

D.R. NO. 86-5

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

In the Matter of

RED BANK REGIONAL BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-85-145

RED BANK EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all full and part-time aides employed by the Red Bank Regional Board of Education. The Director finds the petitioned-for unit to be prima facie appropriate and dismisses the Board's allegations that the aides have no community of interest and do not remain employed long enough to warrant their inclusion in a collective negotiations unit.

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Appearances:

For the Public Employer
Crowell & Otten, Esqs.
(Robert H. Otten of counsel)

For the Petitioner
Marc D. Abramson, Consultant
New Jersey Education Association

DECISION AND DIRECTION OF ELECTION

On May 13, 1985, the Red Bank Regional Education Association ("Association") filed a timely Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The Association seeks to represent all full time and part-time aides employed by the Red Bank Regional Board of Education ("Board").

The Association is willing to consent to a secret ballot election among the employees in the unit in order to ascertain their

representational desires. The Board declined to enter into an Agreement for Consent Election for the employees in the petitioned-for unit. ^{1/}

I ordered that an administrative investigation be conducted into the matters and allegations involved in the Petition in order to determine the facts. Based upon the investigation, I find and determine as follows:

1. The disposition of this matter is properly based upon our administrative investigation for we have not found any substantial and material factual disputes which may more appropriately be resolved at a hearing. See N.J.A.C. 19:11-2.6(b).

2. The Red Bank Regional 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 subject to its provisions and is the employer of the employees who are the subject of the Petition.

3. The Red Bank Regional Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. On May 13, 1985, the Association filed a Petition for Certification of Public Employee Representative, supported by an

^{1/} See Finding of Fact No. 11.

adequate showing of interest, seeking to represent a unit comprised of full time aides.

5. On August 29, 1985, a Commission staff agent conducted an informal conference in this matter and learned that in addition to employing full time aides, the Board also employs part-time aides.

6. On September 12, 1985, the Association filed an amended petition seeking to represent both full time aides and part-time aides. The original showing of interest is adequate to support the amended petition. The full time positions include a Media Center Aide, a Hall/Locker Room Aide and an In-School Suspension Aide. The part-time positions include Curriculum Aides and a Media Center Aide.

7. The Association also represents a unit of teachers and a unit of secretaries in the high school. The Board declined the Association's request that aides be included in either bargaining unit.

8. The Board contends that aides lack an adequate community of interest because they have different functions and that persons filling these titles are "transient" and "[lack] the attribute of permanency."

9. All aides work in one building -- Red Bank Regional High School. All aides receive health insurance coverage. One full time aide is salaried; all others are employed on an hourly basis and their wage rates range from \$3.75 to \$5.50 per hour. The aides have no supervisory authority over other Board employees. Their

supervisors include the vice principal, Media Center supervisor and with respect to curriculum aides, the respective Department supervisors. No aide works less than twenty hours per week. All aides have been employed at least six months; most have been employed a year or more.

10. By letter dated September 20, 1985, I responded to the Board's contentions.

In In re Piscataway Tp. Bd/Ed, P.E.R.C. No. 84-124, 10 NJPER 272 (115134 1984), the Commission articulated its authority to decide in disputed cases which unit of employees is appropriate for collective negotiations. Pursuant to N.J.S.A. 34:13A-5.3, the Commission must define the appropriate negotiations unit "with due regard for the community of interest among the employees concerned." Community of interest is, of course, a term of art encompassing a multitude of factors and the importance of any one factor in a particular case depends upon how it interrelates with other factors. In the final analysis, the Commission must weigh the facts of each case, the concerns of the employer, the employees and the public interest in order to decide what unit structure will promote the statutory goals of labor stability and peace.

The Commission has held that many different types of school district unit structures are appropriate for certification -- some have contained teachers alone, some have contained one or more groups of supportive staff alone and some have contained a mixture

of teachers and one or more groups of supportive staff. Piscataway, supra. Generally, employees in a school district have a common employer, work in the same buildings and have similar goals and purposes and thus share a community of interest. In re Mullica Tp. Bd/Ed, D.R. No. 82-45, 8 NJPER 207 (¶13087 1982).

The proposed unit satisfies these criteria. All aides are employed by the Board, all work in the High School and all assist appointed supervisory employees in performing ministerial, nonprofessional duties. Moreover, all aides except one are paid hourly, all work at least 20 hours per week and all receive full health insurance coverage; that one aide may perform different tasks than another by virtue of his or her specific assignment is a factor of de minimis consequence and it does not militate against the community of interest factors listed above.

The Board also contests the appropriateness of the unit because employees in the petitioned-for titles are "transient" and lack the requisite degree of permanence. However, all aides have been employed at least six months and most have been employed one year or more.

The Board has not alleged that aides are "casual" employees, that is, employed on an "occasional or sporadic basis" and therefore inappropriate for inclusion in a unit with regular employees. In fact, aides appear to be regular part-time and full time employees. They have regular schedules, are paid fixed rates,

are not substitutes for other employees and are eligible for medical insurance coverage. See In re Mt. Olive Bd/Ed, P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982).

The Board alleges that the aides do not remain employed long enough to warrant their inclusion in a bargaining unit. However, in In re W & W Tool and Die Mfg. Co., 93 LRRM 1006 (1976), the National Labor Relations Board determined that students who worked 20 hours weekly during the school year and during the summer were included in a bargaining unit of machine production employees even though they "come and go". ^{2/} Even if aides "come and go," their community of interest and regularity of employment requires finding that the petitioned-for unit is appropriate. See also Morris, The Developing Labor Law, pp. 1481-82 (1983).

In my September 20, 1985 correspondence, I further advised the parties that the petitioned-for unit appeared prima facie appropriate and announced my intention to direct that an election be held among the employees. The parties were provided seven (7) days to submit additional statements of position, together with documentary evidence in support thereof, to raise substantial and material factual issues which might require a hearing.

^{2/} The New Jersey Supreme Court has approved the Commission's use of National Labor Relations Board precedent in deciding cases under this Act. Lullo v. Intern'l. Assn. of Firefighters, 55 N.J. 409 (1970).

11. On September 30, 1985, the Board requested, and was granted, an extension of time to file a response to my letter of September 20, 1985. On October 2, 1985, the Board submitted a letter advising of its consent to a secret ballot election on the condition that the In-School Suspension Aide not be included in the unit. Thus, the Board essentially objects only to the inclusion of one title (and one person) in the petitioned-for unit. Inasmuch as the parties do not contest the unit eligibility of the remaining employees, I find that the purposes of the Act would best be served if an election were to be conducted among the employees in the petitioned-for unit.

In view of the foregoing, I find that a question concerning representation exists in the collective negotiations unit comprised as follows: included -- all full time and part-time aides; excluded: professional employees, craft employees, police officers, firefighters, confidential employees, managerial executives and supervisors within the meaning of the Act.

I direct that a mail ballot election be conducted among the employees described above, pursuant to N.J.S.A. 34:13A-2.6(b)(3).

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote.


I direct the Public Employer to simulateneously file with me and with the Red Bank Education Association, an eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The Public Employer shall also file with me an accompanying proof of service. I must receive the eligibility list no later than ten (10) days prior to the date of the mailing of the ballots. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Ballots shall be mailed by the Commission to the eligible voters on November 15, 1985. Ballots must be received by the Commission by 9:00 a.m. on December 2, 1985. Ballots shall be counted by the Commission at 9:30 a.m. on December 2, 1985.

Those eligible to vote shall vote on whether they wish to be represented for the purpose of collective negotiations by the Red Bank Education Association or no union.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting 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: October 25, 1985
Trenton, New Jersey