

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-179-18

JERSEY CITY TEACHERS AIDES ASSO-
CIATION, JCEA,

Charging Party.

SYNOPSIS

In this unfair practice proceeding which was submitted directly to the Commission on the basis of stipulated facts and without an intermediate Hearing Examiner's Recommended Report and Decision, the Teachers Aides Association alleged that the Board's failure to negotiate with the Association prior to the expiration of the certification bar year was violative of N.J.S.A. 34:13A-5.4(a)(2), (5) and (7). The Commission finds the Board cannot justify its refusal to negotiate by relying upon a pending representation issue since a valid question concerning representation cannot be raised during the certification bar year.

In the interest of promoting labor relations stability, the Commission hereby adopts the policy employed in the private sector which requires an employer to continue bargaining with a certified majority representative even though shortly after the election the union has lost a majority of its membership without fault of the employer. Therefore, when an employer has failed to bargain in good faith during the certification bar year the appropriate remedy shall be an affirmative order to bargain and an extension of the certification bar year for a period equivalent to the period of the refusal to bargain.

Based upon the facts stipulated to herein, the Commission concludes that the Board has violated N.J.S.A. 34:13A-5.4(a)(5) and that the extension of the certification year by four months - the undisputed period during which no negotiations took place - is necessary to provide one full insulated year for negotiations. There being no evidence of violations of N.J.S.A. 34:13A-5.4(a)(2) and (7), these aspects of the complaint are hereby dismissed.

The Commission orders the Board to cease and desist from refusing to negotiate in good faith; and affirmatively orders the Board to negotiate in good faith upon demand of the Association and, orders the certification bar year for the instant unit extended for a period of four months; post appropriate notices; and notify the Chairman of the Commission, in writing, of the steps taken to comply with the order.

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Appearances

For the Respondent, Krieger and Chodash, Esqs.
(Mr. Brian Flynn, of Counsel)

For the Charging Party, Philip Feintuch, Esq.

DECISION AND ORDER

On February 21, 1978, the Jersey City Teachers Aides Association, J.C.E.A. (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Jersey City Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, the Association alleged that the Board was in violation of N.J.S.A. 34:13A-5.4(a)(2), (5) and (7)^{1/} based upon notification by telegram, copy attached hereto as Appendix "A",

^{1/} N.J.S.A. 34:13A-5.4(a) states that employers, their representatives or agents are prohibited from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the Commission."

dated February 14, 1978 from the Board's labor counsel that it would no longer negotiate with the Association.

The Unfair Practice Charge was processed pursuant to the Commission's Rules and, it appearing to the Commission's Director of Unfair Practices that the allegations, if true, might constitute an unfair practice within the meaning of the Act, a Complaint was issued on September 7, 1978.

Pursuant to N.J.A.C. 19:14-6.7, the parties agreed to execute a stipulation of facts regarding the instant charge and to have the matter submitted directly to the Commission for a decision. The Stipulation of Facts executed by the parties is as follows:

"(1) The Jersey City Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act").

(2) The Jersey City Teachers Aides Association, affiliated with the Jersey City Education Association, is a public employee organization within the meaning of the Act.

(3) On June 22, 1977, an election was conducted by the Public Employment Relations Commission (the "Commission") pursuant to an Agreement for Consent Election, among employees in the unit described as consisting of "all teacher aides, including Title I aides, employed by the Jersey City Board of Education". A majority of valid ballots were cast for representation by the Jersey City Teacher Aides Association, affiliated with the Jersey City Education Association (the "Association").

(4) On July 6, 1977, the Commission issued a Certification of Representative, certifying the Association as the exclusive negotiations representative of all employees in the above described unit.

(5) Negotiations between the Board and the Association commenced with a meeting on January 10, 1978; approximately five such meetings were conducted between that date and February 10, 1978 when the last meeting prior to the filing of the instant unfair practice charge was held. The parties had not reached impasse in their negotiations.

(6) On February 22, 1978, a Petition for Certification of Public Employee Representative, dated February 14, 1978, was filed with the Commission by Teamsters Local No. 286 (the "Teamsters") seeking to represent a collective negotiations unit consisting of all teacher aides (school board aides, Title I aides, community aides, liaison officers) employed by the Jersey City Board of Education (the "Board"). The petition was supported by a valid showing of interest.

(7) By telegram dated February 14, 1978, the Board notified the Association that it would not continue to negotiate with the Association until resolution of the representation issues placed before the Commission by way of the Teamsters Petition has been reached. (A copy of that telegram is annexed hereto and shall be made a part hereof.)

(8) On February 21, 1978, the Association filed an Unfair Practice Charge with the Commission alleging that the Board

had violated N.J.S.A. 34:13A-5.4(a) (2), (5) and (7).

(9) On May 26, 1978, the Director of Representation issued a decision which dismissed the Teamsters' Petition as not having been timely filed pursuant to N.J.A.C. 19:11-2.8(b), the "Certification Bar" rule.

(10) On June 15 and 22, 1978 and August 23, 29, and 30, 1978, the parties met and resumed negotiations following demands for negotiation conveyed to the Board by the Association on May 30, 1978 and June 14, 1978. To date, the parties have not reached a collective agreement.

(11) By letters dated June 27, 1978 and July 3, 1978, the Association communicated to the Commission that it is seeking an extension of the certification bar year as a remedy to the instant alleged unfair practice.

(12) On July 11, 1978, the Teamsters filed a second Petition for Certification of Public Employee Representative seeking to represent the same unit of employees as had been sought in its February 22, 1978 petition.

(13) The parties hereby agree and stipulate that the above constitute all the material facts relevant to the instant matter and that no material facts are in dispute. Therefore, the parties agree to waive an evidentiary hearing and upon the issuance of a complaint by the Director of Unfair Practice Proceedings the parties agree to submit the issues in this unfair practice proceeding directly to the Commission for determination."

On September 7, 1978, the Association filed a letter

brief in this matter. In support of the charge, the Association cites In re Jersey City Board of Education, D.R. No. 78-45, 4 NJPER 213 (Para 4106 1978), (see stipulation no. 9). Therein, the Director of Representation explained the certification bar rule in dismissing the Petition for Certification of Public Employee Representative filed by Teamsters Local No. 286:

The purpose of the rule is to provide a reasonable opportunity and a stable environment in which the freely chosen representative of employees and the employer may negotiate a written agreement covering terms and conditions of employment. The rule provides a period of one year for this purpose. (D.R. No. 78-45 at page 4.)

The relief sought by the Association is an extension of the certification bar year for a period of time equivalent to the period of the alleged refusal to bargain during that insulated year, i.e., from February 14 to at least June 15, 1978.

In Brooks v. NLRB, 348 U.S. 96 (1954) the United States Supreme Court found that an employer is under a duty to bargain with a union certified by the National Labor Relations Board, even though shortly after the election which resulted in certification, the union had lost a majority of employees from its membership without the fault of the employer.^{2/} The Court cited labor relations stability as the basic rationale for accepting a policy of a

^{2/} In a recent decision, our Supreme Court stated: "Although Lullo was concerned with the Act prior to its amendment in 1974, its admonition to look to the Act's federal analogue is particularly appropriate with respect to the interpretation of the unfair practice provisions of N.J.S.A. 34:13A-5.4, as these parallel the unfair labor practice provisions of the LMRA in many respects." Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educ. Secs., Supreme Court Docket No. A-132/133, August 1, 1978, p. 8 of slip opinion.

certification bar rule in the initial year of a union's certification. Furthermore, absent specific evidence of schism or defunctness (strictly defined), an employer may not raise a valid question concerning representation during the one year following certification. /See Pepsi-Cola Bottling Co., 227 NLRB No. 286, 94 LRRM 1510 (1977); Affordable Inns, Inc., 222 NLRB No. 192, 91 LRRM 1480 (1976).⁷

The National Labor Relations Board has established that in a situation where an employer has failed to bargain in good faith during the certification bar year that the appropriate remedy is an affirmative order to bargain and the extension of the certification bar year for a period equivalent to the period of the refusal to bargain. This has been found to be the appropriate remedy even where the union may have lost majority adherence during the interim.^{3/}

In the instant case, as the stipulated facts indicate, the Board notified the Association on February 14, 1978 that it would cease negotiations pending the resolution of a representation issue before the Commission. Since a valid question concerning representation cannot be raised during the certification bar year,^{4/} the Board was in violation of the Act, specifically of N.J.S.A. 34:13A-5.4(a)(5), in refusing to negotiate with the Association. The Board

^{3/} Big Three Industries, 201 NLRB No. 76, (1973); Pride Refining Inc., 224 NLRB No. 147 (1976). See also Galloway Twp. Bd. of Ed., supra.

^{4/} With the exceptions of the strictly defined instances of schism or defunctness (see Brooks v. NLRB, supra.)

could not justify the refusal to negotiate by relying upon the pending representation issue since it could not raise a valid question concerning representation.

This extension of the certification year by four months from this date -- the undisputed period during which no negotiations took place -- is necessary to provide the parties with a full opportunity, consistent with our Rules and the purposes of the Act, to negotiate an agreement. The concept of an extension of the certification bar year to provide a full one year insulated period for negotiations is not without precedent before the Commission. In In re City of Jersey City, P.E.R.C. No. 63 (1971), the Commission found that the certification bar year should run from the date of a court decision lifting a stay of negotiations rather from the date of certification where the parties had been temporarily enjoined from negotiating.

This extension shall commence with the issuance of this decision. We recognize that the parties have stipulated that there were some negotiations on and after June 15, 1978. However, for several reasons, we do not believe that the certification bar year should be extended retroactively from July 6, 1978 to November 6, 1978. First, this is a case of first impression and we cannot expect the parties to have anticipated a retroactive extension. Secondly, our review of federal cases, although factually distinguishable, indicates that in the private sector (see note 2 supra) the extension commences with the resumption of negotiations following the completion of litigation. Third, in this case, if

we were to extend the certification bar at this time retroactively to July 6, 1978, we would not be giving the parties more than two weeks from the date of our decision -- before the issuance of which any remedy that we might issue would have been speculative -- within which to complete negotiations without the threat of a challenge to their status. We do not believe that this would be a reasonable or appropriate remedy in this case. Fourth, the July 11, 1978 filing of the second petition by the Teamsters clouded these negotiations and we are not satisfied, under these circumstances, that the Association has enjoyed full, free, and untainted representative status for the 12 months provided by our Rules. Finally, we believe that our order will be most clear and meaningful if effective upon the issuance of this decision. That will eliminate uncertainty regarding the validity of the July 11, 1978 petition filed by the Teamsters and will make clear to all parties when a timely petition can be filed. It will also reduce the likelihood of further litigation regarding this matter.

The Commission, therefore, finds that the appropriate remedy for the Board's refusal to negotiate in violation of N.J.S.A. 34:13A-5.4(a)(5), in addition to an affirmative order to negotiate, is an extension of the certification bar year to provide one full insulated year for negotiations.

There being no evidence of violations of N.J.S.A. 34:13A-5.4(a)(2) and (7), these aspects of the Complaint will be dismissed.

ORDER

Accordingly, for the reasons set forth above IT IS HEREBY ORDERED that the Jersey City Board of Education shall cease and desist from refusing to negotiate in good faith with the Jersey City Teachers Aides Association concerning terms and conditions of employment.

It is further ORDERED that the Jersey City Board of Education shall, upon demand by the Jersey City Teachers Aides Association, negotiate in good faith concerning terms and conditions of employment.

It is further ORDERED that the certification bar year for the instant unit be extended from July 6, 1978 for a period of four (4) months from the date of issuance hereof.

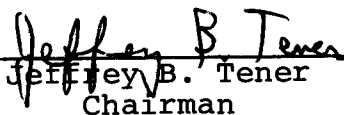
It is further ORDERED that the Board shall post at the Central Offices of the Jersey City Board of Education copies of the attached notice marked Appendix "B". Copies of such notice on forms to be provided by the Commission shall, after being duly signed by the Board's representative, be posted by the Board immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Board to ensure that such notices are not altered, defaced or covered by any other material.

It is further ORDERED that the Board shall notify the Chairman within twenty (20) days of receipt of this order what

steps it has taken to comply herewith.

Furthermore, those allegations in the complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(2) and (7) are hereby dismissed.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves and Parcels voted for this decision. Commissioners Hartnett, Hipp and Schwartz abstained. None opposed.

DATED: Trenton, New Jersey
October 23, 1978
ISSUED: October 25, 1978



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"APPENDIX A"

PHILLIP FEINTUCK ESQ
921 BERGEN AVE
JERSEY CITY NJ 07306

DUPLICATE COPY OF MESSAGE SENT TO TOM CURRAN JERSEY CITY TEACHERS' AIDES ASSOCIATION 154 ST PAULS AVE JERSEY CITY NJ 07306
JERSEY CITY BOARD OF EDUCATION HAS RECEIVED DEMAND FOR RECOGNITION FROM TEAMSTER LOCAL 286 WHICH CLAIMS A MAJORITY OF TITLE I, SCHOOL BOARD AND COMMUNITY AIDES EMPLOYED BY THE BOARD OF EDUCATION. IN ADDITION, THE BOARD OF EDUCATION HAS RECEIVED A PETITION SIGNED BY A CONSIDERABLE NUMBER OF AIDES TO THE EFFECT THAT THEY DO NOT WANT REPRESENTATION BY THE JERSEY CITY TEACHERS AIDES ASSOCIATION. IN LIGHT OF THE ABOVE THE BOARD OF EDUCATION HAS A GOOD FAITH DOUBT AS TO THE CONTINUED MAJORITY STATUS OF THE JERSEY CITY TEACHERS' AIDE ASSOCIATION AND WILL THEREFORE REFRAIN FROM FURTHER COLLECTIVE BARGAINING WITH ITS REPRESENTATIVES UNTIL SUCH TIME AS THE QUESTION CONCERNING REPRESENTATION OF THE TEACHERS'S AIDES IS RESOLVED BY P.E.R.C.

KRIEGER AND CHODASH
LABOR COUNSEL
JERSEY CITY BOARD OF EDUCATION
BY BRIAN N FLYNN

12:23 EST

MGMCOMP MGM

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate in good faith with the Jersey City Teachers Aides Association concerning terms and conditions of employment.

WE WILL, upon demand by the Jersey city Teachers Aides Association, negotiate in good faith concerning terms and conditions of employment.

Further, we note that, pursuant to this decision, no petition can be timely filed by another employee organization until four (4) months from the issuance of this decision.

JERSEY CITY BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.