D.R. NO. 84-10

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

In the Matter of

BERGEN COUNTY SUPERINTENDENT OF ELECTIONS,

Public Employer,

-and-

TRANSPORT WORKERS UNION OF AMERICA, LOCAL #225, AFL-CIO,

DOCKET NO. RO-83-168

Petitioner,

-and-

NEW JERSEY EMPLOYEES LABOR UNION, LOCAL # 1,

Intervenor.

SYNOPSIS

The Director of Representation determines that Local 225's Petition for Certification of Public Employee Representative is not barred by the Commission's recognition or contract bar rules and directs the conduct of a representation election. Local 1 did not demonstrate that it was accorded recognition in the manner set forth by N.J.A.C. 19:11-3.1 and did not, alternatively, present a written agreement with the employer covering employees. Local 1's unfair practice charge alleging that the employer should have reduced the parties' agreement to writing prior to the filing of Local 225's petition was not supported by an evidentiary submission establishing the claim with a fair degree of certainty.

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Appearances:

For the Public Employer
Irwin I. Kimmelman, Attorney General,
State of New Jersey
(Melvin E. Mounts, Deputy Attorney General)

For the Petitioner
Frank A. Caiazzo, President TWUA

For the Intervenor
Hogan & Palace
(Thomas A. Hogan, of counsel)

DECISION AND DIRECTION OF ELECTION

On June 6, 1983, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by the Transport Workers Union of America, Local 225, AFL-CIO ("TWUA") with respect to a unit of secretarial, clerical, investigative, warehouse and records room personnel employed by the Bergen County Superintendent

of Elections ("Superintendent"). By letter dated June 14, 1983, the New Jersey Employees Labor Union, Local 1 ("Local 1") requested intervention in this proceeding. Local 1 has submitted current dues deduction records in compliance with N.J.A.C. 19:11-10.1 and having met the requirements thereof has been granted intervenor status.

The undersigned has caused an administration investigation to be conducted into the matters and allegations set forth in the Petition.

To date, the administrative investigation reveals the following:

1. The Bergen County Superintendent of Elections 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.

2. Transport Workers Union of America, Local 225, AFL-CIO and New Jersey Employees Labor Union, Local 1 are employee representatives within the meaning of the Act and are subject to its provisions.

3. TWUA seeks to represent a unit of all secretarial, clerical, investigative, warehouse and records room personnel employed by the Superintendent.

4. The appropriateness of the negotiations unit has not been placed in dispute by any party. TWUA and the Superintendent of Elections agree to the conduct of a secret ballot election. Local 1, however, has claimed that the Commission's rules bar the filing of the

Petition. Accordingly, a dispute exists and the matter is appropriately before the undersigned for determination.

5. Local 1 first asserts that it received recognition as the majority representative from the Superintendent within the past 12 months and therefore N.J.A.C. 19:11-2.8(b) precludes the filing of the TWUA petition. 1/ Local 1 further asserts that a proposed contract with the Superintendent of Elections bars the filing of the TWUA Petition. 2/ Finally, Local 1 asserts that if its documentation in support of the contract bar claim does not meet the standards of a "written agreement" under N.J.A.C. 19:11-2.8(c), the contract which it negotiated with the Superintendent should have been reduced to writing by the time the TWUA petition was filed. Local 1 claims that the Superintendent of Elections committed an unfair practice by not reducing the agreement to writing, and that this unfair practice

1/ N.J.A.C. 19:11-2.8(b) provides: "Where there is a certified or recognized representative, a petition for certification or decertification will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative)."

2/ N.J.A.C. 19:11-2.8(b) provides: "During the period of an existing written agreement containg 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:

1. In a case involving employees of the State of New Jersey, any agency thereof, or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal of such agreement;

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."

x x x

should not deprive Local 1 of its right to assert the protections of the contract bar rule. Local 1 therefore requestes that the undersigned block the processing of the TWUA petition while its charge and requested relief are litigated before the Commission. (Dkt. No. CO-84-23, filed July 26, 1983, amended August 5, 1983)

6. The undersigned shall review the Local 1 arguments seriatim.

Local 1's first objection to the processing of the Petition raises a recognition bar question under N.J.A.C. 19:11-2.8(b). However, that rule grants twelve months of protection to recently recognized negotiations relationships provided that the initial recognition agreement has been formalized under a procedure set forth in N.J.A.C. 19:11-3.1. Local 1 has not submitted documentation to establish that it was recognized in accordance with the procedure outlined in §§3.1 and therefore its claim of a recognition bar under §§2.8(b) cannot be supported.

The second objection to the Petition asserted by Local 1 advances the claim that Local 1's written submission of a "proposed agreement" to the Superintendent constitutes an "existing written agreement" for purposes of the contract bar rule embodied in N.J.A.C. 19:11-2.8(c). [3/] Previous decisions have held that a document -- whether it be a "memorandum of agreement" or a contractual agreement -- may suffice as an existing written agreement only if it has been executed by the employer and the majority representative. In re

3/ Whether the appropriate section to invoke is §§2.8(c)(1), involving State agencies, or §§2.8(c)(1), involving County agencies, is immaterial to the disposition of this issue.

Transport of N.J., D.R. No. 83-38, 8 NJPER 154 (¶ 13067 1982); In re County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶ 11179 1980) reg. for rev. den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶ 11224 1980); In re City of Jersey City, E.D. No. 78 (1975). Local 1's claim under the contract bar rule falls short because it has not produced an executed agreement.

The undersigned now turns to the unfair practice charge filed by Local 1 in which it is alleged that the Superintendent, prior to the filing of the instant Certification Petition, failed to meet its obligation under the Act to reduce a negotiated agreement to writing. As noted earlier, the premise of this claim is that had the employer met its obligation to reduce an agreement to writing and to execute same with the incumbent representative, a "written agreement" for purposes of the Commission contract bar rule would have existed and, thus, would have precluded the filing of the certification petition. In several recent matters, other than the within matter, the undersigned has been requested to apply the blocking charge procedure in order to permit such unfair practice claims to be litigated and adjudicated by the Commission. In evaluating the blocking charge claim the undersigned has carefully examined the Charging Party's evidentiary proffers in order to ascertain whether the Charging Party's proofs establish with a fair degree of certainty that all contractual issues had been resolved with complete finality. In addition, the undersigned has reviewed the nature of the evidence submitted concerning the circumstances under which it is alleged that the Respondent has withdrawn from executing a draft agreement. Where significant factual issues have been presented and in the opinion of

the undersigned required adjudication in the unfair practice forum, the undersigned has blocked the processing of the Certification Petition. In re Mt. Olive Twp. Bd. of Ed., D.R. No. 83-29, 9 NJPER ___ (¶ _____ 1983). Where the evidentiary submissions fail to establish a basis for a genuine claim, the undersigned will not delay the expression of free choice by unit members as to their organizational preference. In re Western Monmouth Utilities Auth., D.R. No. 83-32, 9 NJPER ___ (¶ _____ 1983).

The undersigned has evaluated Local 1's charge and evidentiary submission in support thereof in accordance with these standards. The relevant factual allegations follow:

Local 1 states that at a March 10, 1983 negotiations session "an agreement as to all issues was reached" between the Superintendent and Local 1 representatives. The undersigned assumes, from the absence of any factual claim or supportive documentation, that the parties did not execute a memorandum of agreement or other written instrument commemorating an agreement at that time.

On May 5, 1983, Local 1's attorney mailed a draft contract to the Superintendent's negotiations representative. Local 1's attorney stated in the accompanying transmittal letter: "I have not reviewed the draft with my client so it may be that some additional changes may be required. However, I wanted to forward it to you to avoid any further delay."

On May 31, 1983, Local 1's attorney mailed to the Superintendent's representative certain changes of draft language which Local 1's President has described in an affidavit as "a clarification of certain language regarding the implementation of certain aspects of the

agreement...." According to the argument advanced by Local 1's President, "At this point, the form as well as the substance of the contract had been agreed to by all parties." Local 1 has not submitted a copy of these changes to the Commission. However, it has submitted a copy of the transmittal letter which accompanied the language changes. This letter states in its entirety:

> Please find enclosed herewith photocopy of revised pages, consisting of 13, 13A, 15, 16, 36 and Schedule A, which I ask that you substitute in the copy of the draft of the contract sent to you with my letter of May 5, 1983.

Pages 13 through 16 of the May 5 draft contract concern an article entitled Work Schedule, Overtime, and Compensatory Time Off. Page 36 of the May 5 draft contains two articles: Dues and Agency Shop Checkoff; and Out of Title Work. Schedule A is a schedule of employee titles, grades, and minimum-maximum salaries corresponding to the title grades.

Local 1 has not explained the reasons which prompted the changes, and therefore its evidentiary submission does not establish whether the changes were in response to its own review of the initial May 5 draft (in accordance with its May 5 transmittal letter), or whether the changes were intended to be responsive to the Superintendent's review of the May 5 draft.

Local 1's submission of changes on May 31 followed by several days a letter which its attorney mailed to the Superintendent advising her that Local 1 had been made aware that the TWUA was engaging in authorization card solicitation "during working hours and on County property." Local 1 stated that "if such activity continues we shall

assume it is being allowed by you and we shall file the appropriate unfair practice charges with PERC."

The Petition filed by TWUA was received by the Commission on June 6, 1983. The Petition states that it was prepared and executed on June 3, 1983.

The undersigned has reviewed all the material submitted by Local 1 in support of its claim that a complete agreement had been reached with the Superintendent and that the Superintendent did not fulfill an obligation to execute the contract. Initially, the proferred evidence fails to support the claim that a complete or final agreement had been reached. If the May 31 modifications were in response to changes proposed by the Superintendent, there is no evidence to suggest that Local 1's response was full acquiescence. 4/ If the changes were necessitated by Local 1's own review of the initial draft, there is no evidence to suggest that the changes were discussed with and agreed to by the Superintendent.

Local 1 further alleges that "prior to June 6, 1983, the parties scheduled a date for signing. The Superintendent has postponed this date indefinitely." There has not been an evidentiary submission by Local 1 to support this claim. 5/

Local 1 further states that the Superintendent has permitted employees to enjoy benefits under the agreement. The date on which these benefits were purportedly granted to employees is not alleged.

4/ The evidence in this regard proferred in the Mt. Olive matter, supra, was of crucial significance in the undersigned's determination to issue a complaint and block the pending representation Petition.

5/ Moreover, although there is a representation by Local 1's attorney in his May 5 letter that he wanted to avoid any further delay, there is no evidence that the Superintendent willfully delayed the preparation of any draft agreement.

Moreover, this assertion fails to provide a foundation for the claim that an agreement has been finalized.

Finally, the undersigned has focused his attention on the last formal written document, the May 31, 1983 letter from the Local 1 attorney to the Superintendent's representative which was mailed shortly before the instant petition was filed. The letter requested the substitution of language in the draft of an agreement previously submitted. Local 1 did not state in this letter that, with this substitution, the parties were now in total agreement on the contract. In its May 31, 1983 letter Local 1 did not request that the Superintendent acknowledge complete agreement and lastly, Local 1 did not request a meeting or fix a date for the execution of the agreement.

Accordingly, having reviewed Local 1's evidentiary proofs, it appears that its claim that an agreement exists has not been established with a fair degree of certainty nor has it established that the Superintendent failed to meet the obligation to execute an agreement. In the absence thereof, the undersigned determines that the interests of employees in expressing at an election their choice as to a negotiations representative should not be delayed. An election is therefore ordered.

The appropriate unit shall consist of "all secretarial, clerical, investigative, warehouse and records room personnel employed by Bergen County Superintendent of Elections, but excluding managerial executives, professional and craft employees, confidential employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), 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 Public Employer is directed to file with the undersigned and with the above-named employee organizations 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 shall be simultaneously filed with the above-named employee organizations 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 225, Transport Workers Union of America, AFL-CIO, New Jersey Employees Labor Union, Local 1, 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 DIRECTOR
OF REPRESENTATION

Carl Kurtzman, Director

DATED: September 30, 1983
Trenton, New Jersey