

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

In the Matter of

EVESHAM TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

MRS. ELIZABETH CAIN,

DOCKET NO. RD-79-3

Petitioner,

-and-

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 550,

Employee Representative.

SYNOPSIS

The Director of Representation, ruling upon a challenge to voting eligibility, determines that the challenged voter is a van driver and, accordingly, is eligible to vote along with other school bus drivers in a decertification election. The Director, additionally, determines that the fact that the individual also performs additional duties for the Board of Education other than van driving, does not compel a determination that she is not included in the bus driver's unit.

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Appearances:

For the Public Employer
Moss, Powell & Powers
(Edgar E. Moss, II, of Counsel)

For the Petitioner
Mrs. Elizabeth Cain

For the Employee Representative
Max Wolf, Coordinator

DECISION

Pursuant to the filing of a Petition for Decertification of Public Employee Representative, and an Agreement for Consent Election, a secret ballot election was conducted on January 6, 1979 to determine the representational desires of

bus drivers employed by the Evesham Township Board of Education (the "Board") and represented by the Service Employees International Union, AFL-CIO, Local 550 ("Local 550"). The Tally of Ballots cast in the election reveals that of approximately 27 eligible voters, 12 valid ballots were cast for continued representation by Local 550, 12 valid ballots were cast against the participating employee representative and 1 ballot was challenged by the Commission Election Agent because the voter's name did not appear on the eligibility list. The challenged ballot, cast by Mrs. Patricia Hacker, is determinative of the results of the election. Accordingly, the voting eligibility of the individual casting the challenged ballot is appropriately before the undersigned for determination.

In accordance with N.J.A.C. 19:11-9.2(k), the undersigned has caused an administrative investigation to be conducted into this matter. Based upon the investigation, the undersigned finds and determines as follows:

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 an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(c) and N.J.A.C. 19:11-9.2(k), 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 Evesham 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. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Service Employees International Union, AFL-CIO, Local 550 is an employee representative within the meaning of the Act, and is subject to its provisions.

4. In a letter dated February 1, 1979, Local 550 maintains that the challenged ballot should not be counted for the following reasons: (1) Mrs. Hacker's name was not on the eligibility list; (2) Mrs. Hacker is classified as a "Driver/Aide"; (3) Mrs. Hacker "spends her primary time as an educational aide, and a comparison of the time she puts in as a driver is less and distinctive in contrast to the regularly employed bargaining unit members." 1/

5. In correspondence to the Commission, dated February 26, 1979, the Board states that Mrs. Hacker was appointed as a school bus driver in September 1978 for the 1978-1979 school year, at the third step of the school bus drivers' salary guide. Her

1/ If Local 550's position is sustained, and the ballot is not counted, Local 550 will not have received a majority of the valid ballots cast in the election. The Commission would thereafter issue a certification of results of the election certifying that a majority of employees have not designated Local 550 as a majority representative for the purpose of collective negotiations. See Best Motor Lines, 82 NLRB 269, 23 LRRM 1477 (1949). Accordingly, since Local 550 would no longer represent a majority of the employees in the collective negotiations unit in which it is currently recognized or certified, it would lose its status as the majority representative.

salary was subsequently adjusted from the third to the second step of the guide by the Board at its November 1978 meeting. The Board has submitted documentation in the form of a copy of the minutes of that portion of the October 10, 1978 Board meeting at which a motion to employ Mrs. Hacker as a van driver at a salary of \$3,920 was voted upon and passed. ^{2/} Additionally, the Board has submitted a copy of a letter memorandum from Joyce O'Neal, a Board representative, to Mrs. Hacker, dated October 23, 1978, which sets forth Mrs. Hacker's salary for driving a van during the 1978-1979 school year. Copies of these materials have been provided to Local 550.

On March 29, 1979, the Board provided the Commission with additional information. The Board explained that the omission of Mrs. Hacker's name from the eligibility list was an administrative oversight due to the fact that Mrs. Hacker's payroll card is maintained with the payroll for the Title VIB program. The Board further stated that Mrs. Hacker received two contracts for the 1978-1979 school year -- one to serve as a classroom aide and another to serve as a van driver. Additionally, the Board maintained that Mrs. Hacker spends approximately 3 3/4 to 4 hours per day performing her van driver duties. The Board asserted that most bus drivers complete their runs in less time

^{2/} The minutes also indicate that a motion to employ Joan Nilsen as a bus driver at the same salary level as Mrs. Hacker was passed at the Board meeting. Ms. Nilsen voted at the election and her eligibility was not challenged.


than their four hour driving assignment, and that given this comparison, Mrs. Hacker is eligible for inclusion in the bus drivers' unit and that her ballot should therefore be counted.

6. On May 3, 1979, the undersigned advised the parties that the evidence elicited in the investigation did not place in dispute a substantial and material factual issue and that based upon the facts, the undersigned was inclined to find that Mrs. Hacker was eligible to vote in the decertification election conducted on January 16. The undersigned stated that it appeared from the investigation that Mrs. Hacker is employed as a van driver for comparable amounts of time as other bus drivers and that she is paid as a van driver in accordance with the Board's salary schedule contained in the collective negotiations agreement between the Board and Local 550. Accordingly, Mrs. Hacker's employment would satisfy the requirements for inclusion in the bus drivers' unit represented by Local 550, and her other employment activities would not compel her exclusion from representation therein.

The parties were afforded an additional opportunity to proffer any supplementary evidence or statements of position which would place in dispute a substantial and material factual issue. The undersigned advised that in the absence of such documentation and based upon the administrative investigation, he would thereafter direct that the challenged ballot be opened and counted and that a revised Tally of Ballots be issued.

The Commission has not received any additional documentation or statements from the parties. Accordingly, the undersigned, for the reasons stated above, determines that Mrs. Hacker was eligible to vote in the election conducted by the Commission and that her ballot be counted. The undersigned directs that, within fifteen (15) days from the date set forth below, the previously designated election agent shall open and count the challenged ballot herein. The election agent shall provide a revised Tally of Ballots to the parties. Thereafter, consistent with the revised Tally, the undersigned shall provide the parties with either a Certification of Representative or a Certification of Results of the election in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 7, 1979
Trenton, New Jersey