

D.R. NO. 83-9

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

In the Matter of

CITY OF RAHWAY,

Public Employer,

-and-

DOCKET NO. RO-82-146

RAHWAY SCHOOL TRAFFIC
GUARDS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among school crossing guards to provide them the opportunity to designate or reject Petitioner as a collective negotiations representative. The Director finds that the crossing guards are regular, part-time employees and may comprise an appropriate collective negotiations unit.

D.R. NO. 83-9

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

In the Matter of

CITY OF RAHWAY,

Public Employer,

-and-

DOCKET NO. RO-82-146

RAHWAY SCHOOL TRAFFIC
GUARDS ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Joseph Hartnett, Administrator

For the Petitioner
Paul V. Novello, Representative

DECISION AND DIRECTION OF ELECTION

On March 18, 1982, a Petition for Certification of Public Employee Representative was submitted to the Public Employment Relations Commission ("Commission") by the Rahway School Crossing Guards Association ("Association"), seeking to represent school crossing guards employed by the City of Rahway ("City"). On May 20, 1982, the Petition was perfected, and thus considered validly filed, by the submission of a showing of interest among employees which conformed to the requirements of N.J.A.C. 19:10-1.1. By a second amendment to the Petition dated July 15, the Petitioner clarified the description of the unit it seeks to represent as "all regular traffic crossing guards employed by the

City of Rahway." This amendment also changed the name of the petitioning organization to read "Rahway School Traffic Guards Association." The petitioned-for employees are not presently represented for the purpose of collective negotiations.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition to determine the facts.

Initially, the City did not respond to the Commission's investigation and did not attend the scheduled investigatory conference. On July 29, 1982, the undersigned advised the parties that based upon the evidentiary material obtained to that date, it appeared that the requested unit was appropriate and that an election among employees should be conducted. However, a further opportunity was provided to the parties to submit evidentiary material relevant to the issues presented, and the City as well as the Association have each submitted additional evidentiary material and statements of position subsequent to July 29. ^{1/}

Accordingly, the parties have been provided with a full opportunity to participate in the matter herein. To date, the investigation reveals the following:

^{1/} The City submitted evidentiary proffers and argument on August 12 and August 27, 1982. The Association submitted additional material and argument on August 12 and August 25, 1982. Additionally, the employer has provided a list containing the names of all school guards employed during the September 1981 - June 1982 school year together with their first date of hire. The accuracy of all the factual proffers is not in dispute, and the undersigned's determination herein is based upon the facts stated in his July 29 correspondence and the material submitted subsequent thereto.

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 at 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 City of Rahway 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 this Petition and is subject to the provisions of the Act.

3. The Rahway School Traffic Guards Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association seeks to represent a unit of school crossing guards.

4. The City, each school year, employs school crossing guards at designated traffic intersections for purposes of assisting the safe crossing of pupils enroute to or from schools. Crossing guards are employed 4 1/2 hours a day, 5 days a week. Their term of employment is approximately 9 1/2 months, commencing with the school year in September and concluding in June.

The employment process involves each guard's appointment in September to a crossing guard position, which, under Civil Service, is unclassified and temporary. In June, each guard is officially terminated and turns over equipment to the City.

There is no formal guarantee of future guard employment with the City. However, there is a substantial return rate in guard employment. The City advises that approximately 85% of those guards employed in previous years reapply and are rehired. According to the Association, the turnover rate is usually associated with newly appointed personnel, and most guards return from year-to-year. This claim appears to be substantiated. Twenty-nine of the guards have employment records which pre-date the 1979-1980 school year. Only 9 of the 45 guards employed during the 1981-1982 school year had no prior guard employment with the City.

5. The City asserts that the guards are casual employees and on this basis it does not consent to an election. The City bases its claim upon the unclassified, temporary Civil Service status of guards, their average total work time, their nonenrollment in the Public Employment Retirement System, and their turnover rate.

6. For the reasons which follow, the undersigned concludes that the instant school crossing guards are not casual employees and, under the Act, are entitled to the rights of collective negotiations within a unit comprised of school crossing guards. The Commission has previously found a unit comprised of school crossing guards appropriate for collective negotiations, In re City of New Brunswick, E.D. No. 10 (1970), and it appears that the facts presented in the instant matter do not suggest a different conclusion.

The City questions the employee status of the individuals involved herein.

N.J.S.A. 34:13A-3(d) defines an "employee" broadly and provides:

This term shall include any public employee, i.e., any person holding a position by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.

The above statutory definition does not predicate a determination of employee status upon classifications used for Civil Service Department purposes or upon Public Employee Retirement System coverage; nor does the definition suggest that employee status be dependent upon one's total length of service, or the status of one's employment as either fixed-term or at-will.

Construing the statutory definition and examining Commission precedent, the Executive Director, in In re Rutgers-The State University, ^{2/} observed:

Neither the Commission nor the undersigned has interpreted the term "public employee" narrowly. See, for example, In re Burlington County, P.E.R.C. No. 14 (1969) ("temporary employees are public employees); In re Cherry Hill Township, P.E.R.C. No. 30 (1970) ("probationary" employees are entitled to representation under the Act); In re Clearview Regional Board of Education, E.D. No. 76-24 (1976) (part-time bus drivers who also work as bus drivers in other school districts are eligible for inclusion in a unit with other bus drivers).

^{2/} In re Rutgers-The State University, E.D. No. 76-35, 2 NJPER 176 (1976), P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd in part, modified in part; D.R. No. 77-5, 3 NJPER 12 (1976), App. Div. Docket No. A-1652-76 (1977). (Unpublished decision), pet. for certif. denied. P.E.R.C. affirmed substantially for the reasons expressed in the Decision cited above.

See also, In re Passaic Cty. Bd. of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (§ 4066 1977) (CETA personnel are public employees notwithstanding unclassified, temporary Civil Service status); In re Cty. of Hudson, D.R. No. 79-3, 4 NJPER 294 (§ 4147 1978) (ten month CETA employment). Further, see In re Cty. of Ocean, D.R. No. 79-25, 5 NJPER 128 (§ 10076 1979) (part-time, temporary, T-80 employees who work until maximum social security allowable earnings threshold is met are employees).

As several of the above cases indicate, the Commission has found that part-time personnel who enjoy a regularity and continuity of employment are public employees. The regular part-time employee has been distinguished from the casual employee, whose work is sporadic and occasional. See, in particular, In re Clearview Reg. Bd. of Ed., supra, and In re Bridgewater-Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (§ 4201 1978).

The school crossing guards involved in this matter work a regular, part-time daily schedule of 4 1/2 hours per day. Assuming satisfactory performance, they can expect continuous employment throughout the school year. Their employment is neither sporadic, nor occasional. The undersigned concludes, therefore, that the instant crossing guards are regular part-time personnel and are public employees within the meaning of the Act.

Furthermore, the undersigned, consistent with the New Brunswick precedent, supra, finds that a unit comprised of crossing guards is appropriate for collective negotiations purposes.

This conclusion of the undersigned is supported by the evidence of a sufficient rate of return among crossing guard personnel to insure stability in a collective negotiations unit. See In re Somerset Cty. College, P.E.R.C. No. 82-68, 8 NJPER 106 (¶ 13043 1982), appeal pending App. Div. Docket No. A-3629-81T2.

Accordingly, the undersigned directs an election in a unit described as including: all school crossing guards employed by the City of Rahway, excluding managerial executives, confidential employees, craft and professional employees, police 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 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 the employees set forth above who are employed during the first payroll period of September 1982, including employees who did not work during that period because they were out ill, 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

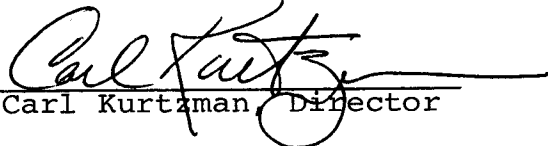
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the Rahway School Traffic Guards Association, an election eligibility list consisting

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 the Association 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.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Rahway School Traffic Guards Association.

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


Carl Kurtzman, Director

DATED: September 3, 1982
Trenton, New Jersey