

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY

Public Employer

and

Docket No. RO-344

LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

DECISION

On September 14, 1971 Petitioner filed with the Commission a petition seeking certification in a unit of blue and white collar employees in the Employer's Department of Public Works. 1/ Local 245, Jersey City Public Works Employees, Inc. opposes the petition and requests its dismissal on the ground it is barred by the Commission's earlier certification of Local 245. The Employer takes no position.

The pertinent history of proceedings involving this group of employees is as follows. The Commission conducted an election in May 1969 involving Locals 1959 and 245. That election was set aside based on meritorious objections by Local 245 and a rerun election was conducted in December 1969 with Local 245 receiving a majority of the votes cast. Thereafter Local 1959 filed objections to the rerun election, but the Commission found them to be without merit and on July 27, 1970 certified Local 245 as the exclusive representative for purposes of collective negotiations. Shortly thereafter, on August 10, 1970 Local 1959 obtained from the Superior Court, Appellate Division, a temporary order which stayed the Commission's certification and restrained the Employer and Local 245 from engaging in collective negotiations. Two weeks later on August 25, 1970 the Court dissolved the restraint on negotiations, but ordered that "...Execution of a contract is stayed pending disposition of the appeal." According to Local 245, it commenced negotiations "...a short time after August 1970." The Appellate Division issued its decision on May 4, 1971, in which it rejected Local 1959's appeal and affirmed the Commission's July 1970 Supplemental Decision and Certification of Representative. 2/ No further appeal was taken. Local 245 states that an agreement with the Employer was

1/ Pursuant to Section 19:15-11 of its Rules and Regulations, the Commission has, on its own motion, transferred this case to itself for decision.

2/ American Federation of State, County and Municipal Employees, Local 1959, AFL-CIO v. Public Employment Relations Commission et al, 114 N.J. Super 463 (App. Div. 1971)

subsequently reached and a collective negotiations contract executed on October 8, 1971. That execution postdates the filing of the instant petition.

Petitioner asserts that the significant date in this history is August 25, 1970 when the Court lifted the prohibition on negotiating an agreement. From that point forward, it argues, the Employer and Local 245 were free to negotiate and from May 4, 1971 they have been free to execute a contract. No contract having been executed until October, the petition filed in September should be entertained. Local 245 contends that lifting the restraint against negotiations is not very meaningful when at the same time contract execution is restrained for the duration of the appeal. It urges that the date of certification is the date of the Appellate Division decision, as a result of which (no higher appeal having been taken) the parties were free of all restraint for the first time.

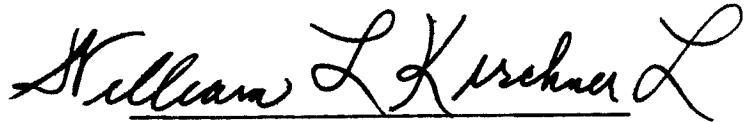
Section 19:11-15 (b) of the Commission's Rules and Regulations provides:

(b) Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding twelve (12) months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to section 19:11-14.

Traditionally, the purpose of such a provision, rooted in federal practice under the National Labor Relations Act, is said to be the creation of a reasonable period of protection after certification in which the certified representative can establish or re-establish a negotiating relationship with the Employer and consummate an agreement without the disruption of competing claims for representation. The above rule contemplates that same kind of protection and for the same reasons. On the facts in this case it is evident that Local 245 did not receive the full benefit of the certification year when for the first nine months or so the parties were enjoined from executing an agreement. The fact that negotiations were permitted is not particularly beneficial when the final outcome of the appeal, and thus the negotiations, remains in doubt. Unless an appeal were patently frivolous, there may be a serious question that constructive negotiations could take place in the face of a challenge to a certification. The Commission concludes that the "reasonable" period of freedom to contract intended by the rule was not available until the

merits of the appeal were decided. By that time, however, the twelve (12) month period allowed under a literal reading of the rule, i.e. beginning with Commission certification, had for the most part been exhausted. Under these circumstances and in order to give effect to the rule, the Commission finds that good cause exists and that fairness requires a liberal construction of the rule. 3/ The protected period will not be computed from the date of Commission Certification, but rather from May 4, 1971, the date of the Court's decision. We conclude that the certification of Local 245 did not become fully effective until the final disposition of the challenge to it, that Section 19:11-15(b) is to be liberally construed as to the facts in this case to permit a reasonable period of protection, and that Local 1959's petition is filed at such time that, if entertained, it would deprive the certified representative of that reasonable period of protection intended by the rule. The petition is found to be untimely and is therefore dismissed.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: December 2, 1971
Trenton, New Jersey

3/ Section 19:19-1 provides: "Whenever the Executive Director or the Commission finds that unusual circumstances or good cause exist and that strict compliance with the terms of these Rules and Regulations will work an injustice or unfairness, it shall construe these Rules and Regulations liberally to prevent injustices and to effectuate the purposes of the law."