

D.R. NO. 93-8

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

In the Matter of

ESSEX COUNTY VOCATIONAL-TECHNICAL
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-93-44

ESSEX COUNTY VOCATIONAL-TECHNICAL
TEACHERS' ASSOCIATION (NJEA/NEA),

Petitioner.

SYNOPSIS

The Director of Representation finds that a consolidated unit of teachers, secretaries, clerks and aides is appropriate and orders that an election be conducted among them. The Board contended that the parties' long, stable history of separate units should not be disturbed. The Director found no compelling circumstances that would negate the appropriateness of a broad-based consolidated unit. He distinguished this case from Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981), where the Commission dismissed a similar petition in the presence of strenuous objections by the units sought to be joined. Here, the existing support staff unit does not object to the petition.

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Appearances:

For the Public Employer
Schwartz, Simon & Edelstein, attorneys
(Lawrence S. Schwartz, of counsel)

For the Petitioner
New Jersey Education Association
(Allen T. Fox, UniServ Rep.)

DECISION AND DIRECTION OF ELECTION

On September 21, 1992 the Essex County Vocational-Technical Teachers' Association (NJEA/NEA) filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. By its petition, the Teachers' Association seeks to add secretaries, aides and clerks, now represented in a separate unit by the Essex County Vocational-Technical Secretaries' Association, to the existing teachers' unit represented by the Essex County Vocational-Technical Teachers' Association. All of these employees are employed by the Essex County Vocational-Technical Board of Education. The petition is supported by an adequate showing of interest. N.J.A.C. 19:11-1.3.

The Board objects to the petition because it does not want to have the long and stable negotiations history among separate units disturbed. The Board will not consent to a secret ballot election.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.6 and make the following factual findings.

1. There are approximately 52 secretaries, aides and clerks presently represented by the Essex County Vocational-Technical Secretaries' Association in a separate unit. This organization has a contract with the Board which expires on June 30, 1993. This Association has disclaimed interest in representing these employees.

2. The unit represented by the Teachers' Association is an all-professional employee unit. There are approximately 192 teachers, child study team members, nurses, guidance counselors, librarians, coaches, athletic directors, teaching specialists, C.I.E. coordinators, C.O.E. coordinators, evening school instructors, summer school instructors, and associate members in the present unit of the petitioning Association. The teachers' contract with the Board expires on June 30, 1993.

3. The Secretaries' Association does not oppose the proposed unit consolidation and does not wish to intervene in this matter.

The New Jersey Supreme Court has affirmed the Commission's policy favoring broad-based, employer-wide negotiations units 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 New Jersey 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 history of labor relations in the two existing units does not compel a determination that the petitioned-for unit is inappropriate and/or the dismissal of the petition.

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 to have a unified negotiations unit requires a balancing 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 alone will not control unit structure in the face of the incumbent's support for consolidation. Glen Rock Bd. of Ed., P.E.R.C. No. 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 these 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 negotiations history of separate support staff units, if the supportive staff unit welcomes, rather than vigorously opposes, the proposed consolidated unit and the existing unit is not the subject of a longstanding certification.^{1/}

^{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.

In Cherry Hill Bd. of Ed., D.R. No. 90-18, 16 NJPER 107 (¶21041 1990), I found a petition to add support staff employees to a teachers' unit appropriate even though there was a twenty-year history of stable negotiations in separate units.

Significantly, the Commission noted in Piscataway,

...the focus of the Englewood litigation was on the placement of [custodians represented by an AFL-CIO affiliate]... 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.

Accordingly, I find that the long history of negotiations cited here, without more, is insufficient to deny the consolidated unit sought.

The Secretaries' Association has advised the Commission that it no longer wishes to represent the existing secretarial unit. Thus, unlike Englewood, the incumbent representative here are not opposed to the petitioned-for unit; it supports the proposed consolidation.

Accordingly, I find that the petitioned-for consolidated unit is appropriate and order that an election be conducted among the employees in the secretarial unit to determine whether a majority of such employees wish to be represented by the Essex County Vocational-Technical Teachers' Association (NJEA/NEA). Professional employees shall vote a professional option concerning whether they wish to be included in a unit with non-professional employees. N.J.S.A. 34:13A-6. Pursuant to N.J.S.A. 34:13A-2.6(b), the election will be conducted in the following unit:

Included: All secretaries, aides and clerks to be added to the existing unit of all teachers, child study team members, nurses, guidance counselors, librarians, coaches, athletic directors, teaching specialists, C.I.E. coordinators, C.O.E. coordinators, evening school instructors, summer school instructors, and associate members.

Excluded: All other employees, all managerial executives, confidential employees, supervisors within the meaning of the Act, craft employees, police, firefighters, superintendent, assistant superintendent, business administrator, assistant business administrator, directors, supervisors, coordinators, principals, vice principals, administrative assistants, secretary of the Board, assistant secretary of the Board and all employees represented in other negotiations units.

* * * * *

The method of balloting shall be as follows:

Method of Balloting

VOTING UNIT #1: All professional employees (all teachers, child study team members, nurses, guidance counselors, librarians, coaches, athletic directors, teaching specialists, C.I.E. coordinators, C.O.E. coordinators, evening school instructors, summer school instructors, and associate members).

VOTING UNIT #2: All secretarial employees (secretaries, aides, clerks).

Voting Unit #2 shall vote on whether they wish to be represented in collective negotiations by the Essex County Vocational-Technical Teachers' Association (NJEA/NEA).

Voting Unit #1 shall vote on whether they wish to be included in a unit with non-professional employees.

If a majority of the voting professional employees (Voting Unit 1) cast ballots for inclusion in a unit with non-professional employees and a majority of the voters in Voting Unit 2 (secretaries, etc.) vote in favor of representation by the Essex County Vocational-Technical Teachers' Association (NJEA/NEA), then a certification shall issue adding the secretaries, aides and clerks to the current unit represented by Essex County Vocational-Technical Teachers' Association (NJEA/NEA).

If a majority of the professional employees (Voting Unit 1) does not vote for inclusion in a unit with non-professional employees and a majority of the voters in Voting Unit 2 (secretarial and clerical employees) votes in favor of representation by the Essex County Vocational-Technical Teachers' Association, then a separate certification shall issue covering the secretaries, aides and clerks.

If a majority of the voters in Voting Unit 2 (secretarial and clerical employees) does not vote in favor of representation by the Essex County Vocational-Technical Teachers' Association, then a certification of results shall issue stating that such employees are not represented by any employee organization for purposes of collective negotiations.

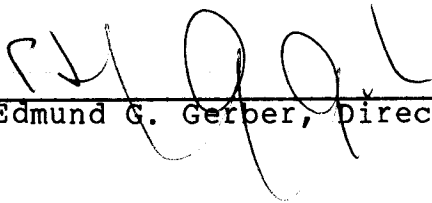
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. 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 the units, 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 the 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: December 7, 1992
Trenton, New Jersey