

D.R. NO. 86-10

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

In the Matter of

CITY OF PLEASANTVILLE,

Public Employer,

-and-

DOCKET NOS. RO-86-9
RO-86-10

Petitioner,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, LOCAL 3103,
AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation finds that a collective negotiations agreement which was tentatively agreed to between the employer and the incumbent but not yet signed, does not operate as a bar to the filing of the petition. The Director orders that an election be conducted among all blue collar and white collar municipal employees of the City of Pleasantville.

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PUBLIC EMPLOYMENT RELATIONS COMMISSION
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In the Matter of

CITY OF PLEASANTVILLE,

Public Employer,

-and-

TEAMSTERS LOCAL 331,

DOCKET NOS. RO-86-9
RO-86-10

Petitioner,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, Local 3103,
AFL-CIO,

Intervenor.

Appearances

For the Public Employer
Andrew Salerno, Administrator

For the Petitioner
Howard Casper, Esq.

For the Intervenor
Emmanuel Murray, Staff Rep.

DECISION AND DIRECTION OF ELECTION

On August 5, 1985, Local 331, International Brotherhood of Teamsters ("Local 331") filed two Petitions for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"); one (Docket No. RO-85-9) seeks to have Local 331 certified to represent all white collar employees of the

City of Pleasantville ("City"); the other (Docket No. RO-85-10) seeks to have Local 331 certified to represent all employees of the Sewer Department of the City of Pleasantville.

The American Federation of State, County and Municipal Employees ("AFSCME") intervened in these proceedings pursuant to N.J.A.C. 19:11-2.7, based upon its expired 1982-1983 contract covering the unit of all blue collar employees and white collar employees of the City, together with an addendum thereto covering terms and conditions of employment for 1984 for these employees.

On August 23, 1985, Commission staff agent Richard C. Gwin convened an informal conference of the parties. The City and AFSCME both allege that the units initially petitioned-for by Local 331 are inappropriate because they seek to sever groups of employees from an existing, appropriate collective negotiations unit. At the conference, Local 331 expressed its intention to amend the petitions to conform to the existing unit comprised of blue collar employees and white collar employees presently represented by AFSCME. On August 29, 1985, Local 331 amended its petitions to seek certification in a unit comprised of all blue collar employees and all white collar employees employed by the City of Pleasantville. The petition, as amended, is supported by a sufficient showing of interest.

The City and AFSCME further contend that the two petitions were not timely filed because the City and AFSCME, the incumbent representative, had reached a collective negotiations agreement on

the terms and conditions of employment of the employees in the blue and white collar unit for 1985-1986. This agreement, which is in writing but not yet signed by the parties, was tentatively approved by the governing body and ratified by the membership of AFSCME.

I have conducted an administrative investigation into the matters and the allegations involved in these petitions. See N.J.A.C. 19:11-2.6. Based upon the administrative investigation, I find and determine the following:

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

2. The City of Pleasantville 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 petitioned-for employees .

3. Local 331, International Brotherhood of Teamsters and Local 3103, Council 71, American Federation of State, County and Municipal Employees, AFL-CIO are employee organizations within the meaning of the Act and are subject to its provisions. AFSCME is presently the exclusive representative for collective negotiations of

the employees in the petitioned-for unit. ^{1/} The petitioned-for unit consists of approximately 45 employees.

4. Local 331 filed two Petitions for Certification of Public Employee Representative with the Commission on August 5, 1985. Through petition Docket No. RO-85-9, Local 331 sought to be certified as the majority representative of a unit of approximately 15 white collar employees. By its other Petition (Docket No. 85-10), Local 331 sought to represent a unit of approximately 5 blue collar employees in the Sewer Department. Each of these petitions was accompanied by an adequate showing of interest. See N.J.A.C. 19:11-1.2.

5. On August 29, 1985, Local 331 filed an amendment to its two petitions. Through its amendment, Local 331 seeks to proceed with the originally filed petitions as one petition for a unit comprised of all blue collar employees and all white collar employees of the City of Pleasantville. In support of its amended petition, Local 331 requested that it be permitted to rely upon the showings of interest previously submitted in the two original filings. We have determined that the showing of interest is adequate to support the petition as amended.

^{1/} The petitioned for unit is described in the recognition clause of the most recent agreement between the City and AFSCME (a signed, written agreement covering 1982-1983) as:
...employees in the City of Pleasantville excluding uniformed personnel in the Police Department, Fire Department, and Supervisors within the meaning of the Public Employees Act [sic].

6. The City and AFSCME both object to an election in this matter. Both assert that the instant petition is not timely filed pursuant to N.J.A.C. 19:11-2.8.

The City and AFSCME claim that an earlier petition for white collar employees (Docket No. RO-85-4) filed on July 11 by the IBEW (and voluntarily withdrawn on August 5, 1985), prevented the City from lawfully executing a tentative contractual agreement reached with AFSCME. Said agreement had been negotiated, finalized and agreed upon by the City and AFSCME prior to July 11, 1985. ^{2/} The City and AFSCME allege that the unexecuted agreement should operate as a contract bar to the filing of the petitions by Local 331.

* * * *

The sole issue for determination herein is whether the petitions, as amended, are timely filed.

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 ... normally will not be considered timely filed unless:

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

^{2/} AFSCME's membership had ratified said agreement; however, before the City Council voted to approve the Agreement, the instant petition was filed on August 5, 1985.

The Commission has previously held that in order for an agreement to operate as a bar to the filing of a petition under N.J.A.C. 19:11-2.8(c), the agreement must be in writing and executed by the parties prior to the filing of the petition. See In re Transport of New Jersey, D.R. No. 82-38, 8 NJPER 154 (¶13067 1982); In re City of Vineland Police Dept., D.R. No. 82-53, 8 NJPER 53 (¶13147 1982). See also Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958). Further, when ratification is an expressed condition of the agreement, then ratification must occur prior to the filing of the petition in order for such an agreement to operate as a bar. In re County of Middlesex, P.E.R.C. No. 81-1, 6 NJPER 355 (¶11179 1980) req. for rev. denied, P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980).

The City asserts that it had concluded negotiations with AFSCME for a successor agreement covering the blue and white collar unit and that both sides had tentatively approved the agreement prior to the filing of Local 331's petition on August 5; however, the City argues that it was prevented from lawfully entering into a formal agreement with AFSCME -- i.e., ratifying and signing the agreement -- while the instant petition was pending. ^{3/} Thus, it is clear

^{3/} The City has properly noted the Commission's policy that, when faced with knowledge of pending questions concerning representation of employees, an employer must maintain its neutrality by suspending negotiations with the incumbent concerning the petitioned-for employees until the representational issue has been determined by the Commission. See In re County of Middlesex (Roosevelt Hospital), P.E.R.C.

from the parties' submissions that no signed, written agreement was in effect at the time that the petitions were filed nor was there a contract in effect covering the blue collar employees which might operate as a bar to the filing of the amendment to the original petitions.

Under the facts presented in this case, I find that the petition, as amended, is supported by a sufficient showing of interest, is timely filed, and seeks an election in an appropriate unit. Accordingly, pursuant to N.J.A.C. 19:11-2.6(b)(3), I direct that an election be conducted among the employees in the petitioned-for unit, which is comprised as follows: included -- all blue collar employees and white collar employees employed by the City of Pleasantville; excluded -- all confidential employees, managerial executives, supervisors within the meaning of the Act, police employees and firefighter employees. The election shall be conducted no later than thirty (30) days from the date of this decision.

3/ Footnote continued from previous page

No. 81-129, 7 NJPER 266 (¶ 12118 1981) and In re County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶ 14196 1983). However, with regard to a representation petition which seeks to secure only part of an existing unit, see In re Passaic County Voc-Tech H.S. Bd. of Ed., P.E.R.C. No. 85-39, 10 NJPER 577 (¶15269 1984), where the Commission held that the employer's negotiations obligation continues, at least with respect to the unchallenged positions.

Those eligible to vote are the employees in the units 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, 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 me an eligibility list consisting of the alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by me no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the employee organizations with a statement of service to me. 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 desire to be represented for the purpose of collective negotiations by Teamsters Local 331, or by American Federation of State, County, and

Municipal Employees, Local 3103, AFL-CIO, or by no union. 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

DATED: December 11, 1985
Trenton, New Jersey