

D.R. NO. 2020-9

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

In the Matter of

WILLINGBORO TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

WILLINGBORO EDUCATION ASSOCIATION,

Docket No. RO-2020-016

Petitioner.

SYNOPSIS

The Director of Representation issues a Certification of Representative on the basis of a card check to the petitioner, Willingboro Education Association (Association), adding the employees in the titles of computer analyst I, computer analyst II, and board certified behavior analyst to an existing unit of employees in professional and non-professional titles employed by the Willingboro Township Board of Education (Board). Although the parties did not stipulate to the appropriate unit, the Board did not raise any legal objections and the Director found that the Association complied with the necessary requirements for a card check certification in the petitioned-for and prima facie appropriate unit.

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Appearances:

For the Respondent,  
Florio Perrucci Steinhardt & Cappelli, LLC, attorneys  
(Nicholas Sullivan, of counsel)

For the Petitioner,  
Selikoff & Cohen, P.A., attorneys  
(Keith Waldman, of counsel)

DECISION

On October 15, 2019, the Willingboro Education Association (Association) filed a representation petition, together with an adequate showing of interest, seeking a certification of representative by card check to add employees of the Willingboro Township Board of Education (Board) holding the titles of computer analyst I, computer analyst II, and board certified behavior analyst to an existing broad-based collective negotiations unit of employees holding specified professional and non-professional titles as defined in the recognition provision

of its current collective negotiations agreement covering the period July 1, 2015, to June 30, 2019.<sup>1/</sup>

On October 16, 2019, I sent a letter to the Board requesting, by October 23, 2019, a list of the petitioned-for employees and a certification that the accompanying Notice to Employees was posted where notices are normally posted for the involved employees, among other things. This letter also scheduled a telephone conference for the parties for October 30, 2019.

On October 25, 2019, after we did not receive the requested documentation, the assigned Commission staff agent sent another letter to the Board, requesting the documents again and asking whether the Board would voluntarily recognize the Association as the majority representative of an expanded unit that included the petitioned-for titles. No response was received. On October 30, 2019, no representative of the Board was available for the scheduled telephone conference. The staff agent left a message

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<sup>1/</sup> The petition is timely because it was filed after the third year of the agreement. N.J.A.C. 19:11-2.8(d). I take administrative notice that the Association's unit became a mixed unit of professionals and non-professionals by certification of representative issued on February 11, 1987, after the professionals voted to be included in a unit with non-professionals in accordance with N.J.S.A. 34:13A-6(d) in the election directed pursuant to Willingboro Tp. Bd. of Ed., D.R. No. 87-13, 13 NJPER 52 (¶18021 1986). Additional titles were added by certification on February 19, 1997, after the election directed pursuant to Willingboro Tp. Bd. of Ed., D.R. No. 97-7, 23 NJPER 142 (¶28069 1997).

with the Board again requesting the documentation and the Board's intentions with respect to voluntary recognition.

On November 1, 2019, the Board retained counsel, who entered an appearance. On November 6, 2019, the staff agent spoke with Board counsel by telephone and sent a follow-up email, requesting the employee list and posting certification, and requesting information regarding: (1) whether the Board would voluntarily recognize the Association without formal involvement of PERC;<sup>2/</sup> (2) whether the Board has no legal objection to the petitioned-for unit but would prefer the formal involvement of PERC; or (3) any legal objections to the certification of the petitioned-for unit.

On November 13, 2019, the Board requested to hold the matter in abeyance until after the next regularly scheduled Board meeting on November 18, 2019, to allow the Board to discuss its options, including voluntary recognition. The Association consented and the staff agent granted the request to hold the matter in abeyance until November 19, 2019. The staff agent also requested the employee list and the posting certification from the Board by November 15, 2019. These documents were provided on November 15, 2019, and November 18, 2019, respectively.

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<sup>2/</sup> See N.J.S.A. 34:13A-5.3 (" . . . the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.")

On November 19, 2019, Board counsel advised the staff agent that although the Board decided at its meeting that it would not voluntarily recognize a change to the definition of the Association's unit because it viewed it as a mid-term change to the collective negotiations agreement, the Board was not raising any legal objections to the proposed unit or the petition. The staff agent advised both parties that, due to the absence of objections or a signed stipulation of appropriate unit, I would issue a written decision on this matter.

I 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.

#### ANALYSIS

In comparing the Board-provided list of employees to the number of valid authorization cards filed by the Association, I have determined that a majority of employees in the petitioned-for titles have designated the Association as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b). In the absence of any objections from the Board, I determine that the Association is entitled to certification for the petitioned-for and prima facie appropriate unit regardless of the absence of a Stipulation of Appropriate Unit signed by both

parties. Lakewood Tp. Bd. of Ed., D.R. No. 2019-4, 45 NJPER 96 (¶25 2018), City of Perth Amboy, D.R. No. 2010-2, 35 NJPER 243 (¶87 2009).

All employees in the titles of board certified behavior analyst, computer analyst I, and computer analyst II will be added to the existing unit of professional and non-professional employees employed by Board (a description of the existing unit based on the parties' collective negotiations agreement will be attached to the certification), excluding managerial executives, confidential employees, and supervisors within the meaning of the Act; police and casual employees; and all other employees of the Board.

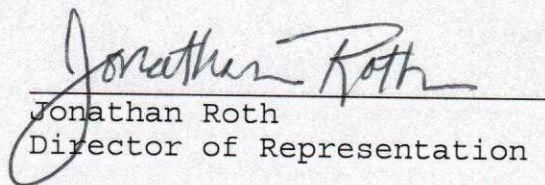
Pursuant to N.J.A.C. 19:11-2.4(c), the Notice to Employees shall remain posted for a period of ten days. We normally delay certification until the ten day period has run. However, on October 16, 2019, we first requested that the Board certify to the posting of the notice by October 23, 2019, but the notice was not posted until November 18, 2019. Given this delay, I will issue a certification before the ten day period has run. N.J.A.C. 19:11-2.4(e) (" . . . the failure of the public employer to post notices normally shall not serve to delay or invalidate any subsequent Commission actions which occurs pursuant to the filing of a petition.") Cf. Camden Housing Authority, D.R. No. 2013-2, 39 NJPER 230 (79 2012).

ORDER

The Association has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the employees in the petitioned-for titles.

I certify Willingboro Education Association as the exclusive representative of the unit described above based upon its authorization cards.<sup>3/4/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Jonathan Roth  
Director of Representation

DATED: November 25, 2019  
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 December 6, 2019.

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<sup>3/</sup> A Certification of Representative is attached.

<sup>4/</sup> This certification does not amend the current collective negotiations agreement. Although there is now an obligation to negotiate over any changes to the status quo of the terms and conditions of employment of the titles added to the negotiations unit, the new titles are not automatically entitled to the contractual terms already negotiated under the agreement for the previously defined unit. State of New Jersey, D.R. No. 87-25 n.9, 13 NJPER 326 (18136 1987).

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> DOCKET NO. RO-2020-016  
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**CERTIFICATION OF REPRESENTATIVE  
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

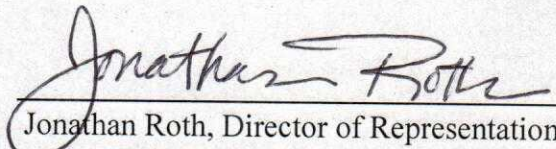
**WILLINGBORO EDUCATION ASSOCIATION**

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

**UNIT: Included:** All regularly employed employees in the titles of board certified behavior analyst, computer analyst I, and computer analyst II are added to the existing unit of professional and non-professional employees employed by the Willingboro Township Board of Education (See Attached Sheet for Existing Unit).

**Excluded:** Managerial executives, confidential employees, and supervisors within the meaning of the Act; police and casual employees; and all other employees of the Willingboro Township Board of Education.

**DATED:** November 25, 2019  
Trenton, New Jersey

  
Jonathan Roth, Director of Representation



**Existing Unit:**

Certificated teachers, reading specialists, nurses, head nurse, librarians, counselors, social workers, speech therapists, learning disability teacher-consultants, psychologists, Family Liaison, Crisis Intervention Specialist, Payroll Systems Administrator, T.V. Program Director, T.V. Specialist, TV Specialist/Technician, certificated T.V. professional personnel, non-supervisory professional personnel in the summer credit make-up session and summer curriculum projects, and non-supervisory professional personnel in the Saturday/Sunday suspension program; Assistant Aerospace position, Research Assistant, RePro Printer, In-School Suspension Teacher, Public Information Clerk, Registrar, Senior Aerospace Instructor, and Athletic Trainer but excluding Supervisors of Instruction (plus those in Child Study and Special Education), Guidance Directors, Athletic Director, Music Coordinator, Reading Supervisor, and Director of Vocational Education.

Secretaries, clerks, administrative clerk-typists, clerk-typists, half-time clerk typists, accounts payable clerks, accounts receivable clerks, payroll clerks, payroll administrator, graphic arts personnel, Sub-Caller position, Educational Interpreter, TV Technician, Facilities Coordinator, Registrar and Assistant Payroll/Pensions Systems Administrator; excluding all confidential personnel.

All building, grounds, and maintenance; custodians and custodial assistants; transportation maintenance and mechanics; warehousemen; aides; security officers; special education teacher assistants; maintenance electrician, boiler engineer, guidance assistant, licensed plumbers and elementary lead custodian.

Any positions equivalent to the above titles included in the unit which may be created by the Board.

Excluding employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively to recommend such action.