

D.R. NO. 2011-6

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

In the Matter of

MONTVILLE TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2011-022

MONTVILLE TOWNSHIP EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that an authorization card petition, filed by the Montville Education Association, seeks an appropriate consolidated unit. A majority of the units and employees expressed approval of consolidation and no unit opposed it. The Director certifies the petitioner as the exclusive majority representative in a unit combining certificated personnel, paraprofessionals, clerical, secretarial employees, and custodial and maintenance employees. The Board opposes the consolidation because of the longstanding stable unit structure. However, the Director rejects this argument, relying on the long line of case law favoring broad-based units. The Director finds that the longstanding unit structure and negotiations history do not override the employees' present desires for a merged unit. The Director also rejects the arguments that the groups do not share a community of interest and that negotiations will be too complex.

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Appearances:

For the Public Employer,
Schwartz, Simon, Edelstein and Celso, attorneys
(Stephen J. Edelstein, of counsel)

For the Petitioner,
Oxford Cohen, attorneys
(Gail Oxford Kanef, of counsel)

DECISION

On October 13, 2010, the Montville Township Education Association/NJEA (Association) filed a representation petition seeking to add all secretarial, custodial/maintenance and paraprofessional employees of the Montville Township Board of Education (Board) to its existing unit of professional employees. The petition, seeking certification without an election, is accompanied by signed authorization cards. The Board opposes the petition and refuses to sign a stipulation of appropriate unit form, asserting that the current unit configuration is

appropriate and has provided stable labor relations over a long period and should not be disturbed.

We have conducted an investigation of the facts concerning the petition. N.J.A.C. 19:11-2.2. The Board and Association have filed letters supporting their respective positions. On December 20, 2010, I wrote to the parties, informing them of my findings and tentative decision to certify the Association as the exclusive majority representative of the consolidated unit. The parties were offered the opportunity to respond. On December 29, 2010, the Board filed a letter, objecting to my tentative decision and requesting a hearing. Based upon our administrative investigation, the following facts appear. N.J.A.C. 19:11-2.6.

1. The Association represents 411 professional employees. The Board and Association have signed a series of collective agreements extending back at least 30 years. The most recent agreement expires on June 30, 2011. The employees sought to be added to the certificated unit are represented in three units by separate associations, all affiliated with the NJEA. I am inclined to find that while separate lines of immediate supervision exist, all are subordinate to the Board of Education, the Superintendent and the business administrator (Petitioner's position statement, page 3).

2. The Montville Township Custodial/Maintenance Association represents 42 custodial/maintenance employees. The custodians

and maintenance employees had separate organizations and contracts from 1974-75 until 2005. We take administrative notice of Docket No. I-2002-056, Notice of Impasse, filed on September 26, 2002, on behalf of the separate custodian's unit and Docket No. I-2006-05, Notice of Impasse, filed on September 20, 2005, on behalf of the custodial/maintenance unit. On an unspecified date between 2002 and 2005, the two groups merged into the present negotiations unit comprised of both custodians and maintenance employees.

3. The Montville Township Educational Secretaries Association represents 25 secretarial employees. The Board and the Secretaries Association have signed a series of agreements for many years. The Montville Township Paraprofessionals Association represents 64 paraprofessional employees. This unit was certified in 2008 and has not completed negotiations with the Board for an initial agreement.

4. At the same time that the petition was filed, the Montville Township Custodial/Maintenance Association, the Montville Township Educational Secretaries Association and the Montville Township Paraprofessionals Association, filed separate letters disclaiming their interest in continuing to represent their respective units.

5. The petition, filed on October 13, 2010, appears to be timely. N.J.A.C. 19:11-2.8(c)3. The secretarial and

custodial/maintenance units' collective agreements expire on June 30, 2011. The Paraprofessional Association was certified as the majority representative on September 16, 2008, and has not yet entered into an initial collective agreement. The professional unit's agreement also expires on June 30, 2011.

6. Upon a check of the authorization cards submitted with the petition against lists supplied by the Board, we determined that the petition is supported by the required number of authorization cards. N.J.A.C. 19:11-2.6(b).

7. A majority of the professional employees signed cards indicating that they were in favor of representation in a unit with the other non-professional employees. N.J.S.A. 34:13A-6(d). It appears that the Petitioner has satisfied the authorization card certification requirements set forth in N.J.S.A. 34:13A-5.3 and N.J.A.C. 19:11-2.6(b).

ANALYSIS

The issue in this matter is whether, under all the circumstances, including the circumstance of a longstanding multiple-unit structure, a petitioned-for unit of all employees is the most appropriate unit. For the reasons set-forth below, I am inclined to find that the petitioner seeks an appropriate unit and that the circumstances warrant processing the petition to a certification of a consolidated unit.

The Commission is charged with determining in each instance what unit is appropriate. N.J.S.A. 34:13A-6. Where more than one unit is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974) ("Professional Ass'n."). N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." The Commission favors structuring negotiations units along broad-based, functional lines and has been reluctant to find appropriate units structured along occupational or departmental lines.

In making unit determinations, we consider the general statutory intent of promoting stable and harmonious employer-employee relations. The desires of the employees and the desires of the parties, while relevant, are not paramount. The totality of circumstances is considered, including the history of the negotiations unit and extent of organization of the employer's employees. Township of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic Cty. Bd. of Freeholders, P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) ("Englewood").

In Professional Ass'n., the Supreme Court endorsed the Commission's broad-based unit approach and directed that a

balance be struck between the rights of public employees to negotiate collectively and the public employer's right not to be burdened with undue proliferation of negotiations units.^{1/}

The Commission has found appropriate a range of unit structures in education. In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984) ("Piscataway"), the Commission observed that ". . . many different types of school district unit structures are appropriate for certification: some containing teachers alone, some containing one or more groups of supportive staff alone, and some containing a mixture of teachers and one or more groups of supportive staff." Id. at 274. In this case, both proposed unit structures are appropriate. The units have been separate for the duration of several collective negotiations agreements, except the paraprofessionals, who have only recently been represented for purposes of negotiations. Also, the custodians and maintenance employees appear to have joined together in one unit not long ago (2002-2005). Thus, two of the four units have not had longstanding collective

^{1/} See Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Ass'n., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985) (secretaries and aides can vote to be added to professional unit); Willingboro Bd. of Ed., D.R. No. 97-7, 23 NJPER 142 (¶23069 1997) (Director finds proposed consolidated unit of teaching and support staff is appropriate in light of the disclaimer of interest by the support staff incumbent representative, notwithstanding the parties' lengthy history of separate negotiations units).

negotiations relationships with the Board in the present four-unit configuration. I am inclined to find that the factor of longstanding unit structure and negotiations history does not override the employees' present desires for a merged unit.

The Board asserts that the community of interest among the units is lacking because the contract terms, policies and practices are so varied among the four units that reconciling them through collective negotiations would be impossible. Neither the Act nor the policies underlying the Act suggest that separate units merged into a single unit should have or are required to have uniform terms and conditions of employment. Nothing requires the Board to alter its various policies or practices merely because these employees might be included in a single negotiations unit. Generally, and until new terms are negotiated, existing terms and practices remain in place.

The Commission has consistently held that a community of interest arises in a school district from a common employer, work in the same buildings, interaction with students and parents, and similar goals and purposes -- the education, safety and betterment of students. Piscataway implicitly found that there is a per se community of interest among all types of school employees. In Spring Lake Heights, D.R. No. 79-21, 5 NJPER 100 (¶10055 1979), the Director, finding a sufficient community of interest, ordered an election among school secretarial employees

and professional employees, rejecting employer's objections about the appropriateness of a single negotiations unit.

The Board asserts that the professional employees form the largest component of the petitioned-for unit and would ". . . completely dominate the proposed new unit." The majority of employees favor the proposed consolidation (notwithstanding that professional employees outnumber the other groups), as evidenced by the disclaimers filed by the three non-professional organizations and by majority support, through authorization cards, among all four units. None of the support units opposes the consolidation. Under these circumstances, I am not inclined to find that the proposed unit structure is inappropriate because one group outnumbers the others.

The Board relies upon Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (¶32030 2000). In that case however, the Director of Representation dismissed a petition that sought a unit of full-time classroom aides and excluded part-time aides, finding that the proposed unit was impermissibly narrow. He noted that the full-time and part-time aides shared a community of interest in their job duties and that restricting the unit to full-time aides could lead to fragmentation, creating the potential for competing demands, whipsawing and continuous negotiations, which the Supreme Court found is not in the public interest. See

Professional Ass'n. at NJPER Supp. 275. The circumstances in Kearny are not analogous to the circumstances in this case.

The Board also relies upon Englewood Bd. of Ed., a 1981 case in which the Commission ordered that a separate unit structure be maintained. In Englewood Bd. of Ed., the Board and one of the incumbent representatives opposed the petitioned-for consolidation, citing a longstanding negotiations relationship. In this case, all units support consolidation. And unlike the circumstances in Englewood Bd. of Ed., not all of the units have longstanding and separate negotiations histories with the Montville Board.

In its December 29, 2010 letter, the Board asserted for the first time that on December 20, 2010, it "outsourced" most of the custodial maintenance work, retaining 7 of those 42 unit employees. It also objected to a consolidated unit for three reasons. First, that our implied per se application of Piscataway was inappropriate, given the current multiple unit structure and a set of stable relationships resulting in the amicable settlement of agreements. We have already considered and declined this argument. A hearing is not necessary to develop facts in support of the Board's position. We have acknowledged that a longstanding stable relationship in the multiple unit structure existed. That fact does not negate the organizations' rights to seek a different consolidated structure.

Apart from Piscataway, a long line of cases supports the broad-based unit concept. For example, in both North Bergen Bd. of Ed., D.R. No. 89-028, 15 NJPER 240 (¶20098 1989), and Barnegat Bd. of Ed., D.R. No. 88-31, 14 NJPER 160 (¶19065 1988), request for rev. den. P.E.R.C. No. 88-79, 14 NJPER 223 (¶19081 1988), mot. for recon. den. P.E.R.C. No. 88-91, 14 NJPER 256 (¶19096 1988), we found that a combined unit of professional employees and support staff employees is appropriate, despite the same objection raised here -- given the previous collective negotiations history with separate support and professional units and a significant period of stable labor relations, the separate support and professional units should not be consolidated.

The Board's second argument is that the paraprofessionals' conduct in organizing into a separate unit merely two years ago and now (in the midst of negotiations), intending to join a wall-to-wall unit amounts to "a lack of good faith", undoing all the previous negotiations work and should not be allowed. The Board argues that the paraprofessional unit's "sudden shift in positions is antithetic to the principles of labor stability." The policy and law favoring broad-based units is grounded in the principles of labor stability and the public interest in the avoidance of costs associated with multiple negotiations for multiple units. This unit is entitled under the Act to join together with another unit. This conduct, authorized by the Act


and rules, cannot be construed as bad faith and is presumed to be legitimate. No facts suggest that paraprofessionals are not engaged in a good faith effort to achieve an initial collective negotiations agreement. A hearing is not required to further clarify the relevant facts of this argument.

The Board's third argument reiterates that the MEA will be unable to reconcile the competing and differing interests of the various employee groups, especially now, after outsourcing maintenance duties, because the custodians and maintenance employees' natural priority will be job preservation and the other MEA members' priority will be salary increases. The fact of outsourcing does not materially change our analysis of this argument. No hearing is required to further clarify the relevant facts.

Based upon all of the above, I find that the authorization card petition seeks an appropriate consolidated unit and I certify the Association as the exclusive majority representative in the unit described below.

Included: All regularly employed certificated personnel, aides, assistants, paraprofessionals, clerical/secretarial employees, and full-time and part-time custodial and maintenance employees, including the matron employed by the Montville Township Board of Education.

Excluded: All managerial executives, confidential employees and supervisors within the meaning of the Act; casual employees, police employees, craft employees and all other employees.


Jonathan Roth
Deputy Director of Representation

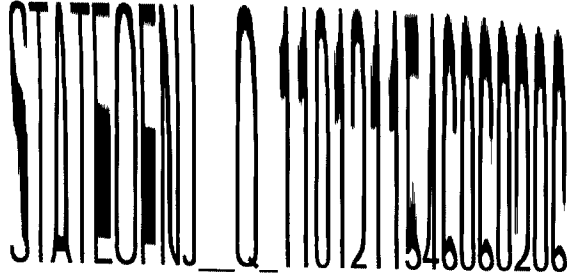
DATED: January 21, 2011
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by January 31, 2011.



Fax Information for Job 6954



Priority Normal, 0 previous attempts.

Owner: DigitalSender UPR-2

Fax to Phone: 1-973-802-1055
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Call made on: 01/21/11 at 10:46
Send Status: ok
Pages Sent: 012
CSI of Called Fax:
Seconds connected: 0231
Baud Rate: 14400 bps.
Resolution: Detail

Additional Status Information

Sender Info:

Name on Cover Sheet: HP 9100C

Recipient Info:

Recipient Name: OXFELD COHEN

Schedule Info:

Submitted at: 10:46:05 01/21/2011
Read at: 10:46:06 01/21/2011
Queued for: 10:46:00 01/21/2011

System Info:

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