

D.R. NO. 92-6

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

In the Matter of

ORANGE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-92-51

ORANGE EDUCATION ASSOCIATION

Petitioner.

SYNOPSIS

The Director of Representation finds that a consolidated unit of teachers, paraprofessional employees, secretaries and custodians 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. In contrast here the existing units support the petition.

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Appearances:

For the Public Employer
Schwartz, Pisano, Simon, Edelstein & Ben-Asher, attorneys
(Nicholas Celso III, of counsel)

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

DECISION AND DIRECTION OF ELECTION

On September 23, 1991, the Orange Education Association ("Association") filed a timely Petition for Certification with the Public Employment Relations Commission ("Commission"). The Association seeks to add secretaries, custodial maintenance, and paraprofessional employees to the teachers' unit presently represented by the Association. Each of these groups is represented in their own negotiations units. The Orange Board of Education ("Board") is the employer of all of these employees. The Board opposes the petition and refuses to consent to a secret ballot election because it argues that there is a longstanding stable negotiations history between the separate units and the Board which should not be disturbed.

On September 16, 1991, an informal conference was held. 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 30 secretaries presently represented by the Orange Education Secretaries Association. This organization has a contract with the Board which expires on June 30, 1992. This Association has disclaimed interest in representing these employees.

2. There are approximately 44 custodians and maintenance workers presently represented by the Orange Custodian and Maintenance Association. This organization has a contract with the Board which expires on June 30, 1992. This Association has disclaimed interest in representing these employees.

3. There are approximately 95 instructional aides presently represented by the Orange Non-Certificated Employees Association. This organization has a contract with the Board which expired on June 30, 1991. This Association has disclaimed interest in representing these employees.

4. There are approximately 280 teachers in the unit of the petitioning Association. The teachers' contract with the Board expired on June 30, 1991.

5. The secretaries', custodians', and paraprofessional employees' associations do not oppose the proposed unit consolidation and do not wish to intervene in this matter. All of the petitioned-for employees have been represented since at least 1974.

6. The Board asserts that the long history of stable labor relations with separate units and the absence of any claim of unfair or inadequate representation combine to require the preservation of separate units.

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 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 history of stable labor relations in four separate units does not compel dismissing 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. 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 unit and the existing unit is not the subject of a longstanding certification.^{1/}

In Cherry Hill Board of Education, D.R. No. 90-18, 16 NJPER 107 (¶21041 1990), I found a petition to consolidate support staff and teachers was appropriate even though there was a twenty year history of negotiations in stable 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 Education Secretaries' Association, the Custodian and Maintenance Association and the Non-Certificated Employees Association have all advised the Commission that they no longer wish to represent their respective employee groups. Thus, unlike Englewood, the incumbent representatives here are not opposed to the petitioned-for unit. They each support the proposed consolidation.

^{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.

Given 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 secretarial, custodial/maintenance and paraprofessional units to determine whether a majority of employees in each group wish to be represented by the Orange Education Association. Certificated employees shall vote (professional option) as to 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 among the employees in the following appropriate unit:

Included: All custodians, maintenance, paraprofessionals, and secretaries to be added to the existing unit of all certificated personnel, including teachers, guidance counselors, team leaders, Chapter I Teachers, part time teachers, extracurricular activity advisors, nurses, pupil personnel staff, and compensatory education teachers.

Excluded: All other employees, all managerial executives, confidential employees, supervisors, craft employees, police employees, firefighters, superintendent, associate superintendents, principals, assistant principals, administrators, elementary and secondary coordinators, and systems coordinators, and all employees represented in other negotiations units.

The following shall be the:

Method of Balloting

VOTING UNIT #1: All Professional employees (teachers) shall vote on whether they wish to be included in a unit with non-professional employees.

VOTING UNIT #2: All Secretarial employees (secretaries, clerks, etc.) shall vote on whether they wish to be represented in collective negotiations by the Orange Education Association.

VOTING UNIT #3: All Custodial employees (custodians, maintenance employees) shall vote on whether they wish to be represented in collective negotiations by the Orange Education Association.

VOTING UNIT #4: All Paraprofessional employees shall vote on whether they wish to be represented in collective negotiations by the Orange Education Association.

If a majority of voting professional employees (Voting Unit 1) cast ballots for inclusion in a unit with non-professional employees, and a majority of the voters in each of Voting units 2, 3, and 4 vote in favor of representation by the OEA, then one certification shall issue adding those respective groups which voted in favor of representation to the professional unit.

If a majority of voting professional employees (Voting Unit 1) do not vote for inclusion in a unit with non-professional employees, and a majority of employees in any one of Voting units 2, 3, or 4 vote in favor of representation by the OEA, then a separate certification shall issue covering the employees in such voting unit.

If a majority of voting professional employees (Voting Unit 1) do not vote for inclusion in a unit with non-professional employees, and a majority of employees in any combination of Voting units 2, 3, or 4 vote in favor of representation by the OEA, then one certification shall issue combining into one unit those units which voted in favor of the OEA.

If a majority of employees in any one of Voting Units 2, 3, or 4 do not vote in favor of representation by the OEA, then a separate certification of results shall issue for each unit not voting in favor of representation, stating that such employees are not represented by any employee organization for purposes of collective negotiations.

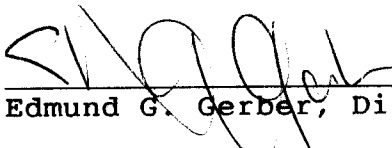
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding

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: November 20, 1991
Trenton, New Jersey