

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,
AFT, AFL-CIO,

Docket No. RO-80-79

Petitioner,

-and-

NEWARK TEACHERS ASSOCIATION,
N.J.E.A.,

Intervenor.

SYNOPSIS

In a decision on request for review from a decision of the Director of Representation, the Commission affirms the Director's decision dismissing a petition. The petitioner had urged the Commission to review the Director's determination that the showing of interest submitted by the petitioner was not adequate. The Commission granted the request for review for the purpose of specifying and confirming the Directors interpretation and application of the Commission's rules regarding showings of interest. First, the Commission agrees with the Director that the requirement of the rules must be strictly applied. Second, the Commission agrees that, as set forth in the Commission's rules, the language on petitions must authorize an employee organization to represent the employee. See N.J.S.A. 19:10-1.1.

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Appearances:

For the Petitioner, Giblin and Giblin, Esqs.
(Mr. Paul J. Giblin, of Counsel)

For the Intervenor, Schneider, Cohen and Solomon, Esqs.
(Mr. J. Sheldon Cohen, of Counsel)

DECISION ON REQUEST FOR REVIEW

On October 15, 1979, the Newark Teachers Union (the "NTU") filed a petition for certification of public employee representative with the Public Employment Relations Commission. The NTU was seeking to be certified by the Commission as the majority representative of "All school nurses (DeG.-E.C.P.)". The petition, which was timely filed, was processed in accordance with the Commission's Rules, N.J.A.C. 19:11-1 et seq., and normal procedures. The Newark Teachers Association (the "Association") having submitted a current agreement between the Newark Board of Education (the "Board") and the Association covering the employees petitioned for by the NTU,

is entitled to the status of an intervenor in this matter.

Section 19:11-1.2(a) 8. of the Commission's Rules provides as follows:

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 per cent of the employees in the unit alleged to be appropriate. A typewritten alphabetical list of such designations also shall be submitted to the director of representation.

Section 19:10-1.1 defines "showing of interests" as meaning

...a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six month prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

Section 19:11-2.1 provides that, "The showing of interest shall not be furnished to any of the parties. The director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack."

During the processing of this petition, the NTU was advised by the Commission that its petition was not accompanied by an adequate showing of interest and that, absent withdrawal, it would be dismissed. No withdrawal request having been received by the date set by the Director of Representation, he dismissed the petition by letter dated November 26, 1979. The letter from the Director to the petitioner dismissing the petition stated that the petition was being dismissed because of the inadequacy of the showing of interest. Letters to the Association and the Board on the same date simply stated that the petition was being dismissed.

The matter now reaches the Commission as a request filed by the NTU for review of the Director's November 26, 1979 letter decision dismissing the petition. The request for review, filed pursuant to N.J.A.C. 19:11-8.1 et seq., was mailed to the Commission on December 5, 1979 but copies were not served upon the other parties until December 18, 1979. Thereafter, the Association obtained an extension of time until January 8, 1980 within which to file a statement in opposition to the request for review. That statement has been filed. The Board chose not to file a statement.

The request for review is hereby granted only for the limited purpose of specifying and confirming the Director's interpretation and application of the relevant rules as set forth above.

The request for review is based on two contentions. The first concerns the number of employees in the unit and the other concerns the language on the petitions which were submitted.

The first contention involves the number of employees in the unit and, upon examination, proves to be insignificant. The NTU states in its request for review that it believed there were 92 eligible employees in the unit. After reviewing information provided by the Board, the Director of Representation concluded that there were 95 eligible employees. However, for the purpose of this decision and to illustrate our point, we shall utilize 92 as the size of the unit. 30% of 92 is 27.6 employees which means that the petitioner needs 28 valid signatures (See N.J.A.C. 19:11-1.2(a)8. which requires a showing of interest "...of not less than 30 per cent of the employees in the unit alleged to be appropriate." (Emphasis added)).

The NTU submitted a petition containing 32 signatures but 9 of these were qualified. The 9 conditional signatures indicated that, although the employees sought an election, they did not designate the NTU as their bargaining agent. The NTU requested and was afforded an opportunity to submit satisfactory evidence to the Director in the form of affidavits from three of these 9 individuals stating that they did in fact desire the NTU to represent them, thereby raising to 26 the number of valid signatures. However, as stated above, our Rules require a showing of interest of not less than 30% of the employees in the unit. Even if we were to accept the figure first provided by the NTU on its petition for the number of employees in the unit, namely 89, the showing of interest is inadequate. We acknowledge that the 30% figure is arbitrary although it is widely utilized by administrative agencies including the

National Labor Relations Board. But the figure is meaningful and equitable only if applied consistently and evenly. "At least 30%" means just that, not 29.9% or anything less than 30%.

To summarize, the unit sought by the NTU required a showing of interest of at least 28 valid signatures using the unit size of 92. The Director accepted only 26 of the signatures submitted by the NTU as valid. Accordingly, on that basis the showing was inadequate.

The second question concerns the validity of six signatures where the individuals indicated on the petition their desire for an election only and where the NTU failed to submit subsequent affidavits from these individuals stating that they did desire to be represented by the NTU. The Director refused to accept these signatures.

We affirm the Director's decision. The above-quoted definition of showing of interest requires the employees either to be members of or to have designated the employee organization as their exclusive representative. The card or petition must authorize an employee organization to represent the employee for the purpose of collective negotiations. While this language on its face is clear and unambiguous, any possible doubt about the Commission's intent in setting forth this definition is removed if one examines the previous language in the definition of showing of interest. The original language, adopted August 29, 1969, was contained at N.J.A.C. 19:10-6:

The term "Showing of Interest", as used herein, shall mean a designated percentage of public employees in an allegedly appropriate negotiating unit, or a negotiating unit determined to be appropriate, who are members of an

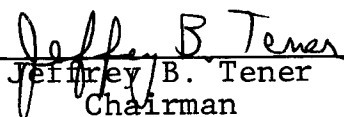
employee organization or have designated it as their exclusive negotiating representative or have signed a petition requesting an election for certification or decertification of public employee representatives.

Such designations shall consist of written authorization cards or petitions, signed and dated by employees, authorizing an employee organization to represent such employees for the purpose of collective negotiations or requesting an election for certification or decertification of public employee representatives; current dues records; an existing or recently expired agreement; or other evidence approved by the Executive Director or the Commission.

The present version, effective March 7, 1974, explicitly tightened up the requirements, necessitating that the employee authorize the organization to represent him for the purpose of collective negotiations. Thus, a request for an election alone is inadequate.

Therefore, we hereby affirm the Director's decision that the 30% requirement for a showing of interest must be strictly applied and that the language on petitions must authorize an employee organization to represent the employee. These statements address the policy issues raised by the NTU in its request for review. We wanted to state our agreement with the Director in order to put all parties on notice regarding the meaning of our Rules in this area. The other matters raised by the NTU are not such as to warrant our review under N.J.A.C. 19:11-8.2.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioners Graves, Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
January 17, 1980

ISSUED: January 18, 1980