

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION

Public Employer

and

NEWARK TEACHERS' UNION, LOCAL 481,  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Petitioner

Docket No. R-128

and

NEWARK TEACHERS ASSOCIATION

Intervenor

and

ORGANIZATION OF NEGRO EDUCATORS

Intervenor

DECISION AND DIRECTION OF ELECTIONS

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Newark Board of Education, a hearing was held on September 24, 1969 before ad hoc Hearing Officer Jonas Silver at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter, on October 9, 1969, the ad hoc Hearing Officer issued a Report and Recommendations. The Board filed Exceptions to the Hearing Officer's Report and Recommendations. <sup>1/</sup> The Commission has considered the record and the

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<sup>1/</sup> Without determining whether or not the Board's Exceptions wired and received October 21, 1969 are timely filed, the Commission has, on its own motion, modified the Hearing Officer's Recommendation regarding the mechanics of the conduct of the election, which were the subject of the Board's Exceptions.

Hearing Officer's Report and Recommendations and on the facts in this case finds:

1. The Newark Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Newark Teachers' Union, Local 481, American Federation of Teachers, AFL-CIO; the Newark Teachers Association; and the Organization of Negro Educators are employee representatives within the meaning of the Act.
3. A timely petition for certification of public employee representative having been filed and the Public Employer having refused to recognize the Petitioner as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.
4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, is adopted except as modified below.

5. The Appropriate Units:

The recommendations of the Hearing Officer are adopted with respect to the appropriate units which the parties stipulated. The Board of Education did not join in the stipulation but indicated that it will follow the decision of the Commission. Accordingly, the appropriate units are as follows:

(1) Unit A:

All employees of the Newark School System, including 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 per week in Central Evening High School, and coordinators having permanent status as teachers, long-term Board appointed substitute teachers, helping teachers, social workers, psychologists, and attendance counselors, but excluding department chairman, head guidance counselors, teacher to assist the principal, vice-principals, principals, acting vice-principals, acting principals, directors, assistant superintendents, superintendents, laboratory assistants, nurses, pianists, teacher-clerks, office clericals, maintenance workers, cafeteria workers, security guards, per diem substitutes with 30 days non-consecutive service in the same position who are not Board appointed (The 30 non-consecutive days must have been acquired within the year preceding the date of issuance of the Decision and Direction of Election herein), teacher and school aides, and all permanent, acting, temporary, or provisional supervisory employees.<sup>2/</sup>

(2) Unit B:

All employees of the Newark School System in the following categories: per diem substitutes with 30 days non-consecutive service in the same position, who are not Board appointed, teacher aides and school aides, but excluding all other employees and supervisors.<sup>3/</sup>

6. The Commission directs that secret ballot elections shall be conducted among the employees in the units found appropriate. The elections shall be conducted as soon as possible but no later than thirty (30) days from the date set forth below.

<sup>2/</sup> Since the unit herein approved does not include statutory exclusions we shall not amend the unit agreed upon by the parties to specifically exclude managerial executives, craft employees, policemen or supervisors as defined in the Act.

<sup>3/</sup> Since this unit does not include any statutory exclusions we shall not amend the unit agreed upon by the parties to specifically exclude managerial

The Commission does not adopt the recommendations of the Hearing Officer regarding the mechanics of the elections. The mechanics of the election may be worked out by the parties with the approval of the Election Officer. If the parties are unable to agree, the Election Officer shall resolve all matters relating to the mechanics of the election.

In the absence of Exceptions to the Hearing Officer's recommendation concerning names and addresses, the Commission adopts the requirement that the Public Employer shall furnish the employee representatives with a list of names and addresses of eligible voters in advance of the date of the election.

Those eligible to vote are employees set forth in Section 5 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 quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

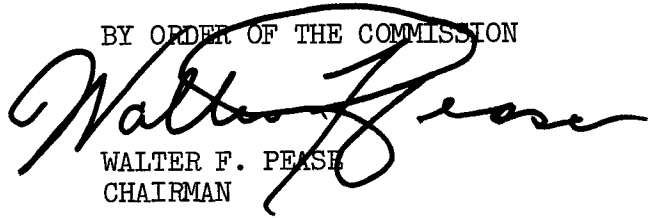
Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Organization of Negro Educators, the Newark Teachers Association, the Newark Teachers Union, or none. The Hearing Officer recommended that "No Representative" be an option on the ballot. The Commission substitutes "None" for "No Representative" in accordance with its Rules and Regulations and Statement of Procedure.

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3/ (Continued) executives, craft employees, policemen, professional employees or supervisors as defined in the Act.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE COMMISSION

A large, stylized handwritten signature in black ink, which appears to read "Walter F. Pease". The signature is written over the typed name and title.

WALTER F. PEASE  
CHAIRMAN

DATED: October 21, 1969  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEWARK BOARD OF EDUCATION

-and-

NEWARK TEACHERS' UNION, LOCAL 481,  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO

-and-

NEWARK TEACHERS ASSOCIATION

-and-

ORGANIZATION OF NEGRO EDUCATORS

Docket No. R-128

APPEARANCES:

For Newark Board of Education

Victor A. DeFillipo, Esq.

For Newark Teachers' Union

Paul J. Giblin, Esq.

For Newark Teachers Association

Jack J. Bertolino

For Organization of Negro Educators

Kapelsohn, Lerner, Leuchter & Reitman, Esqs.

By: Sidney Reitman, Esq.

REPORT AND RECOMMENDATIONS

OF HEARING OFFICER

Upon a petition duly filed under the New Jersey Employer-Employee Relations Act, hearing in this proceeding was held at Newark, New Jersey, on September 24, 1969, before the undersigned ad hoc Hearing Officer. At the hearing, the parties were given full opportunity to present testimony, evidence and argument, and to examine and cross-examine witnesses.

Upon the entire record in this proceeding, the Hearing Officer finds:

1. Newark Board of Education is a public employer within the meaning of Section 3 (c) of the Act.

2. Petitioner, Newark Teachers' Union, Local 481, American Federa-

tion of Teachers, AFL-CIO, hereinafter referred to as NTU, intervenor, Newark Teachers Association, hereinafter referred to as NTA, and intervenor, Organization of Negro Educators, hereinafter referred to as ONE, are each employee organizations within the meaning of Section 3 (e) of the Act.<sup>1/</sup>

3. Inasmuch as the public employer has declined to recognize NTU as the exclusive representative of the employees involved herein, a question concerning the representation of public employees exists.

4. The appropriate unit: The parties stipulated<sup>2/</sup> the appropriate units to be:

Unit A

All employees of the Newark School System, including 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 per week in Central Evening High School, and coordinators having permanent status as teachers, long-term Board appointed substitute teachers, helping teachers, social workers, psychologists, and attendance counselors, but

<sup>1/</sup> At the hearing, intervention was also granted to Newark Public School Nurses Association for the limited purpose of stating the claim of the New Jersey State Nurses Association to represent public school nurses in the employ of the public employer. Inasmuch as neither the existing collective agreement nor the unit request of NTU involve school nurses, there is no question affecting school nurses who are excluded from the units hereinafter recommended.

<sup>2/</sup> The Newark Board of Education, while not joining in the stipulation, will be guided by the recommendations of the Hearing Officer and the ultimate decision of the Commission.

excluding department chairmen, head guidance counselors, teacher to assist the principal, vice-principals, principals, acting vice-principals, acting principals, directors, assistant superintendents, superintendents, laboratory assistants,<sup>\*</sup> nurses, pianists, teacher-clerks<sup>\*</sup>, office clericals, maintenance workers, cafeteria workers, security guards, per diem substitutes with 30 days non-consecutive service in the same position who are not Board appointed,<sup>\*\*</sup> teacher and school aides, and all permanent, acting, temporary, or provisional supervisory employees.

\* These titles are in process of being phased out.

\*\*The 30 non-consecutive days must have been acquired within the year preceding the date of issuance of the Decision and Direction of Election herein.

#### Unit B

All employees of the Newark School System in the following categories: per diem substitutes with 30 days non-consecutive service in the same position, who are not Board appointed, teacher aides and school aides, but excluding all other employees and supervisors.

Unit A is substantially the same as the unit now in effect under the application of the collective agreement between NTA and the Newark Board of Education. The differences lie in the addition to the existing unit of the classifications of helping teacher, attendance counselor, social worker, and psychologist.<sup>3/</sup>

<sup>3/</sup> The language of the agreement expiring on or about February 1, 1970, refers to social worker and helping teacher as within the unit. Their inclusion in the print of the unit clause was in error. In practice, they have not been included.



Without these additional classifications the unit may be viewed as having been predicated upon the existence of a community of interest in the work of professional educators immediately involved in the classroom aspects of the instructional process. With the addition of helping teachers, there is but an extension of the same classroom focus for the helping teacher gives instructional guidance to the classroom teacher. With the inclusion of social worker, psychologist and attendance counselor, the concept of community of interest is broadened so as to embrace professional employees whose duties are a necessary adjunct to the proper fulfillment of the teaching responsibility which, in contemporary conditions, does not end with the classroom proper. In short, the employees in the additional classifications are integrated in their duties with those in the original classifications, experience common overall supervision, common hours of work, common work situs, in some instances pegged to the teachers' salary schedule, and all are certificated by the State Department of Education. Based on the uncontroverted evidence to this effect, I find that the employees in the additional classifications possess a community of interest in the terms and conditions of employment coextensive with those in the original classifications. I further find that Unit A, in agreement with the stipulation, constitutes an appropriate unit under the Act.

Unit B comprises employees in classifications not currently represented in collective negotiations. It is stipulated that teacher aides and school aides assist the teachers in and about the classroom and with respect to duties in the school generally. They are not certificated. Per diem substitutes not long term (the latter are in Unit A), i.e., with less than 30 days consecutive service in the same position and therefore not Board appointed to the substitutes' list, are not obligated to have a certificate of any type to be used on a local school per diem hire basis in place of a regular teacher. It is noted that Unit B would take in

such per diem substitutes with 30 days service in the same position but not consecutively acquired who are not Board appointed, the reason being that some measure of tangible interest in the negotiating unit is thereby exhibited. Because the teacher aides and school aides and the per diem substitutes of the type indicated perform sub-professional (sometimes called paraprofessional) and semi-professional duties, respectively, in support of regular teachers, they appear to have a community of interest sufficient to warrant their inclusion in a separate negotiating unit of their own. I so find in agreement with the parties.

5. The conduct of the election:

The Hearing Officer recommends, in agreement with the parties, and subject to the standard procedures of the Commission, <sup>4/</sup> that:

- (a) There be provided a polling place in each school and annex.
- (b) All schools to close at 1:30 P.M. on the day of the election; voting to be between the hours of 1:30 and 6:00 P.M.
- (c) The payroll used to be that preceding the date of issuance of the Decision and Direction of Election.
- (d) The parties to be furnished with names and addresses of eligible voters on a school by school basis sufficiently in advance of the date of the election.

<sup>4/</sup> Also subject, of course, to the requirements of the Newark Board of Education from an operational standpoint.

(e) The ballot designations to be as described on the record;<sup>5/</sup> the positions on the ballot to be as resulted by drawing lots at the hearing, i.e., horizontally, left to right, first ONE, second NTA, third No Representative, fourth NTU. The same in both units.

(f) The use of paper ballots.

(g) Observers excused one-half hour before the polls open so as to get to their places on time.

The Hearing Officer further recommends that the Commission make such provisions for the conduct of the election as it deems proper in the light of the added requests stated at the hearing.

#### RECOMMENDATIONS

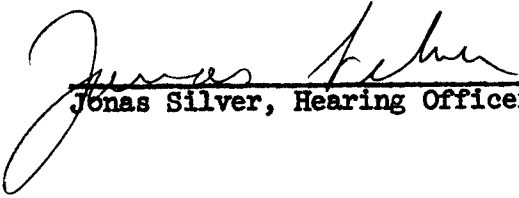
Upon the entire record and the findings and conclusions predicated thereon and set forth herein, the Hearing Officer recommends that the units heretofore indicated be found appropriate for the purposes of collective negotiations within the meaning of Section 8 (d) and Section 7 of the Act. It is further recommended that the Commission direct that a secret ballot election be conducted herein with expedition,<sup>6/</sup> utilizing the mechanics heretofore indicated and such

<sup>5/</sup> The possibility of change in the name of ONE prior to the printing of the ballots is called to the Commission's attention.

<sup>6/</sup> The parties may, in the absence of exceptions to the Hearing Officer's Report and Recommendations, wire the Commission to that effect in order to facilitate expedition of the election.

other procedures as may be consistent with policy and practice.

DATED: October 9 1969  
North Merrick, N. Y.

  
Jonas Silver, Hearing Officer