

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Public Employer,

-and-

DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

Petitioner,

-and-

PASSAIC COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Docket No. RO-77-40

Intervenor,

-and-

NEW JERSEY COUNCIL 52, AMERICAN
FEDERATION OF STATE, COUNTY, MUNICIPAL
EMPLOYEES, AFL-CIO,

Intervenor.

SYNOPSIS

In the absence of substantial and material disputed factual issues necessitating a hearing, the Director of Representation Proceedings, on the basis of an administrative investigation, directs an election among full-time and regular part-time licensed practical nurses and registered nurses at the facilities of Preakness Hospital. The Director determines that the Commission rules establishing a timetable for negotiations between public employers and incumbent exclusive negotiating representatives do not bar the filing of a Petition for Certification of Public Employee Representative, which is otherwise timely filed pursuant to the Commission's representation rules. The Director also directs that a professional option be accorded to professional employees to determine whether a majority of the professional employees desire to be included in a unit with non-professional employees.

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

In the Matter of

COUNTY OF PASSAIC,

Public Employer,

-and-

DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

Petitioner,

-and-

PASSAIC COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Docket No. RO-77-40

Intervenor,

-and-

NEW JERSEY COUNCIL 52, AMERICAN
FEDERATION OF STATE, COUNTY, MUNICIPAL
EMPLOYEES, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer,
Mr. Samuel Hughes, Director of Personnel

For the Petitioner,
Greenberg and Margolis, P.A.
(Mr. Philip Freedman, of Counsel)

For Passaic Council #3, N.J.C.S.A.
Mr. A. William Sala, Jr., Esq.

For Council #52, A.F.S.C.M.E.
Mr. Michael Lanni, Executive Director

DECISION AND DIRECTION OF ELECTION

On September 23, 1976, a Petition for Certification of Public
Employee Representative, supported by an adequate showing of interest, was

filed with the Public Employment Relations Commission by District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO ("District 1199"). District 1199 seeks a Commission certification as the exclusive negotiating representative of a unit of full-time and regular part-time licensed practical nurses and registered nurses employed at the two facilities of Preakness Hospital.

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties have been advised of their obligation under N.J.A.C. 19:11-1.12, and have been afforded an opportunity thereunder to present to the undersigned documentary and other evidence, as well as statements of position, relating to the Petition. On the basis of the administrative investigation herein, 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 a hearing. Pursuant to N.J.A.C. 19:11-1.12(c), 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 County of Passaic is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), the employer of the employees described herein, and is subject to the Act's provisions.

3. District 1199, Passaic Council #3, New Jersey Civil Service Association (hereinafter "Council #3"), and New Jersey Council 52, American Federation of State, County, Municipal Employees, AFL-CIO (hereinafter, "Council 52") are employee representatives within the meaning of the Act and are subject to its provisions.

4. On October 6, 1976, Council #3 advised the undersigned that it was the exclusive representative of employees in the petitioned-for unit and that it was currently negotiating on behalf of the employees with the County towards a successor agreement. Council #3's requested intervention is supported by a contractual agreement with the County in a unit consisting of registered, professional and licensed practical nurses, which agreement is effective January 1, 1975 through December 31, 1976. This unit is the same as that petitioned for by District 1199. On October 8, 1976, Council 52 filed a motion to intervene in the representation proceeding. Council 52 seeks to represent the employees in the same unit as petitioned-for by District 1199 and as currently represented by Council #3. The motion to intervene is supported by an adequate showing of interest pursuant to N.J.A.C. 19:11-1.13. Both requests for intervention are hereby approved.

5. Council 52 does not object to a secret ballot election to be held among employees in the petitioned-for unit. The County has taken no position with respect to this issue. However, Council #3 declines to consent to a secret ballot election.

Accordingly, a Petition for Certification of Public Employee Representative having been filed, a question concerning the representation of public employees is before the Commission, there exists a dispute, and the matter is properly before the undersigned for determination.

6. No party disputes the appropriateness of the petitioned-for unit, and the undersigned finds the unit prima facie appropriate for the purpose of collective negotiations.

7. An informal conference was convened among all parties to the proceeding and the undersigned's investigating agent at which time Council #3 maintained that the Petition was not timely filed.

The Commission's Rules respecting the timeliness of petitions provide in relevant part, at N.J.A.C. 19:11-1.15(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.***."

(as amended, R. 1973 d. 110, eff. May 10, 1973)

Insofar as Council #3's current agreement expires December 31, 1976, and since the Petition was filed within 90 to 120 days before the expiration of the agreement, the undersigned determines that the Petition is timely filed.

Council #3 also contended at the informal conference that the open period established in the above rule provision for the filing of petitions is inconsistent with recently adopted Commission rules adopting a timetable for the commencement of negotiations toward successor agreements. See N.J.A.C. 19:12-1.1 et seq. Effective January 20, 1975. 7 N.J.R. 78(a) (February 6, 1975). The timetable rules provide that negotiations commence six months prior to a public body's budget submission date. Accordingly, the period for filing petitions before the Commission is generally concurrent with the time period in which parties are negotiating towards successor agreements.

In effect, Council #3 argues that the Commission's negotiation timetable rules operate as a "negotiations bar" to the petition. This position is without merit. In past decisions the Commission has con-

sistently held that the status of negotiations between a public employer and an incumbent representative does not create a bar to the filing of a petition. Cf. In re Township of Franklin, P.E.R.C. No. 64, wherein the Commission rejected the contention of a "mediation bar". It is relevant to note that in the Township of Franklin matter the "mediation bar" argument was rejected by the Commission even though the public employer and incumbent representative were engaged in mediation activities utilizing the services of a mediator appointed by the Commission pursuant to its then existing rules concerning impasse when the petition was filed. See N.J.A.C. 19:12-1.2. Repealed effective January 20, 1975. 7 N.J.R. 78(a) (February 6, 1975). Accordingly, the undersigned determines that the establishment of a timetable for the commencement of negotiations is not intended by the Commission to interpose a "negotiations bar" to the filing of a Petition for Certification of Public Employee Representative.

8. On December 8, 1976, the undersigned notified the parties that based upon the investigation to date it appeared that the only issue was a legal one, namely the issue as to the timeliness of the filing of the petition. The undersigned informed the parties as to his analysis of the issue as immediately described above and informed the parties that he was not inclined to accept the "negotiations bar" argument, and that he was inclined to rule the petition timely. The parties were also informed, as stated supra, of their obligation to present documentary and other factual evidence as well as statements of position before the undersigned, and were informed that in the absence thereof the undersigned would thereafter issue a decision and direct an election pursuant to N.J.A.C. 19:11-1.12(b)(3). No party has submitted any additional materials with respect to the instant matter.

Accordingly, based upon the above findings and determinations, the unit being prima facie appropriate and there existing no factual issues in dispute which would warrant the conduct of an evidentiary hearing, the undersigned shall direct an election among the following employees:

All full time and regular part-time licensed practical nurses and registered nurses employed at the facilities of Preakness Hospital but excluding managerial executives, craft employees, police and supervisors within the meaning of the Act.

9. The undersigned directs that an election be conducted among the employees described in section eight. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are 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 quit 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. 19:11-2.7 the Public Employer is directed to file with the undersigned 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. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire to be represented by District 1199, Council #3, Council 52, or neither, for the purposes of collective negotiations. Additionally, professional employees shall be provided with the choice, pursuant to N.J.S.A. 34:13A-6(d), of exercising their option to be included in a unit with non-professional employees, as well as to determine their representational desire.

Should a majority of professional employees desire inclusion in a unit with non-professional employees, their ballots shall be tallied with those of the non-professional employees and the majority representative shall be determined by a majority of valid ballots cast. Should a majority of professional employees vote not to be included with non-professional employees, the choices of professional employees and non-professional employees shall be tallied separately and appropriate certifications shall thereafter issue. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Statement of Procedures.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS



Carl Kurtzman

DATED: December 27, 1976
Trenton, New Jersey