

P.E.R.C. NO. 88-91

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 Public Employment Relations Commission denies the Barnegat Board of Education's motion to reconsider P.E.R.C. No. 88-79, which declined requests for review of a direction of election and stay of the election. It finds that an earlier voluntary recognition did not make a representation petition untimely because of N.J.A.C. 19:11-3.1 was not complied with.

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.

Appearances:

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

For the Petitioner, Dwyer & Canellis, P.A.  
(George W. Canellis, of counsel; Paul J. Burns,  
on the motion)

DECISION AND ORDER  
ON MOTION FOR RECONSIDERATION

The Barnegat Board of Education ("Board") has moved for reconsideration of a Chairman decision, P.E.R.C. No. 88-79, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988), declining its requests for review of a direction of election, D.R. No. 88-31, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988), and a stay of the election. The Board asserts that the Chairman misconstrued private sector case law in holding that an election was not barred by the Board's recognition of the Barnegat Federation of Teachers to represent units of food service employees and custodial and maintenance employees.

We have reviewed the Director's decision, the Chairman's decision and the parties' submissions. We deny the motion for reconsideration. N.J.A.C. 19:11-2.8 provides that a recognition

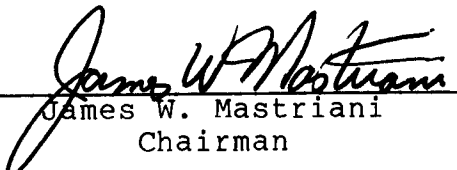
will not make a representation petition untimely unless N.J.A.C. 19:11-3.1 has been complied with. That rule was not satisfied: there was no written recognition and no posting of a written notice of recognition allowing other employee organizations the chance to object. It is also undisputed that there is no contract bar, election bar or certification bar to a petition under N.J.A.C. 19:11-2.8. Accordingly, the petition was timely.

Since our regulation controls the timeliness issue, private sector case law developed in the absence of a comparable regulation is irrelevant. We will not review dictum about that case law. We add that no finding or implication of a bad faith recognition was expressed, intended or warranted. The controlling fact was and remains that the regulatory requirements for a recognition bar were not met.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertlino and Reid abstained.

DATED: Trenton, New Jersey  
March 18, 1988  
ISSUED: March 21, 1988