

D.R. NO. 95-7

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

In the Matter of

CAPE MAY COUNTY PARK COMMISSION,

Public Employer,

-and-

CAPE MAY COUNTY PARK COMMISSION
IN-HOUSE UNION, NON-AFFILIATED,

Docket No. RO-94-136

Petitioner,

-and-

UNITED INDEPENDENT UNION, NFIU,

Intervenor,

-and-

AFSCME, COUNCIL 71,

Intervenor.

SYNOPSIS

The Director dismisses a petition filed by the Cape May County Park Commission In-House Union, Non-Affiliated, seeking to sever a unit of all Park Commission employees. At the time the petition was filed, the subject employees were represented by the United Independent Union, NFIU in a broad-based, county-wide unit and were subject to a timely petition filed by AFSCME Council 71, seeking to represent the broad-based unit. That petition had resulted in an approved consent to a secret ballot election. The Director found that the In-House Union's petition was filed outside of the filing periods provided by N.J.A.C. 19:11-2.7 and 2.8. Accordingly, he dismissed the petition.

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Appearances:

For the Public Employer,
Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly, attorneys
(Lawrence Pepper, Jr., of counsel)

For the Petitioner,
Tracey Carr, Secretary

For the Intervenor - UIU, NFIU,
Fran Chiappardi, President

For the Intervenor - AFSCME Council 71,
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

DECISION

On May 11, 1994, the Cape May County Park Commission

In-House Union, Non-Affiliated, filed a Petition for Certification of Public Employee Representative seeking to sever all Cape May County Park Commission employees from a broad-based County-wide unit and represent them in a separate unit. N.J.S.A. 34:13A-1 et seq. Both AFSCME, Council 71 and the United Independent Union, NFIU (UIU), properly intervened. The County, AFSCME and UIU oppose the severance of Park Commission employees from the existing unit. The Park Commission does not assert itself in this matter as an independent entity and takes no position with respect to the petition.

Pursuant to N.J.A.C. 19:11-2.2, I make the following findings:

The County and UIU had a collective negotiations agreement effective from January 1, 1991 through June 30, 1994. The recognition clause of this agreement includes all blue and white collar County employees, including the following Park Commission titles: zookeepers, groundskeepers, senior groundskeeper, head zookeeper, secretaries, carpenters, mechanics and security employees. The petitioner seeks to create a separate unit consisting of only these Park Commission titles.

On March 29, 1994, AFSCME, Council 71 filed a petition seeking to represent the broad-based County-wide unit represented by the UIU. Notices of the petition were posted and the incumbent majority representative, UIU-NFIU, intervened. On April 27, 1994, a consent for secret ballot election was executed and approved. This severance petition was filed on May 11, 1994. On June 3, 1994, an

election was held in the broad-based County unit. AFSCME Council 71 received a majority of the valid votes cast and was certified on June 14, 1994.

This petition was filed between the time when the consent on the County-wide AFSCME petition was approved and the election was held. The Commission's policy is not to process proposed modifications to a unit while a representation dispute is pending in that unit. City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); Morris Cty. Park Comm., D.R. No. 80-17, 6 NJPER 37 (¶11019 1979). However, in order to preserve the parties' respective arguments concerning the appropriate unit placement for the Parks employees, the Commission election officer challenged the ballots of the Park Commission employees. N.J.A.C. 19:11-9.2. Their challenged ballots were not determinative of the outcome of the election in the County-wide unit.

The County, AFSCME and UIU oppose the petition on timeliness and unit appropriateness grounds.

N.J.A.C. 19:11-2.8 "Timeliness of petitions" states:

(c) 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 or a petition for decertification of public employee representative normally will not be considered timely filed unless:

2. In a case involving employees of a county or a municipality, 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;

N.J.A.C. 19:11-2.7 "Intervention" states:

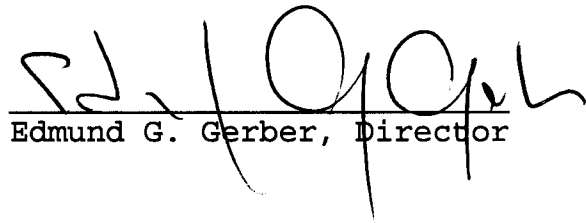
(b) An employee organization seeking to intervene for the purpose of claiming a unit of employees different from that sought by the petitioner shall submit a showing of interest from at least 30 percent of the employees in the unit it claims to be appropriate, or a current or recently expired agreement with the public employer covering such employees.

(c) A request by an employee organization to intervene in a pending representation proceeding may be made at any time prior to:

3. The parties' execution of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

I find that the In-House Union's petition for a separate unit of Park employees was untimely filed. The petition, whether viewed as an independent cross-petition or an intervention in AFSCME's broad-based unit petition, was filed outside the window period provided by N.J.A.C. 19:11-2.8(c)2; and after a consent agreement for a secret ballot election was executed and approved. N.J.A.C. 19:11-2.7(c)3. Accordingly, I dismiss the petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: October 25, 1994
Trenton, New Jersey