

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

In the Matter of

SPRING LAKE HEIGHTS BOARD
OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-78-87

SPRING LAKE HEIGHTS TEACHERS
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all secretaries, custodians, cafeteria employees and aides employed by the Spring Lake Heights Board of Education to ascertain whether they desire to be represented by the Spring Lake Heights Teachers Association for purposes of collective negotiations. An election is also directed among the teachers already represented by the Spring Lake Heights Teachers Association to determine whether or not they desire to be included in a unit with nonprofessional employees. The Director further determines that the Board's assertion that the secretaries are confidential employees may be resolved after the election and that the secretaries may vote subject to challenge by the Board.

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Appearances:

For the Public Employer
John Dempsey, Esq.

For the Petitioner
John A. Molloy, Representative

DECISION AND DIRECTION OF ELECTION

On October 6, 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 Spring Lake Heights Teachers Association (the "Petitioner") seeking to add secretaries, custodians, cafeteria employees and aides employed by the Spring Lake Heights Board of Education (the "Board") to the existing unit of professional employees represented by the Petitioner. The undersigned has caused an investigation to be conducted into the matters

and allegations involved 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 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 a 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 Spring Lake Heights 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 this Petition and is subject to the provisions of the Act.

3. The Spring Lake Heights Teachers Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Petitioner is seeking to add currently unrepresented nonprofessional employees employed by the Board, specifically

secretaries, custodians, cafeteria employees and aides to the existing unit of professional employees. ^{1/}

5. 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).

6. The Board does not consent to a secret ballot election, contending that a unit consisting of professional and non-professional employees, and full-time and part-time employees is inappropriate. In addition, the Board asserts that two of the secretaries are confidential employees and must therefore be excluded from the proposed unit.

7. On January 25, 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 positions 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 employees and also between part-time and full-time school personnel, the undersigned advised that the Commission has consistently held that a community of interest exists between these professional and

1/ The Petitioner currently represents teaching personnel.

nonprofessional school employees and that the Commission has found that regular part-time nonprofessional school employees share a community of interest with other full-time school employees. The Commission has generally concluded that a community of interest arises among employees in a school district because 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. The undersigned notes, in passing, that the Act itself, at N.J.S.A. 34:13A-6(d), envisions the appropriateness of units containing professional and nonprofessional employees. ^{2/} 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. ^{3/}

With respect to the Board's desire to resolve the alleged confidential status of two secretarial employees before any election

^{2/} See 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. With regard to the appropriateness of including full-time and regular part-time employees in the same unit, see West Milford, supra, and New Jersey College of Medicine and Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977), n.8.

^{3/} In 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.

proceeding, the undersigned advised that, in accordance with In re Township of North Brunswick, D.R. No. 78-24, 3 NJPER 260 (1977), a substantial factual issue had not arisen which would warrant the delay of an election by the conduct of a pre-election evidentiary hearing.

The undersigned advised the Petitioner and the Board of his intention to direct an election based upon the 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.

8. On February 2, 1979, the Board filed a reply to the undersigned's letter. The Board, in its letter does not dispute the analysis of the community of interest issues presented by the undersigned. However, the Board does voice continued objection to the direction of an election with the status of two alleged confidential employees remaining unresolved. The Board states that there is no dispute between the parties as to the confidential status of the secretarial employees but rather that the Petitioner seeks "that the confidential occupations of one be shifted to the other so that only one would be excluded."

Whatever the efforts of the parties to resolve this issue at a Commission conducted informal conference, the record does not reveal that the Petitioner has either formally amended its Petition to exclude the secretaries from the proposed collective negotiations unit or that both the Board and the Petitioner have agreed to resolve this issue in any manner. The Petition which is before the

undersigned continues to propose the inclusion of all secretaries in the proposed unit and the Board continues to object to a secret ballot election among employees in the proposed unit. Consistent with the decision in North Brunswick, supra, the undersigned finds that the dispute herein over two employees in a voting unit consisting of eleven employees is not a factual issue of such substantial magnitude as to warrant a delay in an election. The Board may assert a challenge to the voting eligibility of the disputed employees at an election. These challenges, if determinative of the results of the election, will be resolved in accordance with the Commission's usual post-election procedures. If the challenges are not determinative, the status of these employees may be resolved by a Clarification of Unit Petition filed by either party in accordance with the Commission's rules at any time thereafter, assuming that a Certification of Representative issues. The undersigned fails to see how a post-election proceeding or a post-certification proceeding imposes on the Board any more "burden" than the "burden" borne by the Board in a pre-election proceeding.

Therefore, for the above reasons the undersigned determines that a unit consisting of secretaries, custodial employees, cafeteria employees, aides, and professional personnel currently represented by the Petitioner excluding managerial executives, confidential employees, ^{4/} police, craft employees and supervisors

^{4/} Pursuant to the Act, and to the unit described herein, any secretarial employee, or for that matter any other employee, who is a confidential employee is excluded from the proposed unit.

within the meaning of the Act is a prima facie appropriate unit, a petition has been timely filed, and a valid question concerning representation exists. A secret ballot election should be conducted to ascertain whether the currently unrepresented nonprofessional employees, who the Petitioner seeks to add to its unit, desire or do not desire to be represented by the Petitioner.

There existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. The undersigned finds that the appropriate unit for collective negotiations is all secretaries, custodians, cafeteria employees, aides, and teachers ^{5/} employed by the Spring Lake Heights Board of Education, but excluding managerial executives, confidential employees, craft employees, police and supervisors within the meaning of the Act.

The undersigned finds, therefore, that secretaries, custodians, cafeteria employees, and aides (excluding confidential employees) may properly be included in the existing unit of teachers, subject to two conditions to be met in the election herein. For purposes of this election two voting groups are established:

5/ The undersigned intends that the term "teachers" as described above, be consistent with that term as contained in the recognition clause of the agreement between the Board and the Petitioner covering such employees, effective July 1977 through June 1979.

Voting Group I

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

Voting Group II

All teachers employed by the employer, excluding secretaries, custodians, cafeteria employees, aides, police, craft, and confidential employees, managerial executives, and supervisors within the meaning of the Act.

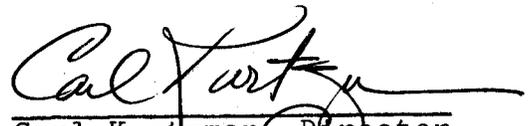
DIRECTION OF ELECTION

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 Spring Lake Heights 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 purposes 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.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: March 1, 1979
Trenton, New Jersey