

D.R. NO. 79-33

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-79-119

NEWARK TEACHERS UNION  
LOCAL 481, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that a secret ballot election be conducted among special investigators to determine whether these employees desire or do not desire to be represented by the Petitioner for the purpose of collective negotiations. The Petitioner desires to represent these employees in the existing collective negotiations unit of professional and nonprofessional employees which it represents. The facts presented by the employer do not support the claim that a conflict of interest exists or potentially exists between special investigators and other employees currently represented. The Director determines that the desires of the employees, for or against representation, are best determined through a secret ballot election.

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Appearances:

For the Public Employer  
Beverly A. Williams, Manager

For the Petitioner  
Pietro M. Petino, Organizer

DECISION AND DIRECTION OF ELECTION

On October 19, 1978, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Newark Teachers Union, Local 481, AFT, AFL-CIO ("NTU") seeking to add certain professional employees, i.e., special investigators, employed by the Newark Board of Education (the "Board") to the existing unit of professional and nonprofessional employees represented by NTU. The undersigned has caused an administrative investigation to be

conducted into the matters and allegations involved in the Petition in order to determine the facts.

All parties have been advised of their obligations under N.J.A.C. 19:11-2.6(a), and have been afforded an opportunity thereunder to present documentary and other evidence as well as statements of position relating to the Petition.

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 that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), 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 Newark Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Newark Teachers Union, Local 481, AFT, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

4. The NTU is seeking to add certain professional employees employed by the Board, specifically, special investigators

to its existing unit of professional and nonprofessional employees. <sup>1/</sup>

5. The Petitioner agrees to a secret ballot election among the petitioned-for employees.

6. The Board does not agree to the conduct of a secret ballot election. The Board asserts that there is a conflict of interest between the employees who are currently represented by NTU and those employees which NTU seeks to include in its unit. The Board, additionally, questions whether the special investigators will "be interested in becoming members of a bargaining unit" when they are given a salary increase. In this latter regard, the Board indicates that it is reviewing proposals for salary adjustments for the concerned employees.

7. Special investigators investigate reports of disturbances in school buildings such as altercations between students or attacks on teachers by students. Further, they investigate reports of other types of severe disciplinary problems with students which disrupt the normal operations of schools. The results of these investigations are reported to the executive staff of the Board. The investigators may at times report to the executive staff of the Board on an incident involving a teacher and a student. In the performance of these duties a special investigator may visit

I/ The Newark Teachers Union currently represents a unit of teachers, long term substitute teachers, itinerant teachers, homebound teachers, recreation teachers, speech teachers, speech therapists, remedial reading teachers, provisional teachers, librarians, drop out counselors, guidance counselors, regular teachers teaching four nights per week in Newark Evening High School, and coordinators having permanent status as teachers, helping teachers, learning teacher consultants, social workers, psychologists, attendance counselors, teacher clerks and clerk stenographers (school).

the student's home and may appear in any other proceeding which arises as a result of disturbances in the schools.

8. The Board agrees that the title in question, special investigators, is a professional title with educational requirements and experience similar to that of attendance counselor -- a professional title currently included in the petitioned-for unit.

9. On March 30, 1979, the undersigned identified the primary issue herein as whether a community of interest exists between special investigators and other professional and non-professional employees currently represented by NTU. The undersigned advised that the evidence proffered in the investigation did not place in dispute any substantial and material factual issues.

Prior Commission decisions have consistently held that a community of interest exists between regular classroom teachers and other professional and nonprofessional employees who, by performing functions which are adjunct or auxiliary to the basic function of classroom teaching, are an integral aspect of the total educational service provided by a Board of Education. <sup>2/</sup>

The evidence proffered to date in the investigation does not support the claim that the special investigators perform a

<sup>2/</sup> In re Newark Board of Education, P.E.R.C. No. 20 (1969); In re Cranford Board of Education, D.R. No. 79-24, 5 NJPER 103 (¶ 10058 1979); In re Board of Education, City of Camden, E.D. No. 76-32, 2 NJPER 123 (1976); In re West Milford Township Board of Education, P.E.R.C. No. 56 (1971); In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971).

function which would present a conflict of interest and which would thus preclude the representation of special investigators with other Board professional and nonprofessional employees in the same collective negotiations unit. Rather, the functions performed by the special investigators are related to student disciplinary problems and only involve unit members when an action by a student has affected a unit member. The Board has not presented evidence of any occurrence which might demonstrate an actual conflict of interest, nor has the Board presented any evidence which might indicate the potentiality of a conflict of interest.

The Board's second objection to a secret ballot election is the claim that special investigators will no longer be interested in collective representation once they receive a salary increase. The instant Petition is accompanied by an adequate showing of interest and raises a valid question concerning representation. The desires of employees for representation, if any, will best be determined through a Commission conducted election.

Accordingly, for the above reasons, the undersigned determines that the unit petitioned-for is a prima facie appropriate collective negotiations unit and that a secret ballot election should be conducted to ascertain whether the special investigators desire to be represented by NTU in a collective negotiations unit including those employees described below.

There existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. The undersigned finds that the appropriate unit for collective negotiations is: all teachers, long term substitute teachers, itinerant teachers, therapists, remedial reading teachers, provisional teachers, librarians, drop out counselors, guidance counselors, regular teachers teaching four nights a week in Newark Evening High School, and coordinators having permanent status as teachers, helping teachers, learning teacher consultants, social workers, psychologists, attendance counselors, teacher clerks and clerk stenographers (school) and special investigators, but excluding managerial executives, confidential employees, police and craft employees and supervisors within the meaning of the Act.

The undersigned directs, pursuant to N.J.A.C. 19:11-2.6 (b)(3), that a secret ballot election be conducted among special investigators. The election shall be conducted no later than thirty (30) days from the date set forth below.


Those eligible to vote are special investigators 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 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 the undersigned and with the NTU an election eligibility list, consisting of an alphabetical listing of the names of all eligible employees together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received 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 NTU with statement of service to the undersigned. The undersigned 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 Newark Teachers Union, Local 481, AFT, AFL-CIO.

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

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: April 26, 1979  
Trenton, New Jersey