

D.R. NO. 88-28

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 EDUCATION ASSOCIATION, NJEA,

DOCKET NO. RO-88-113

Petitioner,

-and-

FAIRVIEW FEDERATION OF TEACHERS/AFT,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among teachers and others in an existing unit employed by the Fairview Board of Education. The Director determined that Petitioner Fairview Education Association submitted a timely Petition for Certification accompanied by an adequate showing of interest. Intervenor Fairview Federation of Teachers alleged that Petitioner improperly solicited showing of interest cards during the time an election bar was in effect. The Director found that neither the Rules nor the Act prohibit the distribution of showing of interest cards or the solicitation of signatures on them during the period of an election bar. Accordingly, the Director directs an election in the petitioned-for unit.

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Appearances:

For the Public Employer
Richard Brovarone, Esq.

For the Petitioner
New Jersey Education Association
(Vincent Perna, UniServ Rep.)

For the Intervenor
New Jersey State Federation of Teachers
(John Fallon, Staff Rep.)

DECISION AND DIRECTION OF ELECTION

On November 26, 1987, the Fairview Education Association, NJEA ("Association") filed a timely Petition for Certification of Public Employee Representative ("Petition") with the Public Employment Relations Commission ("Commission") seeking to represent an existing collective negotiations unit of teachers, speech correctionists, school nurses, librarians, reading specialists and others employed by the Fairview Board of Education ("Board"). The

Fairview Federation of Teachers/AFT ("Federation") sought to intervene in this matter and submitted a copy of the most recent collective negotiations agreement it executed with the Fairview Board of Education covering the unit of employees described above. The request to intervene was approved. See N.J.A.C. 19:11-2.7. We authorized and conducted an administrative investigation into the matters involved in the petition in order to determine the facts. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. We have not found any material and substantial factual disputes which require resolution at hearing. See N.J.A.C. 19:11-2.6(b).

On December 4, 1987, a Commission staff agent conducted an informal conference attended by representatives of the Association, Federation and the Board. The Federation opposed the petition, claiming that the Association illegally solicited signatures on showing of interest cards of unit employees in mid-September 1987, about ten months after the Federation was certified as the majority representative. The solicitation allegedly constituted "interference during the period of an election bar." The Board took no position in this matter.

We find the following facts:

1. 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. ("Act").

2. The Fairview Education Association and the Fairview Federation of Teachers are employee representatives within the

meaning of the Act. The most recent collective negotiations agreement executed by the Board and Federation covered the period from July 1, 1985 through June 30, 1987. The Federation was certified as the majority representative in the petitioned-for unit on November 17, 1986 (Docket No. RO-87-51).

3. The Petitioner seeks to represent a unit composed of all regularly employed teachers, speech correctionists, school nurses, librarians, reading specialists, learning disability teacher-specialist, social workers, school psychologists, permanent substitutes and part-time teachers working less than one-half time or teachers on an hourly basis employed by the Fairview Board of Education.

4. Although the Federation does not contest the unit description, it has alleged that the Association illegally solicited signatures on showing of interest cards of unit employees in September 1987, about ten months after the Federation was certified as the majority representative. The Federation claims that the Association's solicitations constitute improper interference with an organization during the period of an election bar.^{1/}

5. The Association denied that it engaged in any activity which violates the Act. The Board has taken no position with

^{1/} N.J.A.C. 19:11-2.8(b) states: Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during

respect to the processing of this petition.

Neither the rules nor the Act prohibit the solicitation of signatures on showing of interest cards during the period an election bar is in effect. The Federation has not alleged any facts which demonstrate that the Association has in any way "interfered" with the ratification of a proposed collective negotiations agreement. Inasmuch as the showing of interest is an administrative requirement for the purpose of insuring that sufficient interest exists among employees to warrant the expenditure of Commission resources in processing a petition, challenges to a showing of interest must be raised prior to the informal conference and should be embodied in the challenging parties' response to the initial request for position statements. Jersey Medical Center, D.R. No. 83-19, 8 NJPER 642 (¶13308 1982). The Federation has filed no objections to the validity of the Association's showing of interest. Accordingly, the showing of interest is adequate pursuant

1/ Footnote Continued From Previous Page

the preceding twelve months an employee organization has been certified by the Commission as the exclusive of representative employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (recognition as exclusive representative).

to N.J.A.C. 19:11-1.2(a)(8).^{2/}

We determine that the petitioned-for unit is appropriate under N.J.S.A. 34:13A-5.3 and that an election will be conducted among the petitioned-for employees. The unit shall include all regularly employed teachers, speech correctionists, school nurses, librarians, reading specialists, learning disability teachers-specialists, social workers and school psychologists, permanent substitutes, and part time teachers working less than one-half time or teachers on an hourly basis employed by the Fairview Board of Education. The unit shall exclude the Superintendent of Schools, Board secretary, principals, managerial executives, confidential employees, police employees, craft employees, supervisors within the meaning of the Act, supportive staff and daily substitute teachers.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote are the employees in the unit set forth above who were employed during the

^{2/} N.J.A.C. 19:11-1.2(a)(8) provides:

(a) A Petition for certification of public employee representative shall, when filed by a public employee, group of public employees, any individual, or employee organization contain the following:

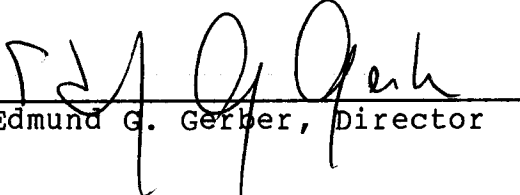
(8) A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in N.J.A.C. 19:10-1.1 of not less than 30 percent of the employees in the unit alleged to be appropriate....

payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be filed simultaneously with the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative of the petitioned-for employees, if any, shall be determined by a majority of the valid votes cast in the election by these employees. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 21, 1988
Trenton, New Jersey