

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON BOARD OF EDUCATION
Public Employer

and

PATERSON TEACHERS UNION LOCAL 482
NEW JERSEY FEDERATION OF TEACHERS

Docket No. RO-185

Petitioner

and

PATERSON EDUCATION ASSOCIATION
NEW JERSEY EDUCATION ASSOCIATION

Intervenor

DECISION

Pursuant to Section 19:14-7 of the Rules and Regulations of the Public Employment Relations Commission, a stipulation of facts in lieu of a hearing was entered into by all parties and submitted for decision on the question of the timeliness of the petition concerned herein. Thereafter, briefs were submitted presenting the arguments and positions of the parties. The Commission 1/ has considered the stipulated facts and the briefs and, on the facts in this case, finds:

1. The only issue for determination in this case is that of the timeliness of the petition in a situation where the Paterson Education Association is the designated representative and party to a contract with the Board of Education and the Paterson Teachers Union in seeking designation as the majority representative of certain employees.

1/ Commissioner Hipp did not participate in either the discussion of or decision in this proceeding.

2. Pursuant to procedures then in effect, in February 1969 this Commission utilized the American Arbitration Association as its agent for the purposes of resolving a representation dispute between the Paterson Education Association and the Paterson Teachers Union with regard to certain employees of the Board of Education of the City of Paterson.
3. At a meeting on February 12, 1969 the three parties; the Paterson Education Association, the Paterson Teachers Union and the Paterson Board of Education agreed to hold a consent election to determine the collective negotiating representative of the employees involved, and also agreed upon the designation of Mr. James Altieri as election moderator.
4. At a meeting held on February 14, 1969, the three parties and Mr. Altieri agreed upon further election procedures and, in the absence of any Commission rules and regulations, adopted the following timeliness rules:

"If no contract is made between the winner of this election and the Board of Education within 14 months after the American Arbitration Association certifies the results of the election, then upon a showing of thirty per cent (30%) by the eligible voters so petitioning, an organization may request a new election.'

'A petition for a new election supported by not less than thirty per cent (30%) of the eligible voters may be presented to PERC by an organization not more than ninety days (90) and no less than sixty (60) days prior to the expiration date of the contract or June 30, 1971, whichever date comes first."

5. On August 29, 1969, the Public Employment Relations Commission adopted its Rules and Regulations containing timeliness rules different from those set out above by the parties.

6. On March 4, 1969 the election was held.
7. The Public Employment Relations Commission was furnished with the results of the election by the American Arbitration Association on June 2, 1969 and on June 26, 1969 issued its Certification of Representative certifying the Paterson Education Association as exclusive representative of the employees for purposes of collective negotiations.
8. On March 13, 1970 a contract was entered into between the Board of Education and the Paterson Education Association providing for a termination date of June 30, 1971.
9. On March 13, 1970 a petition was filed by the Paterson Teachers Union seeking a representation election within the unit covered by the aforementioned contract. That petition was not considered timely filed and on April 21, 1970 was dismissed by the Executive Director of the Commission.
10. On September 23, 1970 the instant petition seeking a representation election was filed by the Paterson Teachers Union.
11. The position taken by petitioner with regard to the timeliness issue is that since the petition was filed within the requisite period of 150 to 120 days before the last date for budget submission immediately preceding the expiration or renewal date of the contract, it comports with the requirements of Section 19:11-15(d) of the Commission's Rules and Regulations, and therefore, an election should be directed.

The intervenor, on the other hand, cites the Altieri bar rule quoted above, and argues that a petition cannot be timely until "not more than ninety (90) days and no less than sixty (60) days prior to the expiration date of the contract, or June 30, 1971, whichever date comes first." Intervenor further argues that Section 19:19-2 of the Rules, which provides that any valid action by the parties prior to the effective date of the Rules and Regulations, will not be held invalid because of a failure to comply with the procedural requirements set forth in the Rules, upholds the validity of the Altieri rule despite its inconsistency with Section 19:11-15.

Petitioner sets forth a number of alternative arguments for the timeliness of the petition at the present time.

He argues that application of the Altieri timeliness rule by the Commission at this time would be prejudicial and inconsistent with the dismissal of the March 13, 1970 petition. That dismissal by the Executive Director was based upon 19:11-15(b) of the Commission's Rules and Regulations 2/ and petitioner therefore argues that by that act, the Commission having previously relied upon its rules, is now bound to apply the timeliness doctrine in its Rules and Regulations rather than the Altieri rule, since petitioner has relied upon the apparant imprimatur granted to the former procedure.

2/ 19:11-15(b) reads: 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."

There is merit to this argument to the extent that were there real prejudice to petitioner in his reliance upon the Rules and Regulations utilized by the Executive Director, the Commission would be faced with a possible "injustice or unfairness" as envisaged by Section 19:19-1 of the Rules and Regulations and would therefore be required to construe the rules to prevent such injustice. However, we need not reach this issue, since, in fact, the March 13, 1970 petition would have been untimely under the Altieri rule as well as the Commission's Rules and Regulations. 3/

The petition filed on March 13, 1970 was untimely whether considered in light of the Altieri rule or the Commission's certification-year bar rule. Since the petition could not have been timely on any basis, it was sufficient to ground the dismissal on existing rules of general application without discussing the applicability of the Altieri rule.

Further, petitioner's alleged reliance upon the Executive Director's dismissal for guidance as to which rule would apply, in no way has prejudiced his position with regard to the instant petition. The petitioner, by so relying has in fact filed earlier than would be permissible under the Altieri rule, and in no way is denied the opportunity of filing a timely petition between sixty and ninety days prior to June 30, 1971 as set

3/ The Altieri rule provided for a period of challengeability if after 14 months from the date of the certification by the American Arbitration Association of the results of the election, no contract had been entered into. The petition was filed on March 13, 1970, 12 months and nine days after the election, less than 12 months after the American Arbitration Association issued its certification, and less than 9 months after this Commission certified the results of the election. In any event, on the same date as the petition was filed, the Paterson Education Association and the Board entered into a contract well within the 14 months prescribed.

out therein. Therefore, it is clear that there has been no prejudice to petitioner by his alleged reliance upon the action of the Executive Director. The Commission notes in passing that no timely request for review of that dismissal was filed with this Commission, and, therefore, while neither adopting nor rejecting the reasoning of the Executive Director, points out that the March 13 petition would have been untimely under either bar rule, and thus it concurs in the result, the dismissal of that petition.

The final argument raised by petitioner is that Rule 19:19-1 which provides for liberal construction of the rules to prevent injustice, where strict compliance would work an injustice or unfairness, should be applied to this case. The Commission finds no merit in this argument. The parties, in February of 1969, before the Commission's Rules and Regulations were in existence, in good faith agreed to a certain time period during which the winner of a representation election would be free from challenge. That agreement, set out either a date certain or the expiration date of the contract (to be negotiated as a consequence of the election,) as the time from which timeliness is to be measured. In fact, the expiration date of the contract coincides with the date set forth in the Altieri rule so that the resulting bar to the filing of petitions exactly corresponds to the maximum time period agreed to by the parties.

In this case, each party entered into the agreement with the implicit understanding that it would be adhered to; and therefore each could reasonably expect to rely upon it.

The petitioner herein was a party to that agreement, and as such should be bound by the contractual relationship it entered into, absent a clear contravention of the Act or the Commission's policies.

In this instance the agreement reached by the parties is not in such conflict with the policies and concepts of the Act or the Commission's policies so that it should not be given full effect under Section 19:19-2 of the Rules as a "valid action". While the Altieri rule sets dates different from those found in the Rules, it fulfills the same basic requirements as the Commission's Rules; it establishes a period of unchallenged representation coupled with a date certain after which the incumbent may be displaced. Both rules seek and achieve the same result; a balance between stability of labor relations, and the employee's right to replace the incumbent organization after a fixed period of time.

Furthermore, since the Commission favors voluntarism and the sanctity of contractual relationships, we believe parties should be held to the performance of their joint obligations to which they have previously agreed. Whether or not the Commission would apply this rule to a petitioner not a party to the joint undertaking is an issue which we need not reach in this case.

Petitioner also argues that an attempt to reconcile the two rules would leave it in a position in which a petition would never be timely filed. We do not agree. As written, the Altieri rule merely establishes a period of unchallengeability for the representative chosen as a result of the March 1969 election. After that period the Altieri rule expires, and the

timeliness rules as set out in the Rules and Regulations of this Commission will control the time for filing any subsequent petitions. Therefore application of the Altieri rule at this time merely means that a petition would be timely if filed "not more than ninety (90) days and no less than sixty (60) days prior to the expiration date of the contract..."

For these reasons, the Commission rules that the agreement reached by the Paterson Teachers Union, the Paterson Education Association, and the Board of Education of the City of Paterson on February 14, 1969 adopting the Altieri timeliness rule constituted a valid action by the parties prior to the effective date of the Rules and Regulations and is binding on the parties and the Commission. Accordingly, we hereby dismiss the petition as being untimely filed.

BY ORDER OF THE COMMISSION



WILLIAM L. KIRCHNER, JR.
Acting Chairman

DATED: November 4, 1970
Trenton, New Jersey