

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

In the Matter of

MOONACHIE BOARD OF EDUCATION,

Public Employer,

-and-

MOONACHIE TEACHERS ASSOCIATION,
N.J.E.A.,

DOCKET NO. RO-82-36

Petitioner,

-and-

MOONACHIE CUSTODIANS ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representative, on the basis of an administrative investigation, directs an election among custodial staff to determine whether they wish to be represented by the Petitioner, which seeks their inclusion in a negotiations unit currently consisting of teaching staff. The Board objected to the Petition, claiming a prior negotiations relationship with the Custodian's Association. However, the Director finds that the Custodian Association's separate negotiations history with the Board, during which only one memorandum of agreement was reduced to writing, is not a compelling consideration. He further notes that the Employer-Employee Relations Act does not prohibit mixed units of professional and nonprofessional employees.

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

In the Matter of

MOONACHIE BOARD OF EDUCATION,

Public Employer,

and

MOONACHIE TEACHERS ASSOCIATION,
N.J.E.A.,

DOCKET NO. RO-82-36

Petitioner,

-and-

MOONACHIE CUSTODIANS ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer
Ferro, Lamb & Kern, attorneys
(Walter M. D. Kern, Jr. of counsel)

For the Petitioner
John Biondi, UniServ Representative

DECISION AND DIRECTION OF ELECTION

On September 15, 1981, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Moonachie Teachers Association, New Jersey Education Association (the "Teachers Association"), seeking to add three custodians to the existing unit of twenty-three teachers and nurse/health coordinator employed by the Moonachie Board of Education (the "Board"), excluding the administrative principal, and substitute teachers. The Moonachie

Custodians Association (the "Custodians Association") is the current recognized representative of the petitioned-for employees.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts.

On the basis of the administrative investigation, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing, where as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Moonachie 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. (the "Act"), is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

3. The Moonachie Teachers Association, New Jersey Education Association and the Moonachie Custodians Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Teachers Association seeks to add three custodians to its collective negotiations unit of twenty-three certificated

professional staff and agrees to a secret ballot election, including a professional option election. See N.J.S.A. 34:13A-6(d). ^{1/}

5. The Custodians Association has declined to intervene in this matter.

6. The Board does not consent to an election. Referring to its negotiations history with the Custodians Association, the Board states that although no collective negotiations agreement was ever reduced to writing, the Custodians Association has represented custodians for a number of years. The information provided to the Commission to date reveals that the Custodians Association was first recognized by the Board in 1978. Although a formal collective negotiations agreement has not been executed, the Board and the Custodians Association are parties to a written memorandum of agreement covering the 1979-80 and 1980-81 school years. The Board also argues that "there is no community of interest between the custodians and the Moonachie Teachers Association" inasmuch as "the Teachers Association is a unit which contains solely certificated professional teachers and a nurse/health instructor." Furthermore, the Board claims that an existing contract between it and the Teachers Association, effective July 1, 1979 through June 30, 1981, is a bar "to any inclusion of non-certificated personnel in the bargaining unit of the Moonachie Teachers Association."

^{1/} N.J.S.A. 34:13A-6(d) provides: "The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes ... both professional and non professional employees unless a majority of such professional employees vote for inclusion in such unit ... "

The undersigned has given careful consideration to the three issues raised by the Board in opposition to the petitioned-for unit. In a recent representation matter, In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶ 12229 1981) the Commission considered a representation petition seeking to alter an existing negotiations unit structure covering the petitioned-for employees. The Commission held that considerable deference should be accorded to the existing unit structure covering the petitioned-for employees where there has been a well established negotiations history. In the instant matter, there may have been an informal relationship between the Board and the custodians as a group prior to 1978 through which matters relating to the custodians' terms and conditions of employment were discussed. However, it does not appear that a formal collective negotiations relationship crystalized until 1978 when the Board recognized the Custodians Association as the exclusive representative. The Board and the Custodians Association have entered into only one written agreement covering terms and conditions of employment, which agreement was not reduced to writing as a formal contract, provided solely for salaries, holiday increases and raingear equipment, and failed to contain a grievance procedure. Furthermore, it appears that the incumbent Custodians Association has no further interest in representing the petitioned-for employees. From the above, it appears to the undersigned that the negotiations history between the Board and the Custodians Association is not comparable to the ten year negotiations history between the

custodians and the Board in the Englewood matter, and does not present a compelling consideration herein.

Second, the Act does not preclude the intermingling of professional and nonprofessional employees in the same negotiations unit. Rather, the Act merely instructs the Commission that a mixed professional/nonprofessional unit may not be deemed appropriate unless the professional employees have the opportunity to vote separately as to whether they wish to be included in a unit with nonprofessional employees. If a mixed unit of professional and nonprofessionals was deemed inappropriate it would be pointless for the statute to provide for a professional option. Prior Commission decisions have found that a community of interest exists between professional and nonprofessional employees in an educational setting. See In re West Milford Tp. Bd. of Ed., P.E.R.C. No. 56 (1971), where the Commission found appropriate a petition seeking to add nonprofessional clerical employees and building aides to a unit of professional employees. In the above matter, the Commission noted that the school district employees have a common employer, work in the same buildings, and have similar goals and purposes i.e., the education and betterment of students. In short, the professional status of the teachers does not by itself render the proposed professional/nonprofessional unit inappropriate.

Finally, it does not appear that the most recent contractual agreement between the Teachers Association and the Board, which is limited by its terms solely to professional

employees, bars the filing of a timely petition, adequately supported by a showing of interest, which seeks the addition of nonprofessional employees to the teachers' negotiations unit. If the nonprofessional employees choose to be represented by the Teachers Association and those employees are added to the existing unit, the Board and the Teachers Association will be required to negotiate with respect to the terms and conditions of employment for the nonprofessional employees as well as the professional employees and to reduce those terms and conditions of employment, as agreed, to writing.

On November 23, 1981, the undersigned advised the parties of the results of the administrative investigation and of the above analysis of the issues presented. The parties were provided an additional opportunity to present an evidentiary proffer which might raise substantial and material disputed factual issues. The Commission has not received any additional proffers.

Accordingly, the undersigned finds that the appropriate unit is: all certificated teachers and nurse/health instructors and custodians employed by the Moonachie Board of Education, excluding the administrative principal; substitute teachers; other noncertificated, nonteaching or per diem employees; and teachers employed for the handicapped in Region 7 and on the Wood-Ridge Board of Education pay schedule guide as per resolution of the Moonachie Board of Education.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described

above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Professional personnel shall vote as to whether they wish to be included in a negotiations unit which includes non-professional personnel. Custodians shall vote as to whether they desire to be represented for the purpose of collective negotiations by the Moonachie Teachers Association.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because they were out ill, or on vacation, or temporarily laid off, including those in 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 prior to the date of the election.

Pursuant to N.J.A.C. 19:11-9.6, the Board is directed to file with the undersigned and the Teachers Association, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Teachers Association with statement of service to the undersigned. The undersigned shall not grant an extension of time except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they wish to be represented for the purpose of collective negotiations by the Moonachie Teachers Association, New Jersey Education Association.

The exclusive representative, if any shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: December 8, 1981
Trenton, New Jersey