

D.R. NO. 89-30

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

In the Matter of

MT. HOLLY TOWNSHIP
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-E-89-47

MT. HOLLY EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that the challenged ballot of the Secretary assigned to the Board Secretary/Business Administrator employed by the Mt. Holly Township Board of Education is not a part of the unit petitioned for by the Mt. Holly Education Association, and thus should not be counted in the election seeking to consolidate the Association's units. The Director also finds that the parties historically have not negotiated over terms and conditions for this position, or otherwise treated it as part of the Association's secretarial unit.

D.R. NO. 89-30

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

In the Matter of

MT. HOLLY TOWNSHIP
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-E-89-47

MT. HOLLY EDUCATION ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Mushinski & Andronici, Esqs.
(Stephen J. Mushinski, of counsel)

For the Petitioner
New Jersey Education Association
(Hriar Zakarian, UniServ Field Rep.)

DECISION

On November 16, 1988, a staff agent of the the Public Employment Relations Commission ("Commission") conducted a secret ballot election among certain employees of the Mt. Holly Township Board of Education ("Board"), pursuant to an Agreement for Consent Election between the petitioner, Mt. Holly Education Association, NJEA ("Association") and the Board. The Association, by its petition, sought to accrete its three non-professional units -- the custodial, support staff, and secretarial groups -- to its professional unit. At the election, the Association challenged the ballots of three secretarial employees: Carol Nistico, Secretary to

the Curriculum Coordinator; Janet Cole, Secretary to the Assistant to the Superintendent for Federal, State, and Local Programs; and Cindy Gaskill, Secretary, assigned to the Assistant Superintendent for Business/Board Secretary ("Assistant Superintendent").^{1/} The parties settled the eligibility of two of these voters. The remaining challenge (Secretary, assigned to the Assistant Superintendent for Business/Board Secretary) may be determinative of the outcome of that part of the election which applies to the secretarial unit. We have conducted an administrative investigation into the issues raised by the challenge, pursuant to N.J.A.C. 19:11-9.2(k). We do not find any substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, we have determined that the disposition of this matter is properly based on our administrative investigation and determination of the facts. To date, the following facts appear.

1. The Association has represented a unit of secretaries since before 1981. By its accretion petition, Docket No. RO-89-47, the Association seeks to add its historical, extant secretarial unit to its professional unit.

2. The parties' most recent collective negotiations agreement provides:

^{1/} Subsequent to the election, the parties engaged in voluntary settlement efforts until the middle of January 1989. In February 1989, at an informal conference, the Association withdrew its objection to the positions occupied by Nistico and Cole.

A. The Board hereby recognizes the Association as the exclusive representative for collective negotiations concerning terms and conditions of employment of all secretarial/clerical personnel employed by the Board excluding:

- a. Executive Secretary to the Superintendent
- b. Assistant Secretary to the Superintendent
- c. Secretary to the Board Secretary and School Business Administrator
- d. Bookkeeper to Board Secretary and School Business Administrator^{2/}

Article I "Recognition of Unit"

3. The challenged ballot was cast by Cindy Gaskill, who holds the title "Secretary" and is assigned to work for the Board Secretary/School Business Administrator. Gaskill has been in this title since July 1986.

4. The position held by Gaskill was previously held by Linda Monelli from 1984 to 1986. While Monelli held that position, she was not represented by the Association. Monelli is the Secretary to the Board Secretary/School Business Administrator, one of the titles specifically excluded from the unit by the parties' agreement.

5. At the election, the Association challenged Gaskill's ballot on the ground that her position is not in the unit it represents and is confidential.

6. The job description for Gaskill's position indicates that she is responsible for performing secretarial duties for the Assistant Superintendent.

^{2/} The title Board Secretary and School Business Administrator was changed to Assistant Superintendent for Business/Board Secretary, herein referred to as "Assistant Superintendent."

ANALYSIS

The Association challenges Gaskill's ballot on the basis that the position is a "central office" secretarial position and is not now nor has it ever been part of its unit. The Association also asserts that the position is confidential. The Board argues that the position is not confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq. ("Act"), that it should be included in the Association's bargaining unit and that the ballot should be counted.

We agree with the Association that the position occupied by Cindy Gaskill is not part of the historical unit and that her ballot should not be counted.^{3/}

In Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980), the Commission set forth the test to determine whether a clarification petition is appropriate. There, the Commission affirmed that it is inappropriate to seek the inclusion of a title in a unit by a clarification of unit petition where the title: (a) was in existence at the time the unit was formed and, knowingly, then not placed in the unit; or (b) where the employee representative has not sought to represent an existing, unrepresented title for a considerable period of time. Thus, where a title existed at the time the unit was formed, or where a title has existed for a

^{3/} In so finding, we do not address the issue of whether the position is confidential within the meaning of the Act.

considerable period and the parties did not display a mutual intent to include that title within the unit, the parties will not be permitted to "enlarge" an existing unit by use of a clarification petition. See also North Bergen Bd. of Ed., D.R. No. 89-21, 15 NJPER 185 (¶20078 1989) and Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981) (petition to include title in newly certified unit dismissed where mutual intent to exclude title from unit at time unit was formed).

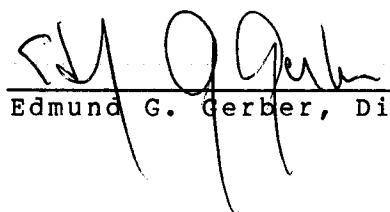
We apply this principle to the situation here, where the position in dispute existed since at least in 1984. The Association asserts that it has never represented the position in negotiations. As recently as June 1988 a copy of the Board's "Regular Monthly Meeting" minutes shows that the Board itself treated this position as a "non-agreement" position. Also, the minutes of the June and April regular monthly meetings indicate that the employee was identified by the Board as "[an] employee...who [is] not a member of a negotiating unit...." The Board agreed at the informal conference that the current incumbent's predecessor was not part of the unit and was not represented by the Association in negotiations during her tenure in the same position (1984 to 1986).

The issue for decision here is not whether the challenged voter, who performs secretarial duties, is appropriate for inclusion in the Association's unit. Rather, the issue is whether she is eligible to vote in a representation election based upon a petition seeking an election in the existing clerical negotiations unit.

The Commission has addressed the issue of modifications to an extant collective negotiations unit during the pendency of a legitimate question concerning representation. The Commission's policy is to promptly proceed with an election in an appropriate, petitioned-for historical unit and not to process requests made by any party to modify the existing unit. North Bergen, supra. Barnegat Bd. of Ed., D.R. No. 88-15, 14 NJPER 16, 18 (¶19005 1987). See also City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985); City of Hoboken, D.R. No. 85-4, 10 NJPER 597 (¶15276 1984); State of New Jersey (N.J. Civil Service Assn.), D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), req. for rev. den. P.E.R.C. No. 81-112, 7 NJPER 189 (¶12083 1981); and Tp. of North Brunswick. The facts here establish that the Board and the Association never acted prior to the election to include the challenged voters in the unit. Under the facts of this case, we find no compelling reason to disturb the existing secretarial unit. Accordingly, we conclude that the challenged voter is not eligible to vote in this election and thus, we decline to count her challenged ballot.

I order the ballots of voters Nistico and Cole to be counted and the ballot of Gaskill void.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 1, 1989
Trenton, New Jersey