

D.R. NO. 2000-6

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

In the Matter of

INTERNATIONAL CHARTER SCHOOL
OF TRENTON,

Public Employer,

-and-

Docket No. RO-2000-67

NEW JERSEY EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation directs an election in a unit of teachers employed by the International Charter School of Trenton. The employees will decide whether they wish to have the NJEA as their representative.

The ICST had opposed the petition. While ICST recognized and accepted the rights of teachers to be represented for collective negotiations, it asserted that the NJEA is an inappropriate employee organization to represent its employees because of the NJEA's positions and actions opposing charter schools statewide. The Director rejected the ICST's arguments, noting that the Commission will not interfere in a petitioner's internal affairs; nor will the Commission speculate about the NJEA's future conduct if elected by the ICST's teachers.

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Appearances:

For the Public Employer
David S. Nemiah, President ICST

For the Employee Representative
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Richard A. Friedman, of counsel)

DECISION AND DIRECTION OF ELECTION

On December 6, 1999, the New Jersey Education Association (NJEA) filed a representation petition with the Public Employment Relations Commission seeking to represent a unit of teachers employed by the International Charter School of Trenton (ICST).

The ICST opposes the petition. While ICST recognizes and accepts the rights of teachers to be represented for collective negotiations, it asserts that the NJEA is an inappropriate organization to represent its employees because of the NJEA's positions and actions opposing charter schools statewide. It contends that the NJEA has vehemently opposed any bill or scheme which would divert taxpayer's money away from public schools and

into charter schools. Thus, according to the ICST, it would pose a conflict of interest for the NJEA to represent its employees and at the same time actively oppose charter schools. The ICST further contends that the imbalance of power between it, a "tiny autonomous [entity]", and the NJEA, a "vast organization", makes the conflict real, and not merely speculative. Moreover, the ICST claims the conflict will make it impossible to implement the specific governance systems in its State-approved charter.

The NJEA claims the ICST's position is meritless and requests that we conduct an election among the employees in the petitioned-for unit as soon as possible.

The NJEA points out that the ICST concedes that teachers have the right to be represented for collective negotiations and that the ICST does not oppose the composition of the proposed unit. The NJEA notes that the right to elect a negotiations representative is conferred upon employees by the New Jersey State Constitution and the New Jersey Employer-Employee Relations Act. The NJEA also asserts that the right of charter school employees to invoke the protections of the Act is expressly set forth in the Charter School Program Act of 1995, N.J.S.A. 18A:36A-146. Finally, the NJEA concludes that the ICST's distaste for the NJEA is not a viable basis for denying the petitioned-for employees' right to select the NJEA as their collective negotiations representative.

ANALYSIS

N.J.S.A. 34:13A-5.3 guarantees public employees the right to form, join and assist any employee organization with only limited

exceptions: generally, supervisors may not be represented by organizations that admit nonsupervisory members, and police may not be members of a civilian employee organization. Section 5.3 further provides:

Representatives designed or selected by public employees for the purposes of collective negotiations by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election...shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. (emphasis added)

N.J.S.A. 34:13A-3(e), in relevant part, defines

"representative' as:

...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. (emphasis added)

These sections of the Act make it clear that the choice of negotiations representative belongs to the employees; it is not for the public employer to decide if the employee organization is best suited to serve the representational needs of the employees. Further, we will not investigate or interfere in a petitioner's internal affairs except to enforce the specific requirements and prohibitions of our Act. Camden Police Dept., P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982); Passaic Cty., D.R. No. 89-32, 15 NJPER 265 (¶20113 1989). In Camden, the Commission explained:

We particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not investigate or interfere in a petitioner's internal affairs. [8 NJPER at 227, n. 2.]

See also Cty. of Monmouth, D.R. No. 92-11, 7 NJPER 405 (¶22191 1992) (Petitioner found to be a valid employee representative despite the alleged criminal conviction of one of its business agents).

Moreover, we assume that an organization, if selected by employees as their exclusive representative, will comply with its duty to represent the unit employees as required by the Act; speculation about how an employee representative might actually conduct itself if elected will not delay representation proceedings. Camden; Univ. of Medicine & Dentistry, D.R. No. 98-2, 23 NJPER 440 (¶28202 1997). See also Hudson Cty., D.R. No. 84-21, 10 NJPER 293 (¶15144 1984); Essex Cty. Voc-Tech Bd. of Ed., D.R. No. 94-6, 19 NJPER 522 (¶24242 1993), rev. den., P.E.R.C. No. 94-48, 19 NJPER 584 (¶24278 1993), aff'd 21 NJPER 63 (¶26045 App. Div. 1995), certif. den. 141 N.J. 96 (1995). If the organization later engages in inappropriate conduct, such claims may be tested through unfair practice proceedings. Camden; Hudson. See also Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 345 (¶12155 1981).

Here, the NJEA has been authorized by certain teachers of the ICST to represent them for purposes of collective negotiations. There is no allegation that the NJEA has an illegal structure. Nor has the ICST proffered any evidence which casts doubt upon the

NJEA's organizational status. Rather, the ICST simply claims that the NJEA is an inappropriate organization because of its alleged positions and actions with regard to charter schools. However, we will not interfere in a petitioner's internal affairs, nor will we speculate about the NJEA's future conduct if elected by the ICST's teachers.

Based upon the above, I find that the petitioned-for employees have the right to be represented for purposes of collective negotiations by an organization of their own choosing, if they so desire. I find that the NJEA is an employee representative within the meaning of the Act, has filed a valid petition seeking to represent the employees of ICST and is an eligible employee representative to appear on the ballot in this matter. Accordingly, I order an election among employees in the petitioned-for unit of employees as follows:

Included: All certificated employees employed by the International Charter School of Trenton.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, nonprofessional employees, police employees, casual employees, and all other employees.


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. 19:11-10.1, 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


Stuart Reichman, Director

DATED: February 18, 2000
Trenton, New Jersey