

D.R. NO. 91-14

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

In the Matter of

PATERSON BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-91-60

PATERSON EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among secretaries, attendance officers and school/community program coordinators employed by the Paterson Board of Education to determine whether they wish to be represented by the Paterson Education Association within the existing unit of all certificated personnel, teacher aides and paraprofessionals. The Director reaffirmed the Commission's preference for broad-based units of education employees and distinguished this case from Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

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Appearances:

For the Public Employer
Gerald L. Dorf, attorney

For the Petitioner
New Jersey Education Association
(Thomas Ziccardi, UniServ Field Rep.)

DECISION AND DIRECTION OF ELECTION

On October 3, 1990, the Paterson Education Association ("Association") filed a Petition for Certification of Representative seeking to add all attendance officers, school/community program coordinators ("SCPC's") and secretaries to an existing unit of all certificated personnel, teacher aides and paraprofessionals employed by the Paterson Board of Education ("Board"). A sufficient showing of interest from each group to be added to the existing unit was submitted. The Board opposes the petition and refuses to consent to a secret ballot election. It argues that the petitioned-for employees lack a community of interest with the existing unit and that, with regard to the secretaries, inclusion in the existing unit is inappropriate due to a long history of separate representation.

We have conducted an administrative investigation in this matter. No substantial and material facts appear to be in dispute that would warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

There are approximately 2,000 bargaining unit members in the existing unit represented by the Association. The contract covering this unit expires on June 30, 1991. The titles included in this unit are: classroom teachers, cooperative industrial education teachers, psychologists, reading specialists, remedial instructions, speech therapists, learning disability teacher-consultants, supplementary teachers, guidance counselors, social workers, nurses, distributive education teachers, librarians, reading teachers, resource teachers, compensatory education teachers, W.E.C.E.P. teachers coordinators, C.I.E. teachers/coordinators, C.O.E. teachers/coordinators, C.H.E. teachers/coordinators, physical education coordinators, athletic directors, teacher assistants to the principals (deans), teacher aides I, II, III and IV and all other paraprofessionals. The negotiations unit consists of both professional employees within the meaning of the Act and non-professional teacher aides and paraprofessionals.

There are approximately 137 secretaries employed by the Board. The secretaries have been represented for at least the last 10 years in a separate bargaining unit by the Paterson Association of Educational Secretaries ("PAES"). The contract covering this unit expires on June 30, 1991. The titles included in this unit

are: administrative secretaries-levels 1 and 2, high school registrars, data entry operators, clerks-business accounts department, clerks-payroll department, school secretaries, secretaries assigned to the administration building, secretaries-maintenance, central supply, audio visual aids and cafeteria and telephone operators. In response to the petition filed by the Association, Rosalind DeMaria, President of PAES, submitted a letter which stated in pertinent part:

Be advised that PAES desires the Paterson Education Association to represent the staff currently represented by PAES.

Be further advised that under the above circumstances, PAES disclaims any interest in continuing to represent the staff currently designated.

The secretaries are 12-month employees and perform general secretarial and clerical functions. They are assigned throughout the district's school facilities and in the Board's administrative offices. They normally work a 6 1/2 hour work day exclusive of a lunch period.

The attendance officers and school/community program coordinators have never been represented. There are approximately 17 attendance officers and 4 coordinators. Both of these titles are full-time, non-professional employees.

Attendance officers investigate student absences. Their duties include making home visits to discover the reason for a student's absence, speaking with a student's parents, filing Juvenile Court complaints and appearing in court. All attendance

officers report to the Administration offices before they report to their assigned schools. They are 10-month employees and work regular school hours. They are supervised by the principal of the school to which they are assigned and the Chief Attendance Officer.

School/community program coordinators encourage and promote constructive participation by parents in the school life of their children and improve an individual student's adjustment to school when needed. Their duties include establishing parent groups for the schools, developing parents' understanding and appreciation of the schools' activities, visiting homes to explain school programs, advising parents who seek redress of grievances and reporting any serious conditions affecting the welfare of students. Two of the SCPC's are assigned to the John F. Kennedy High School and two are assigned to the Basic Skills Office. They are 10-month employees and work regular school hours. The SCPC's are supervised by the principal of the school to which they are assigned and the Director of Funded Programs.

The New Jersey Supreme Court has affirmed the Commission's policy of favoring negotiations units structured along broad-based, employer-wide lines rather than small units of specific 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, it appears that the secretaries, SCPC's and attendance officers share the same type of community of interest with teachers that we have found in other school districts. The employees work together in the district's schools and share the common goal of providing students' education. The Board's centralized authority in the Superintendent's office controls its personnel policies affecting all its employees. Piscataway.

The Board also contends that with regard to the secretaries, there is a substantial history of representation in a separate, stable negotiations unit which compels retention of the separate unit; and it argues that this case is controlled by Englewood.

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 to the petition by the incumbent representative of one of those separate units. As we have found in numerous decisions since Englewood, deciding whether to permit employees to vote on whether they desire representation in 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 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. Voc. Schls. 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 those 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 history of negotiations of separate support staff units, if the support staff unit welcomes, rather than vigorously opposes, the proposed unit and the existing units are not the subjects of longstanding certifications.^{1/} 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

...the focus of the Englewood litigation was on the placement of [custodians represented by an AFL-CIO affiliate] and 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, it appears that the history of negotiations cited here, without more, is insufficient to deny the consolidated unit sought.

In Englewood, the Commission stated,

It is an essential ingredient to the maintenance of labor-management peace and harmony that an existing appropriate unit structure of a longstanding nature not be disturbed absent justification, especially under the circumstances as presented herein....[O]bjections by the employer and an incumbent employee organization to unit alteration, and the absence of evidence that the existing units have in practice conducted negotiations on a broader scope than originally conceived [which] might, in another instance, lead us to modify an existing unit structure in favor of one more reflective of the practice of the parties. Englewood at 519.

Significantly, PAES advised the Commission that they no longer wish to represent their employee group. Thus, unlike Englewood, the incumbent representative is not opposed to the petitioned-for unit. It supports the proposed consolidation. Further, the incumbent's disclaimer of interest in representing its

1/ Footnote Continued From Previous Page

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.

unit diminishes the importance of the history of negotiations in a separate unit.

Balancing all of the circumstances present here, I am inclined to find that the petitioned-for consolidated unit is appropriate. Accordingly, I direct that an election be conducted among the secretaries, the attendance officers and the SCPC's to determine whether a majority of employees in each group wish to be represented by the Paterson Education Association within the existing unit.

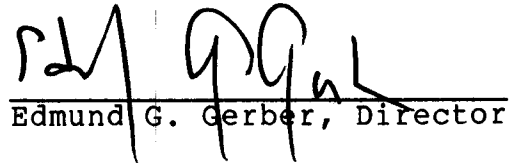
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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. I 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: December 4, 1990
Trenton, New Jersey