

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

In the Matter of

CLIFTON BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-83-37

CLIFTON TEACHERS ASSOCIATION,

Petitioner,

-and-

CLIFTON COACHES ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition for Clarification of Unit filed by the Teachers Association seeking the placement of athletic coaches in its teachers unit. The investigation revealed that: (1) the coaches have been represented separately for nine years by the Coaches Association; (2) the Teachers Association, during this span of nine years, has not asserted a representational claim; and (3) the parties to the existing negotiations relationship resist the Teachers Association's efforts. The Director finds that under these circumstances a question concerning representation is indicated rather than a question concerning the scope of a collective negotiations unit. Accordingly, a Petition for Clarification of Unit is an inappropriate vehicle to accomplish the representation of coaches.

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Appearances:

For the Public Employer
Dines & English, attorneys
(Patrick C. English of counsel)

For the Petitioner
Thomas Ziccardi, Field Representative, NJEA

For the Intervenor
Raymond Tkacz, Representative, Clifton Coaches Assoc.

DECISION

On December 15, 1982, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Clifton Teachers Association ("Teachers Association") seeking the placement of athletic coaches in its negotiating unit which is comprised of teachers and certain

other professional staff members employed by the Clifton Board of Education ("Board"). Coaches are currently represented in a separate collective negotiations unit by the Clifton Coaches Association ("Coaches Association"). ^{1/}

The undersigned has caused an administrative investigation to be conducted into the matters and allegations concerning the Petition.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Clifton 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 et seq. ("Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. The Clifton Teachers Association and the Clifton Coaches Association are employee representatives within the meaning of the Act and are subject to its provisions.

^{1/} There are approximately 35 coaches employed by the Board. Some of these coaches are also teachers within the district, and, in their teaching capacity, are represented by the Teachers Association.

4. The Teachers Association is currently the exclusive representative of all certified teachers employed by the Board including nurses, guidance counselors and special service teachers, but excluding substitute teachers. The Coaches Association is currently the exclusive representative of all athletic coaches employed by the Board.

5. The Teachers Association seeks the placement of coaches in its collective negotiations unit. The Teachers Association argues that since it represents coaches in their capacity as teachers it would be more appropriate if it also represented them as coaches. It further argues that its original decision not to contest the coaches' exclusion from its unit in 1974, should no longer be binding. Both the Coaches Association and the Board argue to the contrary.

6. The Board and the Coaches Association oppose the Teachers Association's Petition, arguing that the Coaches Association has been the exclusive representative of the coaches since 1974, and that since that time contracts have been negotiated regularly on their behalf on either an annual or bi-annual basis. They further argue that at no time has the Teachers Association ever represented the coaches. Rather, in 1974, the Teachers Association withdrew a clarification of unit petition seeking to include coaches in its unit and agreed to permit the coaches to negotiate their own contract.

7. On March 7, 1983, the assigned Commission staff agent convened an informal conference with the parties, at which the above respective positions were advanced.

8. The issue placed in dispute by the parties requires the undersigned to determine whether a Petition for Clarification of Unit is the appropriate petition to resolve a question concerning the unit placement of 35 coaches, where: (1) the coaches have been represented for nine years by the Coaches Association; (2) the Teachers Association, during this span of nine years, has not asserted a representational claim; and (3) the parties to the existing negotiations relationship resist the Teachers Association's efforts. Under these circumstances, a question concerning representation is indicated rather than a question concerning the scope of a collective negotiations unit. Contrast, In re Long Branch Bd. of Ed., D.R. No. 78-24, 3 NJPER 392 (1976). If the Teachers Association seeks to represent coaches, it would appear that a Petition for Certification of Public Employee Representative, with an accompanying showing of interest, should be filed. ^{2/}

Therefore, for the above reasons, it appears to the undersigned that a Petition for Clarification of Unit is an

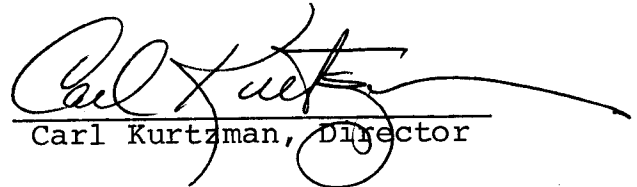
^{2/} In re Wayne Bd. of Ed., D.R. NO. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980), the undersigned, following NLRB precedent, determined that a clarification of unit petition was inappropriate where the petitioned-for titles were in existence at the time the negotiations unit was formed, and in the absence of any mutual intent to include those titles. Such a petition is also inappropriate where the petitioner has, for a considerable period of time, "slept" on its rights concerning the disputed titles. In other determinations the undersigned has found that an employee organization which has "slept" on its rights to assert a representational interest in employee titles is precluded from utilizing a clarification of unit petition to achieve their inclusion in the existing collective negotiations unit. See In re State of New Jersey, D.R. No. 80-8, 5 NJPER 454 (¶ 10229 1979), aff'd P.E.R.C. No. 80-65, 5 NJPER 538 (¶ 10277 1979); and In re Bergen Pines Hosp., D.R. NO. 80-20, 6 NJPER 61, (¶ 11034 1980).

inappropriate vehicle to accomplish the representation of coaches.

On May 9, 1983, the parties were reminded of their obligations pursuant to N.J.A.C. 19:11-2.6 to present documentary or other evidence as well as statements of position related to the instant Petition, and were afforded an additional opportunity to proffer any supplementary evidence or statements of position relevant to the instant Petition. The parties were advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned would thereafter issue a decision dismissing the Petition. The undersigned has not received a reply to the May 9, 1983 letter nor the presentation of any further proffers from the parties.

Accordingly, the undersigned hereby dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 13, 1983
Trenton, New Jersey