

D.R. NO. 86-2

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

In the Matter of

CITY OF HACKENSACK

Public Employer,

-and-

DOCKET NO. RO-85-142

NEW JERSEY EMPLOYEES LABOR UNION,  
LOCAL NO. 1,

Petitioner,

-and-

LOCAL 29, RETAIL AND WHOLESALE DISTRIBUTIVE  
SALES UNION, AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by Local No. 1, N.J.E.L.U., which seeks to represent employees in the Department of Sanitation in the City of Hackensack. The Director finds that the petition filed in this matter is untimely and further, even if timely, the petition seeks to sever a group of employees from an existing appropriate unit. Therefore, the Director determines that the petitioned-for unit is inappropriate.

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

In the Matter of

CITY OF HACKENSACK

Public Employer,

-and-

DOCKET NO. RO-85-142

NEW JERSEY EMPLOYEES LABOR UNION,  
LOCAL NO. 1,

Petitioner,

-and-

LOCAL 29, RETAIL AND WHOLESALE DISTRIBUTIVE  
SALES UNION, AFL-CIO,

Intervenor.

Appearances:

For the Public Employer  
Gordon Sieck, Executive Assistant/Personnel Director

For the Petitioner  
Hogan and Palace, Esqs.  
(Michael Scully of counsel)

For the Intervenor  
Parsonnet, Maisel & Duggan  
(Jesse Strauss of counsel)

DECISION

On May 6, 1985, a Petition for Certification of Public  
Employee Representative was filed with the Public Employment

Relations Commission ("Commission") by New Jersey Employees Labor Union Local 1 ("Local 1"), seeking to represent a unit of sanitation employees employed by the City of Hackensack ("City"). The Petition was accompanied by an adequate showing of interest.

Local 29, Retail and Wholesale Distributive Sales Union, AFL-CIO ("Local 29") is the current exclusive majority representative of the petitioned-for employees. Local 29 has sought to intervene in this matter based upon its current agreement with the City covering the period January 1, 1983 through June 30, 1985, for all blue collar employees, including the sanitation workers. The request by Local 29 to intervene in this matter is hereby granted pursuant to N.J.A.C. 19:11-2.7.

Both the City and Local 29 have declined to consent to a secret ballot election among the employees in the petitioned-for unit.

Both the City and Local 29 object to the composition of the petitioned-for unit. They argue that the Petition seeks to sever employees in the sanitation division from an existing city-wide unit of blue collar employees, contrary to existing Commission policy. Local 29 further argues that the petition, which was filed on May 6, 1985, is untimely under Commission Rule N.J.A.C. 19:11-2.8.

I have authorized an administrative investigation into the matters and allegations involved in the petition in order to

determine the facts. See, N.J.A.C. 19:11-2.6(c). Based upon the administrative investigation, I find and determine the following:

1. The disposition of this matter is properly based upon our administrative investigation, inasmuch as the parties have not placed in dispute any substantial and material factual issues which may be more appropriately resolved after an evidentiary hearing, pursuant to N.J.A.C. 19:11-2.6(b).

2. The City of Hackensack 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 subject to its provisions and is the employer of the employees who are the subject of this Petition.

3. The New Jersey Employees Labor Union, Local 1 and Local 29, Retail and Wholesale Distributive Sales Union, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. Local 1 seeks to represent a unit described in the Petition as "all employees of the City of Hackensack Sanitation Department" (approximately 32 employees). Local 1 has alleged that this unit is appropriate for purposes of collective negotiations. Further, Local 1 asserts that while its Petition was filed with the Commission on May 6, 1985, it had previously mailed the present Petition, together with the accompanying showing of interest, to the Commission's Trenton Office for filing on March 22, 1985. In

support of its claim, Local 1 has proffered a letter signed by the attorney for Local 1, which states that the above-referred documents were mailed to the Commission on March 22, 1985.

5. Local 29 and the City both take the position that the petitioned-for unit is inappropriate in that it seeks to sever certain employees from an existing appropriate unit. Local 29 further asserts that the employees in the existing unit share a community of interest and that no basis is indicated to justify the requested severance of employees from the extant unit. Also, Local 29 asserts that the Petition is not timely filed and that the Petition is defective in that it does not list Local 29 as the incumbent representative, pursuant to N.J.A.C. 19:11-2.8.

6. Local 29 was certified as the exclusive majority representative of an existing collective negotiations unit described in the Commission's certification dated November 1982, as follows:

All blue collar workers employed by the City of Hackensack, excluding supervisors (foreman and above) within the meaning of the Act, managerial executives, police, confidential employees, craft and professionals and all other employees.

The certification was issued as the result of an Agreement for Consent Election entered into between the City, Local 29 and the then incumbent representative, Local 1.<sup>1/</sup> Contained within the

---

<sup>1/</sup> Local 1 (formerly known as Bergen Council #5, NJCSA) had previously represented the city-wide blue collar unit from the time that it was first recognized in 1976 and until Local 29 was certified in November 1982.

consent election agreement was a stipulation that the above-described unit is appropriate for purposes of collective negotiations.

7. Local 29 and the City are parties to a collective negotiations unit which, by its terms, is effective from January 2, 1983 to June 30, 1985. This agreement also contains a recognition clause which grants exclusive recognition to Local 29 for a unit of:

...all full time employees of the the Department of Public Works of the City, which includes blue collar workers employed by the City of Hackensack excluding supervisors (foreman and above) within the meaning of the Act, managerial executives, police, confidential employees, craft and professionals and all other employees...

8. Local 1 takes the position that the petitioned-for unit is appropriate in that (a) the Department of Sanitation employees share a unique community of interest; and (b) those employees have not received responsible representation from the incumbent representative, Local 29.

\* \* \* \*

With regard to the timeliness of the Petition, N.J.A.C. 19:11-2.8(c) provides:

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;...

The Commission's policy is to expeditiously resolve valid questions concerning the representation of employees. In In re City of Newark, D.R. No. 85-12, 11 NJPER 41 (¶16022 1984), we held that the petitioner must exercise due diligence to assure that its filings are received within the time limits imposed by the Commission's rules.<sup>2/</sup>

---

<sup>2/</sup> N.J.A.C. 19:10-2.1(d) provides:

When these rules require the filing of any paper, such document must be received by the commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. (emphasis added).

Almost immediately upon the filing of a representation petition, the Commission notifies all interested parties of the filing of the petition, requests the posting of Notices to Employees and schedules the matter for a conference for the purpose of ascertaining the positions of the parties, including whether the parties will agree that an election be conducted among the affected employees. I would note that, given their experience  
(Footnote continued on next page)

The timely period for the filing of representation petitions -- the "window period" of 90-120 days prior to the expiration of an existing written collective negotiations agreement -- is designed to balance the interests of the various parties in a contested representation matter. Subsection 19:11-2.8 balances the rights of employees to select the organization of their choice to represent them as against the rights of the employer and the incumbent organization to negotiate in a stable environment without the threat of a challenging representation petition. It accomplishes this end by providing a certain period during which a timely petition may be filed, (the 90-120 day period prior to contract expiration) and an "insulated period" (the period between the 90th day prior to the expiration of the contract and the contract expiration) during which the employer and the incumbent may negotiate unencumbered by the shadow of a representation filing.<sup>3/</sup>

In the instant matter, the Petitioner has not substantiated its contention that the representation petition herein was

---

(Footnote continued from previous page)

in matters before this Commission, Local 1 is not unfamiliar with the Commission's procedures in representation matters.

3/ See In re Clearview Reg. Bd. of Ed., D.R. No. 78-2, 2 NJPER 248 (1977) and In re Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455 (1978).



originally filed on March 22, 1985: there is no record at this agency of a filing on March 22 by Local 1 and there is no indication of service upon the employer or the incumbent organization; further, Local 1, as a Petitioner, bears the responsibility of insuring the timely submission of its filings. See, N.J.A.C. 19:10-2.1(d). In view of the foregoing, I determine that the filing date for this petition is May 6, 1985; therefore, the petition has been filed less than ninety days prior to June 30, 1985, the expiration date of the contract. Accordingly, the petition does not appear to be timely filed pursuant to N.J.A.C. 19:11-2.8.

However, even assuming arguendo that the Petition was timely filed, the negotiations unit sought by the Petitioner appears to be inappropriate under the circumstances presented herein. The Commission favors broad-based, employer-wide units rather than narrowly defined units organized along occupational lines or limited to a single department. See In re N.J. State Nurses Assn., 64 N.J. 231 (1974), wherein the court endorsed the Commission's adoption of the broad-based unit concept. Here, the existing unit of blue collar employees (approximately 90 employees) is comprised of employees in the sanitation, roads, water and sewer, and maintenance divisions. Permitting the petitioner to carve out a unit limited to approximately 32 employees in the division of sanitation would not be consistent with Commission policy.

Further, there is a long history of negotiations (beginning in at least 1970) with the existing unit, a factor which the Commission must take into consideration. See In re Englewood Bd. of Ed., D.R. No. 81-22, 7 NJPER 81 (¶12019 1981).

The Commission has on numerous occasions been faced with petitions to sever employees from existing, appropriate units and has consistently followed the standard enunciated in In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). In Jefferson, the Commission stated:

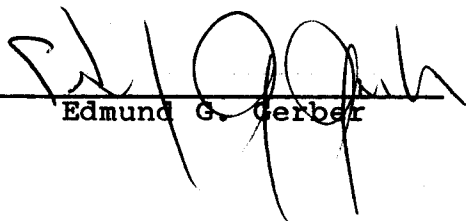
The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

In the instant matter, Local 1 makes a generalized allegation that there has been a failure by the incumbent, Local 29, to provide responsible representation to the petitioned-for employees. However, no specific factual allegations have been

proffered nor has any documentation been submitted in support of that general contention.

Based upon the foregoing facts and relevent cases, I hereby determine that the petition filed herein is not timely filed pursuant to N.J.A.C. 19:11-2.8, and further, that through the petition Local 1 seeks to represent a unit of employees which is inappropriate for purposes of collective negotiations. Accordingly, the Petition in this matter is here by dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber

DATED: August 13, 1985  
Trenton, New Jersey