

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

In the Matter of

LENAPE REGIONAL HIGH SCHOOL DISTRICT
BOARD OF EDUCATION,

Public Employer,

-and-

DONALD R. JENNINGS,

Docket No. RD-77-4

Petitioner,

-and-

LENAPE DISTRICT DRIVERS ASSOCIATION,

Employee Representative-Intervenor.

SYNOPSIS

The Director of Representation Proceedings dismisses a Decertification Petition filed within 12 months after the employee representative was certified by the Commission as majority representative of the employees involved in the Petition. The Petitioner claimed that the unit certified by the Commission is not an appropriate unit and that its Petition seeks the decertification of an appropriate unit. The Director determines that this position is without merit since the Commission only issues certifications of representative where units are appropriate. Thus, pursuant to Commission Rules providing for a one year bar to the filing of petitions subsequent to the certification of an employee representative, the Petition is dismissed as untimely filed.

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Appearances:

For the Public Employer, Gerald L. Dorf, P.C.
(Mr. David A. Wallace, of Counsel)

For the Petitioner, Hyland, Davis & Reberkenny, Esqs.
(Mr. William C. Davis, of Counsel)

For the Employee Representative-Intervenor, Greenberg and
Mellk, Esqs. (Mr. Arnold M. Mellk, of Counsel)

DECISION

A Petition for Decertification of Public Employee Representa-
tive was filed with the Public Employment Relations Commission on
January 21, 1977, by Donald R. Jennings. The Petition was accompanied
by a demonstration of employee support, as mandated pursuant to N.J.A.C.
19:11-1.3(a)(3), seeking a secret ballot election to decertify the
Lenape District Drivers Association (the "Association") as the exclusive
representative of the employees described in the Petition. Petitioner
describes the unit sought to be decertified as consisting of all bus
drivers employed by the Lenape Regional High School District Board of
Education excluding "any bus driver who belongs to another public
employee bargaining unit."

Pursuant to Commission procedures, if a majority of public employees vote in a secret ballot election to decertify an existing negotiations representative, the employees would no longer continue to have a collective negotiations representative.

Pursuant to an administrative investigation into the matters and allegations involved in the instant petition, the undersigned finds as follows:

1. The Lenape Regional High School District Board of Education (the "Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq., and is subject to the provisions of the Act.

2. The Lenape District Drivers Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. A Petition for Decertification of Public Employee Representative having been filed before the Commission, and there being a question as to the timeliness of the Petition, the matter is appropriately before the undersigned for determination.

4. On June 14, 1976, approximately seven months prior to the filing of the instant petition, the Association was certified by the Commission as the majority representative of employees in a negotiations unit described as including "all school bus drivers employed by the Lenape Regional High School District Board of Education excluding professional employees (except those who also function as bus drivers), craft, clerical and confidential employees, police and supervisors within the meaning of the Act, and substitutes."^{1/} The Commission's certification was issued subsequent to a secret ballot election in which the Association received a

^{1/} The Association is hereby granted intervenor status in the instant matter.

majority of the ballots cast by the employees immediately described above, which election was conducted pursuant to a Commission Agreement for Consent Election.

The Commission Rules provide a bar to the filing of petitions for decertification of public employee representative within 12 months after the issuance of a Commission certification of representative.

Specifically, N.J.A.C. 19:11-1.15(b) provides:

"Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to Section 14 of this Subchapter."

On February 19, 1977 the Association advised the undersigned of its objections to the filing and processing of the instant petition, in part predicated upon the time-bar established by the aforementioned rule provision. On February 21, 1977 the Board also advised the undersigned of the outstanding certification, and that negotiations between the Board and Association were in progress. The Board also enclosed in its submission a document purporting to be a conformed "Memo of Agreement." ^{2/}

6. On March 2, 1977, the undersigned informed the Petitioner, with copies of correspondence to all parties, of the Commission's rule barring the filing of petitions during the certification year, and advised the Petitioner that based upon the undersigned's initial investigation the Petition had not been timely filed. Pursuant to N.J.A.C. 19:11-1.9, Petitioner was provided an opportunity to withdraw the petition

^{2/} It is not necessary to determine the effect, if any, of such document for the purposes of this decision.

without prejudice, and was informed that in the absence of a withdrawal by March 11, 1977 it was the intention of the undersigned to dismiss the petition.

By letter dated March 10, 1977, Petitioner contends that "N.J.A.C. 19:11-1.15(b) pertains to the timely filing of a Petition where during the preceding 12 months the then executive director has certified an employee organization as the majority representative of employees in an appropriate unit." (emphasis the Petitioner's). Thus, the Petitioner states: "It is the contention of the Petitioner in this matter that the unit as certified is not an appropriate unit and therefore the section that you quote does not apply."

7. A review of the Petition indicates that the unit Petitioner states is appropriate, and ergo which Petitioner seeks to decertify, is a bus drivers unit excluding those personnel who are bus drivers but who also perform other functions for the Board and who are represented in other negotiating units. The unit certified by the Commission includes all bus drivers.

The undersigned cannot accept the argument advanced by the Petitioner. As stated earlier, the execution by the Board and the Association of a Consent Election Agreement led to the election wherein a majority of employees voting cast ballots for the Association to be the majority representative. In the Agreement for Consent Election the parties stipulated the appropriate composition of the negotiations unit. This procedure was initiated pursuant to N.J.A.C. 19:11-2.1 which provides:

"(a) Where one or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Executive Director, that a secret ballot election shall be conducted

by the Commission among the employees in an appropriate collective negotiating unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in Sec. 1.13 (Intervention) of this Chapter. (emphasis added)

(b) The parties shall stipulate as to the composition of the collective negotiating unit, the eligibility period for participation in the election, the dates, hours and places of the election and the designations on the ballot." 3/

Accordingly, Item No. 12 of the Agreement for Consent Election provides for a description of "the appropriate collective negotiating unit" to be stipulated by the parties. Procedurally, the undersigned reviews the Agreement after it is executed by the parties and recommended by a staff agent, and approves the Agreement provided that it conforms with accepted Commission policy. The undersigned's approval of an Agreement for Consent Election is a determination that the collective negotiations unit described therein, as stipulated by the parties, is a prima facie appropriate unit. 4/

3/ The Agreement for Consent Election in the instant matter was approved by the Commission's then Executive Director. On June 22, 1976 the Executive Director, Jeffrey B. Tener, was sworn in as full-time Commission Chairman. See N.J.S.A. 34:13A-5.2, as amended by Section 3 of P.L. 1974 c. 123. Effective immediately thereafter, the Commission approved the elimination of the Executive Director position, and named the Director of Representation Proceedings as its designee to perform those functions in representation proceedings, including the direction of election function relevant to the instant case, which the Executive Director had theretofore performed. See N.J.S.A. 34:13A-6(f).

4/ Upon the filing of a petition for certification the Director requests the posting of a Notice to Public Employees which contains a description of the proposed unit. At any time prior to the date of the parties' execution of an agreement for consent election, either the employer or any qualified intervenor may dispute the appropriateness of the petitioned-for unit. Additionally, prior to any election conducted by the Commission a Notice of Election is posted which informs employees that they may direct any question as to the voting unit to the Director. In those cases where an election is directed with or without an investigatory hearing, review of the appropriateness of a unit may be sought before the Commission. Subsequent to a Commission certification, an appeal may be filed within 45 days disputing the appropriateness of the unit.

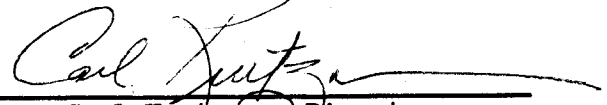
Subsequent to a secret ballot election wherein an employee organization receives a majority of the valid ballots cast, the undersigned issues the Commission's Certification of Representative which contains an order to the parties to negotiate forthwith. The certification of representative reinforces the determination that the unit is appropriate, insofar as, pursuant to N.J.S.A. 34:13A-5.3, an employer may not be required to commence negotiations with an employee representative where the unit of employees is not an appropriate collective negotiations unit.

In summary, a unit certified by the Commission pursuant to an Agreement for Consent Election is determined to be an appropriate unit. N.J.A.C. 19:11-1.15(b) which establishes a time bar to the filing of petitions based upon a certification is not an appropriate vehicle to obtain review of the Commission's appropriateness determination.

The undersigned therefore finds that since (a) the Commission had on June 14, 1976 certified an employee organization as the majority representative of employees in an appropriate unit, and (b) the instant petition was filed on January 21, 1977, that N.J.A.C. 19:11-1.15(b) bars the consideration of the instant petition at this time.

Accordingly, for the aforementioned reasons, the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS



Carl Kurtzman, Director
Representation Proceedings

DATED: March 24, 1977
Trenton, New Jersey