

D.R. NO. 88-27

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

In the Matter of

GREATER EGG HARBOR REGIONAL
HIGH SCHOOL DISTRICT,

Public Employer,

-and-

OAKCREST-ABSEGAMI TEACHERS
ASSOCIATION/NJEA/NEA,

Docket No. RO-88-66

Petitioner,

-and-

T.W.U., LOCAL 225, BRANCH 4,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition filed by the Oakcrest-Absegami Teachers Association/NJEA/NEA. The Association sought to sever secretarial and clerical employees from the existing support staff unit represented by TWU, Local 225. The Director found that the facts did not prove a failure to provide responsible representation and did not warrant disturbing the existing unit structure.

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Appearances:

For the Public Employer
Ralph Martin, Board Secretary

For the Petitioner
New Jersey Education Association
(Eugene Sharp, UniServ Rep.)

For the Intervenor
Michael O'Brien, Int'l Representative

DECISION

On October 13, 1987, a Petition for Certification of Public Employee Representative ("Petition") was filed by the Oakcrest Absegami Education Association/NJEA/NEA ("Association") seeking to represent secretarial employees employed by the Greater Egg Harbor Regional High School Board of Education ("Board") in a separate

unit. The petition was timely filed and is supported by an adequate showing of interest.

The employees who are the subject of the petition are currently included in a unit of secretaries and custodians represented by the Transportation Workers of America, AFL-CIO, Local 225, Branch 4 (TWU). On October 21, 1987 TWU submitted a letter dated October 20, 1987, a copy of an executed collective negotiations agreement between the Board and TWU and a copy of its certification as the majority representative of the petitioned-for employees. Consistent with N.J.A.C. 19:11-2.7, the TWU was granted intervenor status.

On October 30, 1987 a Commission staff attorney conducted an investigatory conference. Representatives of each party attended the conference. The Board states that it wishes to keep the present unit structure intact. The Association alleges the unit should be split in order to allow the secretaries to be represented in a separate unit because TWU has not provided the secretaries with responsible representation. TWU asserts that it has provided responsible representation.

We conducted an administrative investigation in this matter (N.J.A.C. 19:11-2.6). It reveals the following facts.

The Greater Egg Harbor Regional High School 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 petitioned-for employees.

The Oakcrest Absegami Education Association and the Transportation Workers Union of America are public employee representatives within the meaning of the Act and are subject to its provisions.

TWU is the majority representative of a collective negotiations unit comprised of all secretaries, data key punch operators, clerks, custodians, groundskeepers, maintenance workers, cafeteria personnel and bus drivers. We certified TWU as the majority representative of this unit on January 2, 1987. The current collective negotiations agreement covers the period from July 1, 1987 through June 30, 1988.^{1/}

This unit has existed for over ten years in its present form. The Association formerly represented this unit until, however, on December 22, 1986, the TWU was certified after a Commission representation election.

The Association alleges that the unit is dominated by the bus drivers, that TWU has systematically excluded the secretaries from its organizing drive and has excluded them from information about and input into negotiations. During TWU's organizing drive, it held an evening meeting at a local restaurant. Secretaries did not receive specific notification of that meeting although other

^{1/} We note that this petition is timely because where, pursuant to a certification, the parties entered into a collective negotiation agreement, the certification bar is dissolved and the Commission contract bar rule becomes operative. Op. of Upper, D.R. No. 80-27, 6 NJPER 118 (¶11063 1980).

unit members did. Secretaries did, however, attend the meeting. When Martha Triboletti, a secretary, attempted to question a TWU representative, the Association claims she was ignored. When she asked to hear from a TWU representative who was also a secretary, the Association asserts she was told "they don't represent secretaries."

Between that meeting and the election, secretaries were not notified of other meetings or recruited by TWU. Sandra Hawthorne, a secretary, asked Jo Anne Hamilton, the unit's secretary, why secretarial employees were not notified of executive committee meetings where discussions about taking the unit to TWU took place. Hamilton stated that secretaries were not notified because it was believed that they would try to prevent a move to TWU.

Several secretaries stated that they had not been asked to join TWU since the election. They also stated they were not given an opportunity to provide input into negotiations proposals and did not receive progress reports on negotiations or notification that the contract had been ratified. They stated that they were not notified of a ratification meeting. These individuals stated that they received notice of the salary negotiated on their behalf from the superintendent's office. They received copies of the agreement from the Board Secretary.

Apparently, most secretaries have chosen not to join TWU. Only one secretary is a TWU member. The rest belong to the Association. Only TWU members were permitted to vote on the

ratification of the contract. Secretaries were represented at negotiations by Lois Campbell, a media center secretary and TWU representative. She did not discuss the outcome of negotiations with the other secretaries. There is no evidence that she requested input into negotiations from the other secretaries; nor did she reject input from the other secretaries. After the new agreement was ratified, Campbell sent a letter to the secretaries stating that the secretaries did not achieve very much in the new agreement because, during the negotiations, the Board was aware that she (and TWU) did not have their support. Campbell indicated that she has periodically asked secretaries to reconsider joining TWU because their majority representative can only be "as strong as the members who back it."

In both the previous Association agreement and the new agreement negotiated by TWU, secretaries received a holiday on the fourth of July. Under the previous Association agreement, if the holiday fell on a Saturday or Sunday, secretaries were able to take Friday or Monday as a holiday. In 1987, the holiday fell on Saturday and, under the TWU contract, the secretaries did not receive another day off. TWU did not act to change that situation.

The Association asserts that TWU is not providing responsible representation to the secretaries because it did not actively solicit their support before the election or solicit their membership after the election, nor did it not notify them of all meetings and the results of negotiations.

The conduct of the TWU prior to its certification in January is not evidence of lack of responsible representation, since it was not then the majority representative of this negotiations unit.

Failure to solicit certain employees for membership in an employee organization does not constitute a failure to provide responsible representation for that group.^{2/} While it might be an unfair practice to prohibit an employee from joining an organization, simply failing to ask an employee or group of employees if they wish to join does not constitute a failure to represent them.^{3/} There is no evidence that TWU asked secretaries to join TWU after the election, but it has not prohibited secretaries from becoming members of the union. To the contrary, after the contract was ratified, the only secretary who is a member of TWU asked the other secretaries to reconsider joining the organization, ostensibly in order to give it greater strength in future negotiations.

An employee organization may not prohibit nonmembers from attending meetings concerning negotiations unit business, Tp. of Union, D.U.P. No. 84-20, 10 NJPER 163 (¶15080 1984). However, the

^{2/} Section 5.3 requires employee organizations provide representation to employees, but does not require that such employees be solicited for organization membership.

^{3/} Cf. Bergen County (Neely), P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987), appeal pending App. Div. Dkt. No. A-5897-86T8, Bergen County PBA, Local 134 (Saleem), P.E.R.C. No. 86-38, 11 NJPER 596 (¶16212 1985).

Association alleged only that secretaries were not notified of meetings. While that may be some evidence of a lack of responsible representation, we cannot say that the facts presented here warrant disturbing the existing unit structure. Middletown Tp. Bd of Ed., D.R. No. 88-11, 13 NJPER 765 (¶18291 1987).

N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations. In making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. See State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

Under the circumstances of this case, it appears that the negotiations unit the Association seeks is inappropriate. The Commission has previously established the standard by which petitions requesting severance of employees from an existing unit must be considered. In Jefferson Tp. Bd/Ed, P.E.R.C. No. 61 (1971), the Commission stated:

The underlying issue is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such a relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise, would leave every unit open for re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

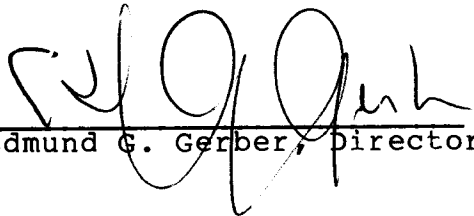
In Passaic Co. Tech. & Vocational H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63, 65 (¶18026 1986), the Commission stated, "determining whether an incumbent organization has provided responsible representation entails a review of the parties' entire relationship, not just isolated occurrences."

Since becoming majority representative eleven months ago, TWU successfully negotiated a contract for the unit, including secretaries. A secretary participated in these contract negotiations. The change in contract language which resulted in a certain group of employees losing a certain benefit does not rise to the level of a lack of responsible representation. These circumstances do not indicate instability or lack of responsible representation of the secretaries.

Accordingly, under the standard set forth in Jefferson, the Association has not demonstrated facts sufficient to warrant the severance of the Board's secretaries from the existing support staff unit.

Based upon the foregoing, we dismiss the petition seeking to sever the Board's secretarial employees from the unit represented by TWU.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 14, 1988
Trenton, New Jersey