

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOUSING AUTHORITY OF THE CITY OF JERSEY CITY

Public Employer

and

HOUSING AUTHORITY WORKERS ASSOCIATION

Petitioner

and

Docket No. RO-36

INTERNATIONAL UNION OF ELECTRICAL, RADIO  
AND MACHINE WORKERS, AFL-CIO, LOCAL 480

Party to the Contract

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Jersey City Housing Authority, a hearing was held on February 20, 1970 before Howard M. Golob, Hearing Officer for the Commission, at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Thereafter, on June 18, 1970, the Hearing Officer issued his Report and Recommendations, a copy of which is appended hereto. A document dated June 26, 1970 and purporting to be exceptions to the Hearing Officer's Report 1/ was filed by Petitioner and received by the Commission on June 30, 1970. The Commission finds that Petitioner's "exceptions" do not comply with its Rules and therefore refuses to consider

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1/ The document states: "Exception is taken to the Hearing Officer's report [in this case] A supporting brief will follow." Petitioner submitted nothing thereafter.

them. The Commission's rules, Section 19:14-16, require that exceptions specify the precise question of "procedure, fact, law, or policy to which exceptions are taken," identify that portion of the report objected to, and indicate the portion(s) of the record relied upon. Petitioner has failed to meet any of these requirements. Furthermore, its document is not timely filed as it was received on the day following the due date for exceptions. The Commission has considered the record and the Hearing Officer's Report and Recommendations and finds on the facts in this case:

1. The Housing Authority of the City of Jersey City is a public employer within the meaning of the Act.
2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480, hereinafter called Local 480, and the Housing Authority Workers Association, hereinafter called the Association, are employee representatives within the meaning of the Act.
3. The Employer refuses to recognize the Association as the exclusive representative of the employees petitioned for on the ground that the employees are already represented by Local 480. There is therefore a question concerning the representation of public employees and the matter is properly before the Commission for determination.
4. In the absence of properly filed and timely exceptions, the Commission adopts the Hearing Officer's Report and Recommendations with the following comments.

The Association's argument that Local 480 has no authority to represent the employees and that the employees are not privy to negotiations is not properly before the Commission. This matter comes before the Commission as a question concerning the representation of certain public employees and as such there is no relevance attached to the above contentions of the Association.

The argument of Local 480 that a petition for certification of public employee representative is an inappropriate vehicle to bring this matter before the Commission lacks merit. Section 19:11-1(a) of the Commission's Rules and Regulations provides: "A petition for certification of public employee representative may be filed by any public employee, group of public employees, any individual or employee organization claiming to be the majority representative of public employees in an appropriate unit." Petitioner claimed to be the majority representative of the public employees herein and supported its claim by a sufficient showing of interest. Petitioner sought certification in an appropriate unit and the Commission finds that this petition is properly before it for determination.

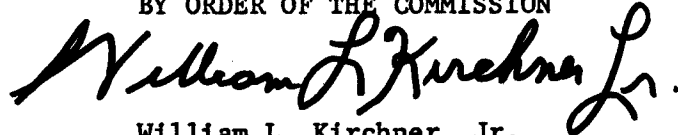
The Commission adopts the Hearing Officer's finding that the Memorandum of Understanding, dated September 4, 1968, contained substantive terms and conditions of employment within the meaning of Section 19:11-15(d) of its Rules and Regulations.

Since the renewal contract is effective from September 4, 1968 to September 5, 1971, a period exceeding two years, it may constitute a bar for only the first two years of its term measured from its effective date, i.e. until September 5, 1970, pursuant to Section 19:11-15(d) of the Commission's Rules and Regulations. A timely petition therefore is one filed not less than 120 nor more than 150 days immediately preceding December 31, 1969, which is the last day for budget submission preceding the second anniversary date of the renewed contract. Inasmuch as the petition here involved was filed November 21, 1969 it was not timely filed as required by

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

Accordingly, the petition is hereby dismissed.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, reading "William L. Kirchner, Jr.", written in a cursive style.

William L. Kirchner, Jr.  
Acting Chairman

DATED: August 27, 1970  
Trenton, New Jersey

In the Matter of  
Housing Authority of the City of Jersey City 1/  
Public Employer

and

Housing Authority Workers Association

Docket No. RO-36

Petitioner

and

International Union of Electrical, Radio,  
and Machine Workers, AFL-CIO Local 480

Party to the Contract

#### Appearances

Alan Kraut, Esquire of Jersey City,  
New Jersey for the Public Employer

Philip Feintuch, Esquire of Jersey  
City, New Jersey for the Petitioner

David Solomon, Esquire, of Friedland,  
Schneider and Friedland of Jersey City,  
New Jersey for the Party to the Contract

#### HEARING OFFICER'S REPORT AND RECOMMENDATION:

Pursuant to a Notice of Hearing dated January 13, 1970 and  
an Order Rescheduling Hearing dated January 30, 1970, a hearing was  
held on February 20, 1970 before the undersigned. At the Hearing all  
parties were given an opportunity to examine and cross examine witnesses,  
present evidence and to argue orally. The Hearing Officer has considered  
the entire record and finds:

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1/  
As amended at the hearing

1. The Housing Authority of the City of Jersey City is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 480, hereinafter called Local 480, and the Housing Authority Workers Association, hereinafter called the Association are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act.<sup>2/</sup>

3. The appropriate negotiating unit as stipulated in the hearing is "all classified maintenance personnel in the operating division of the Housing Authority excluding office clerical employees, professional employees, policemen and managerial executives."<sup>3/</sup>

4. In 1962 the employer, based upon a check of authorization cards, recognized Local 480 as the exclusive representative and after negotiations, entered into a Memorandum of Understanding. This Memorandum of Understanding, though not signed, includes a recognition clause and provides for a voluntary check off of monthly Union dues and initiation fee. It also provides for the admission of the employee representatives on the premises of the employer during working hours

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<sup>2/</sup> It is noted that the purposes of the Association is to promote better and more harmonious relationships with the employer and for the betterment of the workers, i.e. grievances, salary, and welfare. Employees participate in this organization.

<sup>3/</sup> Since 1962 an employee representative has negotiated with the employer for all employees in the division including craft employees and supervisors. Established practice, therefore, exists to include these classifications in the bargaining unit without opting.

for the purposes of contract enforcement, bulletin boards for its use and shop stewards. It also contains a management prerogatives clause, a non-discrimination clause and a grievance procedure.

In 1965 the employer and Local 480 negotiated a second Memorandum of Understanding extending the 1962 agreement. It was signed by Local 480, but not by the Authority. There is no explanation as why neither the 1962 or 1965 agreements were not signed.

On September 4, 1968, the employer and Local 480 entered into a Memorandum of Understanding. This was signed by both parties. It incorporated by reference the 1962 Memorandum of Understanding and extended it to and including the 5th day of September 1971. The 1968 contract also provides for a reopener clause for rates and benefits at each anniversary date of the 1968 Memorandum of Understanding.

On November 21, 1969, the Association filed the instant petition.

#### Position of the Parties

The Authority is refusing to recognize the petitioner as the exclusive representative.

Local 480 moved that the petition be dismissed. It contends that:

1. A petition for Certification of Public Employee Representation is an inappropriate vehicle to bring the matter before the Commission; that the appropriate vehicle is a petition for Decertification and then a petition for Certification; or in the alternative, a joint petition for Certification and Decertification,

2. Section 34:13A-8.1 N.J.S.A. precludes the Commission from altering or modifying any existing agreement.

3. There is a contract with substantive terms of employment and a petition from a rival organization is barred.

The Association argues that Local 480 had no authority to represent the employees in the petition as a unit; that the membership is not privy to the negotiation and that there is no contract to bar an election as the Memorandum of Understanding does not contain substantive terms and conditions of employment which it enumerates as wages, overtime benefits, sick benefits, hospitalization benefits, automobile allowances, and use of tools.

#### ANALYSIS

With regard to the Association's first two arguments, i.e. Local 480 does not have any authority to represent the employees and that the employees are not privy to negotiations of the employee representative, even if true, it is immaterial to this proceeding.

This maybe a matter for an unfair labor practice proceeding but not for a representation case. Representation cases are for representation questions and unfair labor practice cases are for unfair labor practice questions. Let me just say in passing with regard to the possibility of unfair labor practice charge, there is a six month statute of limitations. Also, petitioner has stipulated that intervenor is an employee organization, i.e. an organization in which employees participate and which exists in whole or in part to deal with the employer concerning terms and conditions of employment.



With regard to the question of whether there are sufficient terms and conditions of employment to make this a substantive contract, the evidence shows that the Memorandum of Agreement of 1968 including the 1962 Memorandum, which is incorporated by reference, contains first and foremost both a recognition clause and a grievance procedure. It also contains a grant of rights for the employee representative, including visitation, shop stewards, and the use of bulletin boards. It also provides for a management prerogatives clause, as well as a provision for non-discrimination with regard to terms and conditions of employment. The 1968 Memorandum of Understanding, besides adopting the 1962 Memorandum, contains a wage reopener clause.

Recommendation

Based upon the foregoing, I can only conclude and so recommend that the Memorandum of Understanding does contain substantive terms and conditions of employment, that it does bar a petition at this time,<sup>4/</sup> and that the petition should be dismissed.



Howard M. Golob  
Hearing Officer

DATED: June 18, 1970  
Trenton, New Jersey

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<sup>4/</sup>

The budget submission date is the last day of the callendar year. and the petition was filed on November 21, 1969.