

E.D. NO. 76-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ASBURY PARK BOARD OF EDUCATION,
Public Employer,

-and-

Docket No. RO-1051

ASBURY PARK EDUCATION ASSOCIATION,
NJEA-NEA,
Petitioner.

SYNOPSIS

In the absence of substantial and material disputed factual issues necessitating a hearing, the Executive Director, on the basis of an administrative investigation, directs an election among secretarial employees, security officers, and attendance officers employed by a local board of education. These employees are to vote on whether they desire to be added to an existing unit of teachers, janitorial and maintenance employees, and teacher aides. The parties' dispute as to whether one secretarial employee is a confidential employee within the meaning of the Act, is found not to be a substantial factual issue. Rather, the employee will be entitled to vote subject to challenge.

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Appearances:

For the Public Employer, Joseph N. Dempsey, Esq.

For the Petitioner, John Molloy, UniServ Representative

DECISION AND DIRECTION OF ELECTION

On June 16, 1975 a Petition for Certification of Public Employee Representative, later supported by an adequate showing of interest,^{1/} was filed with the Public Employment Relations Commission by the Asbury Park Education Association, NJEA-NEA (the "Association"). The Association seeks to include secretaries, security officers and attendance officers in an existing unit of certificated members of the professional staff (classroom teachers), and non-certificated employees of the janitorial and maintenance staff and teachers-aid staff.^{2/}

1/ The Board initially objected that it had not seen the showing of interest. However, as has been pointed out to the Board, Rule Section 19:11-1.7 provides that the showing of interest "...shall not be furnished to any of the parties." The Executive Director is authorized to determine its adequacy and this determination is not subject to collateral attack.

2/ Recognition clause of 1974-1976 contract between the Board of Education of the City of Asbury Park and the Asbury Park Education Association.

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. Both parties have been advised of their obligation under Rule Section 19:11-1.12, and have been afforded an opportunity thereunder, to present to the undersigned 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 a hearing. Pursuant to Rule Section 19:11-1.12(c), 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 Asbury Park Board of Education (the "Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

3. The Asbury Park Education Association, NJEA-NEA, is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

4. The Board has declined to consent to a secret ballot election to be conducted by the Commission for the petitioned for employees. A question concerning the representation of public employees exists and this matter is properly before the

undersigned for determination.

On September 30, 1975 the Board stated in writing that it would refuse to consent to a secret ballot election because most secretaries occupied positions of confidence; secretaries lacked tenure and in the past negotiated separately with the Board; security officers were funded from special sources; attendance officers were employed by the Board by statute; there was uncertainty whether petitioner sought to include security officers or attendance officers; and the character of the petitioned for employees necessitates a separate unit identification from custodians, teacher aides and classroom teachers.

On October 10, 1975 and on October 15, 1975 the investigating agent responded to the issues raised by the Board by reviewing previous decisions of the Commission and supplying information on the Commission's rules concerning representation procedures.

On October 27, 1975 an informal conference was held by the investigating agent with representatives of the Association and the Board. Tentative agreement was reached that the Board would recognize the Association as the majority representative of the secretaries, security officers and attendance officers. It was agreed that the secretary to the Board Secretary and the secretary to the Superintendent would be classified as confidential employees.^{3/} The status of a second secretary in

^{3/} N.J.S.A. 34:13A-3(g) defines "confidential employees" as follows: "Confidential employees" of a public employer means
(Continued)

the Superintendent's office remained in dispute. It was agreed that the Association would negotiate a separate contract for the petitioned for employees for 1976-77 and that these employees would be included in the overall unit (custodians-aides-teachers) the following contract year. The agreement was not approved, however, by the entire Board.

The investigating agent again met with the parties in an effort to resolve the matter. Tentative agreement for recognition again was reached. However, recognition was subsequently denied by the entire Board.

On April 13, 1976 the undersigned notified the parties that based on the investigation to date, it appeared that the only issue was a legal one, namely the appropriateness of adding the non-professional employees to the existing unit which includes both professional and non-professional employees. While the Board had requested an evidentiary hearing, the undersigned pointed out that, as it appeared that no substantial and material factual issues had been placed in dispute, the undersigned intended to direct an election in the unit therein described, in accordance with N.J.A.C. 19:11-1.12.

The parties were afforded seven (7) days from the date of the receipt of the letter to proffer any supplementary

3/ (Continued)

employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

evidence or statements of position relevant to the petition.

On April 19, 1976 the Board attorney advised the undersigned that the Board intended to raise factual issues and asserted that one group of employees had not been included in the petition.

On April 26, 1976 the undersigned granted an extension of time of two weeks as requested and stated that an election would be directed unless additional substantial and material factual issues were raised.

On April 27, 1976 the attorney for the Board responded to the undersigned enclosing therewith a copy of his letter dated September 30, 1975.^{4/} The letter of April 27, 1976 contains the following points:

(a) The Board points out that there has been a tradition of negotiating directly with secretaries, security officers and attendance officers. However, as indicated in the April 13, 1976 letter to the parties, the issue raised by the instant petition is whether the unit sought is appropriate. In this regard, it is noted that the unit presently includes both professional and non-professional employees and the petitioner seeks to add additional non-professional employees. The establishment of large negotiating units is generally favored by the Commission and there is no evidence that the unit sought

^{4/} For a discussion of the September 30, 1975 letter, see Section 4, par. 2 supra.

herein is inappropriate. See In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971); In re Board of Education of the Township of Cranford, E.D. No. 74 (1975). At no time has the Board presented any evidence or made any argument to support that the unit sought by the Association would be inappropriate. The only claim made has been that there has been a tradition of separate or direct negotiations between the Board and the disputed categories of employees which should not be violated. There is no evidence, although it has been requested, that these "negotiations" were ever finalized or that written agreements concerning terms and conditions of employment ever resulted.

(b) The Board asserts that there is confusion regarding the employees sought by the Association. The undersigned disagrees. While the Association indicated that it desired to add attendance officers as well as secretaries to the existing unit, the Board has addressed the status of both attendance officers and security officers since its letter of September 30, 1975. Also, it is noted that all three categories were the subject of the two tentative agreements discussed supra. The Association's letter dated March 9, 1976, with a copy to the Board, restated the intention of the Association in this regard in unmistakable terms. Thus, not only is it clear what categories of employees the Association is seeking to add to its existing unit, but the Board has had and has taken advantage of its opportunity to raise factual questions

regarding the status of these employees. As previously stated, in its September 30, 1975 letter, the Board claimed that attendance officers are employees of the Board by statute. Nothing in this decision is inconsistent with that claim. Additionally, this decision is not incompatible with the Board's claimed right as expressed in that same letter to dismiss security officers at any time that funding becomes inadequate.^{5/}

(c) The Board argues that the disputed status of one secretary (the second secretary in the Superintendent's office) indicates the need for a factual hearing. The undersigned determines that the issue of the inclusion of one employee in an otherwise appropriate unit does not constitute a substantial factual issue. The undersigned informed the parties on April 13, 1976 that the disputed employee would be entitled to vote subject to challenge. The ultimate determination of the status of the disputed title may be resolved following the election. See N.J.A.C. 19:11-1.5 and 19:11-2.4 and In re Borough of Lawnside, E.D. No. 76-37, 2 NJPER _____ (May 25, 1976).

(d) The Board argues that the conferences previously held in the instant matter were not binding on the parties.

^{5/} It is clear from the uncontroverted submissions of the Association that security officers function in the area of internal student discipline and control, and on that basis do not constitute policemen within the meaning of the Act.

This decision and direction of election is independent of any tentative agreement and is based solely on the investigation of the petition pursuant to N.J.A.C. 19:11-1.12.

5. Accordingly, based upon the above findings and determinations, the undersigned shall direct an election among the following employees: All secretarial employees, security officers and attendance officers employed by the Asbury Park Board of Education but excluding policemen and confidential employees including the secretary to the Superintendent and the secretary to the Board Secretary. The second secretary in the Superintendent's office may cast a challenged ballot. These employees shall vote on whether they desire to be added to the existing unit of the certificated members of the professional staff, the janitorial and maintenance staff and the teacher aide staff which is represented by the Asbury Park Education Association and represented by that Association for purposes of collective negotiations.

6. The undersigned directs that an election be conducted among the employees described in Section 5. The election shall be conducted no later than thirty (30) days from the date set forth below unless the conclusion of the school year makes it impractical to conduct an election within that period. If the election cannot be conducted within that period, it is to be conducted within thirty (30) days of the start of the next school year.

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


Pursuant to Rule Section 19:11-2.7 the Public Employer is directed to file with the undersigned 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. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire to be added to the existing unit of employees represented by the Asbury Park Education Association, NJEA-NEA and represented by that Association for the purposes of collective negotiations.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein

shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedures.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
June 2, 1976