

D.R. NO. 89-29

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. RO-89-91

LONG BRANCH FEDERATION OF TEACHERS,

Petitioner.

SYNOPSIS

The Director of Representation directs an election to determine the majority representative of a unit of employees employed by the Long Branch Board of Education's School-Based Youth Services Program. The Director finds the nurse practitioner, employment counselor and student assistance counselor are appropriately included in the unit. Finding the program social worker and secretary positions are included in the recognition clause of another employee organization, the Director excludes them from the unit.

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Appearances:

For the Public Employer
Kenney, Kenney, Gross & McDonough
(Malachi J. Kenney, of counsel)

For the Petitioner
Dwyer and Canellis, P.A.
(Paul J. Burns, of counsel)

DECISION AND DIRECTION OF ELECTION

On February 6, 1989, the Long Branch Federation of Teachers ("Federation") filed a Petition for Certification of Public Employee Representative seeking certification as the exclusive bargaining representative of all employees employed in the School-Based Youth Services Program of the Long Branch Board of Education ("Board"). The Board's School-Based Youth Services Program ("Program") employs a nurse practitioner, secretary, employment counselor, social worker and student assistance counselor.^{1/} The Petition is timely filed and is supported by an adequate showing of interest.

^{1/} The project manager and another social worker are employed by the New Jersey Department of Human Services.

On February 21, 1989, a Commission staff agent conducted an investigatory conference. The Board refused to consent to an election and asked that the Commission determine whether the unit sought was appropriate. The Board was concerned that some of the positions sought by the petition were included in the description of the unit represented by the Long Branch School Employees Association (LBSEA).^{2/} The Federation asserted the unit was appropriate because the employees share a community of interest and have interests which differ from those of other units of Board employees.

On March 31, 1989, we sent the Board and the Federation a letter indicating that on the basis of the facts before us, we were inclined to order an election among a unit of the nurse practitioner, employment counselor and the student assistance counselor employed by the Board's School-Based Youth Services Program.

On April 17, 1989, the Federation responded asserting that the social worker shares a community of interest with Program employees. The Federation stressed the work schedules and problems that the Program social workers share with other Program staff as opposed to other Board social workers. Specifically, Program social

^{2/} On February 8, 1989, we informed the LBSEA that a petition was filed and inquired about whether it wished to intervene pursuant to N.J.A.C. 19:11-2.7. On February 23, 1989, we again asked the LBSEA whether it intended to intervene and informed them that if they did not advise us of their intent by March 6, 1989, we would assume they did not wish to intervene in this case. We received no communication from the LBSEA.

workers are on call twenty-four hours a day while Board social workers work during school hours. The Program social worker counsels teenagers about pregnancy, drug abuse, suicide prevention and other problems. Board social workers are members of child study teams in each school. They work with students with learning disabilities.

We conducted an administrative investigation in this matter. N.J.A.C. 19:11-2.6. It reveals the following facts.

The Long Branch Federation of Teachers is the majority representative of two collective negotiations units -- one is comprised of all supplemental instructors and the other is a unit of attendance officers, classroom aides (paraprofessionals), cafeteria and playground aides, bus aides, substitute callers and bus drivers. The Federation has current collective negotiations agreements with the Board for each of these units and they cover the period from July 1, 1988 through June 30, 1990.

The LBSEA is the majority representative of a unit of certificated personnel, secretaries, clerks, matrons, custodians, maintenance employees, groundskeepers, and corridor aides.^{3/} The LBSEA's current collective negotiations agreement with the Board covers the period from July 1, 1986 through June 30, 1989. The

3/ The recognition clause specifically enumerates the titles of certificated personnel represented by the LBSEA. Those titles are: teacher, learning disability specialist, speech therapist, librarian, nurse, guidance counselor, coaches, social workers, psychologist and head teacher.

LBSEA and the Board are currently negotiating a successor agreement. During negotiations, the LBSEA requested that the Board begin dues deductions for the secretary and the social worker sought by this petition.^{4/}

The department chairpersons and the administrators are each represented in separate units.

Historically, the formulation of the Board's negotiations units was based upon title groupings. When the initial professional unit was organized, the supplemental instructors, paraprofessionals and media staff were not included. The Board did not object to the subsequent formation of a separate unit of these titles.

The School-Based Youth Services Program is a pilot program created in May 1988, to provide counseling, medical services and job placement for problem children in Monmouth County. The Program's services include group and individual job and career counseling, medical services and prenatal care. The Program serves students as well as children who have left school. It is funded by a grant from the Department of Human Services. Some of the Program's funding goes through the Board's budget and other money comes directly from Human Services. Program employees work varied hours, including some evenings and weekends. They are on call twenty-four hours each day.

^{4/} At one time, the LBSEA represented the teachers, secretaries and custodians in three separate units. In the late 1970's these units were merged to form the LBSEA's current unit.

The Program employs a project manager, nurse practitioner, secretary, employment counselor, two social workers and a substance abuse counselor.^{5/}

The nurse practitioner's job description provides for the following duties: assists teenagers in maintaining and improving their mental and physical health; conducts physical exams and makes necessary referrals to Monmouth Medical Center and to the school dentist; provides dental health and nutritional education; provides family planning services including pregnancy testing; does vision and hearing tests and weighs and measures students; works with other Program staff on suicide prevention, alcohol/chemical dependency and eating disorders groups; keeps student health records, gives first-aid to injured teens and insures that hygiene is maintained in school. The nurse practitioner must be registered as a nurse with the State and possess New Jersey School Nurse certification or equivalent qualifications. This position is filled by Sandra Burgess.

The Program secretary performs all secretarial tasks including answering phones, maintaining a daily student sign-in sheet, maintaining files, keeping case records, typing, handling purchase orders, keeping inventory records, ordering supplies, picking up, sorting and delivering mail, maintaining calendars and statistical reports and maintaining staff leave time records.

^{5/} The parties agree that the project manager and one social worker are employed directly by the State Department of Human Services.

The Board provided job descriptions for secretary to an assistant principal and for an elementary school medical secretary. Those positions have varied requirements, but both require typing, filing, filling in records and telephone skills.

The Program social worker works in the office and in the field providing preventative and rehabilitative social services to students and their families. Specifically, after meeting with students and their families, the social worker assesses students' problems and formulates a plan for each student. The social worker then periodically contacts the students and counsels the students and their families individually and in groups.

The job description for the Board's social workers states that they help students with personal and environmental problems. Board social workers are part of the child study team. They maintain ongoing relationships with students' families to provide counseling and assist them with educational planning and using community resources. The social workers serve as mental health consultants to the administration and faculty and offer direct intervention to students and families. The social workers also offer in-service training to school personnel and maintain case records.

Carolee Villapiano, the Program's student assistance counselor works with students who are identified either as having or are suspected of having substance abuse problems. She provides substance abuse counseling for teens and their families. She makes

recommendations for referral, follow-up and after-care support for students placed in residential or out-patient programs. She assists the Board's substance abuse district coordinator in developing and updating a comprehensive drug and alcohol educational curriculum. Villapiano serves as a chemical abuse health liaison between the schools and the community. She initiates and sets up student support groups and maintains records and statistical data.

Raylie Dunkel, the Program's employment counselor provides career information and counseling to students and out-of-school youths targeted by the Program. The employment counselor encourages student involvement with the Career & Youth Services Center; researches and recommends the purchase (by the Board) of career and vocational educational materials; arranges career-related guest speakers; and develops and maintains a current file of employers seeking student workers.

The issue here is whether the petitioned-for unit of five employees of the School-Based Youth Services Program is appropriate for collective negotiations.

The Commission is charged with determining in each instance which 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 of New Jersey v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974). 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." However, in making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. In determining unit structure, the desires of the employees and the desires of the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the history of the negotiations unit and the extent of organization of the employer's employees. Township of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 483 (¶18270 1987); Passaic County Board 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).

The Commission has favored structuring negotiations units along broad-based, functional lines and has been reluctant to find appropriate units which are structured along occupational or departmental lines.^{6/}

This case involves a small residual group of five employees in a new program. In deciding whether to grant requests for certification of residual units, the Commission must balance the rights of public employees who desire representation against the effect that creating an additional collective negotiations unit will

^{6/} See State of New Jersey, P.E.R.C. No. 68 (1972); So. Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970); Bergen Cty. Bd. of Freeholders, P.E.R.C. No. 69 (1972); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-124, 10 NJPER 272 (¶15134 1984); 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 (4/4/85); Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12204 1981).

have on the employer's labor relations. Where the Commission finds that a residual employee group more appropriately belongs in an existing, broad-based unit, a request to represent the residual group separately will fail, absent exceptional circumstances. See Tp. of Teaneck; Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986); County of Camden, D.R. No. 88-3, 13 NJPER 663 (¶18251 1987); Bd. of Ed. of the City of Camden and Camden City School Psychologists, E.D. No. 76-32, 2 NJPER 123 (1976) ("Camden I").

An exception was found in Bergen Pines County Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1986), where we found a unit of physicians and dentists appropriate. There, virtually all organizable employees had been organized into 12 separate, narrowly defined units. The physicians/dentists employee group pre-existed the organization of all of the collective negotiations units and there was then no all-inclusive, broad-based professional unit in which to include these employees. We rejected the employer's argument that permitting doctors to organize separately into a thirteenth negotiations unit could lead to unit fragmentation.

In University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983), we approved the formation of a residual unit of graduate faculty employees where the graduate faculty employee group pre-existed organization of the broad-based faculty unit. In UMDNJ, the representative of the existing, broad-based faculty unit twice refused to represent the graduate faculty employees, and the community of interest between

the graduate faculty employees and the broad-based faculty unit was not strong.

The LBSEA has requested that dues deductions be taken from the employees filling two of the new positions petitioned-for here -- the secretary and the social worker -- titles which are included in its unit. The Board has refrained from deducting dues from these employees until the questions concerning representation and unit composition are resolved. The secretary position and the social worker position come within the scope of the LBSEA's unit and have responsibilities similar to those of certain LBSEA unit employees. See Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1984). The Program social worker deal with issues different from those addressed by child study team social workers. The program social worker counsels teens who may not be students, while other Board social workers deal exclusively with students. Both social workers however counsel children with problems. The contract between the Board and the LBSEA simply includes social workers--it does not define social workers by which students they counsel or whether they are members of a child study team.

We therefore find that these positions are inappropriate for inclusion in a residual unit because they appear to be included in the LBSEA unit.

The LBSEA has not sought to represent the remaining Program employees -- the nurse practitioner, employment counselor and student assistance counselor. We therefore permit the formation of

a residual unit of these employees. Since virtually all other Board employees are organized into appropriate units, there is little danger of undue fragmentation from this additional unit. The Board's existing units are not all broad-based, functional units and the Board raises no objection to this residual unit.

Accordingly, we direct an election in a collective negotiations unit which includes the nurse-practitioner, employment counselor and the student assistance counselor employed in the Board's School Based Youth Services Program, to determine whether they wish to be represented by the Federation for the purpose of collective negotiations.

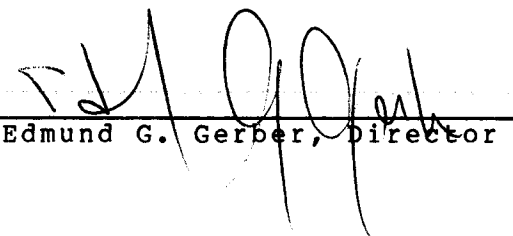
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. 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 unit, 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 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: May 1, 1989
Trenton, New Jersey