

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

In the Matter of

DELAWARE TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

LESTER HIGGINS,

DOCKET NO. RD-83-12

Petitioner,

-and-

DELAWARE TOWNSHIP TRANSPORTATION
ASSOCIATION, NJEA,

Intervenor.

SYNOPSIS

An election is directed among all full time bus drivers to ascertain whether they wish to continue to be represented by the Intervenor. The employees described in the decertification petition comprise the existing negotiations unit. One employee whose voting eligibility is disputed may vote subject to challenge.

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Appearances:

For the Public Employer
John N. Fox, Principal

For the Petitioner
Kenneth J. Hanko, attorney

For the Intervenor
Charles Love, UniServ Representative

DECISION AND DIRECTION OF ELECTION

On January 17, 1983, a Petition for Decertification of Public Employee Representative, supported by an adequate showing of interest was filed with the Public Employment Relations Commission ("Commission") by Lester Higgins ("Petitioner"), on behalf of employees seeking a secret ballot election to determine whether

full time bus drivers employed by the Delaware Township Board of Education ("Board") wish to continue to be represented by the Delaware Township Transportation Association/NJEA ("Association") for the purpose of collective negotiations or to have no representative.

In accordance with N.J.A.C. 19:11-2.2(a), an administrative investigation has been conducted into the matters and allegations involved in the Petition in order to determine the facts. Pursuant thereto, an informal conference was convened by a Commission staff agent on February 5, 1983, and representatives of each party attended. The Board, having previously submitted a list of all full time bus drivers to the Commission, was prepared to consent to an election. The Association, however, declined to consent to an election and raised certain questions regarding the Petition. First, the Association asserted that the Petition was unclear on its face because the word "full time" was not adequately defined. The Association argued that the Board employed substitute bus drivers and it was unclear on the Petition whether those employees should be included in the election. Second, the Association argued that Lester Higgins is a Head Bus Driver and as such is a supervisor within the meaning of the Act who is ineligible for membership in the existing unit of nonsupervisory employees.

As a result of the conference the Petitioner's attorney indicated that the intent of the Petition was to be in conformity with the existing unit structure and that it would be amended to reflect this intent. The amended Petition was filed by the attorney on February 7, 1983.

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

1. The disposition of this matter is properly based on 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. The Delaware Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees who are the subject of the Petition and is subject to the provisions of the Act.

3. The Delaware Township Transportation Association is an employee representative within the meaning of the Act, is subject to its provisions, and is the current certified representative of a unit of Board employees consisting of all permanent bus drivers, excluding substitute drivers and all other employees.

On December 24, 1980, in Docket No. RO-81-116, the Commission certified the Association as the majority representative of:

All full time bus drivers employed by the Delaware Township Board of Education excluding managerial executives, confidential employees, craft employees, supervisors within the meaning of the Act and all other employees.

Subsequently, the Board and Intervenor reached a collective agreement effective July 1981 through June 1982. The recognition clause of that agreement provides in pertinent part:

It is the intent and purpose of this Agreement to provide only for the terms and conditions of employment and amount of compensation for members of the Delaware Township Transportation Association as the representative of all permanent bus drivers in negotiating the terms of employment only. Permanent bus drivers shall not include substitutes and personnel on a per diem basis.

4. A Petition for Decertification of Public Employee Representative concerning "full time bus drivers" was filed with the Commission on January 17, 1983. By a letter received on February 7, 1983, the Petition was amended to identify full time employees as those drivers who are regularly employed. The amendment makes clear that this term excludes all part-time and/or substitute bus drivers, and all other employees not in the unit.

5. Since the Petition has been amended and since a new Notice to Public Employees has been posted clarifying both the inclusions and exclusions of the Petition consistent with the language in the Certification and the recognition clause of the collective agreement, there do not appear to be any substantial and material issues in dispute regarding the unit definition or the unit as defined in the Notice to Public Employees.

6. The Petitioner and the Board state that Lester Higgins, Head Bus Driver, is not a supervisor within the meaning

of the Act, as claimed by the Association, and that Higgins' job category has not changed since he voted in the initial certification election, without challenge. Commission records reveal that Higgins did vote without challenge in the initial election. ^{1/}

Under these circumstances and since Higgins is only one of eight unit employees, the undersigned is not persuaded that substantial and material disputed factual issues exist which would warrant a delay of an election at this time. Higgins' vote in the election may be challenged at the counting of ballots. In re Tp. of North Bunswick, D.R. No. 78-4, 3 NJPER 260 (1977).

On February 28, 1983, the parties were advised that on the basis of the investigation it appeared that a valid question concerning representation existed in the petitioned-for unit and that an election would reflect the free choice of the employees, thereby effectuating the policies of the Act. The parties were reminded of their obligation pursuant to N.J.A.C. 19:11-2.6(a), to present documentary and other evidence as well as statements of position with respect to the instant Petition and were afforded an additional opportunity to proffer any supplemental evidence or statements of position. The parties were further advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, a decision and direction of election would issue. The Commission has not received any further proffers from the parties.

^{1/} The name of Lester Higgins appears on the eligibility list, dated December 2, 1982, which was submitted to the Commission and a copy furnished to the Delaware Township Transportation, NJEA. In correspondence to the Commission dated November 20, 1980, the Board listed Lester Higgins as a Regular Driver and Head Bus Driver.

Accordingly, the undersigned finds the appropriate unit is "All full-time (regularly employed) bus drivers employed by Delaware Township Board of Education, but excluding all part-time and/or substitute bus drivers and all other employees, managerial executives, confidential employees, craft employees, professional employees and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that the election shall be conducted by mail ballot. The election shall be commenced no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. 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 Board is directed to file with the undersigned and with the Petitioner and the Association, an eligibility list 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 list must be received by the undersigned no later than ten (10) days prior to the date established for ballot issuance. A copy of

the eligibility list shall be simultaneously filed with the Petitioner and the Association with statements of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether they wish to be represented for purposes of collective negotiations by the Delaware Township Transportation Association/NJEA.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Joel G. Scharff
Acting Director

DATED: March 24, 1983
Trenton, New Jersey