

D.R. NO. 91-2

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

In the Matter of

CITY OF EGG HARBOR,

Public Employer,

-and-

TEAMSTERS LOCAL 311,

Docket No. RD-90-7

Incumbent,

-and-

NANCY KOLBA,

Petitioner.

SYNOPSIS

The Director of Representation finds that a memorandum of agreement which was tentatively agreed to between the employer and the incumbent but not yet signed and ratified by both parties, does not operate as a contract bar to the filing of a petition. The Director orders that a decertification election be conducted among all regular non-professional, non-supervisory blue collar and white collar employees of the City of Egg Harbor.

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Appearances:

For the Public Employer
Alfred R. Scerni, Jr., attorney

For the Incumbent
Markowitz & Richman, attorneys
(Regina C. Hertzog, of counsel)

For the Petitioner
Nancy Kolba, Asst. Shop Steward, pro se

DECISION AND DIRECTION OF ELECTION

On April 3, 1990, a Petition for Decertification of Public Employee Representative was filed by Nancy Kolba, shop steward, seeking to decertify the International Brotherhood of Teamsters, Local 331 ("Local 331") as the majority representative of a unit of all full-time and regular part-time, non-professional, non-supervisory employees employed by the City of Egg Harbor ("City"). Local 331 has intervened in this matter on the basis of

an expired 1986-1988 contract covering the unit. See N.J.A.C. 19:11-2.7.

Local 331 will not consent to an election. It contends that the petition is barred by a memorandum of agreement detailed in a September 7, 1989 letter and therefore, is untimely filed. The City takes no position as to the petition. However, it maintains that negotiations with Local 331 are not finalized and accordingly, contends that there is no existing contract which would bar the timely filing of a petition. The Petitioner joins in this argument.

An administrative investigation was conducted to determine the relevant facts. There are no substantial and material factual disputes which would warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

Local 331 was certified as the majority representative of this unit on October 5, 1981. The most recent three-year contract covering this unit expired on December 31, 1988. Negotiations for a successor agreement occurred during 1989.

A September 7, 1989 letter from City attorney Salvatore Perillo to Local 331 representative Joseph Yeoman details Perillo's understanding of the terms of a tentative agreement negotiated between Local 331 and the City. The negotiated changes from the previous contract include: a salary increase; a retroactive salary increase; a shift differential; an amended holiday schedule; the implementation of funeral leave and the elimination of sick leave

use for the death of a family member; the elimination of seven titles from the unit; and an increased clothing allowance. The City Council had informally accepted these terms, but Perillo advised in his letter that the City Council would take formal action, by way of a Resolution, once ratification of the agreement by Local 331 membership occurred.

Perillo sent a second letter to Local 331 on October 25, 1989 advising it of the City Council's willingness to extend the clothing allowance benefits to cemetery workers, if that would resolve the contract. He again asked for a letter confirming ratification of the contract and advised that he would recommend that the City Council adopt a salary ordinance implementing the compensation part of the package upon receipt of the contract executed by the union. Additionally, he offered to prepare the contract in typed form, but noted that Local 331 could do so since they have the "contract on a disk." Perillo also encouraged Local 331 to move quickly to ratify.

John P. Morris, International Trustee of Local 331 responded to Perillo's letter in correspondence dated October 30, 1989.^{1/} In his letter, Morris advised Perillo that the membership

^{1/} Local 331 is currently under a trusteeship imposed by the International Union.

had approved the contract and that Local 331 would forward the ratified contract to the City shortly.^{2/}

Sometime after receiving Morris' letter, the City Council approved a salary ordinance applicable to all City employees, including those in the Local 331 unit. Several items from the September 7, 1989 letter were specifically authorized by the ordinance -- salary increases, retroactive salary increase payments and a shift differential.

In January 1990, the City received a draft contract from Local 331. It was signed by Joseph Yeoman representing Teamsters Local 115.^{3/} The City refused to sign the contract. The City and the Petitioner state that the contract draft signed by Local 115 did not conform to what had been negotiated. Of particular concern were the increased costs to the City for payment into the Local 331 Health and Welfare Fund and a decrease in health insurance benefits provided by the Fund. The Petitioner states that these health benefit concessions were not raised during the discussion of the September 7, 1989 letter by Local 331's leadership at the contract ratification meeting.

^{2/} Local 331 contends that the membership ratification of the terms in the September 7, 1989 letter and the City Council's informal acceptance of these terms should act as a contract bar.

^{3/} Discussions have been underway since Fall 1989 to transfer Egg Harbor City unit members from Teamsters Local 331 to Teamsters Local 115; however, this matter remains unresolved.

Local 331 and the City met on January 22, 1990, to discuss the problems with the contract. At the meeting, Local 331 described the financial problems facing the Local 331 Health and Welfare Fund. Local 331 indicated that in six months, Egg Harbor employees would be transferred to the Local 115 Health and Welfare Fund which provides better health benefits to employees at a lower cost to the employer than the current Local 331 Fund. Local 331 was to prepare an addendum to the contract addressing these points. Perillo asked to receive the addendum quickly because he wanted to "send the contract and the addendum into the City Council for approval as one package."^{4/}

Perillo again wrote to Local 331 on February 22, 1990, indicating that he had not received a response to his January 23, 1990 letter and stated that "the City needs to have those issues addressed in a satisfactory fashion before the contract can be finalized."

Perillo sent a letter dated March 30, 1990, to Local 331 attorney Richard Markowitz advising him that he still had not received responses to his previous letters and "as a result of that failure to respond, the contract has not been finalized."

Several items from the September 7, 1989 letter have been implemented, including salary items, the amended holiday schedule and a shift differential payment. However, the parties disagree

^{4/} Perillo confirmed the issues discussed at this meeting in a letter to Local 331 dated January 23, 1990.

over whether the balance of the items in the September 7, 1989 letter were implemented. Additionally, the City maintains that concerns about the decrease in health insurance benefits provided to the Local 331 membership remain unresolved. Finally, the identification of Local 115 on the contract meant to cover Local 331's Egg Harbor unit has not been officially addressed.^{5/}

To date, the City has not executed the contract nor has the City Council been presented with a final contract and addendum for approval.

The issue for determination is whether the petition is timely filed pursuant to N.J.A.C. 19:11-2.8. This rule provides:

(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;

For an agreement to act as a bar to the filing of a petition, the agreement must be in writing and executed by the parties prior to the filing of the petition. See Springfield Bd. of Ed., D.R. No.

^{5/} No Amendment of Certification has been filed with the Commission pursuant to N.J.A.C. 19:11-1.6.

89-3, 14 NJPER 583 (¶19248 1988); City of Pleasantville, D.R. No. 86-10, 12 NJPER 70 (¶17027 1985); Bergen Cty. Superintendent of Elections, D.R. No. 84-10, 9 NJPER 629 (¶14269 1983); Mercer Cty. Superintendent of Elections, D.R. No. 82-40, 8 NJPER 157 (¶13069 1982); Transport of N.J., D.R. No. 82-38, 8 NJPER 154 (¶13067 1982); Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958).

When the parties reserve the right to ratify an agreement, then ratification of the agreement must occur prior to the filing of a petition for the agreement to act as a bar. See City of Wildwood, D.R. No. 88-22, 14 NJPER 77 (¶19028 1987) and Cty. of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. denied, P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980).

Further, an agreement which does not state substantial terms and conditions of employment to the degree necessary to stabilize the parties' negotiations relationship cannot act as a bar to the filing of a petition. See City of Newark, D.R. No. 85-15, 11 NJPER 152 (¶16067 1985); Mt. Olive Bd. of Ed., D.R. No. 83-29, 9 NJPER 633 (¶14271 1983); Appalachian Shale.

Based upon the foregoing, I do not find that the September 7, 1989 letter is an executed memorandum of agreement which effectively bars the filing of a timely representation petition. The letter does memorialize a tentative agreement on various items; however, it is not an executed agreement and it also indicates the necessity of formal ratification by Local 331 and the City Council.

Although it appears that Local 331 ratified the terms and conditions of employment stated in the letter, there has not been a formal ratification of the contract by the City Council.

In January 1990, when the City received a signed draft contract from Local 331, the City refused to sign it. The City maintains that the draft contract submitted in January 1990, did not embody what had been negotiated, particularly in the area of health insurance benefits. The series of letters from the City to Local 331 stating that the contract will not be signed until the health insurance issues are resolved to the City's satisfaction reflects the City's position that it has neither approved nor executed a contract with Local 331.

Finally, I do not find that the City Council's decision to implement certain items from the September 7, 1989 letter constitutes a "written agreement" within the meaning of N.J.A.C. 19:11-2.8(c).

Under these facts, I find that the petition is supported by an adequate showing of interest, seeks an election in an appropriate unit and is timely filed. Therefore, I direct that an election be conducted among the employees in the petitioned-for unit comprised as follows:

Included: All full-time and regular part-time blue collar employees and white collar employees employed by the City of Egg Harbor.

Excluded: All managerial executives, confidential employees, police employees, supervisors within the meaning of the Act, professional employees, craft employees and all other employees employed by the City of Egg Harbor.

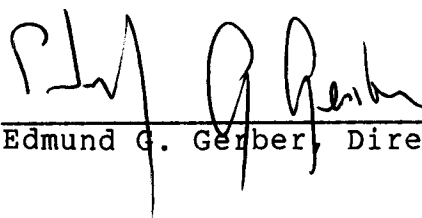
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. I 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 they wish to continue to be represented for purposes of collective negotiations by Teamsters Local 331.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: July 18, 1990
Trenton, New Jersey