

D.R. NO. 90-12

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

In the Matter of

SCOTCH PLAINS-FANWOOD BOARD  
OF EDUCATION,

Public Employer,

-and-

SCOTCH PLAINS-FANWOOD SUPPORT  
STAFF ASSOCIATION,

Docket No. RO-90-66

Petitioner,

-and-

IBTCWHA, LOCAL 102,

Intervenor.

SYNOPSIS

The Director of Representation finds that the Scotch Plains-Fanwood Support Staff Association is a valid employee representative within the meaning of the Act. The Director orders that an election be conducted among the employees in the petitioned-for unit.

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IBTCWHA, LOCAL 102,

Intervenor.

Appearances:

For the Public Employer,  
Cassetta, Taylor & Whalen, Consultants  
(Raymond A. Cassetta, Consultant)

For the Petitioner  
New Jersey Education Association  
(Ronald Harvey, Field Representative)

For the Intervenor  
Ben Merker, Secretary/Treasurer

DECISION AND DIRECTION OF ELECTION

On October 16, 1989, the Scotch Plains-Fanwood Support Staff Association ("Association") filed a Petition for Certification of Public Employee Representative (Docket No. RO-90-66), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Association seeks to represent a unit of all head custodians, custodians, maintenance

personnel, grounds personnel, hall monitors and bus drivers employed by the Scotch Plains-Fanwood Board of Education ("Board"). The petitioned-for employees are currently represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 102 ("Local 102"). Local 102 submitted a signed copy of the current collective negotiations agreement between it and the Board covering the petitioned-for employees, and has been granted intervenor status pursuant to N.J.A.C. 19:11-2.7. Local 102 refuses to consent to an election because it alleges that the Association is not a valid employee representative within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). The Board consents to a secret ballot election.

On November 6, 1989, a Commission agent conducted an informal investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. It appears that there are no substantial and material factual issues in dispute which may more appropriately be resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation. The following facts appear.

In its Petition for Certification of Employee Representative, the Association designates the Scotch Plains-Fanwood Support Staff Association as the petitioner. The Association agrees to appear on the ballot as "Scotch Plains-Fanwood Support Staff Association / N.J.E.A.". The Association states that it is setting

up its internal governance system. If it prevails in an election among the the petitioned-for employees, the Association will be the majority representative of the petitioned-for unit, affiliated with the NJEA, its parent organization.

Local 102 challenges the legitimacy of the Association as an employee organization. It contends that the Association is not an employee organization and lacks typical indicia of an organization such as a treasury and officers. Local 102 contends that the petitioned-for employees should know which organization they are voting for. It argues that the only ballot designation of petitioner which accomplishes that objective is "N.J.E.A." Local 102 will not consent to an election if the petitioner appears on the ballot under any other title. There are no other issues in dispute.

N.J.S.A. 34:13A-3(e) states in pertinent part that the term employee representative "...shall include any organization, agency, or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them." The Commission has found that any association established in part to represent the interests of its members as employees is an employee representative within the meaning of the Act. Rutgers University, P.E.R.C. No. 82-55, 8 NJPER 28 (¶13012 1981). The Commission cited National Labor Relations Board cases which have held that employee committees which have no formal structure, constitution or by-laws and no collection of dues are labor organizations within the meaning of the

National Labor Relations Act. See, e.g., Lane Aviation Corp., 211 NLRB 824 (1974); Butler Manufacturing Co., 167 NLRB 308 (1967).<sup>1/</sup>

The Commission has also held that a petitioner is not required to have certain attributes to file a representation petition, but is only required not to have an illegal structure. City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982) Beyond enforcing the Act's specific prohibitions, the Commission will not interfere in a petitioner's internal affairs. Camden, 8 NJPER at 227, n.2. I have declined to sustain a challenge to the validity of an employee organization absent allegations of an illegal structure. County of Passaic, D.R. No. 89-32, 15 NJPER 265 (¶20113 1989). I have also declined to sustain such a challenge where illegal structure has been alleged, but not supported by facts or by reference to any requirement of the Act. Elizabeth Housing Authority, D.R. No. 89-37, 15 NJPER 385 (¶20162 1989).

Although Local 102 has challenged the validity of the Association as an employee representative, it has not asserted that the Association has an illegal structure. Its concerns over the Association's lack of organization, officers or treasury are internal matters, and are not sufficient to sustain a challenge to the Association's status as an employee representative under the Act. Camden, Rutgers. Local 102's concern that the name of the

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<sup>1/</sup> The Commission noted that although the definition of labor organization and representative under the NLRA and the Act are not precisely the same, both statutory provisions are written in very broad language.

petitioner will confuse voters is addressed by the Association appearing on the ballot as the "Scotch Plains-Fanwood Support Staff Association/N.J.E.A.

Accordingly, I direct that an election be conducted among the petitioned-for employees to determine their representational desires in a unit described as follows:

Included: All head custodians, custodians, maintenance personnel, grounds personnel, hall monitors and bus drivers employed by the Scotch Plains-Fanwood Board of Education.

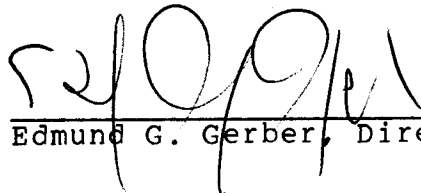
Excluded: All clerical employees, administrators, managerial executives, confidential employees, professional employees, craft employees, police employees, firefighters, supervisors within the meaning of the Act, all employees in other collective negotiations units and all other employees employed by the Scotch Plains-Fanwood Board of Education.

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. We 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

  
Edmund G. Gerber, Director

DATED: December 15, 1989  
Trenton, New Jersey