

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

In the Matter of

DOWNE TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

C.A.R.E. GROUP,

Docket No. RO-85-33

Petitioner,

-and-

DOWNE TOWNSHIP EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Unfair Practices, rejecting the incumbent's assertion that a free and fair election cannot be conducted, directs an election among the teachers and professionals employed by the Downe Township Board of Education. The Downe Township Education Association was unsuccessful in trying to block processing of the petition filed by the "C.A.R.E. Group" because its assertions were either already addressed in a recent Commission decision or were not supported with documentation showing that a free and fair election could not be conducted.

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Appearances:

For the Public Employer  
Colflesh and Burris, Esqs.  
(Ralph H. Colflesh of counsel)

For the Petitioner  
Mary E. Fisher, Chairperson

For the Intervenor  
Selikoff and Cohen, Esqs.  
(Steven R. Cohen of counsel)

DECISION

On September 14, 1984, the C.A.R.E. Group (Concerned About Real Education - "C.A.R.E.") filed a petition with the Public Employment Relations Commission ("Commission") seeking certification as the exclusive representative of the teachers employed by the

Downe Township Board of Education ("Board"). C.A.R.E. amended its petition on October 3, 1986 to include professional personnel in the unit. The unit sought by C.A.R.E. is currently represented by the Downe Township Education Association ("Association").

On October 3, 1984, the Association submitted a copy of its contract with the Board and was granted intervenor status under N.J.A.C. 19:11-2.7.<sup>1/</sup> On October 3, 1984, the Association also requested that the processing of C.A.R.E.'s petition be blocked by pending unfair practice charges.<sup>2/</sup>

On November 30, 1984, the Association's blocking request was granted based on a review of affidavits, evidentiary submissions and the charges filed by both the Association and the Board.

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<sup>1/</sup> N.J.A.C. 19:11-2.7(a) provides that: No employee organization will be permitted to intervene in any proceeding to resolve a question concerning the representation of employees unless it has submitted a showing of interest of not less than 10 per cent of the employees in the unit involved in the petition or has submitted a current or recently expired agreement with the public employer covering any of the employees involved.

<sup>2/</sup> On March 21, 1984, the Board filed two charges against the Association alleging violations of sections 5.4(b)(2) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (the "Act").

On May 16, 1984, the Association filed an unfair practice charge against the Board and on May 31 and October 30, 1984, the Association amended this charge. The Association alleges in the charge that the Board violated §§ 5.4(a)(1), (2), (3) and (5) if the Act..

On August 23, 1984, all charges were consolidated and a Complaint and Notice of Hearing was issued.

On November 19, 1985, the Commission issued a decision (P.E.R.C. No. 86-66, 12 NJPER 3 [¶17002 1985]), finding that the Board violated the Act by disciplining the Association's leadership and refusing the Association's request for information relevant to negotiations. The Commission dismissed the remaining charges against the Board and all charges against the Association. Noting that its decision had resolved all of the unfair practice issues, the Commission indicated that "the Director of Representation may resume the representation proceedings" (n.20, slip op. at 34).

The Association filed a positional statement urging that an election should not be conducted. The Association asserts that the Board has destroyed the laboratory conditions necessary for a free and fair election by engaging in a "pervasive pattern" of unfair practices; by favoring the C.A.R.E. group over the Association; by its response (in a letter dated December 9, 1985) to the Commission's Decision and Order<sup>3/</sup>; and by giving an unfavorable

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<sup>3/</sup> On December 11, 1985, the Association filed a letter with the Commission asking, in light of the Board's letter of December 9, 1985, that the Board be ordered to show cause why additional remedies should not be imposed and why the Commission should not reconsider footnote 20 which states that representation proceedings may be resumed. On January 20, 1986, the Commission issued a decision, P.E.R.C. No. 86-92, 12 NJPER \_\_\_\_ (¶ \_\_\_\_ 1986), denying the Association's application without prejudice to a request that the Director of Representation review any claim that laboratory conditions for an election do not exist.

evaluation to an Association officer shortly after the Commission issued its decision.<sup>4/</sup>

On February 11, 1986, I wrote a letter to the parties advising them that, based on the Commission's decision and the parties' evidentiary submissions and positional statements, I was inclined to issue an order directing that an election be conducted in this matter. The parties were invited to submit additional documentation and positional statements in accordance with N.J.A.C. 19:11-2.6.

The Association submitted a response wherein it maintains that an election would not reflect the free choice of the affected employees because: the Board's conduct complained of in the Association's charge (Docket No. CO-86-173) has had a chilling effect on the desire of employees to support the Association; the Board has treated the competing C.A.R.E. group unequally since it has taken no unlawful action against it; there are outstanding questions concerning the validity of C.A.R.E.'s petition; and the Board continues to favor C.A.R.E. over the Association.

The investigation in this matter reveals the following facts:

1. The disposition of this matter is properly based upon the administrative investigation conducted herein, there being no

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<sup>4/</sup> The Association filed a related charge, Docket No. CO-86-173, on January 6, 1986.

substantial and material factual issues in dispute which would necessitate the convening of an evidentiary hearing. N.J.A.C. 19:11-2.6(b).

2. The C.A.R.E. Group and the Downe Township Education Association are employee organizations within the meaning of the Act and are subject to its provisions.

3. C.A.R.E. seeks to represent a collective negotiations unit consisting of the teachers and professionals employed by the Board. The unit is currently represented by the Association, which has been granted intervenor status based upon its recently expired contract with the Board.

4. A request to block C.A.R.E.'s petition was granted on November 30, 1984, based on a review of affidavits and evidentiary submissions pertaining to then-pending unfair practice charges (Docket Nos. CE-84-22-29; CE-84-24-30; and CO-84-315-31).

5. On November 19, 1985, the Commission ruled on all the outstanding unfair practice issues and indicated that this representation proceeding could continue.

6. The Association never asserted the claim that the Board favored the C.A.R.E. Group in its amended unfair practice charge (Docket No. CO-84-315-31), and never brought a separate action on that issue.<sup>5/</sup>

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<sup>5/</sup> The Association argues that it did attempt to raise the issue of favoritism during the hearing on Docket No. CO-84-315-31, but the Hearing Examiner would not admit testimony on this issue. Nevertheless, the matter was never plead in an unfair practice charge.

7. The Association asserts that the Board attempted to "vitiate" the effect of the Commission's decision in a letter dated December 9, 1985. In the letter, the Board indicates its dislike for, and disagreement with, the Commission's decision but it goes on to state that it will abide by the decision and implement the remedies ordered.

8. On January 6, 1986, the Association filed an unfair practice charge alleging that the Board gave an unfavorable evaluation to an Association officer in retaliation for her participation in activities on behalf of the Association. However, the Association has failed to proffer any documentation showing that the conduct complained of would prevent a free and fair election.

9. The petition filed by C.A.R.E. was accompanied by an adequate showing of interest and complies with the requirements of N.J.A.C. 19:11-1.1 et seq.

#### DISCUSSION

Based upon the above facts and my review of the Commission's decisions and all of the parties' submissions in this matter, I conclude that an election should be directed.

The arguments raised by the Association in support of its position that an election should not be directed have either already been addressed by the Commission or have not been supported by documentation showing that the conduct complained of would interfere with an election.

The Association insists that the alleged retaliatory unfavorable evaluation of one of its negotiations committee members would prevent a fair election in a school district the size of Downe Township (thirty-two teachers, approximately three hundred students). The Association argues that the Commission should infer that the remaining employees have knowledge of the Board's action and that the Board would learn the identity of any other employee actively supporting the Association.

I hold, to the contrary, that the election should not be blocked without documentation supporting a finding that the employees have knowledge of the evaluation (which is typically a matter of confidence between the evaluator and the person being evaluated). Without such knowledge there can be no chilling effect.<sup>6/</sup>

Similarly, the Association has not demonstrated that material issues exist that could lead to a finding that there is no valid question of representation raised by C.A.R.E.'s petition. On this point, the Association refers to the unfair practice hearing (on Docket Nos. CE-84-22-29, CE-84-24-30, and CO-84-315-31), wherein the Hearing Examiner refused testimony concerning the filing of C.A.R.E.'s representation petition. The Association alleges that the Board was involved in filing the petition and points to

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<sup>6/</sup> In holding that the charge should not block an election, I do not rule the merits of the charge itself.



testimony which reveals that a member of the C.A.R.E. group may be a supervisor. However, the Association has failed to present any documentation which supports its contention that the Board was inappropriately involved in the filing of the petition or that it favored the C.A.R.E. Group over the Association. Nor did the Association file related unfair practice charges when these issues were ripe for consideration. Finally, the Hearing Examiner's evidentiary ruling did not prevent the Association from appropriately raising the issues by filing other charges. Without supporting documentation, raising the issue at this point in the processing of the petition is insufficient to block an election.

Accordingly, I direct that an election be conducted among the employees in the existing collective negotiations unit of teachers and professionals. The election shall be conducted on April 2, 1986.

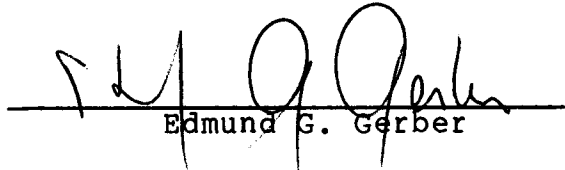
Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who 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 me and with the C.A.R.E. Group and the 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 me 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 C.A.R.E. Group and the Association with statement of service to the Commission. I 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 C.A.R.E. Group or the Association or no union.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION PROCEEDINGS



Edmund G. Gerber

DATED: March 5, 1986  
Trenton, New Jersey