

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-79-120

NEWARK TEACHERS UNION,  
LOCAL 481, AFT, AFL-CIO

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that a secret ballot election be conducted among psychiatrists to determine whether these employees desire or do not desire to be represented by the Petitioner for the purpose of collective negotiations. The Petitioner desires to represent these employees in the existing collective negotiations unit of professional and non-professional employees which it represents. The Director finds, on the basis of stipulated facts, that the psychiatrists, although part-time employees, have a regularity and continuity of employment to qualify as public employees under the Act and that the psychiatrists share a community of interest with employees included in the existing unit.

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LOCAL 481, AFT, AFL-CIO,  
Petitioner.

Appearances:

For the Public Employer  
Beverly A. Williams, Manager

For the Petitioner  
Pietro M. Petino, Organizer

DECISION AND DIRECTION OF ELECTION

On October 19, 1978, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by the Newark Teachers Union, Local 481, AFT, AFL-CIO (the "NTU") seeking to add psychiatrists employed by the Newark Board of Education (the "Board") to the existing unit of professional and nonprofessional employees represented by the NTU.

The undersigned has caused an investigation to be conducted into the matters concerning the Petition in order to determine the facts. All parties have been advised of their obligations under N.J.A.C. 19:11-2.6(a), and have been afforded an opportunity thereunder to present 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 at a hearing. Pursuant to N.J.A.C. 19:11-2.6(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 Newark 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 Newark Teachers Union, Local 481, AFT, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

4. The NTU is seeking to add certain professional employees employed by the Board, specifically, psychiatrists,

to the existing unit of professional and nonprofessional employees. <sup>1/</sup>

5. The NTU agrees to a secret ballot election among the employees sought to be added to the existing unit.

6. The Board does not consent to a secret ballot election contending that the petitioned-for employees, all of whom are part-time personnel, do not have a sufficient regularity and continuity of employment to qualify as public employees. Further, the Board states that there exists a conflict of interest between the petitioned-for employees and other employees currently represented in the unit which negates any community of interest inasmuch as psychiatrists conduct psychiatric investigations of employees currently in the NTU unit. The Board has not advanced any additional position in opposition to the instant Petition.

7. The parties have entered into the following stipulations of fact:

1/ The Newark Teachers Union currently represents the titles of "teachers, long term substitute teachers, itinerant teachers, home bound teachers, recreation teachers, speech teachers, speech therapists, remedial reading teachers, provisional teachers, librarians, drop out counselors, guidance counselors, regular teachers teaching four nights a week in Newark Evening High School, and coordinators having permanent status as teachers, helping teachers, learning disability teachers consultants, social workers, psychologists, attendance counselors, court representatives, and all titles designated in February 7, 1977 arbitrator's award, occupation therapist, physical therapist, program assistant, research assistant, victoria specialist, teacher clerks and clerk stenographers (school)," and special investigators. Recognition Clause, Article I, 1978-1980 Agreement; special investigators added by Certification of Representative issued June 12, 1979.

1. One psychiatrist has been employed by the Board for thirteen years, one for eleven years, one for eight years, and one for one year.

2. They have never been given employment contracts but they are paid through the regular payroll at a yearly salary depending on the number of days per week they work.

3. There are currently four psychiatrists employed by the Newark Board of Education, two regularly work three days per week, and two regularly work one day per week during the regular ten month school year.

4. The two psychiatrists who regularly work three days per week have been members of the pension plan for teachers and have received health benefit coverage, including major medical, from at least 1975 and are currently receiving these fringe benefits. The Board's position is that these benefits were granted in error. The other two psychiatrists, who only work one day per week, have not received any of these fringe benefits.

5. On the days that they work, the psychiatrists are required to report to work at the beginning of the normal work day and are required to work a normal full day which is seven hours.

6. The psychiatrists are assigned space in the Board's Central Office to perform clinical evaluation of students. On rare occasions they will meet with students at the school locations.

7. The Board does not employ any full-time psychiatrists, though it does employ full-time psychologists, learning

disability teacher consultants and social workers, who are all currently represented by the Newark Teachers Union.

8. The psychiatrists are under the direction of the Director of Child Guidance who routinely assigns cases based on availability of psychiatric personnel and caseloads.

9. The psychiatrists are not members of the basic Child Study Team which consists of the learning disability teacher consultant, social worker and psychologist. There are forty such teams. The Child Study Team identifies, diagnoses, evaluates, classifies and determines placement in special programs for intellectually, psychologically, socially, and emotionally handicapped children. If, after having completed these evaluations, the Child Study Team believes that the child may be classified as socially maladjusted or emotionally disturbed, the team will then refer the child to the psychiatrist for his clinical evaluation. The psychiatrist reports to the Child Study Team which then makes a decision on the final classification, if any.

On June 14, 1979, the undersigned advised the parties that, based upon the facts revealed in the investigation, and for the following reasons, the unit sought by the NTU is prima facie appropriate. The Commission's policy is that part-time employees who are public employees within the meaning of the Act share a community of interest with full-time employees and may be represented in the same collective negotiations unit. The stipulations of fact herein demonstrate that the psychiatrists have a regularity and continuity of employment and are, therefore, public employees.

Further, the Commission, under its policy favoring broad-based units in school districts, has previously held that a community of interest exists between regular classroom teachers and other professional and nonprofessional employees who, by performing functions which are adjunct or auxiliary to the basic function of classroom teaching, are an integral aspect of the total educational service provided by the Board. <sup>2/</sup> While it is urged by the Board in its positional statement that the psychiatrists may at times conduct psychiatric examinations of members of the negotiations unit, the factual stipulations do not support this claim. The undersigned, additionally, advised the parties that on the basis of the investigation and in the absence of a presentation of substantial and material disputed factual issues, which would warrant the convening of an evidentiary hearing, an election would be directed among the psychiatrists to ascertain their representational desires. To date, no additional statements have been proffered.

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. The undersigned finds that the appropriate unit for

2/ In re Newark Board of Education, P.E.R.C. No. 20 (1960); In re Cranford Board of Education, D.R. No. 79-24, 5 NJPER 103 (¶ 10058 1979); In re Board of Education of City of Camden, E.D. No. 76-32, 2 NJPER 123 (1976); and In re West Milford Township Board of Education, P.E.R.C. No. 56 (1971).

collective negotiations is: all teachers, long term substitute teachers, itinerant teachers, home bound teachers, recreation teachers, speech teachers, speech therapists, remedial reading teachers, provisional teachers, librarians, drop out counselors, guidance counselors, regular teachers teaching four nights a week in Newark Evening High School, and coordinators having permanent status as teachers, helping teachers, learning disability teachers consultants, social workers, psychologists, attendance counselors, court representatives, and all titles designated in February 7, 1977 arbitrator's award, occupation therapist, physical therapist, program assistant, research assistant, victoria specialist, teacher clerks and clerk stenographers (school), special investigators and psychiatrists, but excluding managerial executives, confidential employees, police and craft employees, and supervisors within the meaning of the Act.

The undersigned directs, pursuant to N.J.A.C. 19:11-2.6 (b)(3), that a secret ballot election be conducted among psychiatrists. The election shall be conducted by mail ballot within forty-five (45) days from the date set forth below.

Those eligible to vote are psychiatrists 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. Ineligible to vote are employees who resigned or were discharged for cause since the

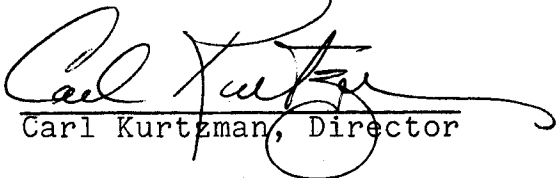


designated payroll period and who have not been rehired or reinstated before the election date. Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with the undersigned and with the NTU an election eligibility list, consisting of an alphabetical listing of the names of all eligible employees together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received no later than ten (10) days from the date set forth below. A copy of the eligibility list shall be simultaneously filed with the NTU 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 Newark Teachers Union, Local 481, AFT, AFL-CIO.

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: July 10, 1979  
Trenton, New Jersey