

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

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Public Employer,

-and-

FAIRVIEW FEDERATION OF TEACHERS,
NJSFT, AFT, AFL-CIO,

DOCKET NO. RO-80-3

Petitioner,

-and-

FAIRVIEW EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among professional and nonprofessional employees of the Board in order to ascertain whether they desire to be represented by the Federation or the Association. If a majority of the professional employees voting in the election desire to be included in a unit with nonprofessional employees, the unit structure will consist of one negotiations unit including all professional and nonprofessional employees. If a majority of professional employees voting in the election do not desire such inclusion, the professional and nonprofessional employees will be voting for a representative in separate units of professional and nonprofessional employees. The Director determines that both a mixed unit of professional and nonprofessional employees and separate units of these personnel are appropriate, and further determines that the most appropriate unit structure need not be designated since the Act permits professional employees to exercise an option as to their inclusion with nonprofessional employees. The Director also determines that a dispute as to who is the spokesperson in the proceedings on behalf of the Association need not delay the conduct of an election.

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

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Public Employer,

-and-

FAIRVIEW FEDERATION OF TEACHERS,
NJSFT, AFT, AFL-CIO,

DOCKET NO. RO-80-3

Petitioner,

-and-

FAIRVIEW EDUCATION ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Jesuele & Maurice, Esqs.
(Alfred Maurice, of Counsel)

For the Petitioner
David Ratner, Representative

For the Intervenor
Goldberg & Simon, P. A.
(Gerald Goldberg, of Counsel)
Elizabeth Stefan

DECISION AND DIRECTION OF ELECTION

On July 2, 1979, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Fairview Federation of Teachers, NJSFT, AFT, AFL-CIO (the "Federation") with respect

to a proposed collective negotiations unit consisting of "teachers and other non-managerial personnel," including nonprofessional personnel, employed by the Fairview Board of Education (the "Board"). The Federation amended its Petition on July 26, 1979, to limit the proposed unit to encompass the professional employees only. Professional employees are currently represented by the Fairview Education Association (the "Association") in a unit exclusively comprised of professional employees.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition in order to determine the facts and to obtain the positions of the parties.

In Item #9 of the Petition form the Federation listed the currently recognized majority representative as the Fairview Education Association, under the heading "affiliation" listed the New Jersey Education Association/NEA, and in the address box listed "c/o E. Stefan." Based upon this information, the undersigned advised Elizabeth Stefan of the filing of the Petition and advised Ms. Stefan that the Association may have an interest in the proceeding and should contact the Commission with regard to the Petition. The Board, on July 23, 1979, certified to the Commission that the Notice to Public Employees was posted. ^{1/}

By letter dated July 14, 1979, and received July 18, 1979, Elizabeth Stefan advised the undersigned that the Association

1/ The Board has taken a neutral position with respect to the Petition.

officers consented to a secret ballot election among employees described in the Petition and signed the letter as President of the Fairview Education Association. However, a letter dated July 25, 1979, from Joseph Bentz, was received by the undersigned on July 27, 1979, requesting that the Association be permitted to intervene in the Petition. Mr. Bentz signed the letter as President of the Fairview Education Association and stated that his letter "is the first authorized communication of the Association." In addition, Mr. Bentz submitted a copy of the most recent agreement between the Board and the Association.

An informal conference was convened on July 31, 1979. At the conference, Ms. Stefan stated that the Association desired an election among the professional employees in the collective negotiations unit petitioned-for, as amended, by the Federation. Mr. Bentz stated that the Association desired an election in a unit containing all professional and nonprofessional Board personnel. ^{2/} Both the Federation and Elizabeth Stefan opposed Mr. Bentz's representation that he was the spokesperson for the Association and disputed the collective negotiations unit proposed by Bentz. ^{3/} Mr. Bentz, in turn, disputed the status of Elizabeth Stefan as spokesperson for the Association. The status of the Association as an employee organization within the meaning of the Act has not been placed in dispute.

^{2/} The nonprofessional personnel are not currently represented for the purpose of collective negotiations.

^{3/} At the conference, Bentz submitted authorization cards from nonprofessional personnel designating the Association as representative.

Based upon the investigation to date, 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 Fairview 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 involved in this Petition and is subject to the provisions of the Act.

3. The Fairview Federation of Teachers and the Fairview Education Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The undersigned has determined that the Petition submitted by the Federation is supported by an adequate showing of interest and that the Association has qualified as an Intervenor in the instant proceeding pursuant to N.J.A.C. 19:11-2.7, based upon the presentation of the existing written agreement and authorization cards.

5. The Federation seeks a secret ballot election among certain professional personnel employed by the Board. The Federation

claims that this unit composition, although somewhat modified by the addition of several previously excluded professional titles, has historically been the unit composition in existence for professional employees of the Board and that the unit composition presents an appropriate collective negotiations unit structure.

6. Elizabeth Stefan, in her positional statement as the purported president of the Association, agrees to an election among the employees in the unit sought by the Federation. Joseph Bentz, in his positional statement as the purported president of the Association, proposes a unit structure consisting of all professional and nonprofessional personnel.

On September 13, 1979, the undersigned advised the parties that the evidence proffered to date did not appear to place in dispute any substantial and material factual issues and that the units sought by the Federation and Association were appropriate units within the meaning of the Act. The undersigned further analyzed the positions of the parties and determined, under the circumstances presented and for the reasons that follow, that there was no need to designate the most appropriate unit.

The Commission has found that units of school employees are appropriate whether they consist solely of professional personnel, solely of nonprofessional personnel, or in combinations of professional and nonprofessional personnel. Although it appears that there is a dispute concerning the scope of the unit, it also appears that both the Federation and the Association are prepared and willing to represent the unit or units which result from the

exercise of a professional option. The need for the Commission to designate the "most appropriate unit" is, under the circumstances, essentially irrelevant. Under the Act, a "wall-to-wall" mixed unit configuration could not be certified by the Commission as "appropriate" unless a majority of professional employees initially express a preference for inclusion in a unit including nonprofessional employees. ^{4/} Inasmuch as the professional employees, by statute, have the ability to "define" the appropriate unit by their voting preference, a Commission decision defining the most appropriate unit as including professional and nonprofessional employees is irrelevant, since the professional option may negate the Commission's determination.

In summary, where an employee representative seeks to represent both professional and nonprofessional employees in one unit, the implementation of the statutory professional option requirement may produce the result of two separate, but appropriate, collective negotiations units.

Accordingly, the undersigned shall direct an election among employees in a unit consisting of all professional and nonprofessional employees, in which the professional employees may exercise their professional option and in which all employees may select the Federation, or the Association, or neither as their

^{4/} N.J.S.A. 34:13A-6(d) provides in relevant part: "The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes ... (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit ... "

exclusive representative. The dispute between Bentz and Stefan, concerning each other's status as the spokesperson for the Association, need not delay the election sought by the Federation and Association, as Petitioner and Intervenor, respectively.

Therefore, the undersigned finds that the appropriate units for collective negotiations are:

(1) All teachers, speech correctionists, school nurses, librarians, reading specialists, learning disability teachers-specialists, social workers and school psychologists, substitutes, and part-time teachers working less than one-half time or teachers on an hourly basis employed by the Fairview Board of Education, but excluding the superintendent of schools, board secretary, principals, managerial executives, confidential employees, police and craft employees and supervisors within the meaning of the Act.

(2) All nonprofessional employees employed by the Fairview Board of Education including cafeteria workers, custodians, aides, van drivers, secretaries/clerks and bookkeepers, but excluding professional employees, managerial executives, confidential employees, police and craft employees, and supervisors within the meaning of the Act.

A secret ballot election shall be conducted among the eligible employees in the two groups described above. For the purpose of this election, two voting groups are established. Voting Group I shall consist of all professional employees described in ¶(1) immediately above. Voting Group II shall consist of all non-professional employees described in ¶(2) immediately above. Employees

in Voting Group I shall vote as to whether or not they desire to be included with nonprofessional employees (Voting Group II). If the majority of professional employees voting vote for such inclusion their ballots shall be tallied with those in Voting Group II. All ballots shall be counted at face value and an appropriate certification shall issue covering Voting Groups I and II. If the professional employees do not wish to be included with nonprofessionals, their ballots shall be counted separately and the appropriate separate certifications will issue for Voting Group I and Voting Group II.

Employees eligible to vote in the election are those employees in the groups above who were employed during the payroll period immediately preceding the date below, including those 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.

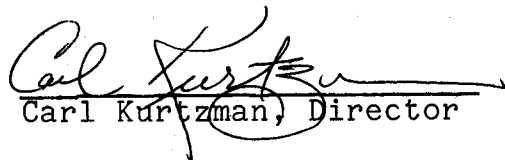
Pursuant to N.J.A.C. 19:11-9.6, the Board is directed to file with the undersigned and with the Federation and the Association an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order 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 Federation and the Association 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 Fairview Federation of Teachers, NJSFT, AFT, AFL-CIO or by the Fairview Education Association.

The election shall be conducted no later than thirty (30) days from the date set forth below; the date, hours and location will be designated by the undersigned. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 25, 1979
Trenton, New Jersey