

D.R. NO. 86-8

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

DOCKET NO. RO-86-15

PUBLIC WORKS CONSTRUCTION
MECHANICAL ASSOCIATION OF
ESSEX COUNTY,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification of Public Employee Representative which was not timely filed. The Director found that a current written agreement containing substantive terms and conditions of employment and covering the petitioned-for titles barred the filing of the petition under N.J.A.C. 19:11-2.8.

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Appearances:

For the Public Employer
Elaine Hyman, Assistant County Counsel

For the Petitioner
Fred Montalbano, Treasurer

DECISION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Public Works Construction Mechanical Association of Essex County ("Association") on September 3, 1985. The Association seeks to represent a unit of the following employees employed by the County of Essex ("County"): carpenters and helpers; carpenter locksmith and helpers; locksmith and helpers; painter locksmith and helpers; plumbers and helpers; steamfitters and helpers; painters and helpers; roofers and helpers; slate

roofers and helpers; mason and helpers; mason plasterers; sheet metal and helpers; welders and helpers; electrician and helpers; machinist and helpers; maintenance repair and helpers; plumber steamfitter and all craft workers. The petition was accompanied by an adequate showing of interest. The petitioned-for employees are currently represented in collective negotiations by the International Union of Operating Engineers, Local 68, 68A, 68B.

Based upon the administrative investigation to date, I find and determine as follows:

1. The disposition of this matter is properly based upon our administrative investigation. We have not found any substantial and material factual disputes which may more appropriately be resolved at a hearing. See N.J.A.C. 19:11-2.6(b).

2. The County of Essex 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 Public Works Construction Mechanical Association of Essex County is an employee representative within the meaning of the Act and is subject to its provisions.

4. The International Union of Operating Engineers, Local 68, 68A, 68B ("Union") is an employee representative within the meaning of the Act and is subject to its provisions.

5. In the petition, the Association acknowledges that the Union is the current majority representative of the employees it now

seeks to represent. It also states that the expiration date of the current agreement is December 31, 1986.

6. The County has submitted an executed copy of its current collective negotiations agreement with the Union. The agreement, which commences January 1, 1984, and expires on December 31, 1986, contains a recognition clause listing the petitioned-for titles.

N.J.A.C. 19:11-2.8 bars the filing of a certification petition during the period of an existing written agreement containing substantive terms and conditions of employment, unless the petition is filed during the designated "window period". The rule states:

(c) During the period of an existing written agreement containing substantive terms and conditions of employment ... a petition for certification of public employee representative ... normally will not be considered timely filed unless:

2. In a case involving employees of a county ... the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

In In re East Brunswick Board of Education, D.R. No. 80-39, 6 NJPER 308 (¶111148 1980), citing a National Labor Relations Board decision, we noted the policy consideration underlying the contract bar rule:

Two objects of the Board's contract bar policies are to afford parties to collective bargaining

agreements an opportunity to achieve, for a reasonable period, industrial stability free from petitions seeking to change the bargaining relationship, and to provide employees the opportunity to select bargaining representatives at reasonable and predicatable intervals. To properly achieve these objects, in determining whether an existing contract constitutes a bar, the Board looks to the contract's fixed terms or duration because it is this term on the face of the contract to which employees and outside unions look to predict the appropriate time for the filing of a representation petition. (footnotes omitted). In re Union Fish Co., 156 NLRB No. 33, 61 LRRM 1012 (1965).

Based upon the submissions in this matter, I find that the County and the Union are parties a written agreement containing substantive terms and conditions of employment for the period January 1, 1984 through December 31, 1986. I also find that the titles covered by the Agreement are those which the petitioner now seeks to represent in collective negotiations. Accordingly, the open period for filing representation petitions would not occur until September 1986. Thus, the Association's petition is not timely filed.

On October 23, 1985, I issued a letter to the parties containing the above findings and stating that unless they submitted additional statements, together with supporting documentary evidence within seven (7) days I would issue a decision dismissing the petition.

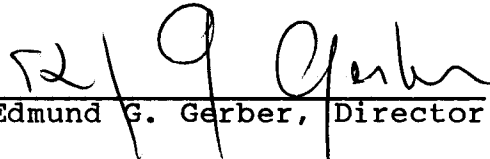
On October 30, 1985, the Association submitted a letter alleging that the president of the incumbent employee representative also serves as a County Freeholder and that his duties in those

capacities create a conflict of interest. The Association also alleged that another conflict exists because the incumbent organization represents supervisory and nonsupervisory employees.

In some contexts, a finding of conflict of interest is relevant to the administration of the Act. 1/ The petitioner's allegations are simply unrelated to the first hurdle in any certification of public employee representation case: namely, is the petition timely filed? Here, the incumbent employee representative's existing written agreement with the County bars the filing of a certification petition under N.J.A.C. 19:11-2.8. Further, the petitioner has not demonstrated that the proffered agreement is invalid, expired or does not cover the petitioned-for titles.

Accordingly, I dismiss the petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: November 18, 1985
Trenton, New Jersey

1/ See, for example, Board of Education v. Wilton, 57 N.J. 404 (1971).