

D.R. NO. 88-11

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

TEAMSTERS UNION LOCAL #11,

Docket No. RO-88-3

Petitioner,

-and-

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition brought by Teamsters Union Local #11. The Teamsters sought to add secretaries to an existing unit comprised of custodians, bus drivers, groundsmen, stock clerks, maintenance helpers and mechanics. The secretaries are currently included in a mixed unit of teachers and secretaries represented by the MTEA, NJEA. The Director found that the facts presented by the Teamsters did not warrant disturbing the existing unit configuration. The evidence submitted by the Teamsters does not prove a failure of the Union to provide responsible representation.

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Appearances:

For the Public Employer  
Kalac, Newman & Lavender  
(Peter P. Kalac, of counsel)

For the Petitioner  
Schwartz, Pisano, Simon & Edelstein  
(Stephen J. Edelstein, of counsel)

For the Intervenor  
Oxford, Cohen, Blunda, Friedman,  
LeVine & Brooks, Esqs.  
(Mark J. Blunda, of counsel)

DECISION

On July 2, 1987, Teamsters Union Local #11 ("Teamsters" or "Petitioner") filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent all secretaries

employed by the Middletown Township Board of Education ("Board"). The Teamsters seek to add secretaries employed by the Board to an existing unit comprised of all custodians, bus drivers, groundsmen, stock clerks, maintenance helpers and mechanics.<sup>1/</sup>

The employees who are the subject of the petition are currently included in a mixed professional/non-professional unit of teachers and secretaries represented by the Middletown Township Education Association, NJEA ("MTEA" or "Association"). The secretaries have been part of this unit for approximately five years. The MTEA objects to the severance of secretarial employees from its existing unit and does not consent to an election. It requests that the petition be dismissed because there is no basis for a severance here.

The Board takes a neutral position as to which employee organization will represent the group, but indicates that it will consent to an election among the employees in the petitioned-for unit.

An administrative investigation was conducted into the matters and allegations involved in the petition pursuant to N.J.A.C. 19:11-2.2 and 2.6. The investigation revealed the following facts:

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<sup>1/</sup> On August 11, 1987, the Teamsters filed a request to amend their original petition. The original petition sought a separate unit of secretaries. The amended petition seeks to add secretaries to the Teamsters' existing unit of custodians, bus drivers, groundsmen, stock clerks, maintenance helpers and mechanics. The amendment was granted.

The disposition of this matter is properly based on our administrative investigation since we have not found any substantial and material factual disputes which may be more appropriately resolved at a hearing. See N.J.A.C. 19:11-2.6(b).

The MTEA is the exclusive representative of a unit of teachers and secretaries; it requested to intervene in this matter and supported its request with a recently expired collective negotiations agreement. N.J.A.C. 19:11-2.7(b). The MTEA's request to intervene was granted. The recognition clause of the 1985-1987 agreement between the Board and MTEA describes the existing unit as "...all professional employees of the Board with the exception of administrators and supervisors...[and]---the secretaries employed by the Board of Education, exclusive of confidential secretaries...." This agreement expired on June 30, 1987. The Commission certified the addition of the secretaries to the professional unit in December 1983.

Under the circumstances presented here, it appears that the negotiations unit sought by the Petitioner is inappropriate. The Commission has previously established the standard by which petitions requesting severance of employees from an existing unit must be considered. In Jefferson Tp. Bd/Ed, P.E.R.C. No. 61 (1971), the Commission stated:

The underlying issue is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such a relationship is unstable or

that the incumbent organization has not provided responsible representation. We think not. To hold otherwise, would leave every unit open for re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

On August 27, 1987, we wrote to the parties explaining that we were inclined to dismiss the petition. At that time, the Petitioner neither had alleged nor demonstrated that the existing collective negotiations relationship was unstable or that the MTEA had not provided responsible representation to the secretarial employees. In response to our letter, the Teamsters submitted an affidavit of a secretary employed by the Board. That affidavit contained several allegations. It was specifically alleged that it was difficult for secretaries to attend MTEA membership meetings since they are scheduled for 3 p.m. and the secretaries workday ends at 4 p.m. [It is noted that the affiant did attend membership meetings.] It is alleged that the Association's bargaining committee has a member who is a secretary, Mrs. Olsen. She was elected by the entire negotiations unit, not just the secretaries. It was further alleged that in January 1987, certain unidentified secretaries met with the MTEA president to discuss the upcoming negotiations. The president declined to tell these secretaries what proposals were being made in negotiations for the secretaries. On September 8, 1987, the secretaries received an update on the

negotiations for the first time. It is noted that the affiant did not object to the terms of the negotiation demands. Finally, the affiants objected to the manner in which the MTEA handled a grievance brought on behalf of nine secretaries. The grievance stated that there was a miscalculation of their placement on the salary guide. By way of settlement, the Board offered to reclassify eight of the nine grievants and offered to reclassify four additional secretaries. The Association rejected the settlement offer and demanded that all nine secretaries named in the grievance be reclassified. The matter was brought to arbitration. The Arbitrator denied the grievance.

Several of the facts alleged in the affidavit do not go to the issue of responsible representation. The manner in which the secretary was elected to the Association bargaining committee is strictly an internal union matter. See Quinn, et al. v. Woodbridge Township Federation of Teachers, Local 822, American Federation of Teachers, AFL-CIO and Regis Matuzsa Sloan, Middlesex County Chancery Division, Docket No. C-2188-75, Final Judgment September 2, 1976.<sup>2/</sup>

Moreover, the Association decision not to accept a settlement offer but rather to pursue a complete remedy for the grievance brought on behalf of the secretaries is, on its face, a judgment call by the Association and is not evidence of a lack of responsible representation.

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<sup>2/</sup> Initial decision rendered by Judge Furman on June 24, 1976 with the Chancery Division. This is an unpublished decision.

The remaining allegations which may go to the issue of responsible representation<sup>3/</sup> are the inconvenient scheduling of meetings and the timing of notice concerning the state of negotiations to the affiant. Even assuming that both of these incidents are evidence of a lack of responsible representation under Jefferson, in the instant matter, we cannot say that the facts as presented in the affidavit warrant disturbing the existing unit configuration.<sup>4/</sup>

As the Commission stated in Passaic Co. Tech. & Vocational H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63, 65 (¶18026 1986):

determining whether an incumbent organization has provided responsible representation entails a review of the parties' entire relationship, not just isolated occurrences.

N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations. In making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. See State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

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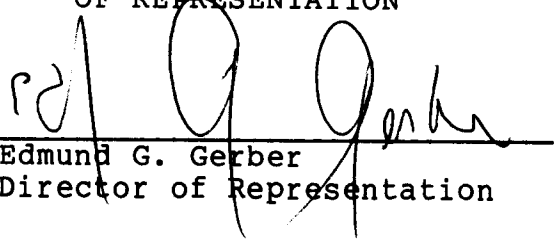
<sup>3/</sup> The affidavits also claim secretaries are made to feel "uncomfortable" at Association meetings. This is a subjective characterization; the facts alleged do not support this characterization.

<sup>4/</sup> No allegations were made concerning the failure to properly represent the secretaries in contract negotiations nor were there allegations as to a failure to present grievances. See N.J.S.A. 34:13A-5.3.

Accordingly, we find that the Teamsters have not met the standards justifying the severance of the Board's secretaries from the existing unit of secretaries and teachers.

Based upon the foregoing, we hereby dismiss the petition seeking to sever the secretarial employees of the Board from the unit represented by the MTEA.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Edmund G. Gerber  
Director of Representation

DATED: September 23, 1987  
Trenton, New Jersey