

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

In the Matter of

LACEY TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-82-26

LACEY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that elections be conducted among bus drivers and among attendance officers to ascertain if these employees wish to be represented by the Education Association in its existing unit of teachers, nurses, guidance counselors, secretaries and clerical personnel. The Lacey Township Transportation Association, the current recognized representative of the bus drivers, has declined to intervene in the instant matter. The attendance officers are unrepresented. The Board declined to consent to elections among the petitioned-for employees based upon its claim of established and successful negotiations relationships in the existing units. The investigation revealed, however, that clerical employees, who had been separately represented, were recently added to the teachers unit with Board agreement. The Director concludes that all factors as to unit appropriateness are in balance so as to permit an election.

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Appearances:

For the Public Employer
Martin & Corbett, attorneys
(Wilbert J. Martin, Jr. of counsel)

For the Petitioner
Harry A. Donnelly, N.J.E.A. Field Representative

DECISION AND DIRECTION OF ELECTION

On October 14, 1981, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Lacey Township Education Association (the "Education Association"), seeking to add bus drivers and attendance officers to the existing unit of teachers, nurses, guidance counselors, secretaries and clerical personnel employed by the Lacey Township Board of Education (the "Board"). The Lacey Township Transportation Association (the "Transportation Association") is the current recognized representative of the bus drivers. The attendance officer position is newly created and unrepresented.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. Pursuant to this investigation, the parties have submitted statements of position and stipulations of fact.

On the basis of 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 at a 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 Lacey Township 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. (the "Act"), is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. The Lacey Township Education Association and the Lacey Township Transportation Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Education Association seeks to add bus drivers and attendance officers to its collective negotiations unit of teachers, nurses, guidance counselors, secretaries and clerical personnel and agrees to a secret ballot election.

5. The Transportation Association has declined to intervene in this matter.

6. The Board does not consent to an election. The Board asserts that the established and successful negotiations relationship between it and the Transportation Association, which dates back to 1973 and has resulted in several collective negotiations agreements, should not be modified. In this regard, the Board points out that both the teacher/clerical unit and the bus drivers unit were created through employer recognition, have been represented responsibly, and have not been demonstrated to be inappropriate. The Board further states that it "feels that the blue-collar unit (bus drivers) is not appropriate to the Education Association's unit which is almost entirely made up of certificated personnel and has only recently included the clerical staff (white-collar workers)."

Initially, the undersigned shall address the community of interest issue. Commission decisions have consistently found that a community of interest is shared among various groupings of school district employees including some or all of the following categories of employees: Teacher aides and other aides, custodial/maintenance employees, secretarial/clerical employees, cafeteria employees, and professional staff. ^{1/} The undersigned has further found that

1/ In re Bergenfield Bd. of Ed., P.E.R.C. No. 7 (1969); In re Montgomery Tp. Bd. of Ed., P.E.R.C. No. 27 (1969); In re Bd. of Ed. of West Milford Tp., P.E.R.C. No. 56 (1971); In re Asbury Park Bd. of Ed., E.D. No. 76-41, 2 NJPER 170 (1976); In re Wildwood Bd. of Ed., D.R. No. 79-20, 6 NJPER 98 (¶ 10054 1979); In re Newark Bd. of Ed., D.R. No. 79-33, 5 NJPER 182 (¶ 10099 1979); In re Haddonfield Bd. of Ed., D.R. No. 80-22, 6 NJPER 80 (¶ 11040 1980); In re Evesham Tp. Bd. of Ed., D.R. No. 80-41, 6 NJPER 331 (¶ 11150 1980); and In re Moonachie Bd. of Ed., D.R. No. 82-28, 8 NJPER 58 (¶ 13023 1981).

attendance officers and bus drivers can be encompassed within a broad-based employee unit. ^{2/}

At the same time, the undersigned has approved the formation of units in school districts which are limited to employees of generally the same classifications (e.g., bus drivers units; clerical units; custodial/maintenance units) and where no other relevant factors concerning unit configuration are raised by any of the parties. ^{3/} These units are also prima facie appropriate.

The significant issue raised by the Board herein concerns the appropriateness of the petitioned-for unit vis-a-vis the existing unit structure. Normally, the Commission favors the establishment of collective negotiations units along broad-based functional lines and rejects claims for narrowly defined units based upon specific occupational distinctions. See In re State of New Jersey, P.E.R.C. No. 68 (1971), aff'd 64 N.J. 231 (1974). The appropriate unit question, however, must be examined in the context of the given case. In the instant matter, the unit structure has already been established and the Petitioner seeks an alteration of that structure. The Board specifically relies upon the existing structure and argues for the maintenance of the status quo. This issue has also been addressed by the Commission.

In In re Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶ 12061 1981) ("Englewood II"), the Commission reviewed

^{2/} In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971); In re Cranford Bd. of Ed., E.D. No. 74 (1975); In re Asbury Park Bd. of Ed., supra, n.l.

^{3/} In re Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶ 11033 1980); In re Holmdel Tp. Bd. of Ed., D.R. No. 80-29, 6 NJPER 120 (¶ 11065 1980); In re Jackson Tp. Bd. of Ed., D.R. No. 82-33, 8 NJPER 82 (¶ 13033 1982).

the undersigned's determination to conduct self-determination elections where the employer and an incumbent desired to maintain the existing unit and where the petitioner sought to include the unit employees in another collective negotiations unit. The Commission held:

The Director determined that, under the circumstances presented herein, a self-determination election was the proper vehicle for fixing the collective negotiations unit structure. We do not disapprove of the utilization of the self-determination election as a vehicle for unit determination. However this procedure should be employed where it has been determined that all of the factors which are normally considered in establishing appropriate units are so balanced as to permit the desires of the employees to be the controlling factor. This preliminary determination is particularly necessary where, as in the instant matter, it is asserted that there is an established history of collective negotiations in the existing unit structure. (footnotes omitted).

Further examination of the facts involved in Englewood revealed a 12 year negotiations relationship between the Board and the respective employee representatives without any change in the established unit structure. During this 12 year period the negotiations relationships were stable and there was no evidence that employees received less than fair and effective representation. Both the employer and the representative of custodial/maintenance employees opposed the addition of the blue collar employees into the teachers' unit.

Given the above facts, the Commission did not find the factors to be sufficiently in balance so as to permit the exercise

of self-determination by employees. Rather, the Commission deferred to the long-standing, uninterrupted negotiations history, and preserved the existing unit structure. In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶ 12229 1981). ("Englewood II")

The issue herein, like that in the Englewood decision, concerns whether the instant negotiations history presents such a compelling factor that the present unit structure may not be altered. It would appear from an examination of the factors herein that the petitioned-for unit is appropriate.

As noted above, the Board's relationship with the Transportation Association commenced with the recognition of the bus drivers unit in 1973. The Board recognized the Education Association as the representative of teachers in 1972. It further appears that the Board negotiated with a separate unit of secretaries represented by a New Jersey Education Association affiliate from 1974 until 1980, when it agreed to the inclusion of the secretaries in the teachers unit.

The above facts, relating to the factor of negotiations history, do not present the same pattern of uninterrupted negotiations relationships which were present in Englewood II. The Board has recently agreed to the consolidation of two negotiations units -- one consisting of professional employees and the other consisting of white-collar nonprofessional employees. This change in unit structure, which presents a negotiations experience

unlike the facts of Englewood II, suggests that further unit alteration may be accomodated in the school district.

An additional factor herein, which runs contrary to the facts of Englewood, is that the employer's desire to continue a separate bus drivers unit is not shared by the majority representative of the bus drivers. To the contrary, the Transportation Association, an affiliate of the New Jersey Education Association as is the Education Association, supports the inclusion of bus drivers within the current teacher/clerical negotiations unit. In fact, subsequent to the posting of the Petition for Certification of Public Employee Representative, no organization, including the incumbent, has come forward to express an interest in representing a unit of bus drivers.

Lastly, the facts relating to the attendance officers do not fall within the Englewood II analysis, since these employees occupy a recently created title and are not currently represented for the purpose of collective negotiations. These employees would be appropriately placed within a larger negotiations unit, in accordance with normal Commission policy. A separate unit of these employees would tend to promote fragmentation, contrary to the principles expressed in the State of New Jersey matter, supra.

On March 19, 1982, the undersigned advised the parties that for the reasons set forth above, it appeared that the factors in the instant matter were substantially in balance so as to permit the desires of the employees to be controlling, and therefore, based upon the investigation to date, it appeared that a valid

question concerning representation existed in an appropriate unit. The parties were reminded of their obligations under N.J.A.C 19:11-2.6, to present documentary or other evidence, as well as statements of position relating 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 further 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 and direction of election. No additional evidentiary proffers have been submitted.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: All bus drivers, attendance officers, teachers, nurses, guidance counselors, secretaries and clerical personnel employed by the Lacey Township Board of Education.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that elections be conducted among the bus drivers and attendance officers, and that the professional employees be polled through an election as to the exercise of their professional option. N.J.S.A. 34:13A-6(d). The elections shall be conducted no later than thirty (30) days from the date set forth below.

Voting Group #1 shall consist of all bus drivers;
Voting Group #2 shall consist of all attendance officers. The

employees voting in Voting Groups #1 and #2 shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Lacey Township Education Association. The professional personnel in the existing teachers/clerical unit shall constitute Voting Group #3. Employees in Voting Group #3 shall vote on whether or not they desire to be included in a unit with nonprofessional employees (bus drivers, attendance officers). If the majority of employees in Voting Group #3 vote for inclusion with the nonprofessional employees, and a majority of Voting Group #1 vote in favor of representation by Petitioner, a certification shall issue adding the bus drivers to the existing collective negotiations unit of teachers and clerical employees. Similarly, if a majority of Voting Group #3 vote for inclusion with the nonprofessional employees, and if a majority of Voting Group #2 vote in favor of representation by Petitioner, a certification shall issue adding those employees to the unit of teachers and clerical employees. If a majority of Voting Group #3 vote against inclusion with nonprofessionals and a majority of Voting Group #1, Voting Group #2, or both, vote in favor of representation by Petitioner, then separate certifications shall issue covering each respective existing negotiations units.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned

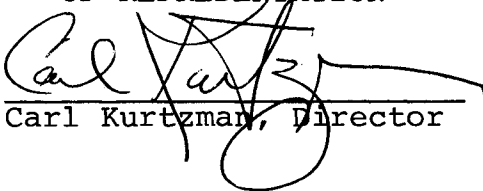
or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the Education Association, an eligibility list for each voting group consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Education Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Lacey Township Education Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: April 6, 1982
Trenton, New Jersey