

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

In the Matter of

HOLMDEL TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

HOLMDEL TOWNSHIP EDUCATION
ASSOCIATION/NJEA,

DOCKET NO. RO-80-40

Petitioner.

-and-

LOCAL 11, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN &
HELPERS OF AMERICA,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among custodial and maintenance employees to ascertain their representational desires. Although the Petitioner originally sought to represent the custodial/maintenance employees within a broader collective negotiations unit, it later amended its Petition to conform to the current unit definition. The incumbent intervenor argued that the date of the amendment was controlling for filing date purposes and, accordingly, the Petition was not timely filed due to the existing collective negotiations agreement. The original Petition, however, was timely filed. The Director rejects the intervenor's arguments and finds the Petition timely filed since the amendment, although proposing a different unit for the representation of employees, relates to the same employees for whom the original question concerning representation had been opened.

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Appearances:

For the Public Employer
Reussille, Cornwell, Mausner & Carotenuto, attorneys
(Martin M. Barger of counsel)

For the Petitioner
Greenberg & Mellk, attorneys
(Arnold M. Mellk of counsel)

For the Intervenor
Craig & Edelstein, attorneys
(Stephen J. Edelstein of counsel)

DECISION AND DIRECTION OF ELECTION

On September 20, 1979, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by the Holmdel Township

Education Association/NJEA (the "Association") seeking to include custodial and maintenance employees employed by the Holmdel Township Board of Education (the "Board") in a collective negotiations unit of teachers, secretaries, librarians, nurses, guidance counselors and clerks, who are currently represented by the Association.

On January 22, 1980, the Association amended its Petition by proposing to represent custodial and maintenance employees in a separate unit. The custodial and maintenance employees are currently represented separately by Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 11").

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 at a 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 Holmdel Township 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 Holmdel Township Education Association/NJEA and Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America are employee representatives within the meaning of the Act and are subject to its provisions.

4. On September 20, 1979, the Association filed a Petition for Certification of Public Employee Representative seeking to include custodial/maintenance employees in a unit consisting of professional and nonprofessional personnel.

5. Local 11 is the current exclusive representative of custodial/maintenance employees in a unit limited to these employees.

6. Both the Board and Local 11 objected to the inclusion of custodial/maintenance employees in the Association's professional/nonprofessional unit. On January 22, 1980, the Association amended its Petition seeking to represent the custodial/maintenance employees in a separate unit.

7. The Board, in a written statement of position, agrees to the appropriateness of the unit described in the amended Petition, and does not oppose the conduct of a secret ballot election among the petitioned-for employees.

8. The appropriateness of the unit as described in the amended Petition is not in dispute.

9. Local 11 claims that the amended Petition presents the Commission with an untimely filed Petition. The current Local 11 collective negotiations agreement expires on June 30,

1980. Pursuant to N.J.A.C. 19:11-2.8(c) a Petition concerning school district personnel is not timely unless it is filed during the period between September 1 and October 15, inclusive, within the last 12 months of an existing agreement.

10. Accordingly, a Petition for Certification of Public Employee Representative having been filed, and the parties not having agreed to a secret ballot election, a dispute exists and the matter is properly before the undersigned for determination.

11. On February 26, 1980, the undersigned advised the parties that it appeared that the initial timely filing of the Petition on September 20, 1979, raised a valid question concerning the representation of custodial/maintenance employees and that the amendment merely sought representation of the same employees within a separate unit rather than within a broader negotiations unit. The undersigned outlined Commission policy which provides that once a valid question concerning representation has been raised concerning employees, the Petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees. Accordingly, the undersigned informed the parties that, in the absence of any further submissions raising in dispute substantial and material disputed factual issues, an election would be directed.

In a letter dated March 5, 1980, Local 11 asserted that the Petition should be dismissed since: (1) the amended unit description represented a significant departure from the

original petition; (2) the Association's showing of interest was in all likelihood obtained upon the representation that the Association was seeking to represent the employees in a combined unit; and (3) that the amendment was a "strategic" device to avoid a determination as to the appropriateness of a combined unit.

The undersigned has considered the above arguments. The significant consideration herein is that at least 30% of the custodial and maintenance employees involved in the Petition have shown support for the Association by designating it as their exclusive negotiations representative and have raised the question concerning their representation during the appropriate "window" period of the contract bar rule. While the Association's amendment proposes a different unit for the representation of these employees, the amendment relates to the same employees for whom the question concerning representation has been opened. The Commission utilizes the showing of interest requirement in order to ascertain whether there is sufficient interest in designating the Petitioner as a negotiations representative to warrant the processing of a Petition. The Commission's requirement is not concerned with evidences of support for a particular unit definition. If there is no support among employees to have the Association represent them in the unit now in existence, this consideration will be reflected in a secret ballot election.

Finally, even accepting Local 11's position that the Association's amendment is designated to avoid litigation over

a contested proposed unit structure, the undersigned does not view this desire as an abuse of the Commission's processes. If the Association succeeds in becoming the majority representative and later desires to combine its units, the Commission's procedures provide ample opportunity for Local 11 to intervene and then participate in any Commission proceedings or to independently present a Petition before the Commission.

Accordingly, 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. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all custodian and maintenance personnel employed by Holmdel Township Board of Education, but excluding all other employees including managerial executives, confidential employees, professional and craft employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

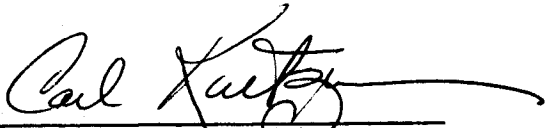
Pursuant to N.J.A.C. 19:11-9.6 the Public Employer is directed to file with the undersigned and with the Association and Local 11 an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned 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 Association and Local 11 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 Holmdel Township Education Association/NJEA or Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or neither.

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: March 20, 1980
Trenton, New Jersey