

D.R. NO. 2019-6

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

In the Matter of

BRIDGETON BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2019-003

BRIDGETON EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation issues a certification of representative, based on a representation petition seeking to add five unrepresented information technology employees to an existing unit of specified certificated, non-certificated, teaching and non-teaching employees represented by the Bridgeton Education Association and employed by the Bridgeton Board of Education. The petition was accompanied by authorization cards signed by a majority of the petitioned-for employees. The Board argued that since IT employees were non-certificated and non-teaching personnel, the most appropriate unit was the unit of Bridgeton School Employees Association (BSEA), consisting of only non-certificated and non-teaching titles. The Board conceded that either unit was appropriate and shared a community of interest with IT employees. BSEA advised that it was not interested in representing the IT employees.

The Director determined that since a consolidation of unrepresented IT employees into an existing unit did not further unit fragmentation or elicit an incumbent's opposition, and since IT employees share a community of interest with either unit, the factors were sufficiently in balance as to permit the desires of the IT employees to be the controlling factor.

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Petitioner.

Appearances:

For the Public Employer,
Weiner Law Group, LLP, attorneys
(Joshua Savitz, of counsel)

For the Petitioner,
Zeller and Wieliczko, LLP
(Cosmas P. Diamantis, of counsel)

DECISION

On July 17, 2018, the Bridgeton Education Association (BEA), a New Jersey Education Association (NJEA) affiliate, filed a timely representation petition seeking to add about seven employees in several information technology (IT) titles to its existing collective negotiations unit, currently comprised of specified certificated, non-certificated, professional, non-professional, teaching, and non-teaching titles employed by the Bridgeton Board of Education (Board). The petition was accompanied by authorization cards signed by a majority of the petitioned-for employees.

On July 16 and 19, 2018, the Bridgeton School Employees Association (BSEA) filed a representation petition and an amended petition, with a sufficient showing of interest, seeking to add the titles of community and parental involvement specialist and parent liaison (not the IT titles) to its unit of various non-certificated and non-teaching employees of the Board. (Dkt. No. RO-2019-002). We learned that BSEA is also affiliated with the NJEA and both BEA and BSEA employed the same field representative. Neither BEA nor BSEA intervened in the other's respective petition. Inasmuch as the Board advised of its preference that the IT titles sought by BEA be added to BSEA's unit instead, a joint conference for the matters was held among the parties and a staff agent investigating the petitions on August 6, 2018. The Board and BSEA agreed to further discuss the possibility of voluntary recognition, pursuant to the BSEA petition.^{1/} BSEA advised that it is not interested in representing the petitioned-for IT employees.

The Board declined to sign a Stipulation of Appropriate Unit form for BEA's petition, arguing that since IT employees were non-certificated and non-teaching personnel, the most appropriate unit for them would be BSEA's unit, consisting of only non-certificated and non-teaching personnel, rather than the BEA

^{1/} BSEA subsequently withdrew its petition without prejudice on October 23, 2018, although I have not been notified whether voluntary recognition has subsequently occurred.

unit, which, though mixed, consists mostly of certificated teaching personnel.

Later on August 6, 2018, the staff agent sent a letter to BEA and the Board, requesting statements of position concerning whether or not the petitioned-for employees should be included in the BEA unit or the BSEA unit and warning that the failure to provide certifications of facts by August 14, 2018, could lead to an adverse factual finding. Attached were the various job descriptions of employees in the two units that had been provided by the Board and reported salaries of the lowest and highest paid IT employees that had been provided by BEA. The staff agent warned that in the absence of certifications to the contrary, the job descriptions and salary figures might be adopted as undisputed facts. Requests for an extension of time by each party were approved.

On August 23, 2018, the Board and BEA each filed position statements and certifications and served them on each other. BEA's certification was authored and signed by its counsel, Cosmas Diamantis (Diamantis Cert). Although it does not appear that Diamantis is in a position to have personal knowledge of the facts set forth in the attached exhibits, almost all of them were provided and certified by the Board or are documents of which I may take administrative notice. For ease of reference, however, I will cite to the relevant exhibits of BEA's certification.

The Board's Director of Human Resources, Maurice Tyndell, certifies the accuracy of the job descriptions provided, that there is a job description in place for every title, and that employees in those titles perform many of the job duties listed in the respective job descriptions. (Tyndell Cert, Paragraph 11).

The Board argues that although BEA's unit has been comprised of certificated, non-certificated, teaching, and non-teaching personnel since at least 1970, over the years new titles have been added resulting in approximately 86% of the current unit consisting of certificated teaching staff. Therefore, the Board argues, since the IT employees are non-teaching and non-certificated staff, the more appropriate unit is BSEA's unit, which consists only of non-certificated and non-teaching titles. (Tyndell Cert, Paragraph 6 and 17).

The disposition of the instant petition is properly based upon our administrative investigation. No disputed, substantial material factual issues warrant our convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.

FINDINGS OF FACT

The recognition provision of a 1970-1971 collective negotiations agreement (CNA) between BEA and the Board

recognizes^{2/} BEA as the majority representative of a unit of teachers, librarians, school nurses, secretaries, and cafeteria workers. (Diamatis Cert, Exhibit 4).

On June 23, 2015, the Director of Representation issued a Certification of Representative adding psychologists, child study team social workers, non-child study team social workers, and learning disability teacher consultants, to BEA's unit of teachers, master teachers, physical therapist, speech therapist, librarians, school nurses, secretaries, guidance counselors, substance awareness coordinators, cafeteria workers, technology coordinators, facilitators, and athletic trainers. Bridgeton Bd. of Ed. and Bridgeton Ed. Ass'n., D.R. No. 2015-10, 42 NJPER 79 (¶20 2015) (hereinafter BEA 1). In the decision, the Director rejected the Board's argument that the petitioned-for non-teaching professionals lacked a community of interest with then-current unit employees because the vast majority of employees in the extent unit were teachers. BEA 1. The Director reiterated the Commission's preference for broad-based units and noted that the unit was already mixed with teachers and non-teaching support staff, including cafeteria workers and secretaries. Id.

2/ The original unit was formed through voluntary recognition and not through a Commission certification. The unit definition did not use the broader language typical in initial Commission certifications. Although the parties are unaware of any earlier CNA, the exact date of voluntary recognition is unknown.

On November 18, 1987, the Director issued a certification of representative to the Bridgeton School Aides Association (BSAA) for "[a]ll school aides employed by the Bridgeton Board of Education including but not limited to instruction aides, playground aides, cafeteria aides, bus aides, and corridor aides." (Dkt. No. RO-88-28).

On an unspecified later date, the Board voluntarily recognized BSEA as majority representative of that unit, as noted in the Director's decision in Bridgeton Bd. of Ed. and Bridgeton Sch. Employees Ass'n, D.R. No. 2015-5, 41 NJPER 506 (¶158 2015) (hereinafter BSEA 1). The Director issued a certification adding attendance officers to the then-existing unit (described in the 2012-2015 BSEA CNA as "all Bridgeton School Employees Association [sic], employed by the Bridgeton Board of Education including but not limited to instructional aides, playground aides, cafeteria aides, bus aides and security monitors"), and rejected the Board's argument that they lacked a community of interest with other unit employees. BSEA 1. The Director noted the Commission's preference for broad-based units and that the Board had not identified any other negotiations unit into which those petitioned-for employees might be placed. Id.

The current BEA unit is comprised of about 642 employees, including 553 teaching staff members, 33 cafeteria workers, and 56 office staff members. (Tyndell Cert., Paragraph 5).

Approximately 86% of the BEA unit consists of certificated teaching staff members.^{3/} (Id.).

Teachers, librarians, school nurses, cafeteria workers and secretaries have been included in the unit since at least July 1970. (Tyndell Cert., Paragraph 6). Over the years, other titles have been added to the unit, with the most recent addition being psychologists, social workers, and learning disability teacher consultants. (Id.).

The Board and BEA were parties to a CNA that extended from July 1, 2015, through June 30, 2018 (2015-2018 BEA CNA). The parties are currently in negotiations for a successor agreement. (Tyndell Cert., Paragraph 2). The Board and BSEA were parties to a different agreement effective for the same period (2015-2018 BSEA CNA) and are currently in negotiations for a successor agreement. (Tyndell Cert., Paragraph 3).

The BSEA unit includes about 152 employees, none of whom are certificated teaching staff, though some of the unit instructional aides are required to hold a paraprofessional certification. (Tyndell Cert., Paragraph 7).

^{3/} By "certificated" and "teaching staff member", I infer the Board means those positions requiring the employees to hold valid certificates appropriate to those positions issued by the State Board of Examiners under the definition of "teaching staff member" in N.J.S.A. 18A:1-1, regardless of whether the position actually requires teaching.

The Board employs seven people holding five information technology titles with varying years of service and salaries. They are: district technology and audio visual engineer (3 years - \$77,453); district technologist (3 years - \$53,200); district technologist (8 years - \$54,759); district technologist (10 years - \$62,006); district technology specialist (4 years - \$68,256); district network/technology specialist (7 years - \$75,903); and district administrative software specialist (7 years - \$63,217). (Tyndell Cert., Paragraph 10).

The 2017-2018 salary guides in the 2015-2018 BEA CNA show: teachers' salaries range from \$49,300 to \$97,415; facilitators' salaries range from \$54,230 to \$90,015; office personnel salaries range from \$24,644 to \$49,733; cafeteria workers' hourly rates range from \$20.14 an hour to \$21.54 an hour; ExCEL teachers' salaries range from \$61,625 to \$102,290; H.S. ExCEL teachers' salaries range from \$59,160 to \$98,198; and psychologists, learning disability teacher consultants, and social workers' salaries range from \$54,426 to \$86,685. (Tyndell Cert., Paragraph 15).

The 2017-2018 salary guides in the 2015-2018 BSEA CNA show: aides' salaries range from \$21,155 to \$31,955; bus aides' hourly rates range from \$11.52 an hour to \$13.23 an hour; satellite aides' hourly rates range from \$10.24 an hour to \$12.48 an hour; security monitors' salaries range from \$21,290 to \$27,840; and

attendance officers' salaries range from \$38,065 to \$57,142. (Tyndell Cert., Paragraph 16).

Each job description for the five IT titles requires the holder to possess a Bachelor's degree. (Tyndell Cert., Paragraph 12). All of the petitioned-for employees work twelve months per year. (Id.) Their responsibilities primarily involve maintenance of the District's computer networks and/or hardware, which are dissimilar from the current responsibilities of any BEA or BSEA members. (Id.) No IT employees have any instructional responsibilities nor do any of their positions require a teaching certification. (Id.)

The job descriptions of employees in the BEA unit show a mix of ten and twelve-month employees, and most descriptions require at least an undergraduate degree. (Diamatis Cert, Exhibit 19). The job descriptions of the existing BSEA titles show that all members are ten-month employees and only the attendance officer title (added pursuant to BSEA 1) requires a college degree. (Diamatis Cert, Exhibit 20; Tyndell Cert., Paragraph 8).^{4/}

IT employees work a 7-hour day, which is less than most BEA teaching staff members (7.5 hours), BSEA instructional aides (7.5

^{4/} The Board and BSEA have been in discussions for voluntary recognition of the addition of community and parental involvement specialists into BSEA's unit, but I have not been informed as to whether such recognition has occurred yet. See Footnote 1, supra. These 12-month employees are required to hold degrees. (Tyndell Cert., Paragraph 9).

hours), BSEA attendance officers (7.5 hours), and BSEA security monitors (8 hours). IT employees work the same number of hours as most BEA office personnel, and more than BEA cafeteria workers. (Tyndell Cert., Paragraph 14).

ANALYSIS

In BEA 1 and BSEA 1, the Board argued that the then-petitioned-for employees lacked community of interest with the existing employees in the petitioners' respective units, but in each case, the Board did not identify any other appropriate unit. In this matter, the Board concedes that the petitioned-for IT employees share a community of interest with either the BEA or BSEA unit, but argues that the BSEA unit is more appropriate because it consists only of non-certificated and non-teaching staff.

The Commission is responsible for determining the appropriate collective negotiations unit when questions concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). When more than one unit is potentially appropriate, the Commission must decide which unit configuration is the most appropriate. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974). The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3.

The New Jersey Supreme Court has affirmed the Commission's policy favoring broad-based negotiations units. State v. Prof'l Ass'n of N.J. Dep't of Educ. The Commission has explained that broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations . . ." that could result from negotiations with numerous smaller units. Id. at 241 (quoting State of New Jersey (Prof'l Ass'n). P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972)). The Commission also examines whether a proposed unit would lead to undue unit fragmentation or proliferation. Id. See also, New Jersey State Coll. of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977); Teaneck Tp., P.E.R.C. No. 88-20, 13 NJPER 721 (¶18270 1987).

The Commission also considers the history of the negotiations units, the extent of organization of the petitioned-for titles, the desires of the parties, and the Act's purpose. See Passaic Cty., P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) recon. den. P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); State of New Jersey (Human Services), D.R. No. 95-1, 20 NJPER 308 (¶25154 1994); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12228 1981).

The Commission has held that many different types of school district unit structures are appropriate, including some containing teachers alone, some containing one or more groups of

supportive staff alone, and some containing a mixture of teachers and one or more groups of supportive staff. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984). Thus, in school districts, where the factors that are considered in establishing appropriate units are sufficiently in balance, the desires of the employees is the controlling factor. Id.

Teachers and supportive staff share 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 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. Id. But cf. Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986) (dismissing petition for unrepresented psychologists to be in their own single-occupation unit where there was an existing broad-based professional unit and undue fragmentation would otherwise occur).

Where the petitioned-for employees are already represented in a separate unit, a deferential approach to the desires of the employees to unify may not prevail if especially compelling circumstances justify the continuation of separate units, such as a long-established and stable negotiations relationship and vigorous opposition to unification by the incumbent. Piscataway Tp. Bd. of Ed., Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER

516 (¶12229 1981). However, "negotiations history will not control unit structure in the face of the incumbent's support for consolidation." Paterson Bd. of Ed., D.R. No. 91-14, 17 NJPER 17, 18 (¶22010 1990) citing Glen Rock Bd. of Ed., P.E.R.C. No. 84-125, 10 NJPER 275 (¶15135 1984).

In this case, BEA seeks to add currently unrepresented IT employees to its existing negotiations unit consisting of a broad array of titles, including professional, non-professional, certificated, non-certificated, teaching, and non-teaching titles. IT employees are unrepresented, negating as a factor for consideration the disturbance of a long-established and stable negotiations relationship. No incumbent organization vigorously opposes the petitioned-for addition. See Piscataway Tp. Bd. of Ed., Englewood Bd. of Ed. (noting that the proceeding did not involve a requested addition of unrepresented employees into an existing unit, but rather the requested addition of employees in an existing unit into a broader unit).

BEA does not seek to increase the number of collective negotiations units, as might occur with a petition to create a new stand-alone unit or to sever an existing unit. There is no risk to the Board of undue unit fragmentation. See Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986).

The facts show that both the BEA and BSEA units are appropriate, like the many different school district unit

structures which the Commission has found to provide the requisite community of interest due to shared goals, central authority, and common environment. The factors in establishing appropriate units are at least sufficiently in balance as to make the desires of the employees the controlling factor, particularly where the BSEA has not expressed interest in representing the petitioned-for employees. See Piscataway Tp. Bd. of Ed.

Regardless of the desires of the petitioning employees, I find that the BEA unit is more appropriate. IT employees are non-teaching and non-certificated staff. The Board does not argue that inclusion of IT employees in the BEA unit (which has been comprised of certificated, non-certificated, teaching, and non-teaching staff since at least 1970) will create any conflict of interest. The Board contends that over the years, more certificated titles have been added to the BEA unit, resulting in approximately 86% of the current unit consisting of certificated teaching staff, and that, therefore, the more appropriate unit is the BSEA unit, consisting of only non-certificated and non-teaching titles.

In BEA 1, the Director emphasized the Commission's preference for broad-based units and rejected the Board's argument that there was a lack of community interest between non-teaching professionals and the then-defined unit (of which the vast majority of members were teachers) because the unit already

included both teachers and non-teachers, such as cafeteria workers and secretaries.

In this matter, non-certificated cafeteria workers and secretaries remain in the unit, demonstrating a continuing community of interest among them and the certificated employees. In 1970, the unit consisted of teachers, librarians, school nurses, secretaries, and cafeteria workers. That over the years only certificated employees were added does not negate the appropriateness of non-certificated titles remaining in the unit.

In Boonton Bd. of Ed., D.R. No. 2008-14, 34 NJPER 144 (¶61 2008), the Director found that an existing broad-based unit of professionals, custodians, secretaries, bus drivers, and teacher assistants was more appropriate than then a less broad unit of all clerical staff and other technical employees sought by the petitioner, despite the petitioner's argument that the existing unit was comprised almost exclusively of teachers and administrators. The Director found that the petitioned-for titles fit within the broad configuration of titles in the existing unit; that the existing unit included virtually all eligible employees of the employer; and that the incumbent majority representative expressed its willingness to represent the petitioned-for titles.

Here, the IT employees fit within the BEA unit configuration of titles that includes non-certificated and non-teaching titles

and is broader in scope than the BSEA unit. The BEA unit members vastly outnumber the BSEA unit members, 642 to 152. IT employees are unrepresented and BEA, the incumbent for the existing broad mixed unit is willing to represent them within its unit, thereby obviating a problem of undue unit proliferation. Further, the BSEA, the incumbent for the unit the Board prefers for the IT employees, has not expressed a willingness to represent the IT employees.

IT employees work a 7-hour day, the number of hours worked by most office personnel in the BEA, but less than the instructional aides, attendance officers, and security monitors in the BSEA. Also, the current salaries for IT employees range from \$53,200 to \$77,453, which comports more with the 2017-2018 BEA salary guides for teachers (\$49,300 to \$97,415), psychologists, learning disability teacher consultants, and social workers (\$54,426 to \$86,695) than any salary guide for BSEA titles.

IT employees also work twelve months per year and are required to hold undergraduate degrees. The existing BEA unit has a mix of ten and twelve-month employees and most titles require degrees. By contrast, all current BSEA unit members are

ten month employees and all titles except for the attendance officer title do not require degrees.^{5/6/}

Accordingly, I find that the following unit is appropriate for collective negotiations:

Included: All information technology employees to be added to the existing unit of all teachers, master teachers, physical therapists, speech therapists, librarians, school nurses, secretaries, guidance counselors, psychologists, child study team social workers, non-child study team social workers, learning disability teacher consultants, substance awareness coordinators, preschool intervention and referral team, cafeteria workers, technology coordinators, facilitators, and athletic trainers employed by the Bridgeton Board of Education.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, secretary to the superintendent, secretary to the business administrator, secretary to

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- 5/ Even if the Board voluntarily recognizes the addition of community and parental involvement specialists into the BSEA unit (see Footnote 4, supra), the BEA would still have more twelve month employees and positions requiring degrees.
- 6/ BEA argues in that the IT employees are professional employees and that the BSEA unit, consisting of only non-professionals, is also less appropriate on this basis than the already mixed BEA unit. BEA speculates that the Board would prefer the BSEA unit for the IT employees because the BSEA CNA does not have a "just cause" provision and only limited binding arbitration compared to the BEA CNA. As the Board's "most appropriate unit" argument is limited to the certificated/non-certificated and teaching/non-teaching distinction, I need not address these arguments by BEA. See Jefferson Tp. Bd. of Ed., D.R. No. 2019-1 n.8, 45 NJPER 39 (¶11 2018), req. for rev. pending.

the assistant superintendent, secretary to the human resource administrator, payroll manager, 12-month secretary to the superintendent, secretary to the affirmative action officer, benefits manager, cafeteria managers, and all other employees employed by the Bridgeton Board of Education.

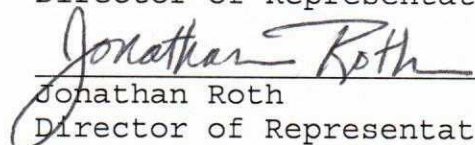
In comparing the Board-provided list of employees sought by BEA to be added to its existing unit with the number of valid authorization cards filed by BEA, I have determined that a majority of petitioned-for employees have designated BEA as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b).

ORDER

BEA has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the petitioned-for employees.

I certify Bridgeton Education Association, as the exclusive representative of the unit described above based upon its authorization cards.^{2/}

By Order of the
Director of Representation


Jonathan Roth
Director of Representation

DATED: October 23, 2018
Trenton, New Jersey

^{2/} A Certification of Representative is attached.

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by November 2, 2018.

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of	>	
	>	
BRIDGETON BOARD OF EDUCATION,	>	
Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2019-003
	>	
BRIDGETON EDUCATION ASSOCIATION,	>	
Petitioner.	>	
	>	

**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

BRIDGETON EDUCATION ASSOCIATION

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All information technology employees to be added to the existing unit of all teachers, master teachers, physical therapists, speech therapists, librarians, school nurses, secretaries, guidance counselors, psychologists, child study team social workers, non-child study team social workers, learning disability teacher consultants, substance awareness coordinators, preschool intervention and referral team, cafeteria workers, technology coordinators, facilitators, and athletic trainers employed by the Bridgeton Board of Education.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, secretary to the superintendent, secretary to the business administrator, secretary to the assistant superintendent, secretary to the human resource administrator, payroll manager, 12-month secretary to the superintendent, secretary to the affirmative action officer, benefits manager, cafeteria managers, and all other employees employed by the Bridgeton Board of Education.

DATED: October 23, 2018
Trenton, New Jersey



Jonathan Roth, Director of Representation

Attachment:

Certification of Representative dated: October 23, 2018

In the Matter of

BRIDGETON BOARD OF EDUCATION

-and-

BRIDGETON EDUCATION ASSOCIATION

Docket No. RO-2019-003

Service on the following:

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