

D.R. NO. 79-28

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

In the Matter of

GLASSBORO BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-79-100

GLASSBORO TEACHERS ASSOCIATION,
NEW JERSEY EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all secretarial employees employed by the Glassboro Board of Education to ascertain whether they desire to be represented by the Glassboro Education Association for purpose of collective negotiations. An election is also directed among the teachers and other professional employees already represented by the Glassboro Education Association to determine whether or not they desire to be included in a unit with nonprofessional employees.

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Appearances:

For the Public Employer
McGinnis Associates
(William J. McGinnis Jr., SPMC)

For the Petitioner
Greenberg & Mellk, Esqs.
(Arnold M. Mellk, of Counsel)

DECISION AND DIRECTION OF ELECTION

On October 13, 1978, 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 Glassboro Teachers Association, New Jersey Education Association (the "Petitioner") seeking to add secretarial personnel employed by the Glassboro Board of Education (the "Board") to the existing unit of professional employees represented by the Petitioner. 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.

All parties have been advised of their obligations under N.J.A.C. 19:11-2.6(a), and have been afforded an opportunity thereunder to present documentary and other evidence as well as statements of position, relating to the Petition.

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

1. The disposition of this matter is properly based upon 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 Glassboro Board of Education is a public employer within the meaning of the New Jersey Edmployer-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 this Petition, and is subject to the provisions of the Act.

3. The Glassboro Teachers Association, is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Petitioner seeks to add nonprofessional employees employed by the Board, specifically, secretarial employees to an existing unit of professional employees which it represents. ^{1/}

1/ The Petitioner currently represents teachers on the salary salary guide, librarians, guidance counselors, nurses, social workers, speech correctionists, learning disability specialists, reading specialists and project teachers. See recognition clause, existing Agreement.

5. The Board's custodial and cafeteria employees are currently unorganized. Secretarial employees are currently represented in a separate negotiations unit. ^{2/} Bus drivers are currently represented in a separate unit.

6. The Petitioner agrees to a secret ballot election among employees in the petitioned-for unit, including a professional option election, if necessary. See N.J.S.A. 34:13A-6(d).

7. The Board does not consent to a secret ballot election, contending that a unit consisting of professional and nonprofessional employees is inappropriate in that there is no community of interest between teachers and nonprofessional school secretaries. The Board further contends that it is in the midst of negotiations with the teachers and that the addition of secretaries to the professional unit at this time would be disruptive of the current negotiations.

8. On March 1, 1979, the undersigned advised the parties that the evidence proffered to date did not appear to place in dispute any substantial and material factual issues and that the unit sought by the Petitioner is a prima facie appropriate unit in light of existing Commission policy concerning unit definition for employees of a school district. The undersigned further analyzed the position advanced by the Board in opposition to the petitioned-for unit.

With respect to the claim that a community of interest does not exist between professional and nonprofessional school

^{2/} The incumbent organization representing the secretarial employees has not sought intervention in this proceeding.

employees, including teachers and secretarial employees, the undersigned advised that the Commission has consistently held that a community of interest exists between these professional and nonprofessional school employees. The Commission has generally concluded that a community of interest arises among employees in a school district because employees in a school district have a common employer, work in the same buildings, and have similar goals and purposes, i.e., the education and betterment of students. The undersigned notes, in passing, that the Act itself, at N.J.S.A. 34:13A-6(d) envisions the appropriateness of unit containing professional and nonprofessional employees. ^{3/} When making unit determinations the Commission has sought to avoid fragmentation of negotiations units and has favored the formation of units along broad-based, functional lines rather than by title or by distinct occupational groupings. ^{4/}

Further, the Commission does not recognize the claimed existence of a "negotiations" bar to the filing of a Petition

^{3/} See, for example, In re West Milford Township Board of Education, P.E.R.C. No. 56 (1971), wherein the Commission found appropriate a petition seeking to add nonprofessional clerical employees and building aides to a unit of professional employees: teachers, nurses and instructional aides. See also In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971), with respect to the appropriateness of a unit of professional and nonprofessional employees. The Commission determined that the existing unit of mixed personnel was not prima facie inappropriate.

^{4/} In re State of New Jersey v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974), the Supreme Court endorsed the Commission's adoption of the concept of broad-based, functional negotiations units.

which is otherwise timely filed pursuant to N.J.A.C. 19:11-2.8. ^{5/}
See further, In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), regarding the timeliness of this type of Petition.

The undersigned advised the Petitioner and the Board of his intention to direct an election based on the administrative investigation unless documentary and other evidence raising substantial and material disputed factual issues and necessitating the conduct of an evidentiary hearing was provided within seven days. By letter dated March 7, 1979, the Board raised a third objection to the conduct of an election, claiming that since separate negotiations, mediation and fact-finding are already being conducted between the Board and the existing secretarial unit, the conduct of an election at this time would be disruptive of the employer-employee association relationship. The Board contends that if an election is ordered at this time the negotiations process itself will be disrupted, and if a new majority representative is selected by the secretaries, both parties will lose the benefit of the negotiations and mediation agreements already achieved in the secretarial negotiations to date.

Essentially, the question posed by the Board's position is whether the entire negotiations process should be insulated

^{5/} The Commission has specifically rejected this claim in In re Township of Franklin, P.E.R.C. No. 64 (1971). See also, City of Atlantic City, D.R. No. 78-31, 4 NJPER 56 (¶ 4027 1977); In re County of Passaic, D.R. No. 77-7, 3 NJPER 22 (1976).

from a Petition for Certification filed by employees. The Commission has not adopted a negotiations or mediation bar for the reasons advanced in Franklin Township, supra, n.5.

It surely cannot be reasonably argued that after the expiration of an agreement, the parties should be protected for however long it takes them to reach a successor agreement on the theory that otherwise one or both parties will be reluctant to "take a chance" and advance to final positions. Such a proposition could negate all opportunity for employees to seek a change in their representative. To deny an otherwise timely petition on this ground would void the legitimate aspirations of employees who have petitioned for representation of their choice in the absence of legal or procedural restrictions on this right.

For the same reasons the undersigned must reject any claim of a "fact-finding" bar.

Accordingly, the additional proffered argument advanced by the Board on March 7, 1979 fails to place in dispute any substantial and material disputed factual issues which may more appropriately be resolved after a hearing. The Petition is timely filed and a valid question concerning representation exists in a prima facie appropriate collective negotiations unit. Therefore, the undersigned shall direct an election based upon the administrative investigation.

The undersigned finds that the appropriate unit for collective negotiations is: All secretarial personnel and all teachers on the salary guide, librarians, guidance counselors,

nurses, social workers, speech correctionists, learning disability specialists, reading specialists and project teachers employed by the Glassboro Board of Education, but excluding managerial executives, confidential employees, employees currently represented in other units, police employees, craft employees and supervisors within the meaning of the Act.

The undersigned finds, therefore, that secretarial personnel may properly be included in the existing unit of professional employees, subject to two conditions to be met in the election directed herein. For purposes of this election two voting groups are established:

Voting Group I

All secretarial employees employed by the employer, excluding professional employees, police, craft employees, confidential employees, managerial executives, and supervisors within the meaning of the Act.

Voting Group II

All professional employees currently represented by the Petitioner and employed by the employer, excluding secretarial employees, police, craft employees, confidential employees, managerial executives and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

A secret ballot election shall be conducted among the eligible employees in the two groups described above. Those eligible to vote are employees in the groups above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, temporarily laid off or on military leave. 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. Those in Group I shall vote on the question of whether they desire to be represented for the purpose of collective negotiations by the Glassboro Teachers Association. If a majority of those voting vote in the affirmative, they shall have thereby indicated their desire to be included in the existing unit (i.e., Group II). That inclusion, however, is subject to the requirements of the Act that professional employees be permitted the opportunity to vote on the question of inclusion with nonprofessionals. Therefore, those in Group II shall vote on the question of whether or not they wish to be included with nonprofessional employees for the purpose of collective negotiations. If a majority of those voting in each group vote affirmatively on the respective questions, a single certification shall issue combining the classifications in Groups I and II in one unit.

If Group I votes for representation, but Group II votes against inclusion, a separate certification of representative shall issue covering Group I.

The election shall be conducted no later than thirty (30) days from the date set forth below and shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: April 4, 1979
Trenton, New Jersey