

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

In the Matter of

WOODBIDGE TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

WOODBIDGE TOWNSHIP EDUCATION ASSOCIATION,

Petitioner,

Docket No. RO-77-52

-and-

WOODBIDGE TOWNSHIP FEDERATION OF TEACHERS,

Intervenor.

SYNOPSIS

The Director of Representation Proceedings directs that an election be conducted among the professional certified personnel of the above-named Public Employer notwithstanding the intervening incumbent representative's assertion that the representation Petition should not be processed. The Intervenor questioned the propriety of accepting the Petition due to a claimed change in the type of the Petition and the distribution of a flyer by the Petitioner. The Director, after examining these claims, determines that substantial and material factual issues have not been raised to warrant continued investigation and to warrant further delay in the processing of the Petition. The Intervenor also questioned the authenticity of some of the signatures contained in the showing of interest. As a result of an investigation, the Director is satisfied that the showing is adequate.

The Director's investigation into the language of the employee showing of interest submitted by the Petitioner reveals that it is sufficient to support a Petition for Certification of Public Employee Representative. The Director, however, noting that the language of the showing of interest merely requested the conduct of a secret ballot certification election, recommends to the Commission that its showing of interest Rule be changed to require, in situations where employees are currently represented, language indicating support for a particular organization to be the employee's representative for the purpose of negotiations.

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Intervenor.

Appearances:

For the Public Employer, Mr. T.C. Cadwalader, Board Secretary

For the Petitioner, Messrs. Rothbard, Harris and Oxfeld, Esqs.  
(Messrs. Emil Oxfeld and Sanford Oxfeld, of Counsel)

For the Intervenor, Messrs. Sauer, Boyle, Dwyer and Canellis, Esqs.  
(Mr. George Canellis, of Counsel)

DECISION AND DIRECTION OF ELECTION

On September 30, 1976, a timely Petition for Certification of Public Employee Representative was filed by the Woodbridge Township Education Association (hereinafter the "WTEA") seeking certification as the majority representative of a unit of approximately 1,000 "certified non-supervisory staff members covered by the existing agreement." The "existing agreement" referred to in that language is a currently effective contract between the Woodbridge Township Board of Education (hereinafter, the "Board"), the Public Employer herein, and the Woodbridge Township Federation of Teachers (hereinafter, the "WTF"), presently the

certified majority representative of a unit of employees described in the contract as set forth below.<sup>1/</sup>

The undersigned has caused an investigation of the Petition to be conducted. The Board of Education certified that the usual Notice to Public Employees was posted on October 7, 1976, supplied a list of unit employees, and informed the undersigned that it had no objection to the conduct of a secret ballot election in the above-captioned matter. In a letter received October 12, 1975 the WFTF, through its attorney Mr. George Canellis, objected "to the filing and acceptance by PERC of the alleged certification Petition dated September 30, 1976," as follows:

"I have in my possession a copy of the original petition which was filed, which is an RD petition; that is, a Petition for Decertification of the Public Employee representative. I have in my possession also a copy of the RO Petition; that is, for the certification of a public employee representative. The forms appear to be identically the same, including a typographical margin error, the signature of the representative of the petitioner, and the erasure of the "x" marked in the RD block. There also appears to be no question from the documentation available that the original decertification Petition was that which was submitted, together with a list of members of the unit involved. We seriously question the propriety of the acceptance by PERC of a petition which has been altered thusly, and which does not also have the acquiescence of the same members in the filing of the Petition as altered.

Additionally, we question the procedural acceptability of the Petition and the signatures submitted, based upon the blatantly false information which was provided to the members of the unit in seeking to obtain signatures for the Petition. I enclose a copy of a document circulated by the petitioning organization which was used to induce individuals to sign the Petition. The

<sup>1/</sup> The agreement, effective for school years 1974-1977, contains the following recognition clause: "The Board recognizes the Union as the sole and exclusive bargaining representative for all certified personnel excluding per diem substitutes, continuing education personnel, Superintendent of Schools, Assistant Superintendents, Principals, Vice-Principals, Administrative Assistants, Supervisors, Directors, Coordinators, and non-certified personnel (Custodians, cafeteria employees, attendance officers, and secretarial and clerical employees.)" On the basis of its current agreement with the Public Employer, the undersigned granted the WFTF intervention in this proceeding.

inaccuracies and falsehoods contained therein speak for themselves. We also question, based on information and belief, the validity of some of the alleged signatures on the Petition.

We shall rely upon a documentation of the above objections via factual verification and legal argument in opposing the request for the election. I submit herewith a copy of the current contract in effect between the Woodbridge Township Federation of Teachers and the Board of Education of the Township, pursuant to your request."

A copy of the document forwarded by the WFTF is attached hereto and made a part hereof. (Attachment "A")

Insofar as no agreement could be reached among all parties to the conduct of a secret ballot election, the undersigned by letter dated October 26, 1976, directed a further investigation of this matter pursuant to N.J.A.C. 19:11-1.12. The parties were reminded of their obligations under N.J.A.C. 19:11-1.12(a), as amended, to present documentary and other evidence as well as statements of position relating to the instant Petition. In particular the WFTF, having raised questions with respect to the validity of the Petitioner's showing of interest, was reminded of its obligation to present affidavits or other evidence in substantiation of its objection and was afforded the opportunity of providing such evidence by November 9, 1976. At the same time the undersigned directed that the staff member designated to investigate the petition on his behalf call a meeting among the parties on November 1, 1976 for the purpose of investigating matters concerning the unit description and for discussion of issues related thereto. The parties were informed that on the basis of the above investigation the undersigned would take appropriate action as set forth in N.J.A.C. 19:11-1.12. The parties were also advised that in the absence of any substantial and material factual issues the undersigned

would thereafter issue a decision in this matter which action might include a decision dismissing the Petition or alternatively a decision directing an election.

In a letter dated November 3, 1976, the undersigned advised all parties that the WTEA, subsequent to the conference of November 1, 1976, had requested a copy of the language of the petition utilized for the Petitioner's showing of interest. The undersigned provided all parties with a copy of the petitioning language inasmuch as the confidentiality accorded to the signatures contained in a showing of interest does not extend to the petitioning language. The parties were requested to submit to the undersigned by November 11, 1976 a statement of position with regard to the appropriateness of the showing of interest language utilized by the WTEA in support of its Petition.

On November 9, 1976, the WTEA provided documentary evidence in substantiation of its objection as requested in the undersigned's letter of October 26, 1976. In addition the parties have presented statements of position with respect to the language of the showing of interest petition. Based upon the investigation the undersigned finds as follows:

1. The Woodbridge Township Board of Education is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, (the "Act") and is subject to its provisions.
2. The Woodbridge Township Education Association and the Woodbridge Township Federation of Teachers are public employee representatives within the meaning of the Act and are subject to its provisions.
3. A Petition for Certification of Public Employee Representative having been filed by the WTEA and the parties not having agreed to a secret ballot election to be conducted by the Commission, a dispute exists within

the meaning of the Act and the matter is appropriately before the undersigned for determination.

4. There is no dispute with respect to the description of the negotiating unit. The parties agree that the unit petitioned-for is coextensive with the unit described in the contract between the Board and the WFTF. The unit is prima facie appropriate for the purpose of collective negotiations.

5. The objections raised by the WFTF to the conduct of a secret ballot election require three areas of investigation and determination by the undersigned. First, the WFTF questions the propriety of PERC accepting a petition which "has been altered" from an RD petition to an RO petition. With respect to this issue the WFTF refers to the PERC -1 form which the Commission provides for the filing of several types of representation petitions. An RD designation on a PERC -1 form indicates a Petition for a Decertification of Public Employee Representative. A decertification petition is utilized when employees no longer wish to have any collective negotiations representative. An RO designation on the above form represents a Petition for Certification of Public Employee Representative filed by an employee organization. The "RO" Petition is the appropriate petition to be filed when employees seek to change their negotiating representative. Secondly, the WFTF questions "the procedural acceptability of the Petition and the signatures submitted, based upon the blatantly false information which was provided to the members of the unit seeking to obtain signatures for the petition." Thirdly, the WFTF questions, "based on information and belief, the validity of some of the alleged signatures on the petition."

In its transmittal letter of November 9, 1976 the WFTF states that its documentary evidence in support of its objections to the Petition consists of:

- "1. An original and two copies of Affidavit of Raymond S. Peterson.<sup>2/</sup>
2. Petitions circulated by the Federation and signed by a majority of the teachers in the bargaining unit indicating continued support of the Woodbridge Federation of Teachers as sole and exclusive bargaining agent, and expressing the belief that a bargaining election is not necessary. This petition is being submitted on 55 separate sheets.<sup>2/</sup>
3. A copy of the original Petition received by the Federation and the transmittal letters of the WTEA to PERC and to the Federation.
4. A copy of the final Petition allegedly filed by the WTEA and a transmittal letter sent by the WTEA to the Federation."

An additional item of evidence consisting of a document which the WFTF asserts was utilized in support of the solicitation of the WTEA's showing of interest was submitted by the WFTF in its initial objection letter to the undersigned. As noted, supra, this evidence is attached to this decision as Attachment "A".

The undersigned shall discuss the evidence and legal argument submitted by the WFTF with respect to each of the above three issues seriatim.

The WFTF states that a decertification petition was filed with the Commission and was later altered to a certification petition. Our

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<sup>2/</sup> The WFTF has requested that the affidavit and petitions presented be accorded confidentiality. To the extent that such documentary evidence solely consists of a preference or a designation of representational desire it is tantamount to a showing of interest and the same has been accorded confidentiality. To the extent, however, that an employee presents an affidavit alleging fraud or forgery, and the undersigned is requested to take adverse action by dismissing a petition on the basis of such affidavits, the undersigned cannot necessarily accord blanket confidentiality. In any event, in accordance with our policy with respect to the confidentiality of a showing of interest, the actual content of such affidavits, as opposed to the signatures, is not deemed to be confidential material. Similarly, the affidavit of the WFTF's President, insofar as it does not relate to a showing of interest purportedly submitted by him, is not shielded by confidentiality.

investigation reveals that this is not the case. The Commission's records indicate that no decertification petition was filed but rather that a Petition for Certification of Public Employee Representative was the only petition filed with this agency.

The WTFF has apparently misinterpreted the filing of the instant Petition. It evidently received two conflicting letters from the President of the WTEA. The first letter dated September 30, 1976, stated "enclosed please find a copy of the decertification petition (PERC Form #1) which was filed with the Public Employment Relations Commission on September 30, 1976." The second letter also dated September 30, 1976, stated "enclosed please find a copy of the actual petition which was filed with the Public Employment Relations Commission on September 30, 1976. Please be advised to make any corrections, if necessary, on the other copy that was sent to you." It is clear to the undersigned and should have been clear to the WTFF that the second letter amended the first. The undersigned finds that the Commission cannot predicate its acceptance of petitions for processing upon the possibility that a Petitioner, in the pre-filing stages, may have erred in the initial completion of the form. In the event that an earlier decertification petition had actually been filed with the Commission followed by the filing of a petition for certification of public employee representative by the same petitioner, a Commission agent would have contacted the petitioner to determine its intent and administratively arranged for the withdrawal and closing of the incorrectly filed petition. In any event, neither the Board nor the WTFF was misled by the filing of the certification Petition. The Commission, as a matter of policy, contacted the Board and the WTFF upon the filing of the Petition and provided the parties with a copy of the Petition actually filed. See N.J.A.C. 19:11-1.6.



The WFTF argues that the alleged change from a decertification petition to a certification petition should have been subject to the acquiescence of the signatories to the showing of interest. The Commission's Rules do not require that a petitioner circulate a completed PERC -1 form among employees simultaneously with the obtaining of signatures to a showing of interest. Significantly, it is not alleged by the WFTF that a completed PERC -1 form seeking a decertification election was circulated by the WTEA simultaneously with the obtaining of signatures.

Even assuming arguendo the factual accuracy of the WFTF's claimed change in petition, a change in a PERC -1 form would not require the approval of the signatories constituting the showing of interest, or a new showing of interest, unless the language of the showing of interest was inconsistent with the intent of the change in the petition. The intendment of employees through the showing of interest language normally controls the procedural acceptability and processing of the PERC -1 form. A certification petition will not be processed where the showing of interest language merely requests a decertification election. The reverse is also true.

N.J.A.C. 19:11-1.3 requires that a showing of interest accompanying a petition for decertification "shall indicate that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified employee representative." An examination of the showing of interest language furnished by the WTEA (see infra, at page 12 - 13) reveals that it does not contain the mandatory showing of interest language required of a decertification petition. On the other hand, it clearly indicates that when the employees signed the showing of interest

they were requesting a certification election. Accordingly, the language of the showing of interest is consistent with the intent of the change in the petition. A further discussion of this point is contained infra, at page 15.

With regard to the second issue, the WFTF supports its allegation that the showing of interest was procured through "blatantly false information," by presenting an affidavit of its President and petitions of support signed by unit employees. In relevant part, the affidavit states as follows:

"A flier dated September 24, 1976, distributed by the Woodbridge Township Education Association through the teacher mailboxes to almost every teacher in the bargaining unit has previously been forwarded to the Commission with the letter of October 8, 1976, from our attorney, George W. Canellis. In addition to being placed in the teacher mailboxes, this flier was posted on many of the teacher bulletin boards in the schools throughout the district. A copy of this flier is attached hereto as Exhibit A. [Attachment A hereto]

This flier misled many of the teachers in the district by alleging that negotiations with the Board of Education for a new contract could not take place unless the Woodbridge Township Education Association was to prevail in a bargaining election. In fact, negotiations between the Federation and the Board had begun on September 15, 1976.

A substantial number of Federation members have advised me that they signed the Petition because they favored the principle of holding a secret ballot election. The language of the Petition states specifically that any employee in the unit who favors a secret ballot election may sign, regardless of membership in any organization. These Federation members have advised me that they intend to support the Federation in any election which may be held, and they are not interested in supporting or being represented by the Woodbridge Township Education Association.

As President of the Federation, I have caused Petitions in support of the Federation to be circulated throughout the district. These Petitions state expressly that the teachers signing the Petition continue to recognize the Federation as the sole bargaining agent and do not seek to have an election conducted by the Commission. It is my belief that these signatures constitute a majority of the members of the unit."

The petitions referred to in the President's affidavit contain the following language:

"We, the undersigned do hereby continue to recognize the WOODBRIDGE TOWNSHIP FEDERATION OF TEACHERS as our sole and exclusive bargaining agent. Furthermore, we feel that a P.E.R.C. conducted election is NOT necessary to prove majority status."

The flier referred to in the President's affidavit, and which is attached to this decision, is purportedly a document passed out to all teachers by the WTEA during a period in which signatures were solicited. The flier itself indicates that it was being distributed in the midst of an organizational campaign. However, to the extent that the President in his supporting affidavit claims that employees were misled by the contents of the flier, his statement is conclusory and is not accompanied by any specific evidence from any individual employee indicating his or her own personal experience. The petitions provided by the WTFF indicating continued support by its members are merely that. There is no statement contained in these petitions indicating that the signatories were misled by any information circulated by the WTEA. Thus, even if the undersigned were to assume arguendo that the flier contains what is alleged to be "blatantly false information," and, parenthetically, the undersigned hereby makes no determination as to such, there is no specific evidence that any unit member was misled by the flier.

Further, there is no evidence that the flier was a material causal factor in the procurement of signatures by the WTEA. N.J.A.C. 19:11-1.15(c)(3) provides an open period from September 1, to October 15, for the filing of certification petitions where school district employees are involved. Showings of interest may be obtained even prior to these dates. The WTFF does not claim that other informational material, written or oral, was circulated among teachers either intended to solicit signatures or intended to dissuade teachers from doing so.

Our investigation of the showing of interest reveals that a substantial number of signatures were obtained prior to the earliest distribution date of the WTEA flier. In view of this determination, and in light of the failure of the WFTF to present a minimal evidentiary proffer that employees relied upon the information contained in the flier in signing the showing of interest, the undersigned finds that substantial and material factual issues have not been raised to warrant continued investigation into the showing of interest and to warrant further delay in the processing of this petition.

With regard to the WFTF petitions, general statements by employees of organizational support are patently insufficient to invalidate their previous declarations on a showing of interest. In any event, since it is possible that 30% of the unit members could still have signed the WTEA showing of interest, the assertion that a majority of employees continue to support the WFTF is irrelevant to the processing of this RO petition. In this respect, the Executive Director's statement in In re City of Jersey City, E.D. No. 76-19, 2 NJPER 30, (1976), aff'd, P.E.R.C. No. 76-21, 2 NJPER 58 (1976), that the desires of employees are appropriately tested at the ballot box in a secret ballot election, is controlling.

With regard to the third issue the WFTF in the letter received by the Commission on October 12, 1976, initially questioned "based on information and belief the validity of some of the alleged signatures on the petition." The WFTF indicated that it would "rely upon a documentation of the above objections via factual verification..." In its offer of proof, the WFTF did not provide any affidavits alleging forgery of signatures nor did it provide a list of certified signatures. Instead the WFTF submitted petitions containing employee signatures which had been

secured by the WFTF subsequent to October 6, 1976. The President of the WFTF requested, in his affidavit, that the undersigned compare signatures of the WTEA showing of interest with the signatures on the WFTF's petition of support.

Normally, the undersigned presumes ab initio the validity of the signatures on a showing of interest. This presumption, however, has not precluded the undersigned, under appropriate instances, to conduct an investigation of the validity of signatures on his own motion and as part of a routine investigation. Inasmuch as the WFTF's evidentiary proffer was of sufficient scope to permit an investigation that would ascertain the validity of the WFTF claim questioning the authenticity of signatures on the WTEA petition, the undersigned has conducted a full and complete investigation. As the result of such investigation the undersigned is satisfied that the showing is adequate.

In summary, the undersigned has fully and thoroughly investigated the three areas of inquiry raised by the WFTF and concludes that with respect to these three areas the WTEA showing of interest is adequate.

6. There remains the issue of the adequacy of the showing of interest language to support the filing of the Petition for Certification of Public Employee Representative. All parties have been requested to provide statements as to this issue; and, accordingly, statements have been received from the WFTF and the WTEA. The language of the WTEA showing of interest is as follows:

PETITION

FOR A SECRET BALLOT ELECTION PURSUANT TO THE  
RULES AND REGULATIONS OF THE PUBLIC EMPLOYMENT  
RELATIONS COMMISSION:

We, the undersigned, members of the certified non-supervisory staff of Woodbridge Township, Middlesex County, request that the Public Employment Relations Commission of the State of New Jersey conduct a secret ballot election to determine whether a majority of the certified non-supervisory staff wish to be represented by the Woodbridge Township Education Association or the Woodbridge Township Federation of Teachers for the purpose of negotiations, grievances, and all other obligations under Chapter 123, Public Laws of 1974.

Attached to each individual petition bearing the above language and accompanying signatures is a cover letter stating as follows:

A  
 PETITION  
 FOR A  
 SECRET BALLOT  
 ELECTION

AS PROVIDED FOR IN N.J.A.C. 19:11-1.3

\*This is not a ballot

\*This is a petition requesting P.E.R.C. to conduct a secret ballot election for Woodbridge teachers. The time and place of the election shall be designated by P.E.R.C. (N.J.A.C. 19:11-2.1)

\*This petition may be signed by any certified/non-supervisory staff member employed in Woodbridge who favors a secret ballot election regardless of membership or non-membership in any organization (N.J.A.C. 19:11-1.3(3))

\*All signatures must be forwarded to the Public Employment Relations Commission only (N.J.A.C. 19:11-17)

Before proceeding to an analysis of the instant language, however, the undersigned makes the following observations relative to the showing of interest requirement.

The showing of interest requirement is a tool designed by the Commission solely for the purpose of determining whether representation petitions are accompanied by adequate employee interest to warrant an

administrative processing of the petition. It is a tool of administrative convenience. For this purpose, attacks on the showing of interest serve a limited nature, that being to convince the undersigned that the Commission's processes are being abused and that, in fact, the processing of a petition is not warranted.

The showing of interest requirement is not established for the purpose of supporting a petitioner's claim to be the majority representative of public employees in an appropriate unit, as contained in the requirement for filing a Petition for Certification of Public Employee Representative (N.J.A.C. 19:11-1.1). Rather, it is designed to preclude the processing of petitions which result in needless expenditure of Commission resources.

The elements constituting a showing of interest are contained in the Commission's definitions, found in N.J.A.C. 19:10-1.1.

"Showing interest" means a designated percentage of public employees in an allegedly appropriate negotiating unit, or a negotiating unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiating representative or have signed a petition requesting an election for certification or decertification of public employee representatives. Such designations shall consist of written authorization cards or petitions, signed and dated by employees, authorizing an employee organization to represent such employees for the purpose of collective negotiations or requesting an election for certification or decertification of public employee representatives; current dues records; an existing or recently expired agreement; or other evidence approved by the Executive Director or the Commission.

The WFTF, noting that the criteria set forth in the above rule are stated in the alternative, argues that the definition requires that where there is an incumbent representative a showing can only consist of either of the first two criteria. In relevant part, the WFTF argues:

"...However, the Federation submits that where certification is sought, the term 'showing of interest' must mean that a designated percentage of employees in the unit 'are members of an employee organization or have designated it as their exclusive negotiating representative.' The other definitions of 'showing interest' may well be appropriate in situations where decertification is sought, or where there is no certified bargaining agent, and original certification is sought. But there (sic), as here, the petition seeks to both decertify the existing representative and certify a different representative, the showing of interest should at least involve a designation of the challenging organization as the exclusive representative of those signing (sic) the petition."

In addition, the WTFPT would also have the undersigned evaluate the language of the showing of interest petition within the context of certain alleged events (described above in Section 5) concerning the filing of the petition. For reasons previously stated, allegations relating to the actual filing of a PERC -1 form and the designation of the RO box rather than the RD box, relate, as the WTFPT has in fact asserted, solely to the procedural acceptability of the petition. Further, the undersigned has carefully examined the evidence presented by the WTFPT, and within the context presently at issue - the adequacy of the language of the showing of interest - determines that the evidence presented in support of its allegations fails to establish a sufficient nexus between the allegations and the actual solicitation of the showing of interest.

There is, however, the evidence that the cover sheet to the WTEA's showing of interest petitions informed employees that the election was for a secret ballot election as provided for in N.J.A.C. 19:11-1.3. Although not specifically described on the cover sheet, this Rule lists the contents of a petition for decertification. The undersigned has indicated above that the instant WTEA showing of interest did not contain



the showing of interest language mandated by the decertification rule. Moreover, when the two pages of the showing of interest petition are read together, it is clear that the employees were seeking an election which would result in a certified negotiations representative. Such result is obtainable only by means of a petition for certification.

The WTEA argues that the language of the Rule definition is sufficiently broad to encompass the language of the instant showing of interest in that the definition permits a showing of interest to be presented in the form of a request for a certification election. The WTEA also asserts that in the past, the Commission has accepted showing of interest language presented by NJEA affiliated organizations containing virtually identical language. In support of this assertion the WTEA brings to the undersigned's attention a showing of interest previously submitted in a matter involving an NJEA affiliate seeking to unseat an incumbent organization. The undersigned has examined that showing language and finds it virtually identical to the instant language. Moreover, based upon the undersigned's own investigation there is no doubt that the Commission has in the past accepted virtually similar showing of interest language.<sup>3/</sup>

While the WFTF advances an attractive interpretation of the definition, the undersigned is constrained not to read it so restrictively. The definition does not restrict a petitioner to the use of one or two of the criteria established therein depending upon the context in which

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<sup>3/</sup> The fact that previous showings of interest contained such language may be relevant to determining whether the WTEA acted in substantial reliance on what appeared to be acceptable practice before the Commission. However, the fact of such reliance has no relevancy to the issue of whether the petitioning language is adequate under the definitional standard. In this regard the undersigned notes that the Commission has in the past processed petitions submitted by affiliates of the WFTF's parent organization, supported by showings of interest which would not satisfy the WFTF's interpretation of the definition suggested above.

a certification petition arises. The WTEA's showing minimally meets the standard which past executive directors of the Commission have utilized in interpreting the definition. The WTEA's showing of interest consists of language which is consistent with a reasonable construction of the language of the definition, and accordingly the undersigned finds that such showing of interest language is adequate.

The gravamen of the WTEA's proposed interpretation of the definition, however, is well noted. The issue raised is the appropriateness of a showing of interest definition which allows the filing of a petition based merely upon a request for a certification election in instances where the employees are currently represented by an exclusive negotiations representative. The filing of a petition for certification under such circumstances has the attendant effect of disturbing the stability of the relationship between an employer and an existing negotiating representative. At the same time, the Commission's rules require that such a petition be filed at a time when the parties generally are commencing negotiations towards a successor contractual agreement. The showing of interest requirement should take into consideration the effect that the filing of a petition for certification of public employee representative would necessarily have on the established negotiations relationship.

In light of this factor, the undersigned has conducted an investigation into the procedures of other labor relations agencies in order to determine their experience. The investigation has revealed a conflict of approach in dealing with the issue.

Some agencies have allowed showing of interest language that merely indicates support for an election, or merely support for the

filing of a petition for a certification election. On the other extreme, some agencies require a clear expression of support for a particular negotiations agent to be contained in the showing language. The National Labor Relations Board, for example, requires that a designation of negotiations representative appear in the showing of interest. Relying upon Board experience, and its own enabling statute, the Michigan Employment Relations Commission has held, that where the only purpose of authorization cards is to obtain an election and there is no clear designation of an organization as the desired bargaining agent, the use of such authorization cards as a showing of interest is unacceptable. In re Board of Education of the School District of the City of Detroit, MERC Case No. R661-325 (1966). As noted, MERC's decision, as in the case of many other agency decisions, rests upon its statutory language, which requires at Sec. 12(a) of the Public Employment Relations Act, Sec. 336 of the Public Acts of 1947, that a petition be accompanied by a petition alleging that 30% or more of the employees "wish to be represented for collective bargaining."

The statutory context in the instant matter, Sec. 6(d) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-6(d), does not set forth a showing of interest requirement. It provides that:

"The Commission...is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees."

Rather, it is, as noted, by administrative rule that the Commission has required such showing. See N.J.A.C. 19:11-1.2(a)(9).

Regardless of the statutory context in which the showing of interest issue arises, the policy problem is the same. It is expressed

most cogently in a decision rendered by the Wisconsin Employment Relations Commission, which, as indicated in the following relevant passage, had no showing of interest requirement prior to the decision rendered therein.

"...Under the pertinent statutory provisions a question of representation must exist as a condition precedent to the processing of a petition for an election among employes. The Commission has not required any showing of interest to be demonstrated by any petitioner with respect to the processing of election petitions filed pursuant to the Wisconsin Employment Peace Act or the Municipal Employer-Employe Labor Relations Act. The Commission has considered the filing of the petition, whether it be to certify or decertify a representative, as a good-faith claim that the employes desire to be represented or not to be represented. This policy has been applied in initial and subsequent elections [footnote omitted] on the basis of our experience that the overwhelming number of petitions have been filed in good faith with the expectation of obtaining the results prompting the petition....

The establishment of a policy which would now require labor organizations seeking representation to present a showing of interest or to require that an employer establish a good faith doubt that the employes desire to continue their representation by an incumbent union, requires a consideration of the rights of employes to select or change their bargaining representative, with the interest of preserving stability in existing collective bargaining relationships. We have considered the above-discussed factors in order to balance and achieve these objectives when confronted with issues involving the timely filing of petitions for elections.

Although the Commission has not in the past processed a substantial number of petitions which have not been filed in good faith, the results of recent elections seeking a change in the present representative status indicate that an increasing number of petitions have been filed where there was little likelihood of success by the petitioner. The processing of such election petitions has resulted in no change in the bargaining relationship and has had an adverse impact upon such existing relationship, in that such processing has interrupted and delayed negotiations, thus affecting the stability of the collective bargaining relationship. Such unwarranted delays create problems especially in municipal employment with respect to the effect of budgetary deadlines and other special deadlines which may be imposed by statute, and in both the private and public employment where such delays create additional issues for bargaining, such as effective dates of agreements, as well as their retroactive application.

The Commission concludes that there is now sufficient reason requiring parties requesting elections seeking a change in representation or the rejection of the present representative to furnish the Commission with objective data raising the question concerning representation before it will conduct such an election, which if otherwise held, might delay and frustrate the relationship between the recognized or certified labor organization and the employer.

Accordingly, where there is an existing collective bargaining relationship...an organization filing a petition for an election among the employees involved at the time of filing must administratively demonstrate that at least 30% of the employees in the claimed appropriate collective bargaining unit desire the petitioning organization to represent them for the purposes of collective bargaining...." 4/

The undersigned agrees with the consensus of opinion of the agencies surveyed that a simple, clear designation of collective negotiations representative is the best evidence of employee interest. Common sense dictates that the petition contain language indicating that the petitioner desires to be certified as the majority representative of employees. Common sense would also dictate that the showing of interest contain language from which a reasonable inference can be drawn that there is support for a particular employee organization to be certified through an election. The above would be consistent with the language of the PERC -1 form relating to a petition for certification of public employee representative which states: "A substantial number of public employees wish to be represented for purposes of collective negotiations by Petitioner and Petitioner desires to be certified as majority representative of employees." (emphasis supplied)

The undersigned moreover, cannot disregard the fact that the mere processing of a representation petition based upon a valid showing of interest tends to cause disruption during the most crucial period of

4/ In re Wauwatosa Board of Education, WERC Decision No. 8300-A (1968).

the negotiating relationship. This factor would independently raise doubt as to the adequacy of a showing of interest rule which would permit the obstruction of a bargaining relationship on the basis of a mere request for an election without more substantial evidence of employee support for a particular employee organization.

The Wisconsin experience lends credence to the conclusion that a bald claim of majority status as contained in the certification petition and unaccompanied by an adequate demonstration of employee interest on behalf of a particular employee organization insufficiently supports a likelihood of success. While the showing of interest as previously stated, is not designed to support the claim of majority status, or even to demonstrate a likelihood of success, it is the very fact that petitions may be filed by petitioners without good reason to anticipate success that gives rise to the need for a showing of interest definition which requires some indication of interest, i.e. support, among employees for having the petitioner represent them for purposes of negotiations. On one hand, the definition should be liberal enough to accommodate, within the scope of permissible language, the desires of employees to exercise their choice of changing negotiating agents through an election, where such privilege is already confined by temporal bars (see N.J.A.C. 19:11-1.15), without, however, committing themselves to actually voting for the petitioner. On the other hand, the permissible language cannot be so liberal as to allow an established relationship to be disrupted because employees sign a petition simply because they support the idea of having elections.

In the instant matter, involving showing of interest language designed solely for gaining a Commission election, the undersigned cannot conclude

that the employees were expressing support for having the Petitioner elected as their representative. The language places primary emphasis upon having an election among two choices. A signature can be interpreted as support for either the Petitioner or the incumbent organization. There is no way to reasonably infer that the required minimum of 30% of employees showed support for the Petitioner. The undersigned feels that the use of such showing of interest language is not conducive to effectuating the purposes of the Act, and recommends that the Commission, pursuant to its rulemaking authority, amend the definition of "showing of interest" to require in future filings a clear indication of support for a particular employee organization to be certified through an election in those instances where the employees are already represented by a negotiations representative.

7. For the reasons heretofore stated, the WTEA's showing is adequate and there being no dispute as to the appropriateness of the unit composition, the undersigned shall direct that an election be conducted.

The unit for election purposes shall be described as follows:

"All certified professional personnel employed by the Woodbridge Township Board of Education excluding per diem substitutes, continuing education personnel, superintendent of schools, assistant superintendents, principals, vice-principals, administrative assistants, supervisors, directors, coordinators, and non-certified personnel (custodians, cafeteria employees, attendance officers, and clerical employees).

8. 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. The election will be conducted as an on-site secret ballot election.

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.

The undersigned's designated election agent shall be authorized to convene a pre-election conference among all the parties, at which conference the details of the election process will be discussed. In the absence of agreement among the parties as to the details of the time and location of the election, which also shall be agreeable to the undersigned, the undersigned's agent shall be authorized to establish the above. Any party not in attendance at the conference shall be deemed to have waived its privilege to participate in the above matters.

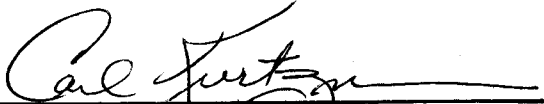
Pursuant to N.J.A.C. 19:11-2.7, the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than 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. The Public Employer is also requested to provide the undersigned with separate lists of employees who are assigned to the individual schools or to other work locations.



Those eligible to vote shall vote on whether they desire to be represented for purposes of collective negotiations by the Woodbridge Township Education Association, Woodbridge Township Federation of Teachers, or neither.

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.

BY ORDER OF THE DIRECTOR OF  
REPRESENTATION PROCEEDINGS



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Carl Kurtzman, Director

DATED: January 13, 1977  
Trenton, New Jersey