

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

In the Matter of

TOWN OF KEARNY,

Public Employer,

-and-

Docket No. RO-77-159

KEARNY COUNCIL NO. 11, INC.,

Petitioner.

SYNOPSIS

The Director of Representation orders that a secret ballot election be conducted within 30 days to determine whether school crossing guards employed by the Public Employer desire to be represented for the purpose of collective negotiations by the Petitioner. The Employer has not consented to the conduct of the election but on the other hand has not affirmatively raised any objections to an election, or questioned the appropriateness of a negotiations unit composed of school crossing guards. No other employee organization has intervened in the proceedings.

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DECISION AND DIRECTION OF ELECTION

On March 28, 1977, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by Kearny Council No. 11, Inc. ("Council No. 11"), with respect to a proposed unit of all school crossing guards employed by the Town of Kearny (the "Town"). The undersigned has caused an administrative investigation of the Petition to be conducted in order to determine the facts. All parties have been advised of their obligations under N.J.A.C. 19:11-2.6 (formerly N.J.A.C. 19:11-1.12) <sup>1/</sup> and have been afforded an opportunity thereunder to present documentary and other evidence as well as statements of position, relating to the Petition. The Town has certified that the Commission's standard Notices to Employees has been posted.

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

<sup>1/</sup> On July 15, 1977 the Commission adopted certain changes in its administrative rules. The changes became effective August 2, 1977. N.J.A.C. 19:11-2.6 is the identical successor to N.J.A.C. 19:11-1.12 with the exception that it incorporates language designating the undersigned as the Commission's agent for the purposes of the rule.

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 a 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 Town of Kearny is a public employer within the meaning of the New Jersey ~~Employer-Employee~~ Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees described herein, and is subject to the Act's provisions.

3. Kearny Council No. 11, Inc. is an employee representative within the meaning of the Act and is subject to its provisions.

4. Petitioner has filed a timely petition before the Commission, supported by an adequate showing of interest, requesting a secret ballot election to be conducted to determine if the employees in question desire to be represented for the purposes of collective negotiations by the Petitioner. Thus, there exists a valid question concerning the representation of public employees before the Commission and the matter is appropriately before the undersigned for determination.

5. Council No. 11 has indicated a willingness to consent to an election in the proposed unit. The Town has not stated that it will consent to an election pursuant to N.J.A.C. 19:11-4.1.

6. Neither party disputes the appropriateness of the petitioned-for unit, and the undersigned finds the unit prima facie appropriate for the purposes of collective negotiations.

7. On April 6, 1977, in response to the undersigned's initial inquiries, the attorney for the Town advised "The Town does not object to recognizing the School Crossing Guards as a separate Bargaining Unit, and in fact has granted them de facto recognition at present." The attorney attached

certain documentary materials to his response, among which included a collective negotiations agreement between the Town and Kearny School Crossing Guards effective January 1, 1974 through December 31, 1975 and certain other post-contract communications between the Town and the School Crossing Guards. In a second letter dated June 24, 1977, addressed to the staff member assigned to this matter, the Town's attorney stated that the Mayor and Council had not taken a position with respect to this matter and that he had no authority to "agree to a settlement."

8. The Kearny School Crossing Guards have not sought to intervene in the instant petition.

9. On July 25, 1977, the undersigned notified the parties that, based on the investigation to date, it appeared that no substantial material issues had been placed in dispute and that a valid question concerning representation existed in an appropriate unit. The undersigned provided an additional opportunity to all parties to present documentary and other evidence as well as statements of position relating to the Petition. The undersigned stated that in the absence of any substantial and material disputed factual issues, he would thereafter issue a decision and direction of election herein. No further evidentiary proffer or statements have been provided by the Town. Council No. 11 has submitted a statement of position stating: "We agree that the election should take place and that it should be without prejudice to our contention that employees in this Unit should be part of a larger unit represented by Kearny Council."

Accordingly, there existing no material and factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Based on the above, the

undersigned finds that the appropriate unit for collective negotiations is all school crossing guards employed by the Town of Kearny, but excluding ~~managerial~~ executives, confidential employees, professionals, craftpersons, police and supervisors within the meaning of the Act.

The undersigned directs, pursuant to N.J.A.C. 19:11-2.6(b)(3), that an election be conducted among the employees described above. The election 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 that 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 quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

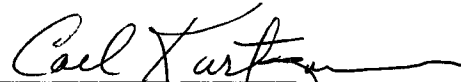
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the employee organization an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with Council No. 111 with statement 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.

Failure to comply with the foregoing shall be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-9.2(h). Additionally, the undersigned may, in the exercise of his reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance therewith may institute appropriate enforcement proceedings pursuant to R. 1:9-6.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by Kearny Council No. 11.

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

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



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Carl Kurtzman, Director  
of Representation

DATED: August 12, 1977  
Trenton, New Jersey