

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,
Public Employer,

and

LOCAL 131, AFL-CIO, SCHOOL CAFETERIA EMPLOYEES,
Petitioner,

and

Docket No. RO-792

ELIZABETH EDUCATION ASSOCIATION, N.J.E.A.,
Intervenor,

and

COUNCIL 52, AFSCME, AFL-CIO,
Intervenor.

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Elizabeth Board of Education, a hearing was held before Hearing Officer Carl Kurtzman, at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, argue orally and submit briefs. All parties declined to file briefs and/or proposed findings and conclusions with the Hearing Officer. At the hearing, all parties joined in a motion to waive the Report and Recommendations of the Hearing Officer and to proceed directly to a decision of the Executive Director. The undersigned has considered the entire record and the all-party agreement to waive the Hearing Officer's Report and Recommendations. An examination of the record reveals there is no question of fact; all of the parties have stipulated to all of the relevant facts. Inasmuch as no question of fact, but rather a question of policy has been presented for determination, the undersigned grants the motion of all parties to waive the Hearing Officer's Report and Recommendations and the undersigned will render a decision upon the record.

The undersigned has considered the entire record, and on the facts in this case finds:

1. The Elizabeth Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. Local 131, AFL-CIO, School Cafeteria Employees, and the Elizabeth Education Association, N.J.E.A., and Council 52, AFSCME, AFL-CIO, are employee representatives within the meaning of the Act.

3. The Employer refuses to recognize Petitioner herein as the exclusive representative of certain employees of the Elizabeth Board of Education. Therefore, a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.

4. The parties have stipulated that a unit consisting of all food service and cafeteria workers employed by the Elizabeth Board of Education, but excluding all supervisors, clericals, professionals, and all other employees, is an appropriate unit for collective negotiations, and that this is the same unit specified in the recognition clause of the agreement between Council 52, AFSCME, and the Elizabeth Board of Education which expired June 30, 1973. This is the unit sought by the Petitioner herein.

The sole issue relates to the request of Council 52, AFSCME, AFL-CIO, that the scheduling of an election in this matter be deferred pending a resolution under the procedures contained in Article XX of the AFL-CIO Constitution. This request arises from the following facts.

AFSCME, as indicated above, is the incumbent organization representing the employees in question. Both AFSCME and the Petitioner are affiliates of the American Federation of Labor-Congress of Industrial Organizations. The Constitution of the AFL-CIO provides in Article XX a mechanism whereby an alleged "raid" by one affiliate against the representation status of another affiliate may be resolved internally. The General Counsel of AFSCME, in a letter to the Commission shortly after the filing of the instant petition, explains AFSCME's position and this internal procedure as follows:

"Article XX of the AFL-CIO Constitution expressly prohibits any affiliate from attempting to organize and represent employees in a unit represented by another affiliate. The election petition filed by Local 131, an organization affiliated with the Hotel and Restaurant Employees' and Bartenders' International Union, AFL-CIO constitutes a violation of Article XX. AFSCME has filed a complaint under Article XX with AFL-CIO President George Meany, pursuant to which certain procedures, including arbitration if necessary, will be utilized to resolve the dispute."

In an earlier case, South Jersey Port Corporation, PERC No. 74 (February, 1973), the Commission was asked to give controlling weight to a determination rendered pursuant to Article XX, in which the American Federation of Technical Engineers was found to have been guilty of "raiding" the Boilermakers. Unlike the instant case, the Commission had before it and prior to that decision the fact of an award favoring one affiliate over the other and the text of that award was part of the record in that case. The Commission, having considered the entire record and particularly that award, concluded that it would not permit its determination to be controlled by that Article XX proceeding.

Since the time of that decision, the Commission has adopted as a matter of policy the position that it will not defer to the internal disputes machinery of the AFL-CIO, but instead will proceed to a disposition of the case based on all other facts. Accordingly, since the AFSCME request is the only issue in this case, and since all other pertinent facts have been stipulated, the case will be processed directly to an election without waiting upon the outcome of the internal proceeding.

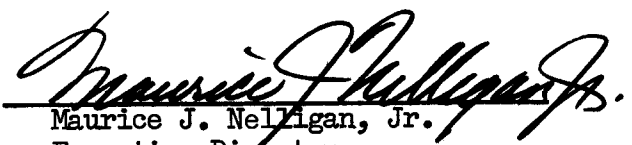
5. It is directed that an election in the unit described above be held within thirty (30) days of the date of this decision. Those eligible to vote shall be those who were employed in such unit during the payroll period immediately preceding the date below, including employees who did not work during the period because they were out ill, or on vacation or temporarily laid off, including those in military service. Employees must appear at the polls to be eligible to vote. Ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. The Commission requires the submission of an alphabetical list of all eligible voters along with their job titles at least seven days prior to the election. Accordingly, the public employer is hereby directed to submit such a list to the Executive Director and to the employee organizations which will appear on the ballot as set forth below.

Those eligible to vote shall vote on whether they wish to be represented for purposes of collective negotiations by Local 131, AFL-CIO, School Cafeteria Employees, or the Elizabeth Education Association, N.J.E.A., or Council 52, AFSCME, AFL-CIO, or by no organization.

The majority representative shall be determined by a majority of the valid votes cast.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations.

BY ORDER OF THE EXECUTIVE DIRECTOR


Maurice J. Nelligan, Jr.
Executive Director

DATED: June 6, 1974
Trenton, New Jersey