P.E.R.C. NO. 82-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Public Employer,

-and-

NATIONAL POLICE SECURITY OFFICERS LOCAL 9,

Docket No. RO-82-31

Petitioner,

-and-

AMALGAMATED TRANSIT UNION DIVISION 880, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission affirms a direction of election in a unit of security officers, baggage agents, bagpersons, janitors, and matrons working at the Atlantic City Bus Terminal. Amalgamated Transit Union Division 880, AFL-CIO, the present representative of these employees, and Atlantic City, their employer, had contended that an existing two year contract made the representation petition of the National Police Security Officers Local 9 untimely. The Director of Representation found, and the Commission agrees, that the agreement, effective January 1, 1981, did not contain an explicit termination date or duration and therefore, under N.J.A.C. 19:11-2.8(d), expired at the end of one year.

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Appearances:
For the Public Employer, John Miraglia, Consultant

For the Petitioner, G. Chip Dunn, President

For the Intervenor, Weitzman, Brady & Weitzman, Esqs. (Richard D. Weitzman, of Counsel)

DECISION AND ORDER

On September 9, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission by National Police Security Officers, Local 9 (the "NPSO"). NPSO sought to represent a unit of security officers employed by the City of Atlantic City (the "City") at the Atlantic City Bus Terminal. On October 2, 1981, NPSO sought to amend the representation petition by enlarging the scope of the unit to include:

> ...All regularly employed full time and part time employees, employed by the City of Atlantic City, regarding Security Officers, Baggage Agents, Bagpersons, Janitors, [and] Matrons presently employed at the Atlantic City Bus Terminal and future depots.

The amended petition, which is supported by an adequate showing of interest, was deemed filed as of October 2, 1981. The Amalgamated Transit Union, Division 880, AFL-CIO (the "ATU") is the current representative of the petitioned-for employees and has intervened pursuant to N.J.A.C. 19:11-2.7, on the basis of a current written agreement covering these employees.

The City and ATU filed statements in opposition to the Petition in which they asserted that the current written agreement covering these employees does not expire until December 31, 1982, and, therefore, under N.J.A.C. 19:11-2.8(c)(2),[1/] should bar the instant Petition. NPSO responded that the current contract, effective January 1, 1981, does not provide for a definite term, and therefore, under N.J.A.C. 19:11-2.8(d),[2/] it should be construed as a one year agreement expiring on December 31, 1981, thus making the Petition timely.

Pursuant to N.J.A.C. 19:11-2.6(a), the Director of Representation conducted an administrative investigation into the contract bar question. It was found that the contract does not

1/ N.J.A.C. 19:11-2.8(c) provides, in pertinent part:
> 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 of municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration date or renewal date of such agreement.

2/ N.J.A.C. 19:11-2.8(d) provides, in pertinent part:
> For the purpose of determining a timely filing...an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date.

set forth explicitly its termination date or duration but merely states that the agreement was "made and entered into effective as of January 1, 1981..." The contract does set forth a rate of pay for various job classifications. Article V(a) sets forth six different rates of pay for baggage agents, baggagemen, janitors and matrons effective on these dates: (1) January 1, 1981; (2) July 1, 1981; (3) November 1, 1981; (4) January 1, 1982; (5) July 1, 1982, and (6) November 1, 1982. Article V(b) sets forth six different rates of pay for various guards effective on different dates. The effective dates of the pay rates are identical to those in Article V(a) except that the third and sixth pay rates are effective December 1, 1981 and December 1, 1982, respectively. It is the position of the City and ATU that these Articles indicate that the contract's duration is for two years, despite the absence of an explicit expiration date.[3/]

On January 6, 1982, the Director issued his determination directing an election in the petitioned-for unit of employees, D.R. No. 82-34, 8 NJPER ____ (¶_____ 1982). The Director held that the current collective negotiations agreement between the City and ATU did not bar the filing of a representation petition because it did not set forth explicitly its duration or termination date. Applying National Labor Relations Board ("NLRB") precedent, he based his determination on a review of the contract on its face, and declined to consider parol evidence or order a hearing.

On January 18, 1982, ATU filed a Request for Review of the Director's decision and stated that substantial and material

3/ If this claim is true, a petition could be timely filed approximately September 1, 1982.

factual issues existed which could be more appropriately resolved at a hearing. The Chairman, acting as the Commission's designee, granted this request and solicited statements of position from all parties. NPSO filed a statement on January 27, 1982, supporting the Director's direction of election. On January 28, 1982, ATU filed a statement reiterating its previous position that the Director should have ordered a hearing to determine the expiration date of the current contract. The City filed a statement on January 22, 1982, asking that the Petition be dismissed or that a hearing be held, and questioning whether the current agreement would continue in effect if NPSO won the election.

Upon a thorough review of the entire record in this case, we are satisfied that the Director properly based his disposition of this matter upon the administrative investigation and that no substantial and material factual issues exist which could more appropriately be resolved at a hearing. The contract bar rule and its application have been previously confronted by the Director. In In re East Brunswick Bd. of Ed., D.R. No. 80-39, 6 NJPER 308 (¶11148 1980), the following passage was quoted:

> Two objects of the Board's contract bar policies are to afford parties to collective bargaining agreements an opportunity to achieve, for a reasonable period, industrial stability free from petitions seeking to change the bargaining relationship, and to provide employees the opportunity to select bargaining representatives at reasonable and predictable intervals. To properly achieve these objects in determining whether an existing contract constitutes a bar, the Board looks to the contract's fixed term or duration because it is this term on the face of the contract to which employees and outside unions look to predict the appropriate time for the filing of a representation petition...
> Union Fish Co., 156 NLRB No. 30, 61 LRRM 1012 (1965)

NLRB case law has established the principle that if agreements do not contain a fixed term or duration, those contracts will

not serve as a bar to the filing of a representation petition by any outside union. Pacific Coast Assn. of Pulp & Paper Mfgs., 121 NLRB No. 134, 42 LRRM 1477 (1958); see also Dalmo Victor Co., 132 NLRB No. 68, 48 LRRM 1487 (1961); W. Horace Williams Co., 130 NLRB No. 3, 47 LRRM 1337 (1961); United Wallpaper, Inc., 124 NLRB No. 3, 44 LRRM 1290 (1959); Office of the General Counsel of the NLRB, An Outline of Law and Procedure in Representation Cases, p. 89 (1970); The Developing Labor Law, p. 168 (1971). Further, it is the face of the contract that will determine whether or not it has a fixed duration, and parol evidence is inadmissible to establish the intent of the parties concerning its duration. See In re City of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for review den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980), In re East Brunswick Bd. of Ed., supra, In re Twp. of Franklin, P.E.R.C. No. 64 (1971); In re City of Jersey City, E.D. No. 78 (1975); In re Hudson City Bd. of Chosen Freeholders, D.R. No. 78-14, 3 NJPER 295 (1977); Union Fish Co., supra.

It has already been established that this Commission can appropriately look to NLRB precedents and follow the guidelines established by the Board in representation matters before us. Lullo v. Intern. Assn. of Fire Fighters, 55 N.J. 409 (1970). There is no reason to deviate from that approach here. An employer and an incumbent union who desire maximum labor stability must include a specific term of duration in their negotiated agreement so that employees or outside unions will know when they can file their Petitions. If the parties fail to meet this minimal burden, then our rules limit their protection from representation petitions to

one year. This in fact affords broader protection than that afforded by the Board when a contract on its face does not designate a specific term or duration. In such cases, the Board will allow representation petitions to be filed at any time and will not provide a one year cushion.

Turning now to the instant matter, we have found that the contract entered into between the City and ATU does not on its face specifically indicate its duration or include a termination date so that employees or outside unions could predict with reasonable certainty when to file a representation petition. As was mentioned earlier, the contract provides that it was "made and entered into effective as of January 1, 1981..." with no specific termination or duration. There was an Article setting forth different rates of pay which also included references to dates in 1982. The Board applied the contract bar rule to an agreement in a case factually similar to the one before us. In T.E. Connolly, Inc., 239 NLRB No. 197, 100 LRRM 1139 (1979), the parties ratified an agreement on April 5, 1978, which did not contain specific information as to the contract's duration or termination date, but did provide for three annual wage increases effective April 1, 1978, April 1, 1979, and April 1, 1980. The next day a decertification petition was filed, and on April 19, 1978, the parties executed a formal agreement specifically providing for a three year term from April 1, 1978 until March 31, 1981. In determining that no existing contract barred the filing of a decertification petition on April 6, 1978, the Board stated:

> To serve as a bar to a petition, a contract must contain substantial terms and conditions

> of employment deemed sufficient to stabilize the bargaining relationship. It is well settled that the expiration date is one of those "substantial terms" and that contracts having no fixed duration shall not be considered a bar for any period. Thus, it is required that the expiration term must be apparent from the face of the contract without resort to parol evidence, before the contract can serve as a bar.
>
> In the instant case, the proposal admittedly had no stated expiration date. The fact that it provided beginning dates for three annual wage increases, without more, fails to give it a fixed terminal date because the last annual wage increase could continue indefinitely.
>
> Therefore, contrary to the finding of the Regional Director, we find that the contract lacked an expiration date at the time the instant petition was filed, and therefore could not serve as a bar.

Supra, at 1139 (Footnotes omitted).[3/]

The Director stated in his decision, and we agree, that Connolly controlled; accordingly, he found the Petition to be timely filed and directed an election.[4/] Therefore, based

3/ The Board in Connolly distinguished Cooper Tire & Rubber Co., 181 NLRB 509, 73 LRRM 1402 (1979). In Cooper, the contract stated it would be "effective from ___ 1968...until ___ 1971" and provided for three annual wage increases on September 1, 1968, 1969 and 1970; the Board construed the duration clause providing for a three year span in conjunction with the periodic wage increases to find a three year term effective September 1, 1968. By contrast, in Connolly, as here, there was no duration clause making it clear that the contract would expire in a given year.

4/ We take note of the question posed by the City when it asks what its position will be concerning the salary increases and benefits given under the ATU agreement, if NOSP wins the election. At this point, this question is premature. Our decision is limited to an application of N.J.A.C. 19:11-2.8(d) which provides a purely procedural mechanism designed to determine the timeliness of Petitions and when an existing contract can serve as a bar. It is not a rule which determines when, in fact, a contract expires.

upon a thorough review of the entire record of this proceeding, we affirm the decision of the Director and direct an election pursuant to his decision dated January 6, 1982.[5/]

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Newbaker, Butch and Suskin voted for this decision. None opposed. Commissioners Graves and Hartnett were not present.

DATED: Trenton, New Jersey
February 9, 1982
ISSUED: February 10, 1982

5/ With respect to any matters and issues which have not been specifically discussed and decided above, the Commission affirms the Director's decision for the reasons so stated in his Decision and Direction of Election.