

E.D. NO. 72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,
Public Employer,

and

PUBLIC EMPLOYEES UNION OF NEW JERSEY, Docket No. RO-976
Petitioner,

and

LOCAL 29, R.W.D.S.U., AFL-CIO,
Intervenor.

SYNOPSIS

The Executive Director directs an election in a unit of custodial and maintenance employees of the Board of Education after finding that the petition filed by the Public Employees Union of New Jersey is timely. He rejects the contention of the Board that the petition should be dismissed as untimely because, even though the contract covering these employees has expired, the Board and Local 29 were negotiating and were engaged in the fact-finding process when the petition was filed.

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DECISION AND DIRECTION OF ELECTION

On January 30, 1975 a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission by the Public Employees Union of New Jersey ("Petitioner") with respect to a unit of approximately 52 employees of the Englewood Board of Education ("Board"). The employees sought are custodians, maintenance personnel and matrons. These employees were represented by Local 29, R.W.D.S.U., AFL-CIO in a two-year contract which expired June 30, 1974. Local 29 has moved to intervene in these proceedings and that motion has been previously granted.

In accordance with N.J.A.C. 19:11-1.12 of the Commission's Rules, the undersigned has caused an investigation of the matter and allegations in this matter to be conducted. The parties have been given an opportunity to present documentary and other evidence and statements of position relating to this matter.

On the basis of the administrative investigation herein,

the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing to the undersigned that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to Rule Section 19:11-1.12(c), 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 Englewood Board of Education is a public employer representative within the meaning of the Act and is subject to its provisions.

3. The Public Employees Union of New Jersey and Local 29, R.W.D.S.U., AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

4. The only matter in dispute relates to the timeliness of the petition. The Board urges that the petition be dismissed as untimely because, although it is conceded that there is currently no agreement in effect covering these employees, the Board and Local 29 were engaged in negotiations when the instant petition was filed. In fact, at the time the petition was filed, the Board and Local 29 were awaiting the issuance of a Fact-finder's Report and Recommendations.

The Commission's Rules regarding timeliness N.J.A.C. 19:11-1.15 provide that a petition will be timely filed if there has been no valid election within the preceding twelve-month period in the requested negotiating unit or any subdivision thereof; that a petition will not be considered as timely filed if

during the preceding twelve months an employee organization has been certified as the majority representative by the Commission or has been granted recognition by a public employer in accordance with the Commission's Rules; and that a petition will not be considered as timely filed during the period of an existing written agreement containing terms and conditions of employment unless, in a case involving employees of a school district, the petition is filed during the period between September 1 and October 15 within the last year of the agreement.

The petition is clearly timely in accordance with these Rules. The period subsequent to the expiration of a contract is normally an open period, i.e., a period during which a petition may be filed.

The Commission has considered and rejected the argument of the Board that the petition should be regarded as untimely if filed during the course of impasse proceedings where, as here, the contract has expired. Township of Franklin, P.E.R.C. No. 64 (December 3, 1971)7.

Based upon the above, including the conclusion that the petition was timely filed, it appears to the undersigned that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit and that the policies of the Act will be effected by the direction of an election. The election shall be directed in the following appropriate unit: "All custodial and maintenance employees and matrons of the Englewood Board of Education excluding managerial executives, confidential employees, craft and professional employees, policemen and super-

visors within the meaning of the New Jersey Employer-Employee Relations Act."

5. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, 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 quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.


Pursuant to Rule Section 19:11-2.7 the public employer is directed to file with the undersigned 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. Such list must be received by the undersigned no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire

to be represented for the purposes of collective negotiations
' by the Public Employees Union of New Jersey, Local 29, R.W.D.S.U.,
AFL-CIO, or by neither.

The majority representative shall be determined by a
majority of the valid ballots cast. The election directed herein
shall be conducted in accordance with the provisions of the Com-
mission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
May 1, 1975