

D.R. NO. 90-30

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

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-90-128

FREEHOLD REGIONAL CUSTODIAL SUPERVISORS'  
ASSOCIATION/NJEA,

Employee Organization.

SYNOPSIS

In a petition brought by the Freehold Regional Custodial Supervisors Association ("Association"), the Director of Representation directs an election among building custodial supervisors. Although the Freehold Regional High School District Board of Education objected to the potential conflict of interest between the Association and other employee organizations in the district which are affiliated with the N.J.E.A., the Association executed a certification that it will be a separate, independent entity (a "Camden" certification) which the Commission has found sufficient to overcome in such an objection.

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Appearances:

For the Public Employer  
Kenney, Gross & McDonough, attorneys  
(Michael J. Gross, of counsel)

For the Employee Organization  
Marc Abramson, NJEA Field Representative

DECISION AND DIRECTION OF ELECTION

On February 22, 1990, the New Jersey Education Association ("NJEA") filed a petition seeking certification as the exclusive majority representative of a negotiations unit of all building custodial supervisors employed by Freehold Regional High School District Board of Education ("Board"). The petition was amended on March 5, 1990, to identify the petitioner as the Freehold Regional Custodial Supervisors' Association/NJEA ("Petitioner" or "Custodial Supervisors' Association"). The petition is supported by an adequate showing of interest. The Board will not consent to an election, contending that the petitioning organization is not a viable separate

organization from other NJEA affiliates which represent Board employees.

We conducted an administrative investigation in order to determine the relevant facts. See N.J.A.C. 19:11-2.2 and 2.6. The investigation reveals the following facts.

The parties agree on the composition of the negotiations unit -- all building custodial supervisors. There are approximately 10 employees in the petitioned-for unit. These employees work in five separate school buildings within the Freehold Regional High School District Board of Education. On December 4, 1986, the Commission certified the Freehold Regional Custodial and Maintenance Association/NJEA as the exclusive majority representative for a unit of 76 custodial employees employed by the Board. Both the Custodial Supervisors' Association and the majority representative of the non-supervisory custodial employees unit, the Freehold Regional Custodial and Maintenance Association, are affiliates of the New Jersey Education Association.

The Custodial Supervisors' Association submitted a certification which provides: (1) that it is a separate organization from any other organization which represents or may represent non-supervisory employees employed by the Freehold Regional Board of Education; (2) that it will negotiate and administer any collective negotiations agreements covering supervisory custodial employees independent of representatives of any non-supervisory unit of Board employees; and (3) that it has no non-supervisory members. The

Custodial Supervisors' Association further represented that it will maintain its own officers and have no connection to any organizations representing non-supervisory employees of the Board, except that the Custodial Supervisors' Association and other organizations representing Board employees may all be affiliated with the same State-wide organization, the NJEA. Finally, the Custodial Supervisors' Association indicated that, if necessary, it would not use the same attorneys or field representatives as those used by any non-supervisory NJEA locals which represent employees of the Board.

Based on its certification and other representations, the Petitioner contends that no conflicts of interest would be created by its representing supervisory custodial employees. If actual conflicts develop in the future, the Petitioner notes, citing City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Board may initiate appropriate unfair practice proceedings.

Citing Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981), the Board contends that the representation of these negotiations units by two affiliates of one state-wide labor organization would create an inherent conflict of interest. The Board contends that the Petitioner is an organization in name only. The Board argues Petitioner's certification does not eliminate the potential for conflicts of interest which may arise from those supervisors being represented in collective negotiations by an NJEA affiliate.

The Commission has addressed the issue of whether a union already representing a non-supervisory employee unit can also seek to represent a unit of supervisory employees of the same employer.

In Kearny, the Commission found that although superior officers, as supervisory employees, had a separate organization from non-supervisory police officers,<sup>1/</sup> the two organizations were not independent of each other. There was an actual conflict of interest in the failure to keep these two organizations separate. Such actual conflict of interest constituted an unfair practice.

Following Kearny, in City of Camden, the Commission set forth the standard required when an organization seeking to represent superior officers is affiliated with a second organization already representing rank and file police officers. First, the petitioning organization must certify that if selected as majority representative of superior officers it would be a separate organizational entity from the organization representing the unit of rank-and-file officers. It also must certify that as it then existed, the petitioning organization had no non-supervisory members and if selected, it would control the negotiations and administration of contracts concerning supervisory employees.

In Camden, the Commission further stated that, "[t]his certification creates a presumption that the Committee is qualified to represent the unit of superior officers." In a footnote, the

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<sup>1/</sup> See Town of Kearny and Kearny PBA Local 21, D.R. No. 78-30, 4 NJPER 54 (¶4025 1977).

Commission explained, "we particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs." 8 NJPER at 227, n. 2.

The Commission further went on to say that:

If the Committee is able to comply with the above requirements, then an election would appear to be in order. We do not believe that speculation about how a validly organized entity might actually conduct itself if elected should delay representation proceedings. In the event that speculation of possible improper domination during contract negotiations and administration by non-supervisors becomes fact, then a satisfactory and sufficient remedy is at hand. The City may file an unfair practice charge. It may then test the legality of a representative's actual conduct. See Kearny.  
Camden at 227.

Camden was upheld in Hudson Cty Freeholders Bd., D.R. No. 84-21, 10 NJPER 293 (¶15144 1984), lv. to app. den. App. Div. Dkt. No. AM-944-83T2 (6/7/84), lv. to app. and stay election den. S. Ct. Dkt. No. 22,796 (6/12/84). See also City of Vineland, D.R. No. 88-18, 14 NJPER 28 (¶19009 1987) and Tp. of Hanover, D.R. No. 89-1, 14 NJPER 523 (¶19222 1988).

The Freehold Regional Custodial Supervisors Association/NJEA has met the certification requirements established in Camden. The Board has presented no evidence to rebut the

presumption that the Petitioner is currently qualified to represent this unit of supervisory employees.<sup>2/</sup>

Accordingly, we direct that an election be conducted in the petitioned-for unit of all building custodial supervisors to determine whether they wish to be represented for the purpose of collective negotiations by the Freehold Regional Custodial Supervisors' Association/NJEA.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job

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<sup>2/</sup> The Board's concern over the impact of the Flamma decision is now moot. The New Jersey Supreme Court has reversed the Appellate Division decision. See Flamma v. Atlantic City Fire Dept., S. Ct. Dkt. No. A-46 (5/9/90), rev'g 231 N.J. Super. 316 (App. Div. 1989).

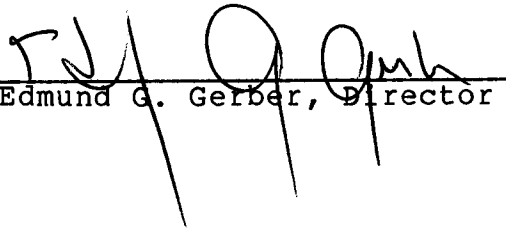
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titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: May 23, 1990  
Trenton, New Jersey