

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

In the Matter of

BOARD OF EDUCATION/VOCATIONAL  
SCHOOLS OF THE COUNTY OF ESSEX,

Public Employer,

-and-

DOCKET NO. RO-80-92

ESSEX COUNTY VOCATIONAL/TECHNICAL  
CLERKS & SECRETARIES ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all full time and regular part-time clerical/secretarial personnel and teacher aides to ascertain whether they desire to be represented by the Association for the purpose of collective negotiations. The Director finds that the Petition was timely filed and that the Board's contention that a limited number of employees are confidential employees may be resolved, if necessary, in post-election proceedings.

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Appearances:

For the Public Employer  
Grotta, Glassman & Hoffman  
(Thomas J. Savage, of Counsel)

For the Petitioner  
Bernard H. Lelling, UniServ Representative, NJEA

DECISION AND DIRECTION OF ELECTION

On November 8, 1979, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Essex County Vocational/Technical Clerks & Secretaries Association (the "Association") with respect to certain employees of the Board of Education/Vocational Schools of the County of Essex (the "Board"). The Association seeks to represent a proposed unit consisting of all full time

and regular part-time clerical/secretarial personnel and teacher aides.

The undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts.

Based upon 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 disputed 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 Board of Education/Vocational Schools of the County of Essex 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 Essex County Vocational/Technical Clerks & Secretaries Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Association has filed a Petition seeking a collective negotiations unit comprised of all full time

and regular part-time clerical/secretarial personnel and teacher aides employed by the Board excluding all other employees.

5. The Board does not consent to a secret ballot election. The Board raises three objections to the Petition: (1) there is in effect an existing collective negotiations agreement with a recognized negotiations agent; (2) there are eleven confidential employees in the titles of Secretary to the Superintendent, Secretary to the Board Secretary, Secretary to the Business Administrator, Secretary to the Assistant Superintendent and Head Clerk; and (3) the Association has "forfeited the right to petition for or to represent these public employees" because the Association and its parent organization, the New Jersey Education Association, "led an illegal strike among these and other district employees in the Fall, 1979."

6. On January 11, 1979, the Association, responding to the Board's position above, advised the Commission of its agreement that the Secretary to the Superintendent, Secretary to the Board Secretary and Secretary to the Business Administrator <sup>1/</sup> are confidential employees within the meaning of the Act and are not entitled to representation within the proposed unit. Hence, there remain eight employees whose eligibility status is in dispute.

1/ The Association also acknowledged that one of the two Secretaries to the Assistant Superintendent is a confidential employee but has failed to identify the confidential employee.

A Petition for Certification of Public Employee Representative having been filed, and the parties not having agreed to a secret ballot election, a dispute exists, and the matter is properly before the undersigned for determination.

7. In support of its claim that the Petition is barred by an existing written agreement with a recognized representative, the Board has submitted a copy of an "Agreement between: Essex County Vocational Schools Board of Education, Essex County, New Jersey -and- Secretary/Clerical Agreement." [sic] The agreement does not contain a recognition clause; nor does it otherwise indicate the existence of a recognized negotiations agent. The agreement does not contain a grievance procedure. By its terms, the agreement expired on June 30, 1979.

Based upon the above and assuming without deciding that there is a recognized collective negotiations representative, as argued by the Board, the Petition, which was filed after the expiration of the agreement, is not barred by N.J.A.C. 19:11-2.8(c). <sup>2/</sup>

8. The Association's proposed unit consists of approximately fifty-nine employees. The Board asserts that eight of these employees are confidential employees. Consistent with the undersigned's determination in In re Township of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977), it does not appear that substantial factual issues are raised by this dispute to warrant a delay of an election and the conduct of an evidentiary hearing

<sup>2/</sup> The signatories to that agreement have been contacted by the Commission. There has been no request to intervene in this proceeding.

at this time. The purposes of the Act are best served by the prompt conduct of an election at this time in which a majority of employees may exercise the choice of designating or rejecting the Association as their representative. Adequate post-election procedures are available, if necessary, to resolve the eligibility of the eight disputed employees. At the election, a party asserting that the disputed employees are not eligible to vote may assert a challenge to voting eligibility. The eligibility of the voter may be resolved subsequent to the election, if necessary, in an appropriate proceeding.

9. On January 31, 1980, the undersigned advised the parties of the results of the investigation and evaluated the relevant issues above. The undersigned stated an intent to direct the conduct of a secret ballot election on the basis of the facts and the issues presented in this matter. The parties were provided an additional opportunity to present evidence as well as statements of position relating to the instant Petition and were advised that in the absence of the presentation of evidence raising substantial and material disputed factual issues concerning this matter which would warrant the convening of an evidentiary hearing, the undersigned would direct an election.

No further evidentiary proffer or statement has been provided to the undersigned. 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. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all full time and regular part-time clerical/secretarial personnel and teacher aides employed by the Board of Education/Vocational Schools of the County of Essex; excluding: managerial executives, confidential employees, police and craft employees, professional employees, and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6, 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.

Those eligible to vote are the full time and regular part-time clerical/secretarial personnel and teacher aides 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 resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

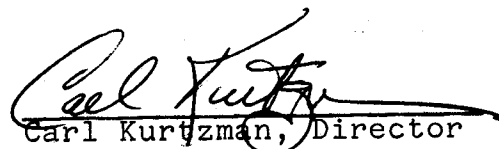
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the Association an election eligibility list consisting of an alphabetical listing

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 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 Essex County Vocational/Technical Clerks & Secretaries Association.

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: February 21, 1980  
Trenton, New Jersey