

D.R. NO. 84-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

MONTVILLE TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

MONTVILLE TOWNSHIP BOARD OF
EDUCATION CENTRAL OFFICE STAFF,

DOCKET NO. RO-84-21

Petitioner,

-and-

MONTVILLE TOWNSHIP EDUCATIONAL
SECRETARIES ASSOCIATION,

Intervenor.

SYNOPSIS

The Administrator of Representation Proceedings determines that the Montville Township Board of Education Central Office Staff has failed to allege facts sufficient to support its claim that central office clericals have not received responsible representation from the Montville Township Educational Secretaries Association, the current representative of all clericals employed by the Board. The Administrator finds that the allegations of the Petitioner do not support a claim of improper representation.

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Appearances:

For the Public Employer
Rand & Algeier, attorneys
(Robert M. Tosti of counsel)

For the Petitioner
Gloria Fidler, Spokesperson

For the Intervenor
Joseph Vender, UniServ Representative, NJEA

DECISION

On September 20, 1983, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission ("Commission") by the Montville Township Board of Education Central Office Staff ("Petitioner" or "Central Office Staff"). The Central Office Staff seeks to represent a unit

comprised of all central office staff clericals employed by the Montville Township Board of Education ("Board").

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

The Board opposes the Petition. The Board argues that no specific and independent community of interest exists with regard to the employees herein, and were the Petitioner to prevail, undue fragmentation of an existing secretarial unit consisting of all secretaries employed by the Board would result.

The Montville Township Educational Secretaries Association ("Secretaries Association" or "MTESA"), is the current exclusive representative of all secretaries, including the petitioned-for central office clerical staff. The Secretaries Association, too, opposes the Petition and maintains that it has provided responsible representation for the affected employees.

Based upon the administrative investigation, 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. Montville Township 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 the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. The Montville Township Board of Education Central Office Staff and Montville Township Educational Secretaries Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Central Office Staff seeks to represent all central office clerical employees employed by the Board. The petitioned-for employees are currently represented by the Secretaries Association in a collective negotiations unit of all contracted clerical employees employed by the Board.

5. The Central Office Staff seeks to enter into an Agreement for Consent Election for the petitioned-for unit, but the Board and the Secretaries Association object to the severance of employees from the existing unit. Therefore, the Board and the Secretaries Association decline to enter into an election, a dispute exists, and the matter is properly before the undersigned for determination.

6. The Commission, in defining appropriate unit structure, favors the formation of units along broad-based functional lines and, in its determinations, has sought to avoid fragmentation. See In re State of New Jersey, P.E.R.C. No. 68 (1971), aff'd 64

N.J. 231 (1974). The existing unit, consisting of all clericals employed by the Board, is an appropriate collective negotiations unit. Under Commission policy, an appropriate existing unit should not be severed except for compelling reasons. Accordingly, the Commission has established standards for the severance of employees from an appropriate collective negotiations unit. In In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971), the Commission stated:

The underlying question 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 relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to 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.

7. By letter dated October 21, 1983, the Petitioner set forth the following allegations in support of its claim that the Secretaries Association has not provided responsible representation to central office staff during collective negotiations with the Board:

"(1) Two additional sick days clause was overruled by the school secretaries, who felt that the present ten days plus vacation time was sufficient.

(2) A request by Central Office Staff to negotiate for the Jewish holidays was also rejected by the school secretaries as they do not work those days school is not in session.

(3) Attendance at the NJEA convention was not felt to be a negotiable item as school secretaries again do not work on those days and were free to attend the convention if they desired.

(4) In the present contract school secretaries may leave the building within a half-hour of school being dismissed due to inclement weather.

(5) The negotiating team refused to negotiate for an additional stipend for Central Office Staff, who were now required to utilize the newly installed computer in the central office on a daily basis."

8. The Secretaries Association replied to the Central Office Staff's allegations in detail by letter dated October 31, 1983. The Secretaries Association disputed certain of the above allegations and explained in greater dimension the factual surroundings concerning non-disputed allegations. The Central Office Staff subsequently submitted a responsive statement by letter dated April 3, 1984.

Based upon the investigation, the undersigned concludes that there are no disputed factual issues of material consequence in this matter and finds as follows in order of each allegation:

(A) All existing unit members receive 10 rather than 12 sick days due to a concession made by a negotiating team for the MTESA several years ago reducing sick days from 12 to 10. The central office staff had representatives on that negotiating team.

The Association has made several unsuccessful attempts to increase the number of sick days since the concession was made.

(B) Jewish holidays are workdays for all secretaries.

(C) School secretaries do not work during the NJEA convention period and are on a non-paid status. Central Office Staff work during this period. Central Office Personnel may request a professional day(s) to attend the NJEA convention. All unit members may request up to \$50 expense reimbursement for convention attendance under Article XII of the negotiations agreement.

(D) The issue of early leave has held up execution of a memorandum of agreement between the Board and the MTEESA. A dispute exists as to the wording of the relevant provision. The Association has refused to sign the agreement unless the provision covers all unit members. However, Central office staff fear that certain clerical personnel would not be covered.

(E) The negotiating team has refused to negotiate an additional stipend for computer operation. This is due to the fact that the negotiations team was not informed of the negotiations request until it had already placed all its proposals on the table during negotiations with the Board.

The undersigned finds also from a review of the three letters that a dispute exists as to whether Central Office Staff were solicited for upcoming negotiation proposals. However, it is undisputed that Central Office Staff were invited to serve on the negotiating team.

Based upon the foregoing the undersigned concludes that the Central Office Staff has not proffered evidence which would indicate that the existing collective negotiations relationship is unstable or that the incumbent organization has not provided responsible representation. The Petitioner does attest to dissatisfaction of some employees with the results of prior negotiating efforts by the incumbent majority representative, but the factual submissions do not provide any evidence of actions by the incumbent which would constitute less than responsible representation. Although certain employees of the Central Office Staff are not content with their inclusion in the unit of employees currently represented by the Secretaries Association, and believe they can achieve better representation in a unit limited to this sub-group, these factors do not establish a basis to support a claim that employees should be severed from a facially appropriate collective negotiations unit.

The Petitioner has alleged unequal treatment involving two conditions of employment. The investigation, however, reveals that as to one issue, Jewish Holidays, the allegation is in error. As to the early leave inclement weather issue, the MTSEA, in pressing a proposal to extend this benefit to some or all central office staff, has held up contract ratification.

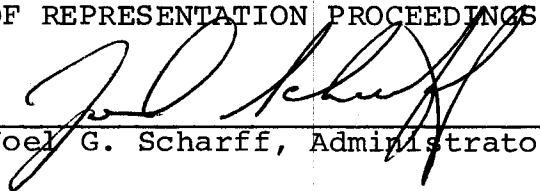
Petitioner also alleges that the MTSEA has not pressed for three additional benefits. One proposal appears not to have been advanced before the preparation and submission of the MTSEA

negotiations proposals. Another involves rejection of a proposal to increase sick days for all unit employees. The final issue apparently involves the Central Staff's desire to be accorded non-paid leave status during the NJEA convention period.

This last issue appears to be the only issue for which the Secretaries Association has not sought to remedy a perceived inequality of benefits among clerical and secretarial staff. Otherwise, MTSEA has sought, during its current negotiations, to equalize or at least minimize differences in the early release benefit, apparently to the point of friction with the Board.

The undersigned concludes, based upon the totality of the circumstances reviewed above, that Petitioner's allegations do not support a claim of irresponsible representation. The Petition is therefore dismissed.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS



Joel G. Scharff, Administrator

DATED: June 1, 1984
Trenton, New Jersey