

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY WELFARE BOARD
Public Employer

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Petitioner

Docket No. RO-246

and

CAMDEN COUNTY WELFARE EMPLOYEES ASSOCIATION
Intervenor

DECISION

Pursuant to a Notice of Hearing to resolve a question of representation concerning caseworkers employed by the Camden County Welfare Board, hearing was held on March 10, 1971 in Camden, New Jersey, before Hearing Officer Bernard J. Manney. All parties were given full opportunity to examine and cross examine witnesses, to present evidence and to argue orally. No briefs were filed by the parties. On June 18, 1971, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. Thereafter, timely exceptions were filed by Intervenor and the Public Employer. Intervenor also submitted a brief in support of its exceptions. The Commission having considered the entire record, the Hearing Officer's Report and Recommendations and the exceptions and brief submitted herein, on the facts in this case finds:

1. The Camden County Welfare Board (hereinafter called the Board) is a public employer within the meaning of the Act and is subject to its provisions.
2. The Communications Workers of America, AFL-CIO, (hereinafter called CWA) and the Camden County Welfare Employees Association (hereinafter called the Association) are employee representatives within the meaning of the Act.
3. CWA filed a petition for certification of representative on January 18, 1971 for a unit of all caseworkers employed by the Board. The Board and the Association contend that the petition is untimely, being barred by an agreement entered into between them on January 13, 1971, and they further contend that the unit petitioned for is inappropriate. Therefore, a question concerning representation is involved and the matter is properly before the Commission for determination.
4. The Hearing Officer found that the instant petition was not barred by the agreement between the Board and the Association and that the unit petitioned for was appropriate. He, therefore, recommended the conduct of an election to determine a majority representative.

5. The Board and the Association excepted to these findings and recommendation. The Commission need not discuss each exception in order to resolve this matter, but will only discuss those concerned with the finding of no contract bar.

On August 21, 1969, the Board recognized the Association as exclusive representative for employees of the Board. ^{1/} In December of 1970 the CWA requested recognition as majority representative for all caseworkers. This was a bare claim unsupported by proof of CWA's alleged majority status. On January 13, 1971 a written collective negotiations agreement was executed by representatives of the Board and the Association. Article XIII of that agreement provides in pertinent part: "This Agreement shall be in effect from January 1st, 1971 through December 31, 1971...This Agreement is subject to the provision of funds for the purpose of enacting the salary increments by the Board of Chosen Freeholders of Camden County and the State of New Jersey, Department of Institutions and Agencies, Division of Public Welfare." Thereafter, both contingencies were met: in February, 1971 when the Freeholders adopted their budget and appropriated funds to the Camden County Welfare Board, and on March 8, 1971 when officials of the State of New Jersey gave notice that there would be an allocation of federal monies to the Board. Before this, but following the January 13, 1971 signing, CWA filed the instant petition with the Commission on January 18, 1971.

The Hearing Officer concluded that the contract came into being on March 8 when the State gave notice, not January 13 when the parties executed their agreement; thus, there was no contract to bar CWA's petition. He further questioned the authority of the Association signatories to execute that document on January 13 prior to membership ratification of its contents. We do not agree that the provision of funds by the County and through the State are conditions precedent which must be met before the agreement could operate as a bar. The Commission's rule on contract bar speaks only of a "...written agreement containing substantive terms and conditions of employment..." (Section 19:11-15(d)). The incorporation of two conditions regarding funds for salary increases in no way detracts from the substance of the agreement. It simply represents the most that a public employer could do under the circumstances at that time. A collective negotiations agreement in public employment frequently requires a later appropriation of funds after execution of the agreement in order to implement it. Even if that subsequent appropriation is not made an express condition in the contract, it is nevertheless a fundamental condition which is

^{1/} The original recognition and the later contract indicate that the caseworkers, considered by the parties to be professional employees, voted to include the non-professional employees of the Board.

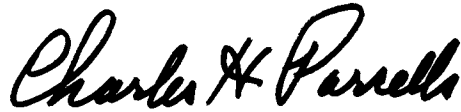
incorporated by necessary implication. 2/ Many, probably most, public employers are not self-appropriators; they are dependent for funds upon a political mechanism outside of their direct control. The conditions involved here are of that kind; the contract does not contain a condition, the fulfillment of which is reserved to one of the parties. The parties struck a bargain, the funding of which was necessarily conditioned by the Board's limitations. The expression of these conditions in their agreement merely recognizes a fact of political life. Under the circumstances, we conclude that the execution date of their written agreement, January 13, 1971, should control for purposes of applying the contract bar rule.

The second and final aspect of the case concerns the effectiveness of execution on behalf of the Association, allegedly prior to membership ratification. The Association's President and Vice-President signed the agreement. Under that organization's Constitution and By-Laws, they are members of the Executive Committee and the Negotiating Committee. At the very least it would appear that they have apparent authority. The Constitution and By-Laws further provide: "General terms of all proposals must be submitted to the membership at a membership meeting and any agreement between the Association and the Camden County Welfare Board or other group or person must be ratified by a majority vote of those voting at a membership meeting." Whether or not ratification preceded execution by the Association's two officers need not be decided here. Instead, we will be guided by the language of the agreement. Nowhere in that agreement is membership ratification required before it can become an effective instrument. Had such been included as an express condition, then the matter of ratification would be pertinent to the issue of whether the contract should operate as a bar. Unlike funding, discussed above, over which the parties have no direct control and which exists as a necessary condition whether expressed or not, ratification should be material only where both parties agree that it is and indicate their intent by express terms. In the absence of such, the Commission declines to consider the question of ratification in applying the contract bar rule.

2/ The Commission's contract bar rule creates a four month insulated period just prior to budget submission. That rule contemplates an uninterrupted period of negotiations culminating in an agreement in sufficient time for the employer to include its costs in his budget request. The rule obviously encourages making a final agreement during that period; to consider such agreement as only tentative or conditional upon an appropriation which is made after the protected period expires would destroy the purpose of the rule. While the protected period is designed for parties to a successor agreement and not for parties negotiating an initial agreement, as in the instant case, the general observation is equally valid that agreements are no less final simply because conditioned, express or implied, upon a later, required appropriation.

We conclude that the agreement executed by the Board and the Association on January 13, 1971 is to be given effect as of that date as a contract barring the petition filed on January 18, 1971. The petition is therefore dismissed as untimely filed.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script that reads "Charles H. Parcels". The signature is written in black ink and is positioned above a horizontal line.

Charles H. Parcels
Acting Chairman

DATED: February 15, 1972
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. RO-246

REPORT AND RECOMMENDATION OF HEARING OFFICER

On January 18, 1971, the Communications Workers of America, AFL-CIO, filed a petition with the Public Employment Relations Commission for Certification of Public Employee Representative in a unit encompassing all caseworkers employed by the Camden County Welfare Board.

A Notice of Representation Hearing was issued to the parties and a hearing was scheduled for February 24, 1971 in Camden, New Jersey. Subsequent thereto, and pursuant to an Order Rescheduling Hearing, a hearing was held on March 10, 1971 in the Council Chambers, City Hall, Camden, New Jersey. All parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. No briefs were submitted by the parties.

Appearances were recorded as follows:

For the Public Employer:

Joseph I. McCullough, Jr. Esq.

For the Petitioner:

Edward Schultz, International Representative

For the Intervenor:

Floyed A. Paules, Executive Committee

Witnesses testifying include:

Fred L. Streng

Eva Arlene Thomas

Edward A. Schultz, Jr.

Floyd A. Paules

Carol Abbott

John B. Early

Eugene J. Bayles

The record of the proceedings establishes that:

1. The Camden County Welfare Board is a public employer within the meaning of the Act.
2. The Communications Workers of America, AFL-CIO, and the Camden County Welfare Employees Association are employee representatives within the meaning of the Act.
3. The Camden County Welfare Board objects to the appropriateness of the unit as described in the instant petition and, moreover, maintains that a bar to an election exists. Therefore, a question concerning representation is involved, and the matter is appropriately before the Commission for adjudication.

ISSUE:

The question before the undersigned relates to the timeliness of the instant petition vis-a-vis a projected claim of a recognition and/or contract bar.

POSITION OF PARTIES:

The Public Employer maintains that they properly recognized the Camden County Welfare Board Employees Association on August 21, 1969, and that a written contract was entered into between the parties as of January 13, 1971. He maintains further, that a contract, "oral in nature", existed during the interim between recognition and the written agreement (T 163) and therefore, a bar to an election exists pursuant to 19-11-15(c).

The Petitioner contends that the instant petition is timely filed, the requested unit is an appropriate one, the disputed recognition cannot be construed as a bar under the provisions of 19:11-15(b), and similarly the disputed collective negotiating contract does not proscribe an early election inasmuch as it did not exist as of the date of the filing of the instant petition with the Public Employment Relations Commission.

The Intervenor maintained a position consistent with that of the Public Employer.

BACKGROUND:

The record indicates that the Public Employer recognized the Camden County Welfare Board Employees Association "...as the exclusive bargaining agent for the employees of the Camden County Welfare Board..." on August 21, 1969 * (Pe-1 and Pe-2.)

On December 17, 1970, * the Communications Workers of America, by certified mail, requested the Public Employer to recognize them as representatives of the caseworkers for purposes of collective negotiations (P-1.) A written agreement was signed by representatives of the Camden County Welfare Board and the Intervenor association on January 13, 1971 * (P-4,) and subsequent thereto, on March 8, 1971, * (T 58) approval signatures were affixed to said agreement by the Director of the Division of Public Welfare, New Jersey Department of Institutions and Agencies, and

* Emphasis added.

by the Director of the Governor's Office of Employee Relations (Pe-5.)
On January 18, 1971, the C.W.A., AFL-CIO, filed a petition for
certification of Public Employee Representative.

DISCUSSION AND FINDINGS:

The Intervenor association was granted recognition in accordance with the provisions of the first paragraph of 19:11-14 on August 21, 1969 (prior to the adoption of P.E.R.C. Rules and Regulations.) However, the bare recognition lingered without contractual implementation until March 9, 1971 - over sixteen months later. Section 19:11-15(b) establishes only a twelve (12) month * recognition insulation period during which petitions will not be considered as timely filed. Thus, the said recognition does not disqualify the instant petition.

Next, the undersigned addresses himself to the crucial question raised by the existence of a written agreement vis-a-vis a possible bar to an election. On this point, the record paints a confusing picture of a collective negotiating agreement which was consummated by the Camden County Welfare Board and the Intervenor association on either of two dates i.e., January 13, 1971, or March 8, 1971. * As to the former date, the record indicates a suspect situation as it relates to the arrogation of authority by the signatories to said contract.

On examination by the Hearing Officer, Witness Paules, a former president of the Intervenor association and a signatory to disputed contract, testified as follows (T 120-121):

H.O.: Before you signed it (i.e. the instant contract) ** had it been ratified by the members?

Witness: The written contract was not ratified by the members, but by the Executive Committee. Our Constitution gives the Negotiating Committee, and the Executive Committee, the right to do this.*
(T 122-123)

H.O.: What you are saying is, that some time in January the Negotiating Committee of the Employees signed the agreement and there was no subsequent ratification meeting held where the members were given the opportunity to vote, is that right?

Witness: No. the final written contract was approved by the Executive Board. *

H.O.: By the Executive Board?

Witness: and then signed by the officer(s). **

H.O.: of the Executive Board? *

* added for emphasis.

**added for clarification.

Witness: Yes. The content of that was presented as we went along. The economic proposals of the contract were voted upon.

Under questioning by the attorney for the Public Employer (T 123-124) witness Paules, advised that the terms and conditions of the contract had been ratified by the members at regular meetings "down till November when the final conditions were returned."

Q. The other terms and conditions were non-economic?

A. Yes.

Q. These were ratified by the membership previous to November.

A. Yes, at a regular meeting.

Q. And the final terms of the contract were given oral ratifications... before the written contract was signed by you?

A. Yes.

Q. Sometime in early November, is that correct?

A. Yes.

However, on cross-examination by (T 124-128) the Petitioner, the witness testified:

Q. You stated you did not take the terms and conditions of the contract to the membership for ratification, is that correct?

A. (no response)

Q. (continuing) It was by the Executive Board is that right?

A. You mean the written contract?

Q. Yes.

A. The written contract was presented to the Executive Board. *

Q. The proposals you agreed to, or did not agree to, were they ever submitted to the employees in totality for their ratification?

*emphasis added.

A. The proposals, as we went along in our negotiations, were made known to the Association at the regular monthly meeting, the second Monday of each month.

Q. They were made known?

A. Yes.

Q. Were they voted upon?

A. Several of the proposals which were economic, were voted upon.

Q. Was there a total voting of an agreement prior to its adoption?

A. A total---say it again?

Q. Voting of the agreement, a total ratification of all the terms and conditions of the agreement, by the membership?

A. No. By the Executive Board.

Q. Is that in your constitution?

A. Yes.

Q. Do you have copies of your by-laws?

A. We don't have any by-laws.

Q. What document empowers the Executive Board, then?

A. The original Constitution.

The undersigned takes official notice at this juncture (T 125-128) of the failure of exhibit I-1, captioned "Constitution and By-Laws of the Camden County Welfare Board Employees Association," to reconcile with statements made by witness Paules vis-a-vis the repeated, and emphatically averred constitutional authority of the Executive Board to ratify and sign collective negotiation agreements binding on the membership, and without prior sanction by said membership. On the contrary, this document does not authorize either the negotiating committee or the Executive Board to ratify and/or sign such an agreement without prior membership approval.

*all emphasis added.

Additional doubt is created by further testimony of witness Paules relating to proxy voting (T 118) at prior ratification meetings.

(T 129) Q. You stated that proxy votes were accepted?

A. Yes.

H.O.: Mr. Paules, does your Constitution provide for proxy voting?

A. No, I don't think so.

H.O.: Is there a provision, an Article, on voting?

A. No--wait a minute. No, this is a nebulous Constitution. *

To add to the overt inconsistencies relating to the disputed contract ratification timetable, witness Streng, Welfare Director, testified (T 41):

Q. I asked if at the present moment (i.e. January 17, 1970**) there was a contract in existence, did I not?

A. There was a contract, the terms of which had not been completed, and submitted for satisfaction to the association... there was a written contract in draft form which had been submitted to the association for their approval.*

With reference to the March 8, 1971 signing of the instant collective negotiations agreement, the undersigned finds that on this date the disputed contract was definitively consummated by all authorized parties thereto. Witness Streng, Director, Camden County Welfare Board, on cross-examination testified: (T 411-2)

Q. Can you state why a contract was not signed immediately upon completion of negotiations?*
(i.e. in October, 1970**)

A. Well there were many things other than the wage increments that were in there... We had to make sure our Freeholders and our State was going to approve this. It would be futile to prepare a contract, and have the thing turned down at the County level, or State level.*

Q. But..In October, it wasn't the end of negotiations, is that correct?

A. Negotiations were completed, as far as the association was concerned...But, we had to make sure the State and the County would approve of this contract.*

*Emphasis added.

**added for clarification.

On direct examination, witness Streng advised that (T 32) although the Camden County Board of Freeholders is an autonomous body, it is "financially dependent upon the County of Camden.* i.e., "they had to appropriate the money..." Witness Streng stated, too, that "Federal money" is allocated to the Welfare Board upon the prior approval of Frank Mason from the Office of the Governor, and Irving Engelman, Director of the Division of Public Welfare. Witness Streng indicated that most of the money "...comes from the Federal Government and the rest from the County." *

Significantly, on further cross-examination witness Streng advised (T 47-48) that the Board of Freeholders adopted their budget in "late" February, 1971, and simultaneously appropriated their share of funds to the Camden County Welfare Board. The undersigned notes that this action took place after the January 13, 1971 signing of the instant contract. *

(T 50) Q. Unless you have effectuated the terms and conditions of the contract, you have not put the contract into effect.

A. We certainly can't effectuate a contract unless we know we are getting the money. *

(T 51) H.O. In other words, the negotiation of an agreement between the Welfare Board, and the employee representative, does it depend upon the Board of Freeholders' sanction? *

A. Yes, it would. And, this is why the contract was not signed until January, until we had a pretty good idea that the Board of Freeholders would approve the the contract and give us the money. *

Again, the undersigned takes notice that the County did not provide the funds until February, i.e. after the January 13, 1971 signing of the disputed contract.

However, in T -58, witness Streng advises that the approval of that contract by the State was not made until March 8, 1971, and that (T 59) "the contract says that this is subject to the approval of the State of New Jersey"* (Article XIII of disputed contract reads in part as follows: "This Agreement is subject to the provision of funds for the purpose of enacting the salary increments by the Board of Chosen Freeholders of Camden County and the State of New Jersey, Department of Institutions and Agencies, Division of Public Welfare.)

* Emphasis added.

Q. You are therefore saying, that at the time you signed the agreement, you were not augmenting the terms of the agreement. *

A. We wouldn't, until we got the approval of the Board of Freeholders, and the State of New Jersey. *

At this point, the undersigned draws an analogy from the usual contract of employment, wherein an employer pays a wage for services rendered to him by an employee, i.e., both parties to the agreement have the capacity to fulfill the obligations to which they are legally committed. By contrast, it is abundantly clear from the record that the instant public employer as of January 13, 1971, was in the first instance, financially incapable of implementing the economic terms of the disputed contract, and secondly, lacked the capacity, without the collateral approvals of the Board of Freeholders, the New Jersey Department of Institutions and Agencies, and the Governor's Office of Employee Relations, to consummate a viable collective negotiation agreement. Adding further to the catena of suspect procedural improprieties, the Hearing Officer takes notice; too, that Witness Paules, a former president of the Intervenor Association, held two simultaneous and conflicting positions at the time of this hearing, to wit, Acting Supervisor of Case Workers (T 79) and member of the Executive Committee of the Camden County Welfare Employees Association (T 85.)

In answer to the contention of the Public Employer, that an oral contract was in effect between the Camden County Welfare Board the Intervenor Association and to the implication of proscriptions drawn therefrom, the undersigned makes reference to C:34:13A-5.3 which provides, "When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative." * This section mandates, too, that the parties to a collective negotiation contract shall include "...written policies setting forth grievance procedures * by means of which their employees...may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement * entered into between the public employer and the representative organization." In addition, 19:11-15 of the Commission's Rules and Regulations, defines standards for determination of timeliness of petitions filed for certification of public employee representative; sub-section (d) provides for time limitations during "an existing written agreement" "...a petition for certification of public employee representative or a petition for decertification of public employee representative involving the employees normally will not be considered timely filed unless the petition is filed not less than 120 days and not more than 150 days before the last date, if any, for budget submission of the public employer immediately preceding the expiration or renewal date of such agreement or two (2) years from the effective date of the agreement, whichever is earlier.."

* Emphasis added.

The above citations amply demonstrate the imperative requirement of written contracts in employer-employee relations in the public sector under the New Jersey Employer-Employee Relations Act. Thus, verbal agreements cannot proscribe delay representation elections or militate against the timeliness of the instant petition.

C:34:13A-5.3 provides that the negotiating unit shall be defined with due regard for the community of interest among the employees concerned. In this connection, the undersigned takes note of the following facts from the record:

(1) There are approximately 150 Case Workers in a total work force of about 361 employed by the Public Employer.

(2) As of the non-supervisory employees covered by the disputed contract, only the caseworkers are classified and recognized by the Public Employer as professionals (T 53, 76-77, 82, 93, 96, and 111), and are required to possess a college degree to qualify for Civil Service certification and permanent appointment. The said contract establishes, too, the professional status of caseworkers, to wit, Article XI-A (Pe-5) reads in part, "All professional employees, including Case Workers..."

(3) Different supervision; i.e., all clerical employees in the instant unit are supervised by the Deputy Director (T 93-94), whereas Case Workers and non-clericals are supervised by administrative Supervisors, Department Heads, and Case Worker Supervisors (T 93-97).

(4) Different salary guides (Pe-5 Art. II-B) i.e., the Case Worker is the highest paid of the non-supervisory employees.

(5) Vis-a-vis other members of the instant unit, the Case Worker has separate and distinct skills, expertise, job duties, functions and responsibilities as indicated in a list of job descriptions supplied by exhibit Pe-6. Accordingly, the undersigned appreciates the distinct, professional community of interest that exists among the instant case workers.

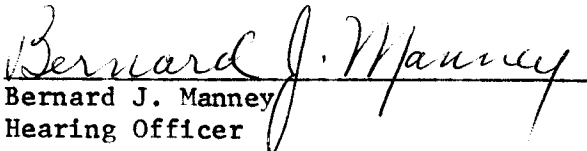
Under normal circumstances, and in keeping with the spirit of the Act, the Hearing Officer would hesitate to disturb an existing unit. However, from all pertinent aspects of the record to wit, a stale recognition, a contract consummation after the filing of the instant petition, a lack of authority of intervenor representatives to ratify and sign the instant contract, the invalid proxy voting on ratification of contract, and the filing of a timely petition, the undersigned believes that the interests of the parties herein and of the general public as enunciated in C:34:13A-2, will be best served by an election among the case workers to determine their desire vis-a-vis a majority representative for purposes of collective negotiations.

Therefore, the undersigned finds: that the instant collective bargaining agreement was consummated on March 9, 1971, and consequently, the instant petition was timely filed; an appropriate unit for purposes of collective negotiation is: all classified Case Workers employed by the Camden County Welfare Board, and excluding office clerical, all other non-professionals, craft employees, managerial executives, police, and supervisors within the meaning of the Act; and because of the aforementioned questionable circumstances, the Case Workers shall freely and unilaterally opt for a negotiating representative.

RECOMMENDATION:

After a complete review of the record, the undersigned recommends:

1. That a secret-ballot election shall be conducted among the eligible employees in the unit found appropriate.
2. Participant voters in the election shall vote on whether or not they desire to be represented for purposes of collective negotiations by the Communications Workers of America, AFL-CIO, the Camden County Welfare Board Employees Association, or neither.


Bernard J. Manney
Hearing Officer

DATED: June 18, 1971
Trenton, New Jersey