

D.R. NO. 2021-1

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2021-003

SPECIAL POLICE ORGANIZATION
OF NEW JERSEY,

Petitioner,

-and-

NEWARK UNION OF SCHOOL RESOURCE
OFFICERS, LOCAL 18,

Intervenor.

SYNOPSIS

The Director of Representation orders that a secret mail ballot election be conducted for a unit of police officers employed by the Newark Board of Education based on a timely representation petition filed by the Special Police Organization of New Jersey (SPONJ). The Director finds that the employees are currently represented for purposes of collective negotiations by Newark Union of School Resource Officers - Local 18 (Local 18), and that Local 18 has validly intervened in the representation proceeding.

Local 18 requested that the processing of the petition and any election be blocked pending resolution of its unfair practice charge, which alleged that the Board failed to provide a draft successor collective negotiations agreement to Local 18 for review despite previously expressing agreement on all issues. The charge also alleged that Board representatives stated an intent to get rid of Local 18 and collaborated with SPONJ. The Director found no competent evidence that showed that the Board's delays were intentional or that they proximately caused a loss of employee support for or blame against Local 18 in comparison to SPONJ, such that the potential for a free and fair election between the two organizations would be jeopardized. The Director also did not find sufficient non-hearsay or otherwise competent evidence that Board representatives stated an intent to get rid of Local 18 or collaborated with SPONJ. Accordingly, the Director declined to exercise discretion to block the election.

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Appearances:

For the Public Employer,
Riker Danzig Scherer Hyland & Perretti, LLP, attorneys
(Fiona E. Cousland, of counsel)

For the Petitioner,
Loccke Correia & Bukosky, attorneys
(Corey M. Sargeant, of counsel)

For the Intervenor,
Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On July 21, July 22, and July 30, 2020, the Special Police Organization of New Jersey (SPONJ) filed a representation petition, first amended petition, and second amended petition, seeking to represent first, second, and third class special

police officers employed by the Newark Board of Education (Board).^{1/} The petition was accompanied by an adequate showing of interest. The petition is timely filed. N.J.A.C. 19:11-2.8.

On July 24, 2020, based on uncertainty from SPONJ regarding the representational status of petitioned-for employee and on a prior Certification of Representative in our records, we sent a letter to Newark Union of School Resource Officers - Local 18 (Local 18) inquiring whether it intended to intervene in the processing of the petition. On July 27, 2020, Local 18 submitted a written request to intervene on the basis that it was the incumbent representative, as evidenced by a Certification of Representative issued to it by the Commission in 2015 (Dkt. No. RO-2015-045) for school safety officers of the Newark State-Operated School District and recent email correspondence between Local 18 and the Board indicating that the Board currently recognizes Local 18 as the exclusive negotiations representative of the petitioned-for employees. N.J.A.C. 19:11-2.7.

^{1/} SPONJ originally sought certification by card check, indicating to Commission staff its belief that the sought employees were not currently represented or had been abandoned by Local 18 and that it was the only interested organization. The petition was first amended to conform the petitioner name on the form to the name on the submitted authorization cards. N.J.A.C. 19:11-1.1(a)(10)(ii). After Local 18 asserted that it was the current representative and also interested in representing the employees, SPONJ amended its petition again to seek certification by election. Both amended petitions were received after 5:00 p.m. on July 21 and July 29, respectively, and so were considered filed the next day. See N.J.A.C. 19:10-2.1(d).

Accordingly, Local 18's intervention was tentatively granted on July 27, 2020.

On July 28, 2020, Local 18 filed an unfair practice charge (Dkt. No. CO-2021-018) against the Board, alleging that on August 21, 2019, the Board's chief negotiator, Raymond Cassetta, expressed agreement with Local 18 on all issues and stated he would prepare a fully-integrated written successor agreement for Local 18 to review, but that he failed to do so despite numerous inquiries from Local 18 by telephone and email, and that, as a result, the Board was not negotiating in good faith. Local 18 also alleged that the Board's Director of Security openly stated he would get rid of Local 18 and encouraged and collaborated with SPONJ's officers.

On July 29, 2020, Local 18 submitted a written request, with copies to the Board and SPONJ, to have the processing of the petition and any election blocked, pending resolution of the unfair practice charge. On July 30, 2020, SPONJ raised its own objections to Local 18's intervention and participation in the case, namely, that Local 18's intervention was improper as the petitioned-for employees were excluded by Local 18, its prior certification description and/or the Act's general prohibition against police being included the same employee organization as

one that admits non-police;^{2/} or that the petitioned-for employees had been abandoned by Local 18.

The assigned Commission staff agent set deadlines for initial briefs and response briefs for August 6 and 14, 2020, respectively, and advised that the briefs must be supported by citations to legal authority and certifications from persons with personal knowledge of the relevant facts. The staff agent also advised of the standard for blocking requests articulated in Atlantic Cty. M.U.A., D.R. No. 2020-1, 46 NJPER 44 (¶11 2019) and requested that the parties address the distinction, if any, between school safety/resource officers and first, second, and third class special police officers.

On July 30, 2020, Local 18 filed and served its brief in support of its blocking request, accompanied by a certification of Local 18 President Darryl Johnson, a copy of an email from Johnson to Superintendent Leon regarding delays in receiving a draft agreement, and what is purported by Local 18 to be the text of a cell phone text message from unit member Akhil Scott sent to the entire unit describing a conversation between he and the Board's Director of Security, Levi Holmes. The assigned staff agent reminded the parties that the accuracy of exhibits and of the alleged facts contained therein should be presented by certification from persons with personal knowledge, not through

^{2/} See N.J.S.A. 34:13A-5.3.

hearsay, and that the failure to present competent evidence on contested issues could result in adverse determinations.

On July 31, 2020, the Board submitted a certification providing that it had posted the requisite Notice to Public Employees on July 30 and had emailed it to the petitioned-for unit employees. N.J.A.C. 19:11-2.4. On August 6, 2020, the Board provided a listing of the petitioned-for employees, thus confirming the adequacy of SPONJ's showing of interest and that the employees claimed to be represented by Local 18 were the same employees that SPONJ sought to represent. The Board also filed and served its brief, in which it took no position on the petition, on whether the petitioned-for employees were police, or whether the petitioned-for employees were school safety officers or class one, class two, or class three special police officers. However, the Board did provide legal citations to statutes referencing the types of officers.

Also on August 6, 2020, SPONJ filed its brief, which it authorized to be forwarded to the parties as its complete submission. The brief was not accompanied by any certification. On August 7, 2020, SPONJ and Local 18 confirmed that they both took the position that the petitioned-for employees were police. The parties also confirmed that they were not disputing that Local 18 does not represent any employee whose name didn't appear on the list filed by the Board. SPONJ and Local 18 also

indicated that they would forego response briefs. However, on August 10, 2020, the Board indicated its intent to file a response brief.

The Board filed and served its response brief on August 12, 2020, reiterating that it took no position on the petition or on whether the petitioned-for employees were police, but asserting certain facts that it believed could be relevant to a determination.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon our administrative investigation. No substantial or disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.

* * * * *

Intervention

An employee organization may intervene in a proceeding initiated by a petition for certification by submitting a written request to the Director of Representation and evidence that it is the currently certified or recognized exclusive representative of any of the employees sought by the petition. See N.J.A.C. 19:11-2.7(a), (b) (1). Recognition as the exclusive representative need not be formal and may be inferred from conduct and circumstances, such as the employer engaging in collective negotiations with proposals and counter-proposals with an intent to reach a

mutually acceptable agreement with an organization regularly speaking on behalf of a reasonably well-defined group of employees. See Collingswood Bd. of Ed., P.E.R.C. No. 86-50, 11 NJPER 694 (¶16240 1985).

We received Local 18's written request to intervene on the basis of its Certification of Representative issued by the Commission in 2015 (Dkt. No. RO-2015-045) for school safety officers of the Newark State-Operated School District and recent email correspondence between Local 18 and the Board indicating that the Board currently recognizes Local 18 as the exclusive negotiations representative of the petitioned-for employees. The certification's unit description provides:

Included: All regularly employed school safety officers employed by the Newark State Operated School District.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; professional employees, police, craft employees, and all other employees employed by the Newark State Operated School District.

The exclusion of "police" might have been our oversight because "school safety officers" were included and no party in the current case argues that the relevant employees are not police, suggesting that they have always been perceived as police. Regardless of the description, and subsequent to the certification, the employer of the unit employees reverted to the

City of Newark Board of Education, which, through its conduct, has recognized Local 18 as the exclusive representative of the employees now petitioned-for by SPONJ. For purposes of granting intervention, I accept the emails submitted by Local 18 with its request as evidence of the Board's de facto recognition.^{3/} These emails were also attached to Local 18's unfair practice charge and served on the parties, and they were referenced in Local 18's subsequent submissions in this case. These emails, from 2019 and 2020, show communications between Raymond Cassetta, the Board's chief negotiator, and Sanford Oxfeld, counsel for Local 18, scheduling negotiations sessions and discussing an already-negotiated (but not yet ratified) collective agreement.

These emails also show that Local 18 has not "abandoned" the employees. SPONJ provides no legal citations for its abandonment argument, which appears to alternate between an argument that there have not been negotiations at all and an argument that the

^{3/} Evidence of incumbent status also constitutes a "showing of interest." See N.J.A.C. 19:10-1.1 (definition of showing interest includes an existing or recently expired agreement and "other evidence" approved by the Director). I approve the emails submitted by Local 18 as evidence of incumbency and, thus, a sufficient showing of continued interest. A showing of interest is merely an administrative device designed for the convenience of the Commission to determine for itself, as a ministerial act not subject to collateral attack, that its processes are not being abused and that an election between the approved employee organization parties in the case would best ascertain the desires of the employees. See Atlantic City M.U.A., D.R. No. 2020-1, 46 NJPER 44 (¶11 2019); N.J.A.C. 19:11-2.1.

petitioned-for employees are not "properly represented" by Local 18 because they are not kept notified of the negotiations process and seek a contract that benefits the whole group, not specific individuals. SPONJ provides no evidence of its assertions. The emails show that negotiations have occurred and that Local 18 has reached out to the Board multiple times to provide the finalized draft contract for signing. That some employees may have been unaware of the status of negotiations or worried that any negotiated terms would benefit only specific individuals does not form a legal basis to block Local 18's participation in this case.^{4/5/}

4/ SPONJ's position statement seems to assume that Local 18's intervention in this case would automatically block an election altogether. Intervention alone does not block an election. In most cases, it merely results in additional ballot options for voters in the election. Local 18 does raise an argument for blocking the election, although it is not based on its intervenor status. Its specific arguments for blocking the election are addressed further below.

5/ When examining the entire negotiations relationship, a showing of irresponsible representation toward an identifiable group with its own community of interest beyond isolated breaches of the duty of fair representation may avoid dismissal of a petition seeking to sever that group from a broader negotiations unit. See Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986). Such a showing has not been made here, although, regardless, this is not a severance petition as the current petition seeks the same group of employees that have been previously represented by Local 18. It should be further noted that the duty of fair representation does not create an individual statutory right to be apprised of negotiations strategy, schedule, or status updates where the majority representative otherwise provides diligent and fair

(continued...)

The unit recognized by the Board as represented by Local 18 and for which that organization has negotiated the terms and conditions of its members supersedes the unit description set forth in the prior certification to the extent that it might have described a different unit. As noted above, the word "police" in the "excluded" description might have been unintended.

Regardless, an employer and the majority representative may agree, as evidenced by their conduct, to negotiate pursuant to a different unit structure and are not bound by prior certification language, which only describes a unit from the time it is issued until altered by agreement or Commission action.

SPONJ and Local 18 both take the position that the petitioned-for employees are police and have not disputed that the list provided by the Board represents the petitioned-for employees. The parties also confirmed that they were not disputing that Local 18 does not represent anyone not included on the list submitted by the Board. The Board does not take a position on whether the petitioned-for employees are police, and thus, no party has raised an argument that any of the petitioned-for employees or any of the employees represented by Local 18 are

5/ (...continued)
representation and has not acted arbitrarily or in bad faith, or where no harm has occurred. See C.W.A. Local 1044, D.U.P. No. 96-12, 22 NJPER 48 (¶27024 1995); Old Bridge Ed. Assn. (Kosten), P.E.R.C. No. 91-7, 16 NJPER 438 (¶21188 1990).

not police. Accordingly, the general prohibition against police joining an organization that admits non-police employees in N.J.S.A. 34:13A-5.3 is not implicated in this case. As no party raises an argument that any of the petitioned-for employees are not police, any certification of representative that may be issued in this matter will explicitly include police and exclude non-police employees. It is therefore not necessary to determine whether these particular employees are school safety/resource officers or first, second, or third class special police officers.^{6/}

As I find that Local 18 is a valid party in this case and eligible to participate in an election for the petitioned-for employees, I now turn to the question of whether an election should be blocked until resolution of Local 18's unfair practice charge.

Blocking Issue

The filing of an unfair practice charge or issuance of an unfair practice complaint will not automatically block the

^{6/} The statutes cited by the Board for these classifications, N.J.S.A. 40A:14-146.8 et seq. and N.J.S.A. 18A:17-42 et seq., appear to make any employees appointed to perform the role of such classifications police within the meaning of the Act who would be in a conflicting position if they were included in the same employee organization as non-police employees. Contrast Commc'ns Workers of Am., Local 1034 v. N.J. State Policemen's Benev. Ass'n, Local 203, 412 N.J. Super. 286 (App. Div. 2010) on remand D.R. No. 2011-1, 36 NJPER 287 (¶106 2010).

processing of a representation petition. A blocking charge procedure is not required by the Act nor by the Commission's rules. The decision whether an unfair practice charge will block the processing of a representation petition lies within the Commission's discretion. State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981).

The legal standard for determining whether an unfair practice charge should block the processing of a representation petition was set forth in State of New Jersey, and reaffirmed in Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 89-69, 15 NJPER 68 (¶20025 1988). The charging party must first request that the charge block the representation election. It must also submit documents showing that the conduct underlying the unfair practice prevents a free and fair election. The Director of Representation will exercise discretion to block if under all of the circumstances, the employees could not exercise their free choice in an election. See Atlantic City Convention & Visitors Authority, D.R. No. 2002-9, 28 NJPER 170 (¶33061 2002); Village of Ridgewood, D.R. No. 81-17, 6 NJPER 605 (¶11300 1980).

In State of New Jersey, the Commission adopted the following substantive factors in evaluating whether a fair election can be conducted during the pendency of an unfair practice charge:

The character and the scope of the charge(s)
and its tendency to impair the employee's
free choice; the size of the working force
and the number of employees involved in the

events upon which the charge is based; the entitlement and interests of the employees in an expeditious expression of their preference for representation; the relationship of the charging parties to labor organizations involved in the representation case; a showing of interest, if any, presented in the [representation] case by the charging party; and the timing of the charge. [NLRB Case Handling Manual, Section 11730.5]

[7 NJPER at 109]

In applying these factors to a blocking request, we carefully evaluate the submitted certifications and documents to determine whether the evidence is competent (and in particular, based on an affiant's personal knowledge). River Vale Bd. of Ed., D.R. No. 2014-3, 40 NJPER 133 (¶50 2013); County of Monmouth, D.R. No. 92-11, 18 NJPER 79 (¶23034 1992); Leap Academy Charter School, D.R. No. 2006-17, 32 NJPER 142 (¶65 2006); Atlantic City Convention and Visitors Auth.

For purposes of deciding the blocking effect of the charge, we assume the veracity of the statements within the certifications submitted by both parties. Ridgefield Bd. of Ed., D.R. No. 2012-6, 38 NJPER 246 (¶82 2012). However, we will not block an election where no facts are certified by a person with personal knowledge that demonstrate a nexus between the alleged unfair practice and the conduct of a free and fair election. Academy Urban Leadership Charter H.S., D.R. No. 2018-13, 44 NJPER 208 (¶60 2017) ("[C]onclusory statements, which are not based upon . . . personal knowledge cannot provide that nexus.");

Somerset Cty., D.R. No. 2016-1, 42 NJPER 87 (¶23 2015) (holding that speculation is not sufficient to support a blocking request and that the union's allegation of the employer's deliberate delay of negotiations was not supported by certifications or other documentary evidence); cf. Berlin Tp., D.R. No. 2011-3, 36 NJPER 379 (¶148 2010) (refusing to consider evidence from individuals who lacked personal knowledge of events).

The Commission does not block the processing of a representation petition based upon claims of bad faith negotiations without a showing of a nexus between the alleged violation and the potential for a free and fair representation election. Berlin Boro., D.R. No. 93-9, 19 NJPER 74 (¶24033 1992); Somerset Cty. (finding that no facts were submitted showing how voters' freedom to choose a representative would be influenced by the purported bad faith negotiations); Atlantic Cty. M.U.A., D.R. No. 2020-1, 46 NJPER 44 (¶11 2019) (finding that no documents or certifications from persons with personal knowledge were provided that demonstrated that the alleged failure to negotiate proximately caused a loss of employee support for the charging party and jeopardized a free and fair election); compare Great S. Trucking Co. v. NLRB, 139 F.2d 984, 986-87 (4th Cir. 1944); NLRB v. P. Lorillard Co., 314 U.S. 512, 512-13, 62 S. Ct. 397, 397-98, 86 L.Ed. 380, 382-83 (1942), directing enforcement of In re P. Lorillard Co., 16 NLRB 684, 5 LRRM 259, 16 NLRB No. 69 (1939);

NLRB v. George P. Pilling & Son Co., 119 F.2d 32, 39 (3d Cir. 1941).^{7/}

Local 18's unfair practice charge alleges that on August 21, 2019, the Board's chief negotiator, Raymond Cassetta, expressed agreement with Local 18 on all issues and stated he would prepare a fully-integrated written successor agreement for Local 18 to review; that Cassetta verbally reaffirmed on a number of occasions that there were no issues and that he would send a draft for review; that numerous phone calls and emails were sent to Cassetta inquiring about the draft; and that no draft has been delivered. Local 18 alleges this constitutes the Board not negotiating in good faith. The charge also alleges that the Board's Director of Security openly stated he would get rid of Local 18 and encouraged and collaborated with SPONJ's officers.

Attached to the charge were emails, mostly from counsel for Local 18, Sanford Oxfeld, requesting updates from Cassetta. The only emails from Cassetta that Local 18 attached to its charge

^{7/} As explained in footnote 20 of State of New Jersey, even the National Labor Relations Board, which investigates and prosecutes charges itself and has a higher standard of proof (than the Commission) for complaint issuance, exercises discretion as to whether to block. Although the Commission analyzes most of the same blocking factors, and assumes the truth of allegations in a charge in determining whether to issue a complaint (that the charging party itself prosecutes), it applies "even more discretion" in determining whether to block to avoid abuse of the "blocking policy" by a party desirous of holding up an election by filing "a frivolous but serious-sounding charge."

were one from August 14, 2019, in which Cassetta selected a date from a list provided by Oxfeld (presumably of possible negotiation session dates) and set the location, and another email from September 27, 2019, in which Cassetta mentions that the agreement has been ready but asks Oxfeld to call him because an issue was raised about the employment status of the officers.

Local 18's brief in the representation case alleges that the Board "intentionally stalled negotiations" and "openly made anti-Local 18 statements." However, the only proffer of evidence accompanying Local 18's submission was a certification from Local 18 President Darryl Johnson, a copy of an email from Johnson to Superintendent Leon, and what is purported by Local 18 to be the text of a cell phone text message from unit member Akhil Scott sent to the entire unit allegedly describing a conversation between Scott and the Board's Director of Security, Levi Holmes.

Johnson's certification references the attached email from Johnson to Leon, and presumably certifies to its authenticity. The email, dated June 5, 2020, reiterates that a tentative agreement was reached in 2019 and that Local 18 was still waiting for a draft to be presented. Johnson also wrote in the email that Leon sat down with the officers and said he would help with their contract. Johnson certifies that he never received a reply.

Johnson's certification mentions that a number of emails and verbal communications between Oxfeld and Cassetta occurred, but Johnson does not demonstrate a foundation showing that he would have first-hand personal knowledge of these communications, their content, or whether follow-up communications occurred.

No competent factual assertions in the certification based on personal knowledge, as opposed to conclusory or speculative assertions based on belief, show that the Board's delays were intentional for bad faith reasons, as alleged in Local 18's brief. Compare Somerset Cty. Even assuming that the delays and asserted lack of responses in their totality amounted to a breach of the obligation to negotiate in good faith, I find no competent facts showing, (nor are any alleged), that this failure proximately caused a loss of employee support for or blame against the charging party in comparison to SPONJ, such that the potential for a free and fair election between the two organizations would be jeopardized.

Likewise, no competent evidence has been provided regarding the allegation that the Board's Director of Security, Levi Holmes, stated that he wanted to "get rid of" Local 18, that he solicited SPONJ for this end, or (as alleged only in the charge and not in the brief) that he collaborated with officers of SPONJ. Johnson certifies that unit member Scott informed the unit (presumably including Johnson) about statements made by

Holmes to Scott. Johnson does not have first-hand knowledge of these alleged statements of Holmes, and Local 18 does not provide an independent certification from Scott. At most, Johnson's certification shows that Scott told the unit certain things. To the extent Local 18 asserts that what Scott told them was true (regarding the statements of Holmes), Scott's uncertified statements are hearsay, and insufficient to meet the documentary evidence requirement for blocking an election.

Moreover, while Local 18 avers that Scott informed the unit by text message, the exhibit presented by Local 18 appears to be a typed transcript of the text message, rather than, for example, a screenshot or data directly extracted from a text retrieval program. No date or time is provided for the message. Assuming that Johnson has certified to the accuracy and authenticity of the text of the message, I find that the statements remain hearsay if offered for their truth.

Accordingly, it is not necessary to set forth the entire transcript of the text, but I note that it appears that Scott was merely summarizing the alleged conversation, and there are no purported direct quotes from Holmes, not even the previously-alleged "get rid of" statement. Scott himself appears to state his understanding of Holmes's (allegedly stated) frustration with officers' tardiness and reliability and questions how Holmes can

be expected to keep his word to fight for them when the officers have not provided what they promised him: good service.

Although Scott's statements appear to allege that Holmes told him that the union gave Holmes headaches and that Holmes, having thought he had a productive meeting with Johnson, became disappointed when Labor Relations called him to repeat the same issues, nothing in Scott's text message alleges that Holmes threatened to replace Local 18. Scott indicates that Holmes told him he has to make a decision regarding a memorandum of understanding (MOU) with the police department that could result in the officers' employment "being decided by outside employment" and that Holmes would be done with the "headaches."

While Local 18 alleges that the purported exchange constitutes a threat, it may have referred to the employment status question mentioned by Cassetta to Oxfeld, and may also be related to the question of whether these officers are safety/resource officers or first, second, or third class special police officers, discussed by the parties in the present case, and whether they should be employees of the police department or the Board.^{8/} If the officers became employees of the police department, Holmes might have no longer been as involved, but Local 18 might have still been able to represent them at the

^{8/} In its response brief, the Board confirms that the employees at issue in this matter are employees of the Board.

police department. If officers were no longer employed by the Board, SPONJ would not be able to petition to be the majority representative that would negotiate with the Board, thereby undermining Local 18's speculation that the Board wanted to replace Local 18 with SPONJ. There is also little to suggest that Holmes's alleged statements were meant to explain that he would sign the MOU in order to be done with the headaches of dealing with a union, as opposed to him simply stating a perceived side benefit (less management responsibility) to a decision that would be based on other reasons. In the absence of certifications from Scott, this ambiguity is another reason why these hearsay statements are insufficient evidence to support blocking the election.

There is also no evidence presented, hearsay or otherwise, that the Board or Holmes solicited or coordinated with SPONJ. Johnson certifies his "belief" that SPONJ was solicited by Holmes, but he does not certify his personal knowledge of any facts that would ground that belief. This is insufficient to block an election. Somerset Cty. Cf. Union Cty. College, 47 NJPER 70 (App. Div. ¶19 2020) at footnote 2.

In determining whether to block the election, (while noting that the negotiations referenced in the charge were for the whole unit), I find that no competent evidence has been presented to show that any conduct of the Board had the tendency to impair the

employees' free choice that would override the interests of the employees in an expeditious expression of their preference for representation.

Accordingly, I issue the following:

ORDER

A secret mail ballot election is directed among the employees in the following unit:

Included: All regularly employed police officers employed by the Newark Board of Education, including school safety/resource officers and first, second, and third class special police officers.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, and casual employees; and all other employees employed by the Newark Board of Education.

The parties will have an opportunity to agree upon the designations on the ballot, the eligibility period for participation in the election, and the dates for the election, including when the ballots will be mailed by the Commission, when they must be returned to our post office box, and when the count will take place. In the absence of the parties' agreement, I shall determine those arrangements. The eligibility list from the public employer must be received no later than 10 days before the date the ballots will be mailed by the Commission. N.J.A.C.

19:11-4.1,-5.1.-10.1. Eligible voters are those meeting the requirements of N.J.A.C. 19:11-10.3(c).

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

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: December 23, 2020
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by January 8, 2021.