

D.R. NO. 94-6

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

In the Matter of

ESSEX COUNTY VOCATIONAL-TECHNICAL  
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-94-2

ESSEX COUNTY VOCATIONAL ADMINISTRATORS  
AND SUPERVISORS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among a unit of principals and supervisors to determine if they wish to be represented by an affiliate organization of the NJEA, which currently represents non-supervisory employees of the Board.

The Director reaffirmed the rule that if a supervisory organization files a certification of its separate organizational structure (Camden affidavit), it is qualified to represent the petitioning supervisory employees. The Director approved such a certification of an NJEA affiliate organization in Ocean Cty College, D.R. No. 93-23, 19 NJPER 293 (¶24152 1993).

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Appearances:

For the Public Employer  
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys  
(Joel G. Scharff, of counsel)

For the Petitioner  
Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION AND DIRECTION OF ELECTION

On July 2, 1993, the Essex County Vocational Administrators and Supervisors Association filed a petition for certification of employee representative seeking to represent a unit of principals and supervisors employed by the Board of Education of Essex County Vocational Schools. The petitioned-for employees are currently represented by a majority representative of the same name as the petitioner, affiliated with the N.J. Principals and Supervisors

Association. The petitioner is an affiliate of the New Jersey Education Association. The petition was accompanied by an adequate showing of interest. N.J.A.C. 19:11-2.1

The Board filed a letter refusing to consent to a secret ballot election in the petitioned-for unit. It asserts that NJEA representation of the employees would "raise serious conflicts of interest" because certificated, non-supervisory staff are already represented by the NJEA.

The Association, as a PSA affiliate, negotiated the most current collective negotiations agreement which expired June 30, 1993. The recognition clause of that agreement includes these employees:

All certified personnel employed by the Essex County Voc-Tech Board of Education in the following positions: Principal, Vice-Principal, Basic Skills Supervisor, Apprentice Coordinator, Educational Program Supervisor, ESL and Bilingual Supervisor, Technical Education Supervisor, Vocational Education Supervisor, Math/Science Supervisor, English Supervisor and Special Education Supervisor.

PSA filed letters stating that the Association was an affiliate member when the recently expired agreement was negotiated but on January 1, 1993 that affiliation ceased. It also declined to intervene in this representation matter.

The president of the petitioning Association filed a certification stating that the organization, if elected, will "... be and act as a separate organization from any other organization which represents or may represent non-supervisory employees" of the Board.

He certified that the organization will control its own negotiations and the administration of any collective agreement covering the petitioned-for employees. Finally, he represented that the organization has no non-supervisory members.

On August 3, 1993, we issued a letter tentatively directing an election in the petitioned-for unit. On August 24, 1993, the Board filed a letter asserting that petitioner is not a "qualified labor organization", that a potential conflict of interest existed, and that the demand and return system may be inadequate.

On August 26, 1993, the petitioner filed a response, asserting that no material factual issues are raised by the Board and requesting that an election be directed.

N.J.S.A. 34:13A-5.3 provides that except for unusual circumstances, supervisors are prohibited from representation by an organization that contains non-supervisory employee members. In City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), aff'g D.R. No. 82-25, 8 NJPER 11 (¶13005 1981), the Commission identified an organization's responsibility to create a separate organizational structure to represent supervisors. The Commission outlined specific requirements which an organization must follow to seek representation of supervisors. The certification submitted by the petitioning organization in this matter complies with the Camden requirements.

The Commission has previously addressed the kinds of issues which the Board raises concerning the petitioner's ability to adequately separate itself from the organization representing the

Board's non-supervisory employees. See Hudson County, D.R. No. 84-21, 10 NJPER 293 (¶15144 1984) (directing an election), req. for rev. den., P.E.R.C. No. 84-131, 10 NJPER 320 (¶15153 1984), and D.R. No. 85-7, 10 NJPER 623 (¶15297 1984) (issuing certification), aff'd App. Div. Dkt. No. A-989-84T7 (11/15/85). In Camden, the Commission observed that once a petitioner satisfies that requirement to create a separate organizational structure from any non-supervisory organization, speculation "...about how a validly organized entity might actually conduct itself if elected..." should not delay representation proceedings. Camden at 227.

In Ocean Cty College, D.R. No. 93-23, 19 NJPER 293 (¶24152 1993), I approved the certification of an NJEA supervisory organization. The organization was "structurally qualified" to represent the petitioned-for administrators and any inappropriate conduct could later be tested through unfair practice proceedings Camden; Hudson; Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 345 (¶12155 1981).

No facts show that a different result is required here. Although another NJEA affiliate currently represents a unit of non-supervisory, certificated personnel, the petitioner has filed a certification which appropriately addresses the representation issues here and complies with Camden.

Accordingly, I direct an election in the following unit:

Included: All certified personnel employed by the Essex County Voc-Tech Board of Education in the following positions: Principal, Vice-Principal, Basic Skills Supervisor,

Apprentice Coordinator, Educational Program Supervisor, ESL and Bilingual Supervisor, Technical Education Supervisor, Vocational Education Supervisor, Math/Science Supervisor, English Supervisor and Special Education Supervisor.

Excluded: All other positions not named above, including all other Directors, non-supervisory employees, non-professional employees, craft employees, police officers, firefighters, managerial executives and confidential employees within the meaning of the Act.

Eligible employees shall vote for either the Association or no representation.

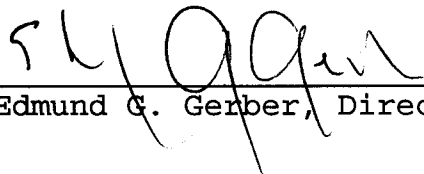
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy

of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

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

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director

DATED: August 31, 1993  
Trenton, New Jersey