P.E.R.C. NO. 88-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BARNEGAT BOARD OF EDUCATION,

Public Employer,

-and- Docket No. RO-88-54

BARNEGAT FEDERATION OF TEACHERS,
LOCAL 3751, AFT, NJSFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission denies the Barnegat Board of Education's request to review a decision directing an election by the Director of Representation. The Director determined that there was no recognition bar to an election because the Board did not formally recognize the majority representative, and informal recognition does not bar an election. The Chairman finds that the standards for granting review do not exist and that the Director's decision is consistent with Commission law.

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Appearances:

For the Public Employer Cassetta, Taylor & Whalen
(Garry M. Whalen, consultant and on the brief)

For the Petitioner Dwyer & Canellis, Esqs.
(George W. Canellis, of counsel and on the brief)

DECISION AND ORDER

On October 2, 1987, the Barnegat Federation of Teachers, Local 3751, AFT, AFL-CIO ("BFT") filed a Petition for Certification of Public Employee Representative. The BFT seeks to consolidate four collective negotiations units of employees of the Barnegat Board of Education ("Board").[1/] There are no intervenors.

In June 1987, the Board granted the BFT informal recognition as the statutory majority representative of employees in the food service unit and the custodial and maintenance unit. The

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1/ The BFT seeks to consolidate the following units: the professional unit, secretaries' unit, food service employees' unit and the custodial and maintenance employees' unit. All of these units are presently represented by the BFT.

BFT replaced another employee organization during the terms of existing labor agreements. Those agreements are expired. The Board refuses to consent to an election in this matter arguing that its grant of informal recognition to the BFT in the food service unit and the custodial and maintenance unit is a bar to the filing of any representation petition for employees in these units.

On February 8, 1988, following an administrative investigation, the Director of Representation issued a decision rejecting the Board's arguments and ordering that an election be conducted among the petitioned-for employees. Barnegat Bd. of Ed., D.R. No. 88-31, 14 NJPER ___ (¶_____ 1988). On February 22, 1988, the Board filed a request for review of the Director's decision. N.J.A.C. 19:11-8.1. On March 3, 1988, the BFT filed its response.

In his decision, the Director stated that where an employer voluntarily recognizes an employee organization and complies with the requirements of N.J.A.C. 19:11-3.1(b), the employee organization will enjoy an irrebuttable presumption of continuing majority status for a one-year period after such grant of formal recognition and the timeliness protections of N.J.A.C. 19:11-2.8(b), that is, a representation petition will not be considered timely filed for a one-year period from the grant of such formal recognition. However, he noted that where an employer grants an informal recognition to an employee organization, the Commission will not accord the timeliness protections provided by N.J.A.C. 19:11-2.8(b). Accordingly, the Director concluded that there is no recognition bar to the conduct of a secret ballot election in this matter.

In its request for review of the decision by the Director of Representation, the Board argues that the informal recognition accorded to the BFT by the Board in June 1987 created a bar to any certification petitions affecting employees in the food service unit and the custodial and maintenance unit for a reasonable period of time after the informal recognition was provided. Citing Essex Cty. Educ'l Serv. Comm., P.E.R.C. No. 86-88, 12 NJPER 13 (¶17004 1985), the Board contends that the right of "an irrebuttable presumption of continuing majority status for a reasonable time" given to unions accorded informal recognition was meant to include not only protection from an employer's refusal to negotiate but also protection from representation challenges. The Board notes that the Director accepts that informal recognition provides the first protection noted above, but not the second. The Board argues that the Director's decision is at variance with private sector precedent.

I have reviewed the record in this matter and conclude that the Director correctly applied existing law to the unique facts of this case. In Salem City B/E, P.E.R.C. No. 81-6, 6 NJPER 371 (¶11190 1980), the Commission noted that N.J.A.C. 19:11-2.8(b) provides a 12-month insulated period to an employee representative which has successfully achieved the status of certified or formally recognized majority representative. Rule subsection 2.8(b) refers to N.J.A.C. 19:11-3.1 as setting forth the requirements which must be met for a recognition to be awarded the 12-month election bar

protection.[2/] The Commission amplified the Salem City standards in Essex Cty. Educ'l Serv. Comm., P.E.R.C. No. 86-88, 12 NJPER 13 (¶17004 1985): a union enjoys an irrebuttable presumption of continuing majority status for one year after its certification or formal recognition. However, a union enjoys an irrebuttable presumption of continuing majority support "for a reasonable time" after it secures majority status through informal recognition.

These decisions, when read together with N.J.A.C. 19:11-2.8(b) and 3.1(b), accord to unions which procure a certification or formal recognition both (1) an irrebuttable presumption of continuing majority status for one year after their certification or formal recognition and (2) a 12-month insulated period. For unions which procure an informal recognition (i.e., one not meeting the requisites of N.J.A.C. 19:11-3.1[b]), the Commission has provided an irrebuttable presumption of continuing majority status for a reasonable time. The Commission has not extended the timeliness protections of N.J.A.C. 19:11-2.8(b) to unions accorded informal recognitions. A case by case determination is required.

The Commission's Salem City and Essex decisions and the result reached by the Director in this matter are consistent with

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2/ The §3.1 preconditions do not necessarily have to be met before a negotiations obligation arises between a public employer and an employee organization which has secured an informal recognition in an appropriate unit.

private sector caselaw.[3/] While the NLRB has no administrative rule section equivalent to the Commission's §3.1, it has achieved the same result through its decisional law. In Keller Plastics Eastern Inc., 61 LRRM 1396 (NLRB 1966), the Board held that where a union achieves majority representative status through voluntary recognition granted by an employer, the parties must be afforded a reasonable time to bargain and execute the resultant contracts. The Board stated, however, that such negotiations can succeed and the policies of the LMRA can be effectuated only if the parties can rely upon the continuing representative status of the lawfully recognized union for a reasonable period of time. In subsequent decisions, the NLRB further refined Keller: it rejected informal recognition agreements as a bar to petitions for certification. In Display Sign Service, 72 LRRM 1577 (NLRB 1969), the Board stated:

> We find that this recognition agreement is not a bar to the rival petitions. It is now well settled that informal recognition granted a union will not constitute a bar to a petition by a rival labor organization where it does not "affirmatively appear...that the Employer extended recognition to the Intervenor in good faith on the basis of a previously demonstrated showing of majority and at a time when only that union was actively engaged in organizing the unit employees.
> Id. at 1578, footnotes omitted.

3/ In Lullo v. Int'l Ass'n. of Fire Fighters, 55 N.J. 409 (1970), the Supreme Court held that the experiences and adjudications under the Labor Management Relations Act, 29 USC § 141 et seq., our Act's federal counterpart, may appropriately guide the interpretation of our Act because the language, content and purposes of our Act and the LMRA are substantially the same.

See Sound Contractors Assn., 64 LRRM 10 (NLRB 1966); Allied Super Markets Inc., 66 LRRM 1044 (NLRB 1967); Josephine Furniture Co., 68 LRRM 1311 (NLRB 1968); and Bridgeport Jai Alai, 94 LRRM 1435 (NLRB 1977).

Accordingly, acting pursuant to authority delegated to me by the full Commission, I do not find that the requisite standards for granting review exist and thus, I decline the request for review and the request to stay the election ordered by the Director.

ORDER

The request for review and the request to stay the election are denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: March 3, 1988
Trenton, New Jersey