

D.R. NO. 90-31

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

In the Matter of

DEPTFORD TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

DEPTFORD EDUCATION ASSOCIATION/NJEA,

Docket No. RO-90-64

Petitioner,

-and-

TEAMSTERS LOCAL UNION NO. 676,

Intervenor.

SYNOPSIS

The Director of Representation orders an election pursuant to a Petition which sought to consolidate both professional and nonprofessional units over the objections of the employer. It was found that the compelling circumstances of Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (12229 1981) were not present in this case.

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Appearances:

For the Public Employer
Capehart & Scatchard, attorneys
(Joseph F. Betley, of counsel)

For the Petitioner
New Jersey Education Association
(Eugene Sharp, Field Rep.)

For the Intervenor
Tomar, Seliger, Simonoff, Adourian & O'Brien, attorneys
(Mary L. Crangle, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 13, 1989, the Deptford Township Education Association ("Association") filed a timely Petition for Certification with the Public Employment Relations Commission ("Commission"). The Association seeks to add secretaries and clerks, food service workers, instructional and lunch room aides, and custodial and maintenance workers to the teachers' unit

presently represented by the Association. The Deptford Township Board of Education ("Board") is the employer of all of these employees. The Board refused to consent to a secret ballot election on several grounds: (a) the long-standing, existing unit structure should not be disturbed; (b) there is a stable 20-year negotiations history for the separate units; (c) Teamsters Local 676 ("Local 676") currently represents the custodial and maintenance employees and Local 676 opposes the petition; and (d) there is no community of interest among the groups sought to be consolidated.

On March 29, 1990, the Association amended its petition. It no longer seeks to represent either the custodial and maintenance employees or the instructional and lunchroom aides. The petitioner seeks to add only the secretarial and clerical employees and the food service employees to the existing teachers' unit.

We have conducted an administrative investigation.

N.J.A.C. 19:11-2.6. These facts appear.

There are 31 secretaries and clerks who were previously represented by the Deptford Township Educational Secretaries Association. This Association has disclaimed interest in representing these employees.

There are 21 food service workers who were previously represented by the Deptford Township Cafeteria Association. This Association also has disclaimed interest in representing these employees.

There are 307 teachers in the unit of the petitioning Association.

Both incumbent, support staff organizations support the proposed unit consolidation. All of the petitioned-for employees have been represented since 1969. In that year, the Board signed its first contracts with the Education Association, the Educational Secretaries' Association and the Cafeteria Employees' Association. Since 1969, these three organizations have represented the petitioned-for employees and the most recent contracts for all three units run from July 1, 1987 to June 30, 1990. All three organizations are affiliated with the New Jersey Education Association. Most of the Board's employees are organized into seven separate collective negotiations units. In addition to these three units, there is the custodial unit, no longer included in this petition, which is represented by Teamsters Local Union No. 676. There are also units of bus drivers, school psychologists and administrators. The classroom aides, also deleted from the petition, are unrepresented.

The teachers' unit consists of all certificated professional personnel. Support staff are not required to have advanced education. Teachers, secretaries and cafeteria staff all work in the same building. The secretaries' contract provides for both 10-month and 12-month work years while the teachers and cafeteria workers work 10-month work years. The cafeteria workers have a 4 1/2 hour work-day; the secretaries work 7 1/4 hours per day; teachers work between 6 hours 50 minutes and 7 hours 7 minutes per day. There is no salary schedule for the cafeteria workers.

The secretaries' salary schedule consists of five steps, while the teachers' salary schedule has 21 steps with six classifications. The teachers' and secretaries' line of supervision is headed by the superintendent while the cafeteria employees are the responsibility of the board secretary.

The Board asserts that the support staffs' differences in terms and conditions of employment, the long history of stable labor relations with separate units and the absence of any claim of unfair or inadequate representation combine to require the preservation of separate units.

The Board also argues that certificated professional employees do not share the same educational goals as secretaries and cafeteria workers. The Board contends that although the Commission often assumes that separate employee groups share common goals, there is no factual basis for that conclusion here.

The New Jersey Supreme Court has affirmed the Commission's policy favoring broad-based, employer-wide negotiations units rather than small units of separate occupational groupings. Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." that result from negotiating with numerous smaller units. State of N.J. and Prof. Assn. of N.J. Bd. of Ed., 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68. The Commission has long held that broad-based units of education employees -- both units of all school support staff employees and units combining support staff and

professional staff -- are appropriate. West Milford Bd. of Ed., P.E.R.C. No. 56 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

In Piscataway, the Commission found:

When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and professional school district employees has arisen, the Commission since 1969 has consistently found, ...that teachers and supportive staff have a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment and that this community of interest generally warrants giving teachers and supportive staff the opportunity to choose a unified representative in a single unit if they so desire. See West Milford Bd. of Ed., P.E.R.C. No. 56 (1971). In the Commission's judgment, affording teachers and supportive staff such an opportunity promotes labor stability since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. State of New Jersey and Professional Assn of N.J. Dept. of Ed., 64 N.J. 231 (1974). (Emphasis in original.) Piscataway, at p. 274.

The Commission has generally given teachers and support staff employees the opportunity to choose unified representation in a single unit based on their community of interest, except where certain compelling circumstances may justify continuing separate units. Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

Here, I find that the support groups share a community of interest with teachers. Piscataway. The goal of all the employees in the petitioned-for unit is to provide for the students'

education. The employees work together in the district's schools toward this common goal. The Board's centralized authority in the Superintendent's office controls the personnel policies affecting all its employees.

Englewood was not decided solely on the basis of a long history of negotiations in separate units but on a combination of factors including the strenuous objection by the incumbent organization. As we have found in numerous decisions since Englewood, deciding whether to permit employees to vote on whether they wish to have a unified negotiations unit requires a balancing of factors.

Shortly after Englewood, in Glen Rock Bd. of Ed., P.E.R.C. No. 83-64, 9 NJPER 17 (¶14008 1982), the Commission reversed a Director of Representation decision finding that the history of negotiations in separate units mandated dismissal of a petition to consolidate units. The Commission found that the Director erred in relying exclusively on the negotiations history and remanded the matter for hearing. On remand, the hearing officer also found that the 10-year history of separate negotiations units precluded consolidating the units. The Commission again reversed, finding that negotiations history alone will not control unit structure in the face of the incumbent's support for consolidation. Glen Rock Bd. of Ed., P.E.R.C. 84-125, 10 NJPER 275 (¶15135 1984).

Simultaneous with Glen Rock, the Commission issued five other decisions clarifying the applicability of Englewood.

Piscataway Bd. of Ed., Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd App. Div. Dkt. No. A-4503-83T6 (4/9/85); Bergen Cty. Vocational Schools Bd. of Ed., P.E.R.C. No. 84-127, 10 NJPER 279 (¶15137 1984); Freehold Reg. Bd. of Ed., P.E.R.C. No. 84-128, 10 NJPER 280 (¶15138 1984); and Barrington Bd. of Ed., P.E.R.C. No. 84-129, 10 NJPER 282 (¶15139 1984). In each of these cases, the Commission found that giving employees a chance to choose unified representation in a consolidated unit was appropriate even where there had been a lengthy negotiations history of separate support staff units, if the supportive staff unit welcomes, rather than vigorously opposes, the proposed unit and the existing unit is not the subject of a longstanding certification.^{1/} In Cherry Hill Board of Education, D.R. No. 90-18, 16 NJPER 107 (¶21041 1990), I found a petition to consolidate support staff and teachers was appropriate even though there was a twenty year history of negotiations in stable separate units.

Significantly, the Commission noted in Piscataway,

^{1/} In Bergen, the Commission found a five-year history would not control where the incumbent support staff representative did not oppose unification. In Freehold, the Commission found the 10-year history of separate representation for secretaries did not control where the incumbent support staff representative did not oppose unification. In Barrington, the Commission found a history of more than 10 years of separate representation for secretaries did not control where the incumbent support staff representative did not oppose unification.

...the focus of the Englewood litigation was on the placement of [custodians represented by an AFL-CIO affiliate].... Englewood may not be read as rejecting giving employees the opportunity to choose unified representation when the majority representatives of these units favor, rather than oppose, that course. Piscataway at p. 275, n. 4.

In light of the foregoing, I find that the long history of negotiations cited here, without more, is insufficient to deny the consolidated unit sought.

The Educational Secretaries' Association and the Cafeteria Employees' Association have both advised the Commission that they no longer wish to represent their respective employee groups. Thus, unlike Englewood, the incumbent representatives are not opposed to the petitioned-for unit. They each support the proposed consolidation. Had the Association not amended its petition and withdrawn its demand to represent custodians (who are represented by Teamsters Local 676) then I might be inclined to reach a different conclusion. Englewood.

Balancing all of the circumstances present here, I find that the petitioned-for consolidated unit is appropriate. Accordingly, I direct that an election be conducted among the employees in the secretarial unit and among employees in the food services unit to determine whether a majority of employees in each group wish to be represented by the Deptford Township Education Association. Certificated employees shall be given a choice (professional option) as to whether they wish to be included in a unit with non-professional employees. N.J.S.A. 34:13A-6. Pursuant

to N.J.S.A. 34:13A-2.6(b), I direct that the election be conducted among the employees in the following appropriate unit:

Included: All secretarial and clerical employees and all cafeteria employees to be added to the existing unit of all certificated personnel, including classroom teachers, special area teachers, librarians, guidance counselors, nurses, social workers and learning disability teacher consultants.

Excluded: All managerial executives, confidential employees, supervisors, craft employees, police employees, firefighters, cafeteria managers and all employees included in existing negotiations units.

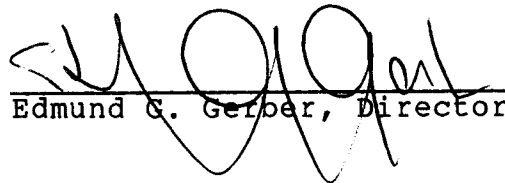
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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 public employer 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. 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: June 1, 1990
Trenton, New Jersey