

D.R. NO. 90-18

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

In the Matter of

CHERRY HILL TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-90-68

CHERRY HILL EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that the petitioned-for consolidated unit of secretarial employees, technical support personnel, and certificated teaching staff is appropriate. He finds that, contrary to the Board's assertion, the groups share a community of interest. He also rejects the Board's argument that, under Englewood Board of Education, P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981), the history of separate representation of the secretarial and technical employees precludes unit consolidation. The Director found that, unlike Englewood, the employee organizations previously representing secretarial and technical employees have disclaimed further interest in representing their respective groups and favor unit consolidation. The Director orders an election among each support staff group to determine whether a majority wish representation by the Cherry Hill Education Association. He also orders a professional option vote among the certificated employees.

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Appearances:

For the Public Employer
David, Reberkenny & Abramowitz, Esqs.
(William C. Davis, of counsel)

For the Petitioner
New Jersey Education Association
(Paul J. Leahy, UniServ Field Rep.)

DECISION AND DIRECTION OF ELECTION

On October 16, 1989, the Cherry Hill Education Association ("Education Association") filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The petition is supported by an adequate showing of interest. The Education Association seeks to consolidate a unit of secretaries and a unit of technical employees with the unit of certificated teaching personnel it currently represents. The Board refuses to consent to a secret ballot election. The Board contends that the long-standing existing unit structures should not be disturbed. It contends that the teachers and non-instructional personnel in the proposed consolidated unit do

not share a community of interest, because all but the most basic terms and conditions of employment of the employees in these units are different.

* * * *

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

The secretaries unit, previously represented by the Cherry Hill Associated Secretarial Personnel (Secretaries' Association), consists of about 80 employees. The support staff unit, previously represented by the Cherry Hill Associated Support Personnel (Support Association), consists of 14 technical employees in the following titles: copy machine operator, word processing specialist, media technician, print shop operator, audio-visual repair person, pupil accounts technician, assistant pupil accounts technician, high school engineer and district engineer. In 1989, both the Secretaries' Association and the Support Association merged with the Education Association and the support staff employees and the secretaries joined the Education Association. The former president of the Secretaries' Association has advised the Commission that that organization no longer claims to represent the secretaries. Similarly, the former president of the Support Association has advised the Commission that that organization no longer claims to represent the technical employees. Both organizations support the proposed unit consolidation.

The Board and the Education Association have negotiated a series of contracts covering certificated staff since 1969. The Board negotiated the first agreement with the secretaries' unit the following year. The Board signed its first contract with the technical unit in 1977. Until 1983, both support staff associations were independent. Since 1983, both associations have been affiliated with the Cherry Hill Education Association and the New Jersey Education Association. The most recent contracts for all three units run concurrently, from July 1, 1987 through June 30, 1990. In negotiations for the most recent contract, the secretaries and the technical employees engaged in coalition negotiations. Education Association representatives participated in those negotiations.

The Board's employees are now organized into ten separate collective negotiations units. In addition to the three units involved here, a custodial unit is represented by an affiliate of New Jersey Education Association and a cafeteria workers' unit is represented by Communications Workers of America. Independent employee organizations represent the five remaining units of psychologists, aides, bus drivers, non-professional supervisors and administrators.

The "teachers' unit" employees are all certificated; support staff are not required to have advanced education. Teachers, secretaries and technicians all work in the same buildings, including the schools and the district office. Teachers

may be scheduled to work up to 35 hours per week. Most certificated staff work ten months per year. Secretaries also work a 35-hour work week, but work a twelve-month work year. Technicians work a 35 or 40-hour work week, and either a ten or twelve-month work year. Twelve-month support staff employees receive vacation benefits and are eligible for overtime pay. Twelve month employees do not follow the school calendar. While all staff working in schools report to the school principal, support staff are ultimately responsible to the assistant superintendent for personnel or the assistant superintendent for business. Teaching staff are ultimately responsible to an assistant superintendent for secondary or elementary education.

Teaching staff and support staff are all salaried. They receive identical health benefits, similar dental benefits, and similar leave benefits. They are subject to the same Board personnel policies. No employee in the proposed unit supervises another unit employee.

* * *

The Board initially asserted that the support staff's terms and conditions of employment are different from those of teachers. The Board argued that secretaries and technical employees do not share a community of interest with teachers and should be required to maintain separate units.

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 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 the same community of interest with teachers that we found in other school districts. Piscataway. 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.

By letter of December 1, 1989, based upon the foregoing, I advised the parties that I was inclined to direct an election in the petitioned-for unit. In response, the Board argued that here, as in Englewood, there is a substantial history of representation in separate, stable negotiations units which compels retention of the separate units. I reject the Board's argument 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 by the incumbent organization. As we have found in numerous decisions since Englewood, deciding whether to permit employees to vote on whether

they wish a unified negotiations unit requires a balance 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. 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 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 supportive 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,

...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, I find that the long 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;...objections 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

^{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.

us to modify an existing unit structure in favor of one more reflective of the practice of the parties.

In 1983, both Associations affiliated with the Cherry Hill Education Association and negotiations for the 1987-90 contract were conducted through coalition bargaining with the participation of the Education Association. Thus, the parties' recent practice with respect to these support units has tended toward a unit structure broader than those originally created by the parties through recognition.

Significantly, the Secretaries Association and the Support 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. Further, the former Associations' disclaimers of interest in representing their respective units have the effect of abrogating the history of negotiations in separate units.

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 secretaries' unit and among employees in the technical unit to determine whether a majority of employees in each group wish to be represented by the Cherry Hill Education Association within the existing unit of certificated employees. Pursuant to N.J.S.A. 34:13A-6, certificated employees shall be given


a choice (professional option) as to whether they wish to be included in a unit with non-professional employees.

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 each of the three voting units (secretaries, support staff and certificated employees), 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 Cherry Hill Education Association 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 each voting unit. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: January 23, 1990
Trenton, New Jersey