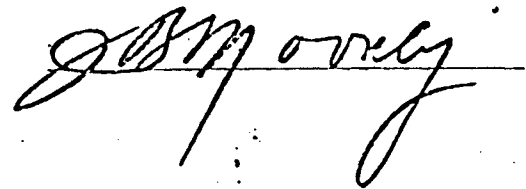
R. B. [Signature]

11. Side-bar letter to be drafted to provide that hospital will review Respiratory Department salaries in relation to other area hospitals to determine comparability.
12. Minimum salaries to be increased to reflect \$700 increases.
13. Prior agreement to continue except as changed herein.
14. Terms herein subject to ratification by both sides; i.e., for Hospital - the Board of Managers; for Union - the rank and file. Both negotiating teams shall recommend this package to their constituents.
15. Mediator to retain jurisdiction pending ratification.

DATED: July 18, 1979

JERSEY CITY MEDICAL CENTER

By:



LOCAL 2254, COUNCIL 52, AFSCME

By:

