

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

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-77-100

LONG BRANCH EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

In a Clarification of Unit proceeding, the Director of Representation clarifies a negotiations unit consisting of teachers, learning disability specialists, speech therapists, librarians, nurses and guidance counselors to include all athletic coaches employed by the Long Branch Board of Education. The Director notes that athletic coaching activities are a fundamental part of the education process.

In making this determination, the Director finds that a community of interest exists between athletic coaches and the employees in the above-referred unit. The Director rejects the Board's argument that a conflict of interest exists between the coaches and other unit members; rather, the Director notes that the issue raised by this argument is "competing interests" and that such "competing interests" are of neither the type nor the magnitude contemplated by the Commission such as would warrant the exclusion of coaches from the above-referred unit represented by the Education Association.

Finally, the Director concludes that no prior history of collective negotiations exists between the Board and a Coaches' Association such that would warrant the continuance of a separate relationship between the Coaches' Association and the Board.

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Appearances:

For the Public Employer, Murray, Meagher &
Granello, Esqs.
(Mr. Malachi J. Kenney, of Counsel)

For the Petitioner, Chamlin, Schottland, Rosen &
Cavanagh, Esqs.
(Mr. Thomas W. Cavanagh, Jr., of Counsel)

DECISION

On December 16, 1976, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the Long Branch Education Association (the "Education Association") seeking a clarification regarding the composition of a unit of employees represented by the Petitioner and employed by the Long Branch Board of Education (the "Board"). A hearing was held on April 22, 1977 before Hearing Officer Charles A. Tadduni at which the parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. At the hearing, the parties agreed to submit the instant matter for decision entirely upon jointly stipulated facts, joint exhibits and briefs.^{1/} Briefs were filed in this matter

^{1/} During the hearing, the parties agreed to submit several joint exhibits to the Hearing Officer subsequent to the close of the hearing. These materials, received by the Hearing Officer on June 6, 1977, consisted of the following:
(1) Joint Exhibit I, the Agreement between the parties herein covering the
(continued)

by the parties by June 20, 1977. The parties have agreed to waive the issuance of a hearing officer's report and recommendations and to submit the instant matter directly to the undersigned for determination. The undersigned has considered the entire record in this proceeding including the transcript, exhibits, stipulations, and the briefs filed herein and, on the basis of the facts in this case, finds:

1. The Long Branch Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq., as amended (the "Act"), is the employer of the employees who are the subject of this proceeding, and is subject to the Act's provisions.

2. The Long Branch Education Association is an employee organization within the meaning of the Act and is subject to its provisions.^{2/}

3. The Education Association has requested that its negotiations unit be clarified to include athletic coaches. The Education Association contends that its negotiations unit is the most appropriate unit for representation of the coaches in collective negotiations. The Board contends that the coaches should be in a separate collective negotiations unit because coaches do not share a community of interest with teachers and because there is a conflict of interest between these groups.

^{1/} (continued)... period from September 1, 1976 through August 31, 1978.

(2) Joint Exhibit 11a, a list of coaching assignments for 1976-77 at the Long Branch Senior High School. (3) Joint Exhibit 11b, a list of coaching assignments for 1976-77 at the Long Branch Junior High School. (4) A joint stipulation concerning liability insurance coverage provided for teachers and coaches by the Board.

^{2/} The parties have stipulated, and accordingly, the undersigned finds that the Education Association is the exclusive representative for purposes of collective negotiations for the following certificated professional personnel: teachers, including learning disability specialists and speech therapists, librarians, nurses and guidance counselors. See, Transcript, p. 5; see also, Exhibit J-1. Hereinafter, the undersigned has used the term "teachers" to refer to the personnel currently represented by the Long Branch Education Association.

Hence, there is a question concerning the composition of a negotiations unit and the matter is properly before the undersigned for determination.

The parties have stipulated that the question for determination in the instant matter is: "What is the most appropriate unit for inclusion of coaches employed by the Long Branch Board of Education for purposes of collective negotiations?"

4. The positions of the parties in this matter are as follows. The Education Association contends that the coaching duties performed by certificated professionals are part of their work day as teachers. The Education Association cites several cases wherein it was determined that coaching duties are an integral part of the education process and that such duties may be assigned to teachers by a board of education so long as the assignment is reasonable. The Education Association contends that a community of interest exists between coaches and teachers which warrants the inclusion of coaches in the teacher unit. It is further claimed that the record does not indicate the existence of a conflict of interest between the above-referred employees.

The Board contends that coaches do not share the requisite community of interest with teachers which would warrant the inclusion of both groups in the same collective negotiations unit. The Board argues that athletic activities are a distinguishable part of the school program. The Board notes that while prior hereto all coaches employed by a board of education also were teachers employed by that board, recent amendments to certain regulations of the New Jersey State Board of Education now permit, under specified circumstances, the hiring of coaches who are not members of a board's regular teaching staff.^{3/}

^{3/} See N.J.A.C. 6:11-3.12 and N.J.A.C. 6:29-6.3

The Board also contends that there is a conflict of interest between coaches and teachers in that teacher salaries and coaching stipends come from the same limited supply of money -- the school district budget; thus, the two "groups" are competing for the same funds. Finally, it is contended that there is a history of both informal and formal discussions concerning coaches' terms and conditions of employment between Board representatives and the Long Branch Coaches' Association (hereinafter the "Coaches' Association"). The Board submits that consistent with the Act's intent to promote harmonious labor relations, the Commission should permit such prior existing relationships -- such as is alleged to exist between the Board and the Coaches' Association -- to continue in effect.

With regard to this latter argument, the Education Association contends that this "group" -- ostensibly, the coaches as a separate negotiations unit represented by the Coaches' Association -- no longer functions as a representative of coaches and that the coaches have twice indicated through internal elections their desire to have the Education Association negotiate on their behalf.

5. The undersigned has carefully considered the facts in this case, the applicable statutory and decisional law, and the arguments advanced by the parties concerning the unit placement of coaches. Accordingly, the undersigned finds and determines as follows:

N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations.^{4/} N.J.S.A. 34:13A-5.3 states that negotiations units shall be defined with due regard for community of interest. Unit determinations are made within the framework of the general

^{4/} In State of New Jersey v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974), the Supreme Court stated that where the proposed unit is contested, the Commission is obligated to determine the most appropriate unit for collective negotiations.

statutory intent and purpose of promoting permanent employer-employee peace, ^{5/} or as the New Jersey Supreme Court has stated "...the establishment and promotion of fair and harmonious employer-employee relations in the public sector."^{6/} Consistent with the statutory intent, when making unit determinations the Commission has sought to avoid the fragmentation of negotiations units and has favored the formation of units along broad based, functional lines rather than by title or by distinct occupational groupings. ^{7/}

A review of decisions of courts and other administrative agencies reveals that without exception "extracurricular activities," including interscholastic and intramural sports activities, are deemed to be a fundamental and indispensable part of the education process. ^{8/} Further, the Commission has found that the performance of such extracurricular duties as the coaching of athletic activities is a part of the professional responsibility of teachers. ^{9/} The Commission has determined that while the decision to assign teachers to athletic coaching duties is a permissive subject for negotiations, the effects of such a decision on the terms and conditions of employment of teachers are mandatorily negotiable. ^{10/}

^{5/} See N.J.S.A. 34:13A-2.

^{6/} Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

^{7/} In State of New Jersey v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974), the Supreme Court endorsed the Commission's adoption of the concept of broad-based, functional negotiations units.

^{8/} Asbury Park Board of Education v. Asbury Park Education Association, 145 N.J. Super. 495 (Ch. Div. 1976). Smith v. Paramus Board of Education, 1968 S.L.D. 62. In re Central Islip Board of Education, 4 P.E.R.B. 4018, 4033-4035 (New York Public Employment Relations Board, 1971), Parrish v. Moss, 200 Misc. 375, 106 N.Y.S. 2d 577 (Sup. Ct. 1951) aff'd without opinion, 279 App. Div. 608, 107 N.Y.S. 2d 580 (App. Div. 1951), McGrath v. Burkhard, 131 Cal. App. 2d 367, 280 P. 2d 864 (Ct. App. 1955). See also, Exhibit J1 (Agreement between Long Branch Board of Education and Long Branch Education Association for years 1975-76 and 1976-77), Article XIX ("Teacher Responsibility").

^{9/} In re Rutherford Board of Education, P.E.R.C. No. 77-22, 3 NJPER 37 (1976). See also, Asbury Park Board of Education v. Asbury Park Education Association, supra, n. 7.

^{10/} In re Pascack Valley Regional High School District Board of Education, P.E.R.C. No. 77-55, 3 NJPER 114 (1977).

In a case similar to the instant matter, In re Hamilton Township Board of Education, E.D. No. 30 (1971), the Board contended that a separation should be maintained between teachers and coaches for purposes of collective negotiations. This position was rejected by the Executive Director in light of the close community of interest between the teachers and coaches and the identity of personnel between the groups. The Executive Director determined that for purposes of collective negotiations, teachers who are coaches should be included in the negotiations unit for all full-time classroom teachers.

In another similar case decided by the Director of Public Employment Practices and Representation of the New York Public Employment Relations Board, In re Central Islip Board of Education, 4 PERB 4018 (1971), the Director found that coaches should be included in the teacher negotiations unit. The Director observed that the occupational differences which did exist between coaches and teachers were not sufficient to warrant a separate unit for coaches and further stated:

"Thus, interscholastic coaches, by instructing in a program which is so closely related to the basic curriculum, occupy a role which is complementary to, and not isolated from, that of the classroom teacher...

"Moreover, the qualifications of coaches and teachers are interdependent, a fact recognized by the employer in choosing to recruit its coaching staff from among the members of the regular teaching staff. There is thus a total identity of personnel between the "coaches" and the "teachers." This fact and their shared educational mission make it clear that the two groups have an identity of interest which precludes their fragmentation."^{11/}

Prior to March 1977, school athletic coaches employed by boards of education in this State were required to be employed as teachers in the district

^{11/} In re Central Islip Board of Education, supra, n. 8.

in which they rendered coaching services. While recently enacted State Board of Education Regulations now permit a relaxation of this requirement under certain specified circumstances, ^{12/} the record shows that all athletic coaches employed by the Long Branch Board of Education are also teachers employed in that school district. ^{13/}

As the Education Association is the exclusive representative for all teachers employed by the Board, it is the Education Association which negotiates the agreement which governs the terms and conditions of employment of the teachers. Coaches, in their capacity as teachers, are subject to the same contractual provisions governing terms and conditions of employment as are all other teachers employed by the Board. More specifically, the record shows that teacher-coaches and all other teachers employed by the Board (1) utilize the same contractual grievance procedures, (2) are supervised by the same group of supervisory personnel, (3) share the same facilities (i.e., lounges, washrooms and parking), (4) are provided with the same health insurance benefits and (5) are subject to the same contractual provisions concerning personal leave, sick leave, sabbatical leave, evaluation procedures, building assignment, class assignment, subject assignment, contract renewal, terminal leave pay and teacher responsibility. ^{14/} Further, the record demonstrates that teacher-coaches, as coaches, are provided with the same liability insurance by the Board

^{12/} N.J.A.C. 6:11-3.12 provides that a school district may employ a certified and qualified full-time teaching staff member of another New Jersey school district to work on a part-time basis in the co-curricular interscholastic athletic program, if, inter alia, an "emergency situation" exists as determined by the county superintendent.

^{13/} Tr. p. 7, 10. It should be noted that in discussing "athletic coaches employed by the Long Branch Board of Education," the undersigned refers to all coaches, i.e. both interscholastic and intramural coaches. See, Exhibits J-11a (list of coaching assignments in the high school) and J-11b (list of coaching assignments in the junior high school).

^{14/} See, Tr. p. 7, 12-15.

as are all other teachers. ^{15/} Teacher-coaches, as coaches, work at the same locations as do all other teachers employed by the Board, except for those coaches who supervise sports for which the Board does not have its own facilities. ^{16/}

Based upon the foregoing, the undersigned concludes that the coaches share a close community of interest with teachers employed by the Board and that coaches, as a separate group, do not share such a unique community of interest so as to warrant their exclusion from the unit of teachers.

The Board's argument that a conflict of interest exists between coaches and teachers -- resulting from their both competing for the same pool of funds -- is rejected. The undersigned notes that while such a conflict may exist between coaches and teachers, it is of neither the type nor the magnitude contemplated by the Commission such as would warrant the exclusion of coaches from the teacher negotiations unit. ^{17/}

The undersigned finds this argument raises the issue of "competing interests," not conflicting interests. Such competing interests often occur to some degree among the various groups within a negotiations unit, particularly where several job titles or distinct job categories are part of one unit. However, competing interests among unit members may be and in fact usually are reconciled while conflicting interests are often inherently irreconcilable. ^{18/}

^{15/} See, stipulation received from parties dated 6/3/77.

^{16/} See, Tr. p. 14.

^{17/} See, Board of Education of W. Orange v. Wilton, *supra*, n. 6. See also, In re City of Camden, P.E.R.C. No. 52 (1971) and In re City of Union City, P.E.R.C. No. 70 (1972). Cf., Belen v. Woodbridge Township Board of Education, 142 N.J. Super. 486 (App. Div. 1976).

^{18/} For examples of how the Commission has viewed the community of interest among board of education employees see, In re Bergenfield Board of Education, P.E.R.C. No. 7 (1969); In re Garfield Board of Education, P.E.R.C. No. 16 (1969); In re Montgomery Township Board of Education, P.E.R.C. No. 27

Further, the undersigned concludes that the underlying premise of the competing interests argument advanced herein is that the competing interests between groups will be reconciled unfairly and to the detriment of one of the subgroupings within the unit. Such contentions raise a question concerning potential unfair representation. The undersigned is not prepared to assume, in futuro, absent clear evidence, that a majority representative of public employees will abrogate its statutory duty to fairly represent all employees in the unit. ^{19/}

The Board's final argument, that its prior existing relationship with the Coaches' Association should not be disturbed by placing the coaches in the teachers' negotiations unit, is also rejected.

The history of negotiations for a given unit of employees is an important factor in unit determination. ^{20/} However, negotiations history will not always be a determinative factor, particularly where such history runs counter to established policy. ^{21/}

In the instant matter, the undersigned concludes that the relationship between the Board and the Coaches' Association did not rise to the level

^{18/} (continued)... (1969); In re West Milford Board of Education, P.E.R.C. No. 56 (1971); In re Township of Cranford Board of Education, E.D. No. 74 (1975); In re Rancocas Valley Regional High School Board of Education, E.D. 76-39 (1976). See also, In re County of Atlantic, P.E.R.C. No. 32 (1970) and In re Borough of New Milford, E.D. 76-42 (1976). Cf. Board of Education of W. Orange v. Wilton, supra, n. 6.

^{19/} In re Board of Education of Fair Lawn, D.R. No. 78-22, NJPER (1977). See also, Belen v. Woodbridge Township Board of Education, supra, n. 17.

^{20/} In re Great Atlantic and Pacific Tea Co., 59 LRRM 1679 (N.L.R.B., 1965); In re Mid West Abrasive Co., 55 LRRM 1209 (N.L.R.B., 1964). The courts of this State have specifically recognized that the New Jersey Employer-Employee Relations Act was patterned after the National Labor Relations Act, as amended, 29 U.S.C.A. 151 et seq., and that the latter may be utilized as a guide in resolving disputes arising under the Act [see Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970)].

^{21/} In re Mechling Barge Lines, 78 LRRM 1119 (N.L.R.B. 1971); NLRB v. Portes County Co-op (C.A.-7 1963); See also, Office of the General Counsel, N.L.R.B., An Outline of Law & Procedure in Representation Cases, p. 133 (1974). Cf. State of New Jersey v. Professional Association of New Jersey Department of Education, supra, n. 4.

of collective negotiations. Their relationship was far less than collective negotiations -- rather, it appears to have been much closer to consultation than negotiation. The undersigned notes the specific recognition given by the Board to the Coaches' Association and that "representatives of the Board dealt with the Coaches' Association in meetings and through correspondence which resulted in an agreement (Exhibit J4) between ..." the Board and the Coaches' Association. ^{22/} However, this "agreement," covering the years 1973-1976, addresses little more than salaries and contains no grievance procedure. ^{23/} Further, while the agreement was ratified by the Board of Education, it was never ratified by the Coaches' Association and there is no indication in the record that the agreement was ever formally executed by either party. The timing and language of Exhibit J6 also clearly belie any claim by the Board of an ongoing collective negotiations relationship with the Coaches' Association. ^{24/} Accordingly, the undersigned concludes that the prior relationship between the Board and the Coaches' Association does not establish a history of collective negotiations.

^{22/} See, Tr. p. 7. The undersigned would further note that there is no indication in the record that the procedures for recognition set forth in N.J.A.C. 19:11-3.1 (formerly N.J.A.C. 19:11-1.14) were followed.

^{23/} See, Exhibit J4 and Tr. p. 11. It should also be noted that such a brief negotiating history -- one three-year agreement -- will not be accorded weighty significance in the determination of the most appropriate unit for collective negotiations. See, Office of the General Counsel, N.L.R.B., An Outline of Law and Procedure in Representation Cases, p. 134 (1974).

^{24/} Exhibit J6 is a letter dated 11/30/73 from Board Superintendent Hughes to Coaches' Association President Gasser. In J6, it is stated that J6 is in response to J5, a letter dated 11/5/72 from the Coaches' Association to Hughes and containing the Coaches' Association's proposals for 1973-74 school year. The first two paragraphs of J6 are illustrative with regard to the parties' relationship:

"This letter is in a response to a letter from the Long Branch Coaches Association dated November 5, 1972, concerning proposals for the 1973-74 school year. The Board has adopted the agreement for salaries and also the Agreement for the 1974-76 Coaches Guide, copy of which is attached. However, I felt that I owed you this reply to show that the other matters mentioned in your correspondence had been taken into consideration. (emphasis added)

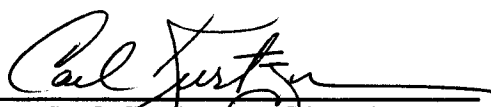
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The undersigned would further note that there is no current agreement between the Board and any collective negotiation's representative which covers coaches. Moreover, the record in the instant matter indicates that the coaches employed by the Board wish to be represented in collective negotiations by the Long Branch Education Association. 25/

Based upon the foregoing considerations and the entire record herein, the undersigned concludes that the inclusion of athletic coaches in the Education Association's unit constitutes a "most appropriate unit" and that the coaches should be included in the teachers' negotiations unit.

Accordingly, the negotiations unit represented by the Long Branch Education Association is hereby clarified to include all athletic coaches employed by the Long Branch Board of Education. This determination shall be effective immediately. 26/

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: November 18, 1977
Trenton, New Jersey

24/ (continued)...

I have consulted with the athletic directors and I believe you will find the following comments will clarify most of the questions raised."

25/ In two formal, internal votes taken among the coaches, they indicated their desire was to be represented in collective negotiations by the Long Branch Education Association. See Exhibits J-9a, J-9b and J-10.

It is also noted that during this entire proceeding, the Long Branch Coaches' Association never came forward or sought to appear in this matter in any capacity. Further, as one of the votes which was taken among the coaches was to dissolve the Long Branch Coaches' Association, a question is raised concerning whether the Coaches' Association any long exists.

26/ The instant clarification of unit petition has a complex procedural history. Initially, the Education Association filed a scope of negotiations petition
(continued)

26/ (continued)... on June 9, 1976; one week later on June 16, 1977, the Association filed an unfair practice charge against the Board; subsequent to the exploratory processing of the above matters, it was determined that the question presented by the scope petition and the charge would be more appropriately raised in a clarification of unit proceeding. Thereafter, the instant clarification of unit petition was filed on December 16, 1976. The undersigned observes that each of the above-cited Commission processes initiated by the Education Association raised several common issues -- inter alia -- whether the coaches are or should be in the teachers' negotiations unit and thus whether the Board is required to negotiate with the Education Association on behalf of the coaches.

The parties' current agreement (Exhibit J-1, for the period covering September 1, 1976 through August 31, 1978) was executed on June 22, 1976. Accordingly, as a question concerning the composition of a negotiations unit was raised before the Commission prior to the execution of the parties' most recent contract, the clarification of unit determination made herein shall be effective immediately. See, In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977).