

D.R. NO. 81-51

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BROOKDALE COMMUNITY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-81-214

COUNCIL 73, A.F.S.C.M.E.,

Petitioner,

-and-

NON-ACADEMIC STAFF ASSOCIATION, NJEA,

Intervenor.

BERGEN COUNTY COLLEGE,

Public Employer,

-and-

LOCAL 804, I.B.T.,

DOCKET NO. RO-81-202

Petitioner,

-and-

BERGEN COMMUNITY COLLEGE SUPPORTIVE
STAFF ASSOCIATION, NJEA,

Intervenor.

SYNOPSIS

The Director of Representation determines that representation petitions involving county community college employees who are covered by an existing written agreement may be filed only during the September 1 - October 15 period immediately preceding the expiration of the agreement, in accordance with N.J.A.C. 19:11-2.8(c)(3). The Director, on the basis of certain court decisions, concludes that county colleges are not county agencies, and that N.J.A.C. 19:11-2.8(c)(2) does not apply. Further, county colleges are not school districts, which are governed by §2.8(c)(3).

Nevertheless, since the Commission's timeliness rules are designed to provide for the resolution of questions concerning representation before budget submission date, and the application of §(c)(3) to county colleges would provide this result, §(c)(3) is the applicable timeliness provision.

Although the Petitions in these matters were filed in accordance with §(c)(2) rather than (c)(3), the Director nevertheless orders an election since a previous decision had indicated that Petitions not filed under §(c)(2) would be dismissed.

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Appearances:

For Brookdale Community College
Murray, Granello & Kenney, Esqs.
(Malachi Kenney, Esq., of Counsel)

For A.F.S.C.M.E., Council 7, AFL-CIO
Carlton Steger, Staff Representative

For the Non-Academic Staff Association, NJEA
New Jersey Education Association
(Leo Galcher, UniServ Representative)

For the Bergen County College
Rosen, Gelman & Weiss, P.A.
(Patrick J. McCarthy, Esq. of Counsel)
(Suzanne E. Raymond, on the Brief)

For Local 804, I.B.T.
Cohen, Weiss & Simon, Esqs.
(Eugene S. Friedman and Richard M. Seltzer, Esqs.,
of Counsel)

For Bergen Community College Supportive Staff Association, NJEA
Sterns, Herbert & Weinroth, P.A.
(Mark D. Schorr, of Counsel and on the Brief)

DECISION AND DIRECTION OF ELECTION

Petitions for Certification of Public Employee Representa-
tive were filed with the Public Employment Relations Commission
(the "Commission"), supported by adequate showings of interest, by
Local 804, International Brotherhood of Teamsters, ("Local 804") with
respect to a unit of all supportive staff employees of Bergen Community
College ("Bergen C.C.") and by Council 73, American Federation of
State, County and Municipal Employees ("AFSCME") with respect to a
unit of non-academic staff employees employed by Brookdale Community
College ("Brookdale C.C."). Motions for Intervention were filed
in each matter by the incumbent organization, pursuant to N.J.A.C.
19:11-2.7. Therefore, the Bergen Community College Supportive Staff
Association, NJEA (the "Bergen Association") is granted intervenor
status in RO-81-202 and the Non-Academic Staff Association, NJEA
("NASA") is granted intervenor status in RO-81-214 based on their
respective submissions of current contracts covering the petitioned-
for employees. The undersigned caused separate administrative
investigations to be conducted into the matters and allegations
involved in the Petitions in order to determine the facts. Based

upon the investigations, the undersigned has determined that the same issue is presented in each matter; accordingly, the undersigned has consolidated these matters solely for the purpose of this decision.

At conferences held in each matter the Petitioners sought a secret ballot election to determine the majority representative in the petitioned-for unit. The incumbents and the employers do not consent to the holding of the election, arguing that the Petitions were not timely filed.

On April 30, 1981, the undersigned requested all parties to submit briefs, statements of position and documentary evidence in support of their respective positions. All parties, except Brookdale C.C., have proffered a submission for consideration by the undersigned.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. Bergen Community College and Brookdale Community College are public employers within the meaning of the New Jersey Employer-Employee Act (the "Act"), N.J.S.A. 34:13A-1 et seq. are

the employers of the employees in the respective petitioned-for units and are subject to the provisions of the Act.

3. Council #73, American Federation of State, County and Municipal Employees, AFL-CIO, Local #804, International Brotherhood of Teamsters, the Non-Academic Staff Association, NJEA and the Bergen Community College Supportive Staff Association, NJEA are employee representatives within the meaning of the Act and are subject to its provisions.

4. On March 9, 1981 Local 804 filed a Petition for Certification of Public Employee Representative with respect to a unit of all supportive staff employees of Bergen C.C. These employees are currently represented by the Bergen Association and are covered by a collective negotiations agreement which expires on June 30, 1981.

5. On April 1, 1981, AFSCME filed a Petition for Certification of Public Employee Representative with respect to a unit of all supportive staff employees of Brookdale C.C. These employees are currently represented by NASA and are covered by a collective negotiations agreement which expires on June 30, 1981.

6. There is no challenge to the appropriateness of the petitioned-for units which are coextensive with the existing units.

7. Bergen C.C., Bergen Association, and NASA contend that the Petitions in these matter were not timely filed under N.J.A.C. 19:11-2.8(c)(3), which provides that Petitions in school districts be filed in the September 1 - October 15 period immediately

preceding the expiration of an existing agreement. 1/ The Petitioners argue that the Petitions have been timely filed under N.J.A.C. 19:11-2.8(c)(2), which provides that Petitions in cases involving employees of a county, county agency, authority, commission or board shall be filed during the 90-120 day period immediately preceding the expiration of an existing agreement. 2/

8. Petitions for Certification of Public Employee Representative having been filed, and the parties not having agreed to a secret ballot election, a dispute exists and the matter is properly before the undersigned for determination.

N.J.A.C. 19:11-2.8(c) states:

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:

1/ It is unclear whether Brookdale C.C. asserts this position as its objection to the timeliness of the AFSCME Petition. Brookdale C.C. has asserted that a memorandum of agreement which it entered into with NASA on March 26, prior to the filing of AFSCME's petition, constitutes a contract which creates a "contract bar" to the petition. This assertion fails since the memorandum of agreement requires ratification by NASA and the college -- which ratification, if any, did not occur prior to AFSCME's filing -- In re Middlesex County, D.R. No. 81-1, 6 NJPER 355 (¶ 11179 1980) req. for rev. den. PERC No. 81-29, 6 NJPER 439 (¶ 11224 1980). Secondly, if in fact N.J.A.C. 19:11-2.8(c)(2) is applicable, such agreement would be a premature extension of the contract since it was executed during the window period created by this subsection.

2/ None of the parties have asserted that subsection (c)(1), relating to State employees, is applicable hereto.

1. In a case involving employees of the State of New Jersey, or any agency thereof, or any State authority, Commission or Board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;
2. In a case involving employees of a county or a municipality, or 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 or renewal date of such agreement;
3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

The courts have found that county community colleges are not agencies of a county, notwithstanding their initial creation by a county. In Atlantic Community College v. Civil Service Commission, 59 NJ 102 (1971), the Supreme Court found:

"...we are not persuaded that county colleges are agencies of county government. Rather, we believe that they are separate political subdivisions which serve a separate purpose and operate apart from the governing bodies of the counties in which they are situated."

See also, The Board of Trustees of Mercer County College v. Sypek, 160 N.J. Super 452 (App. Div. 1978), certif. den., 78 N.J. 327 (1978), in which community colleges were found not to be county "agencies" as intended under the County Optional Charter Act. In Atlantic Community College, supra., the court analogized the community colleges to a municipal housing authority citing, Monte v. Milat, 17 N.J. Super 260, 265 (Law Div. 1952):

The powers of the authority are derived, not from the municipality, but from the State, and the governing body as the municipality in deciding upon the desirability of creating an authority and in exercising the power of appointment and removal of its members is acting merely as a statutory agent.

On the basis of the above decisions, the undersigned concludes that county community colleges are not agencies of a county, and accordingly, N.J.A.C. 19:11-2.8(c)(2) is inapplicable.

Bergen C.C. and the Intervenors assert that subsection (c)(3), pertaining to school districts, governs the timeliness of petitions for county college employees. In support of this position, the Intervenors cite that "county colleges are, like local boards of education, are completely independent of the political subdivisions of the State (the counties) in which they are located, and, also, like such boards of education are themselves independent subdivisions". In addition, the Intervenors argue that the county colleges are a part of the legislature's "carefully formulated" system of public education and in fact the colleges are likewise governed by Title 18A. Bergen C.C. and the Intervenors all assert that the fiscal year operations of the colleges are another distinguishing factor which militates in favor of their treatment under subsection (c)(3), rather than under subsection (c)(2).

Concededly, county colleges are not public school districts as that term is defined in Title 18A. County colleges are public institutions of higher education. Nevertheless, after careful

consideration, the undersigned finds that, in order to effectuate the purposes of the Act and in order to provide an adequate period for the resolution of questions concerning representation while providing sufficient time for negotiations in the context of the employer's budget considerations, the timely period for filing representation petitions affecting employees of the county colleges is most appropriately established under subsection (c)(3).

From their inception, the Commission's timeliness rules were designed to accommodate the public employer's budget submission date. The purpose of the rules was to provide for the designation of a majority representative in sufficient time to permit the majority representative and the employer to negotiate prior to the employer's budget submission deadlines. In re Camden County Welfare Board, PERC No. 65 (1972).

Although the timeliness rules adopted effective May 10, 1973, described the timely periods for filing relative to contract expiration dates, as opposed to budget submission dates contained in the earlier rules (see former Commission rule 19:11-15), care was taken to fix the timely periods so that representation questions could be resolved and negotiations concluded within the framework of the budget submission dates of the various employees. Thus, petitions concerning state employees must be filed during the month of October, approximately four months prior to the State's budget submission, petitions concerning county and municipality employees must be filed in September, approximately four months prior to budget submission,

and petitions concerning school district employees must be filed between September 1 and October 15, approximately four months before the budget submission date. 3/

In the matter under review herein, a window period for filing which corresponds to subsection (c)(2) would compel filings after the college's budget submission date. On the other hand making subsection (c)(3) applicable permits the filing of petitions during the September 1 and October 15 period, leaving adequate time for the resolution of representation questions and subsequent negotiations prior to February budget submission.

However, the undersigned notes that in an earlier decision, In re Bergen Community College, D.R. No. 79-32, 5 NJPER 181 (¶ 10098 1979), a petition in Bergen Community College was dismissed as not timely filed pursuant to N.J.A.C. 19:11-2.8(c)(2). 4/ Petitioners had reason therefore to petition in reliance upon §(c)(2) and the Colleges and the Intervenors herein would necessarily conduct their affairs with reason to expect that a Petition might be filed during the period provided under §(c)(2).

3/ The Commission took notice that contracts with public employees invariably coincided with the budget year of the public employer. The impracticality of operating under the prior rules was the difficulty in ascertaining the exact date for budget submission. A more exact rule tying the dates to contract expiration provided a more simple means of ascertaining the correct period for employees and employee organizations.

4/ In this matter the issue of the applicability of §(c)(2) as opposed to §(c)(3) was not placed in dispute. To the extent the instant decision is to the contrary, the prior determination is hereby overruled.

It would be manifestly unfair to dismiss AFSCME's and Local 804's petitions which were filed under the then applicable procedure. See Trinity Lutheran Hospital, 218 NLRB No. 34, 89 LRRM 1238 (1975).

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned determines that valid questions concerning representation exist, that elections will reflect the free choice of employees in appropriate units, and that the policies of the Act will be effectuated by the direction of elections. In the matter of Brookdale C.C., the undersigned finds that the appropriate unit for collective negotiations is: Including: All permanent non-academic staff employed by Brookdale Community College but excluding supervisory personnel, exempt - administrative staff, officers of college, police force personnel, and confidential secretaries including secretaries to the following positions, president, executive assistant to the president, vice presidents, executive director for public affairs, director of personnel services, director for research, and director of campus services.

Those eligible to vote shall vote on whether they wish to be represented for the purposes of collective negotiations by Council #73, American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME), the Non-Academic Staff Association, NJEA (NASA) or no representative.

In the Bergen C.C. matter, the undersigned finds that the appropriate unit for collective negotiations is: Including: All full-time and regularly employed (twenty hours per

week minimum) part-time employees assigned to a salary range and whose functional duties and responsibilities are supportive in nature, but excluding all other employees including craft workers, professionals, police, confidential employees, managerial executives, and supervisors within the meaning of the Act. (this definition is coextensive with the existing unit.) Those eligible to vote shall vote on whether they wish to be represented for the purposes of collective negotiations by Local #804, International Brotherhood of Teamsters, Bergen Community College Supportive Staff Association, or no representative.

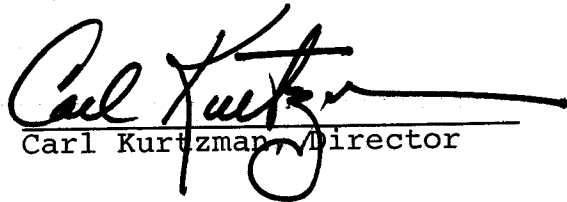
Accordingly, the undersigned directs that elections be conducted among the employees in the units described above. The elections shall be conducted no later than thirty (30) days from the date set forth below. Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of the election.

Pursuant to N.J.A.C. 19:11-9.6, the employers are directed to file with the undersigned and with the employee organizations, election eligibility lists in each unit consisting of an alphabetical

listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility lists must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility lists shall be simultaneously filed with the employee organizations with statements of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility lists except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the elections. The elections directed shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: June 29, 1981
Trenton, New Jersey