

P.E.R.C. NO. 94-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY VOCATIONAL-TECHNICAL
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-94-2

ESSEX COUNTY VOCATIONAL ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies a request for review of D.R. 94-6 filed by the Essex County Vocational-Technical Board of Education. In that decision, the Director of Representation ordered an election among a unit of principals and supervisors to determine if they wished to be represented by the Essex County Vocational Administrators and Supervisors Association. The Board contends that having supervisory and non-supervisory employees represented in separate negotiations units by different New Jersey Education Association affiliates would create a conflict of loyalties. The Commission affirms its policy to defer any issue of nonsupervisory domination to post-Certification proceedings. The Board may raise its claims in an unfair practice charge, should the facts warrant.

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Appearances:

For the Public Employer, Schwartz, Simon, Edelstein, Celso
& Kessler, attorneys (Joel G. Scharff, of counsel)

For the Petitioner, Bucceri & Pincus, attorneys (Gregory T.
Syrek, of counsel)

DECISION AND ORDER

On September 13, 1993, the Essex County Vocational-
Technical Board of Education requested review of D.R. No. 94-6, 19
NJPER ____ (¶____ 1993). In that decision, the Director of
Representation ordered an election among a unit of principals and
supervisors to determine if they wished to be represented by the
Essex County Vocational Administrators and Supervisors Association.
The Association is an affiliate of the New Jersey Education
Association ("NJEA"). The Board's certificated nonsupervisory staff
are represented in a separate negotiations unit by another NJEA
affiliate.

The Chairman denied the Board's request to stay an election and the Director denied the Board's subsequent request that he stay the election or seal the ballots. On October 4, 1993, a majority of eligible voters selected the Association as their employee representative. The Director and the Chairman then denied the Board's request to stay the issuance of a Certification of Representative pending consideration of its request for review. The Director issued the Certification on October 13.

The Board contends that having supervisory and nonsupervisory employees represented in separate negotiations units by different NJEA affiliates would create a conflict of loyalties. The Board is "categorically opposed to the policy expressed by the Commission in its earlier decisions to defer to the Commission's post-certification authority to entertain such conflict claims" (Req. for Rev. at 4). The Association urges that the request for review be denied.^{1/}

A request for review may be granted only upon one or more of the grounds listed in N.J.A.C. 19:11-8.2:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;
2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;

^{1/} We deny the Board's request for oral argument since the issues have been fully briefed.

3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. That there are compelling reasons for reconsideration of an important commission rule or policy.

The Director traced the development of the cases outlining the requirements which an organization must meet to seek representation of supervisors. See City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982). Those requirements include submission of a certification that the petitioner, if elected, will: have no nonsupervisory members; be a separate organization from any organization that represents or may represent nonsupervisory Board employees; and control the negotiations and contract administration for supervisory employees. It is undisputed that the petitioner complied with those requirements.

So long as these threshold requirements are met, our policy is to defer any issue of nonsupervisory domination to post-Certification proceedings. That policy has been approved by the Appellate Division, Hudson Cty., D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd App. Div. Dkt. No. A-989-84T7 (11/15/85). The Board has not presented any compelling reasons for overruling this long-settled and judicially-approved policy.

The Board is concerned that the NJEA will dominate the demand and return system associated with the collection of representation fees. However, that concern is premature since it would come into play only if the Board were to agree in negotiations


that the Association is entitled to representation fees and only if the facts illustrate such domination. The Board is also concerned that the NJEA will first seek one contract to cover all employees and then maneuver to seek one overall negotiations unit. However, we do not envision the creation of such a consolidated supervisory and nonsupervisory unit since our Act prohibits it. N.J.S.A. 34:13A-5.3; 6(d).

Having found no compelling reason for considering the Board's claims pre-Certification, and in light of the fact that a Certification has already issued, we deny review. The Board may raise its claims in an unfair practice charge, should the facts warrant.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 25, 1993
Trenton, New Jersey
ISSUED: October 26, 1993