

D.R. NO. 88-31

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

In the Matter of

BARNEGAT BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-88-54

BARNEGAT FEDERATION OF TEACHERS, LOCAL 3751,
NJSFT, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

Since the Barnegate Board of Education did not comply with all of the elements of N.J.A.C. 19:11-3.1, when it recognized the Barnegat Federation of Teachers as the employee representative for employees in the food services and custodial and maintenance units, no recognition bar to the conduct of an election in those units exists. Also, the negotiations history in the secretaries', food service and custodial and maintenance units does not justify the maintenance of separate collective negotiations units. Accordingly, the Director directs an election among the employees in the petitioned-for units. The professional employees shall also vote on whether they wish to be included in a unit with nonprofessionals.

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Appearances

For the Public Employer
Garry Whalen, Consultant

For the Petitioner
Dwyer and Canellis, Esqs.
(George W. Canellis, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 2, 1987, the Barnegat Federation of Teachers, Local 3751, AFT, AFL-CIO ("BFT") filed a petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"), supported by an adequate showing of interest, seeking to consolidate several collective negotiations units of employees of the Barnegat Board of Education ("Board"). The BFT seeks to consolidate the following units: the

professional unit,^{1/} the secretaries' unit,^{2/} the food service employees' unit,^{3/} and the custodial and maintenance employees' unit.^{4/}

On September 30, 1987, the Barnegat Education Association/NJEA ("BEA") filed a petition for certification of public employee representative (Docket No. RO-88-40), supported by an adequate showing of interest, seeking to represent only those employees serving in titles included in the professional unit and covered by the collective agreement currently in effect between the Barnegat Board of Education and the BFT. On October 20, 1987, an informal investigatory conference pertaining to both petitions was conducted by a Commission staff attorney. Representatives of all parties attended. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. The parties declined to enter into an agreement for consent election. Consequently, on October 27, 1987, we invited the parties to file statements of position, and all parties did so.

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- 1/ The professional unit is comprised of all classroom teachers, teachers of music, teachers of art, teachers of physical education, reading specialists or teachers, teacher librarians, Title I teachers, special education instructors, nurses, psychologists, learning disability teaching consultants (LDTC), guidance counselors and social workers.
- 2/ The secretaries' unit is comprised of principals' secretaries, general secretaries, and child study team secretaries.
- 3/ The food service employees' unit is comprised of food service workers and aides.
- 4/ The custodial and maintenance employees' unit is comprised of all custodial and maintenance employees.

On December 1, 1987, we issued a decision [Barnegat Bd. of Ed., D.R. No. 88-15, 14 NJPER 16 (¶19005 1987)] directing an election in the professional unit only. On December 22, 1987, an election was conducted. The BFT won the election and on December 30, 1987, we issued a Certification of Representative designating the BFT as the representative of employees included in the professional unit.

With regard to Docket No. RO-88-54 (the consolidation petition), we do not find any substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. See N.J.A.C. 19:11-2.6(b). Accordingly, we have determined that the disposition of this matter is properly based on our review of the parties' positions expressed during the informal investigatory conference, in their statements of position and through our administrative investigation and determination of the facts.

The dispute here concerns the status of four separate collective negotiations units comprised of Board employees who are all represented by the BFT:^{5/} the teachers' unit, the secretaries' unit, the food service employees' unit and the custodial and maintenance employees' unit.

^{5/} The BFT also represents other collective negotiations units comprised of Board employees. However, no petitions have been filed regarding such other units.

Prior to June 1987, employees in the food service unit and the custodial and maintenance unit were represented by the Service Employees International Union, Local 389, AFL-CIO ("SEIU") for purposes of collective negotiations. On or about June 9, 1987, the Board received a letter from the SEIU informing it that the employees in the food service and custodial and maintenance units had chosen, with prior approval of the SEIU, to change their affiliation to the BFT, and the BFT was prepared to commence negotiations on behalf of the employees in those units. In light of this letter, the Board accepted BFT dues authorization cards, executed and submitted by a majority of employees in each unit (food service and custodial and maintenance), as proof of the BFT's majority status in the two units. However, the Board did not post notices regarding this recognition nor did it convey any written grant of recognition to the BFT. The Board and the BFT have conducted numerous negotiations sessions regarding terms and conditions of employment covering the employees in the food service and custodial and maintenance units. During the course of those negotiations sessions, the parties were able to reach several tentative agreements on various issues.

The Board argues that its grant of informal recognition to the BFT in the food service unit and the custodial and maintenance unit carries with it an irrebuttable presumption of majority status in favor of the BFT in each of the units for a reasonable period time. The Board contends that the grant of recognition and

consequent presumption of majority status creates a bar to the filing of any representation petition for employees in these units for a reasonable period of time. Therefore, since the BFT's petition might have the effect of changing the status of the current representative in the food service and custodial and maintenance units, the Board argues that the petition must be dismissed with respect to those units.

The Board also contends that the BFT petition should be dismissed in light of the history of successful negotiations in the school district with each support staff unit which the BFT now seeks to merge into a single professional/support staff unit. The Board argues that this history of successful collective negotiations should be considered the controlling factor in determining the unit structure. The Board concludes that the petition filed by the BFT seeks an inappropriate unit structure and should be dismissed. The Board relies upon Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) in support of its argument.

The BFT argues that a recognition bar should not be found to apply in this case. The BFT contends that during the negotiations between it and the Board, the Board "represented a willingness...to have the custodial and cafeteria employees represented in a single bargaining unit."^{6/} Further, the BFT asserts that the filing of its petition does not imply a revocation

^{6/} BFT statement of position dated November 10, 1987, p. 2.

of its representational status. Finally, the BFT notes that since the Board did not comply with the formal requirements of the Commission's rule pertaining to recognition (N.J.A.C. 19:11-3.1), it should not be able to assert a viable bar to the BFT petition.

* * *

The facts in this matter lead us to conclude that there is no recognition bar to the conduct of the secret ballot election sought by the BFT.

N.J.A.C. 19:11-2.8 provides, in relevant part, as follows:

(b) Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceeding 12 months an employee organization has been certified by the Commission as the exclusive representative of employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative.)

N.J.A.C. 19:11-3.1 provides, in relevant part, the following:

(b) The Commission will accord certain privileges to such recognition as set forth in N.J.A.C. 19:11-2.8 (Timeliness of Petitions), provided that [the] following criteria have been satisfied prior to the written grant of such recognition by a public employer:

1. The public employer has satisfied itself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiations unit;

2. The public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least ten consecutive days

advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiations unit;

3. The public employer shall serve written notification upon any employee organizations that have claimed, by a written communication within the year preceeding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceeding the date of the request for recognition. Such notification shall be made at least ten days prior to the grant of recognition and shall contain the information set forth in Paragraph 2 of this subsection;

4. Another employee organization has not within the ten-day period notified the public employer, in writing, of a claim to represent any of the employees involved in the collective negotiations unit or has not within such period filed a valid petition for certification of public employee representative with the Director of Representation;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiations unit involved.

Where an employer voluntarily recognizes an employee organization and adheres to each element of N.J.A.C. 19:11-3.1(b), the employee organization will enjoy an irrebuttable presumption of continuing majority status for a one-year period after such grant of formal recognition. See Essex Cty. Educational Services Commission, P.E.R.C. No. 86-68, 12 NJPER 13 (¶17004 1985). Pursuant to N.J.A.C. 19:11-2.8(b), a representation petition will not be considered timely filed for a one-year period from the grant of such formal recognition. However, where an employer grants recognition to an

employee organization but does not follow all of the criteria set forth in N.J.A.C. 19:11-3.1(b) (informal recognition), the Commission will not accord the benefits provided by N.J.A.C. 19:11-2.8(b). See Salem City Bd. of Ed., P.E.R.C. No. 81-6, 6 NJPER 371 (¶111190 1980), where the employer granted recognition to an employee organization without having satisfied all of the criteria in N.J.A.C. 19:11-3.1(b). In Salem, the Commission indicated that where the employer informally recognizes an employee organization, there exists a distinction between (1) an employee organization's entitlement to an irrebuttable presumption of continued majority status from which flows the employer's obligation to negotiate with the employee representative and (2) the informally recognized employee organization's access to the protections provided by N.J.A.C. 19:11-2.8(b). The Commission went on to state:

N.J.A.C. 19:11-3.1 appears in the chapter of the Commission's rules on procedures for resolving disputes over representation questions. N.J.A.C. 19:11-2.8(b) refers to the 12-month insulated period granted an employee representative which has successfully achieved status of certified or recognized majority representative. That rule refers to N.J.A.C. 19:11-3.1 as setting forth the requirements which must be met for a recognition which will be accorded this 12-month election bar privilege. The same pre-conditions do not necessarily have to be met before a negotiations obligation arises between a public employer and an employee organization which does represent a majority of the employees in an appropriate unit. Such an organization may have the right to negotiate but only so long as it can satisfy the employer that it represents a majority of the employees in the unit. [Id. at 372.]

In Atlantic County Sewerage Authority, H.E. No. 81-15, 6 NJPER 566 (¶11287 1980), adopted P.E.R.C. No. 81-91 7 NJPER 99 (¶12041 1981), mot. for recon. den. P.E.R.C. No. 81-111, 7 NJPER 162 (¶12072 1980), aff'd. App. Div. Dkt. No. A-3252-80 (1/27/83), the Hearing Examiner wrote that non-compliance with N.J.A.C. 19:11-3.1, on the part of the employer,

...does not totally eliminate the obligation to negotiate arising in a voluntary recognition. It only defines under what circumstances will a voluntary recognition be treated as a certification after an election. Alternatively, a failure to comply with the rule only means the full protection of 19:11-2.8 will not be granted. [Atlantic County Sewerage Authority, 6 NJPER at 568.]

Here, the Board equates the employee organization's irrebuttable presumption of majority status with its right to assert the protection afforded by N.J.A.C. 19:11-2.8(b).^{7/}

Where an employer has informally recognized an employee representative, such action on the part of the employer does not operate to bar the filing of a petition for certification, as has occurred in this case. Accordingly, we find no recognition bar to the petition for certification filed by the BFT in this matter.

The Board asserts that it has enjoyed a history of successful collective negotiations in the secretaries', food service employees' and custodial and maintenance employees' units. Relying

^{7/} In Clinton Township Bd. of Ed., D.R. No. 82-44 8 NJPER 206 (¶13086 1982) the Director of Representation noted that either the employer or the employee organization may assert the protection of N.J.A.C. 19:11-2.8(b).

upon Englewood Bd. of Ed., supra., the Board contends that the history of successful collective negotiations should be considered the controlling factor in determining whether the BFT's petition should be considered viable. The Board concludes that Englewood mandates the dismissal of the BFT's petition.

However, in Englewood, the incumbent majority representative opposed the petition filed by a competing employee organization and the incumbent enjoyed a long history of successful negotiations in the existing unit structure. Here, the incumbent majority representative (the BFT) itself is seeking the unit consolidation. The facts in this case do not constitute the "especially compelling circumstances justifying the continuation of separate units" as was found in Englewood.

Accordingly, we hold that the negotiations history present here does not justify the maintenance of separate collective negotiations units in light of the incumbent representative's affirmative interest in a consolidated unit. A combined unit of professional and support staff employees, as proposed in the BFT petition, constitutes an appropriate unit structure. Piscataway Township Bd. of Ed. P.E.R.C No. 84-124, 10 NJPER 272 (¶15134 1984).

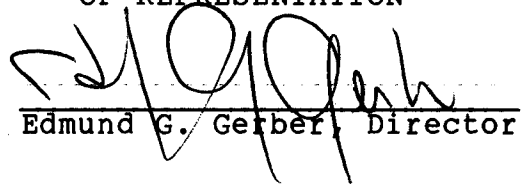
Accordingly, we direct that an election be conducted among the employees in the petitioned-for units. Additionally, employees serving in titles included in the professional unit shall vote on whether they wish to be included in a collective negotiations unit with non-professional employees.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the 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 Board is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. Separate lists must be prepared for each of the support staff units and the professional unit. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: February 8, 1988
Trenton, New Jersey