

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN,
SOMERSET COUNTY, NEW JERSEY

Public Employer

and

Docket No. RO-107

DEPARTMENT STORE DRIVERS, LOCAL 177,
AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND
HELPERS OF AMERICA

Petitioner

and

FRANKLIN TOWNSHIP MUNICIPAL EMPLOYEES ASSOCIATION

Party to the Contract

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Township of Franklin, a hearing was held before Howard Golob, Hearing Officer, on August 13, 1970 at which all parties were given the opportunity to present evidence, examine and cross-examine witnesses and to argue orally. A post-hearing memorandum was filed by the Public Employer. Thereafter on January 22, 1971, the Hearing Officer issued his Report and Recommendations, recommending that an election be held involving the above employee organizations. Exceptions were timely filed by the Public Employer. The Commission has considered the record, the Hearing Officer's Report and Recommendations, and the exceptions filed thereto.

DISCUSSION AND BACKGROUND

The initial collective negotiating agreement between the Public Employer and the Franklin Township Municipal Employees Association (hereinafter referred to as the FTMEA) was executed on July 2, 1969 to expire on December 31, 1969, or in the absence of a new agreement its terms were to remain in "full force and effect until a new contract is agreed upon for 1970 or thereafter." ^{1/} By expiration date, no new agreement had been reached.

A Notice of Impasse was filed by the FTMEA on February 18, 1970 and an ad hoc mediator was appointed by the Commission. With

^{1/} Article 10: "This contract shall be in full force and effect from the date of agreement until December 31, 1969. Until a new contract is agreed upon for 1970 or thereafter, the terms of this contract shall continue in full force and effect..."

mediator assistance, the parties reached a memorandum of agreement in the early hours of March 20, 1970, which was subsequently signed on April 24, 1970 and placed into effect from March 19, 1970 with salary and wages retroactive to January 1, 1970.

A petition seeking certification in the contract unit 2/ was filed on March 18, 1970 by Local 177. The timeliness of the petition was challenged by the Public Employer on the basis of an existing contract and a "mediation bar." Before the Hearing Officer, the Public Employer asserted that Article 10 of the collectively negotiated agreement contemplated automatic renewal of the contract, and while cognizant of the open-ended nature of the expiration date clause ("1970 or thereafter"), it sought an interpretation of this clause to allow a two-year term, in which case the petition would be barred as untimely.

The Public Employer also asserted before the Hearing Officer that the Commission's appointment of an ad hoc mediator prior to the receipt of the petition should have resulted in the dismissal of the petition because the employer bargained in good faith to the consummation of an agreement on March 20, 1970 with the FTMEA, and therefore, should be protected from petitions for representation during this process. These contentions were rejected by the Hearing Officer who found the petition timely and recommended an election be held to determine the question of representation.

Before the Hearing Officer, the Public Employer renewed a request previously denied by the Executive Director that the Commission conduct an investigation of Petitioner's authorization cards to inquire into a possible relationship between the FTMEA's negotiating committee and the Petitioner. If, as alleged, members of said negotiating committee were also signatories to authorization cards of the Petitioner, such investigation, it is claimed, might show a relationship which could result in an "abuse of process" determination. The Hearing Officer generally permitted questions which explored the contacts between the two organizations, but refused to permit questions which would require the witness to disclose whether or not he had signed an authorization card for Petitioner. Within the framework of these rulings the Hearing Officer found no evidence of abuse of process. An additional contention made before the Hearing Officer and rejected for lack of evidence was the allegation that Petitioner's failure to disclose on the petition FTMEA's status as the incumbent representative constituted fraud and therefore invalidated the petition.

2/ "All full-time or regular part-time employees of the Township excluding elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, managerial executives, supervisors having the power to hire, discharge, discipline or to effectively recommend the same, policemen, firemen, professional employees, unless the majority of such employees vote for inclusion, craft employees unless a majority of such craft employees vote for inclusion and temporary employees."

FINDINGS OF THE COMMISSION

Exceptions filed by the Public Employer to the Hearing Officer's Report contain the same basic contentions as brought before the Hearing Officer. Incorporated into the exceptions are contentions also made in the Public Employer's Post-Hearing Memorandum.

The contention of a valid contract barring the timely filing by the Petitioner cannot be supported through a reasonable interpretation of Article 10 of the contract. A contract that shall continue in "full force and effect" for "1970 or thereafter" ^{3/} presents a situation in which any potential petitioner would be effectively and permanently barred from filing a timely petition. The Commission supports the Hearing Officer's interpretation of the contract. As the petition was filed on March 18, 1970, it postdates the specific expiration date of the earlier agreement and predates the execution of the March 20 Memorandum of Agreement between the Township of Franklin and FTMEA; it is, therefore, a timely petition.

By similar reasoning, the contention that a mediator's presence bars a petition must also be dismissed. The Employer argues that if petitions will be accepted during mediation, no employer would "take a chance" and move to its ultimate position in the belief it was achieving a settlement. The real question posed by that position is whether the entire negotiating process should be insulated, whether mediation is invoked or not, because mediation is not intended to compel an agreement which would, in the absence of a mediator, be unacceptable to the parties. It surely cannot be reasonably argued that after the expiration of an agreement, the parties should be protected for however long it takes them to reach a successor agreement on the theory that otherwise one or both parties will be reluctant to "take a chance" and advance to final positions. Such a proposition could negate all opportunity for employees to seek a change in their representative. To deny an otherwise timely petition on this ground would void the legitimate aspirations of employees who have petitioned for representation of their choice in the absence of legal or procedural restrictions on this right.

The Employer takes exception to the Commission's failure to investigate authorization cards to determine if "fraud and deceit" has been practiced on the Commission and to the Hearing Officer's refusal to rule that the Petitioner must have been aware that an impasse in negotiations existed and a mediator assigned by the Commission.

These two issues provide the crux of the instant case before the Commission and the base on which the employer draws further inferences mentioned below.

The fundamental issue is not whether Petitioner had knowledge of impending negotiations of the FTMEA with the Employer, nor whether a substantial number of employees, including negotiation representatives

^{3/} Emphasis added.

signed authorization cards of the Petitioner. At least 30% of the employees in this unit legally authorized the Petitioner for whatever subjective reasons: to authorize the Petitioner to represent them in negotiations; or possibly to simply force an election to resolve whatever question existed concerning representation. Even if it is assumed that Petitioner had knowledge of the negotiating activity of the FTMEA, this in itself would not warrant the invalidation of an otherwise timely petition based solely on this connection.

But the argument proceeds beyond these facts to observe that employees also comprised the FTMEA negotiating committee, might have signed authorization cards, which it is inferred, manipulated the negotiating process as part of a conspiracy with the Petitioner. That aspect of the argument fails for lack of evidence. While this agency is without jurisdiction to determine bad faith bargaining as a violation of the Act and to fashion a remedy upon such determination, a further consideration is that assuming Commission jurisdiction on such matters, a demonstration of bad faith on the part of FTMEA is not enough by itself. Bad faith would have meaning only if connected to the Petitioner in such clear fashion that one could reasonably conclude that Petitioner was responsible for such conduct of the Association's officials. Notwithstanding said lack of jurisdiction there is insufficient evidence to support Employer's inference of conspiracy with the incumbent.

Two further points as raised by the Employer concern a resolution passed by members of the FTMEA apparently affiliating the FTMEA with Local 177 sometime after the hearing. The Hearing Officer merely recited this apparent affiliation in his report with no further comment. The Employer excepts to the Hearing Officer's recitation of this incident in his report and states that it is irrelevant to the issues. The Commission concurs with the Employer. This information regarding affiliation of the two employee organizations has no evidentiary value since it was submitted by one party after the close of the hearing. Furthermore, affiliation is not pertinent to the issues in the instant case.

The Employer's final exception concerns the Petitioner's omission on the petition of information regarding the existence of the then recognized union in the unit petitioned for. By Local 177 answering in the negative, the Employer would have the petition dismissed as either defective or further proof of fraud by the Petitioner. The omission is not fatally defective in form; nor does it support an inference of fraud.

Accordingly, the only issue before the Commission is the disposition of the petition. Based on the foregoing, the Commission finds:

1. The Township of Franklin, Somerset County, New Jersey is a public employer within the meaning of the Act.
2. Department Store Drivers, Local 177, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

- America, and the Franklin Township Municipal Employees Association are employee representatives within the meaning of the Act.
3. The Employer refuses to recognize Petitioner as the exclusive negotiating representative for certain of its employees. Accordingly, a question concerning representation exists, and the matter is properly before the Commission for determination.
 4. The appropriate collective negotiating unit is set forth in footnote 2 above.
 5. The Commission directs that a secret-ballot election shall be conducted among the employees in the above set forth unit. The election shall be conducted no later than thirty (30) days from the date set forth below.

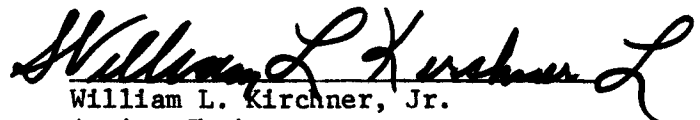
Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Franklin Township Municipal Employees Association or Department Store Drivers, Local 177, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or neither.

The majority representative shall be determined by a majority of the valid ballots cast.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE COMMISSION


William L. Kirchner, Jr.
Acting Chairman

DATED: December 3, 1971
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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FRANKLIN TOWNSHIP MUNICIPAL EMPLOYEES ASSOCIATION

Party to the Contract

Appearances:

Ernest Gross, Esq. of New Brunswick, New Jersey
For the Employer

Parsonnet, Parsonnet & Dugan of Newark, New Jersey
Victor Parsonnet for the Petitioner

Busch & Busch of New Brunswick, New Jersey
By Mark N. Busch, Esq. For the Party to the Contract

HEARING OFFICER'S REPORT AND RECOMMENDATION

Pursuant to a Notice of Hearing dated July 7, 1970 2/ and
Order Rescheduling Hearing dated July 16, a hearing was held on August 13,
before the undersigned. At the hearing all parties were afforded an
opportunity to present evidence, examine and cross examine witnesses and

1/ As amended at the hearing.

2/ Unless noted to the contrary, all events occurred in 1970.

to present briefs. 3/ The public employer subsequently filed a Memorandum of Law. On March 26, prior to the opening of the hearing, the public employer moved to dismiss the petition for "abuse of process". It was denied by the Executive Director of the Public Employment Relations Commission with leave to renew the motion before the Hearing Officer. At the hearing the motion was renewed and testimony was taken.

The facts in this case will be handled seriatim.

On February 25, 1969, after being assisted by a representative of the Public Employment Relations Commission in determining the unit, the Franklin Township Municipal Employees Association, hereinafter called the Association, was recognized as the exclusive agent for "all full-time or regular part-time employees of the Township excluding elected officials; heads and deputy heads of departments and agencies; members of boards and commissions; managerial executives; supervisors having the power to hire, discharge, discipline or to effectively recommend the same; policemen; firemen; professional employees, unless the majority of such professional employees vote for inclusion; craft employees unless a majority of such craft employees vote for inclusion; and temporary employees." At this hearing held before ad hoc Hearing Officer Joseph Wildebush, the parties also agreed that the following department heads were specifically excluded from the unit; assessor; tax collector; finance officer; assistant manager; engineer; assistant engineer; chief building inspector; assistant chief

3/ At the hearing the undersigned refused to direct witnesses to answer questions, directly or indirectly, as to their possible affiliation with the petitioner. I reaffirm my decision. Though it might be relevant, I believe that this matter is outweighed by the individual's constitutional and statutory right to organize for collective negotiations without fear of reprisal. NJSA Constitution Art. 1, Pa 19. cf. Section 19:11-7 of the Commission's Rules and Regulations.

building inspector; fire inspector; health officer; welfare director; superintendent of public works; four foremen in public works (streets, parks, garage, water department); director of recreation and two assistant directors of recreation.

On July 2, 1969 the parties executed a collective negotiations agreement. Article 10 of the contract entitled "Term of Contract" reads as follows:

"This contract shall be in full force and effect from the date of agreement until December 31, 1969. Until a new contract is agreed upon for 1970 or thereafter, the terms of this contract shall continue in full force and effect...."

During December 1969 and January the employer and the Association met on five occasions in negotiating sessions in an attempt to reach a successor contract.

February 10 is the last day for submission of the budget in 1970.

On February 11 the Association filed a Notice of Impasse with the Commission.

On March 2 Jack D. Tillem, Esq. was assigned as a mediator to assist the parties in resolving the impasse.

In March - before March 19 - the petitioner held an organizing meeting among the employees in the bargaining unit. It was aware that the Association represented the employees. There is no evidence to indicate that it was aware that the Association had reached an impasse with the employer and that a mediator had been assigned by the Commission. There is no evidence that it instructed, if in fact it could, members of the negotiating team of the Association to forestall contract negotiations

so that it might file the instant petition. There is no evidence that the employees did, in fact, deliberately delay negotiations.

On March 10 the Association and the employer met with ad hoc mediator Tillem.

On March 18 the instant petition was mailed by the petitioner.

On March 19 the instant petition was docketed by the Public Employment Relations Commission. The petitioner answered "none" to the following questions on the petition:

#9 Recognized or Certified Majority Representative if known to the petitioner (If there is none, so state.)

#11 Employee Organizations other than petitioner (and other than named in Item 9) which have claimed to represent any of the employees in the unit set forth in Item 6, if known to the petitioner. (if none, so state.)

The petition also includes the following clause:

I declare that I have read the above- petition and the statements herein are true to the best of my knowledge and belief.

The petition was signed by John J. Galligan, President of the petitioner.

On March 19 and continuing into the next morning the Association and the employer negotiated. A Memorandum of Understanding was executed on that date. The mediator had been made aware of petitioner's interest by the Association attorney, though it is not clear whether they knew that a petition had been filed.

On September 17 the Association, after an election, passed a resolution to affiliate with petitioner. The details of the election are not known. 4/

4/ The Hearing Officer was so notified by letter dated September 17.

The employer asks that the instant petition be dismissed. The reasons given are multifaceted. Its contentions are basically that 1) the petition is untimely and 2) that the filing of the petition in the face of the Notice of Impasse and presence of a mediator is an abuse of process.

The gravamen of employer's first argument is that based upon Article 10 of the 1969 contract, there was a contract in effect at the time the petition was filed and, as the petition was not timely with regard to the budget submission date, there is a contract bar. Furthermore, it argues that there should be in effect a "mediator bar". Petitioner on the other hand argues that 1969 is an open-ended contract and that this does not bar a rival petition and that, furthermore, there is no such thing as a "mediator bar". The Association takes no position.

The philosophy of the Act, i.e. exclusive representation and of the Rules, i.e. timeliness of petition, is basically, if there is representation it should be exclusive representation but there must be a time during which the employees may change their representative, if they so desire. For stability in labor relations this open period should be limited but the time during which this rival petition may be filed must be clear on the face of the contract.

The clause as it is contained in the instant case does not give another organization a clear and concise picture as to when a petition may be filed. The employer realizes that the disputed clause is an open-ended clause and suggests though, that it be given effect for a two-year period. The Rules, though, do not provide for such a situation. Accordingly, I reject the employer's argument.

With regard to the "mediator bar", the Commission's Rules and Regulations provide for a recognition bar, a contract bar, an election bar and a certification bar. There's no provision for a mediator bar. I, therefore, reject this argument also.


The employer argues that the petition be dismissed because the petitioner 1) filed a petition while mediation was in process and 2) falsified certain important data on the petition itself. There is no evidence that in fact negotiations were deliberately delayed at the instructions of the petitioner. Concerning the mistakes in the petition, there were mistakes. The existence of such mistakes as per se evidence of fraud or the existence of the mistakes in the light of the facts, surrounding the instant petition as per se fraud does not necessarily follow. As noted above there is no direct evidence of a delay or if in fact there was a delay it was deliberate and pursuant to petitioner's instructions. I cannot make the same inference suggested by employer's counsel. I am, therefore, rejecting this argument also.

Accordingly, based upon the aforementioned, the record, as a whole, and the brief submitted by the employer, I make the following findings and recommendation:

1. Township of Franklin, Somerset County, New Jersey is a public employer within the meaning of the Act.
2. Department Store Drivers, Local 177, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Franklin Township Municipal Employees Association are employee representatives within the meaning of the Act.

3. As a demand for recognition was made upon the employer by the petitioner and as there is no bar to the filing of this petition, a question concerning representation exists and the matter is appropriately before the Commission.
4. The appropriate unit in the instant matter is: All full-time or regular part-time employees employed by the Township of Franklin, Somerset County, New Jersey, excluding elected officials; heads and deputy heads of departments and agencies; members of boards and commissions; managerial executives; supervisors within the meaning of the Act; policemen, firemen; and professional, craft, and temporary employees.

As the situation concerning the affiliation resolution passed by the members of the Association is not clear, I recommend that an election be held as soon as practical in the unit set forth above under the supervision of the Public Employment Relations Commission.


Howard M. Golob
Hearing Officer

DATED: JANUARY 22, 1971
Trenton, New Jersey