

D.R. NO. 88-4

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

In the Matter of

BOROUGH OF BLOOMINGDALE,

Public Employer,

-and-

Docket No. RO-87-59

LOCAL 930, N.U.P.E.,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among certain staff employees and the school crossing guards in the Borough of Bloomingdale to determine whether they desire to be represented in collective negotiations by Local 930. N.U.P.E.

The employee union filed an amended petition seeking to represent the Library Board employees and the Board of Health employees but the Director determined pursuant to Grosso v. City of Paterson, 55 N.J. Super 164 (Ch. Div. 1959), that these employers are autonomous and the affiliated employees are not appropriate for inclusion in the petitioned-for unit of clerical employees and school crossing guards.

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Appearances:

For the Public Employer
Segreto and Segreto, Esqs.
(James V. Segreto, of counsel)

For the Petitioner
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce D. Leder, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 3, 1986, Local 930, National Union of Public Employees ("Local 930") filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"), seeking to represent all clerical employees and all crossing guards employed by the Borough of Bloomingdale ("Borough"). On January 16, 1987, Local 930 filed an amendment to its petition seeking to add library employees to the originally petitioned-for unit. The petitioned-for unit is unrepresented.

The Borough opposed the petitions, contending that the petitioned-for unit is inappropriate. The Borough argued that the unit contained titles which did not share a community of interest with Borough clerical employees and titles which the Borough claimed were confidential. The Borough also maintained that several of the petitioned-for employees were not employees of the Borough of Bloomingdale.

We conducted an administrative investigation in this matter to determine the facts. N.J.A.C. 19:11-2.2. In correspondence dated July 13, 1987, we advised the parties that a valid question concerning representation exists and that on the basis of the information before us, we are inclined to direct the conduct of a secret ballot election among the petitioned-for employees. We provided the parties with an opportunity to submit relevant documentary materials and additional argument in support of their respective positions regarding the conduct of an election in this matter. Neither party responded to our July 13, 1987 correspondence.

The disposition of the instant petition is properly based upon our administrative investigation, as we have not found any substantial and material factual disputes which may be more appropriately resolved through an evidentiary hearing. The following facts appear:

The Borough of Bloomingdale 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") and is subject to its provisions.

Local 930, National Union of Public Employees is an employee representative within the meaning of the Act and is subject to its provisions.

Local 930 seeks to represent a unit of clerical/white collar employees of the Borough of Bloomingdale comprised as follows: clerks in the Tax Collector's Office, clerks in the Assessor's Office, the payroll clerk, clerk in the Borough Office, clerk in the Treasurer's Office, Police Department secretary, secretary to the Borough Administrator, crossing guards, police dispatchers, clerical employees at the Board of Health, and clerical employees at the Library. None of the petitioned-for employees are included in a negotiations unit.

The employer opposes the petition because it contends that the unit petitioned for includes titles which are inappropriate for inclusion in a clerical/white collar unit. The following positions are in dispute:

Secretary to the Borough Administrator (Kraemer) -- The Borough claims that the secretary to the Borough Administrator does work of a confidential nature for the Borough Administrator, who is the chief negotiations representative of the Borough. Local 930 claims that this employee does not perform confidential work and further notes that she works for the Borough Administrator for only part of the time that she is employed by the Borough.

N.J.S.A. 34:13A-3(g) defines confidential employee as:

...employees whose functional responsibilities or knowledge in connection with the issues involved

in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985) [dism'd App. Div. Dkt. No. A-1375-85T1] the Commission stated that it has strictly construed the term confidential employee. The Commission stated:

We scrutinize the facts of each case to find for whom each employee works, what he does and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit.
State of New Jersey, at 510.

In the instant matter, while the Borough has claimed that the secretary to the Borough Administrator performs confidential functions, it has made these claims in a general way. Local 930 denied that the secretary to the Borough Administrator performs confidential functions, in an equally general way. The record fails to establish any specific example which demonstrates that the employee in question has access to or knowledge of confidential labor relations materials. Accordingly, inasmuch as there is no evidence in this record to support the employer's contention that the secretary to the Borough Administrator is a confidential employee within the meaning of the Act, we are unable to conclude that this employee is confidential and, therefore, shall include this position in the petitioned-for unit. See Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Dispatchers -- The Borough argues that all of the employees who perform dispatching functions on a part-time basis are not appropriate members of the unit. The Borough further argues that because the full-time civilian dispatcher works for the police department, she does not share a community of interest with the other clerical employees and, therefore, is not appropriately included in this unit. Local 930 argues that all full-time and part-time civilian dispatchers should be included in its petitioned-for unit.

There are five employees who perform dispatching functions. Three of these employees are police officers. Another of these employees is a secretary in the Borough who performs dispatching functions on an intermittent basis. One civilian employee performs dispatching functions on a full-time basis.

The full-time civilian dispatcher works 40 hours per week, Wednesday through Sunday, 4 p.m. to 12 a.m. Dispatchers perform reception work in the police department; they take calls and dispatch cars. All dispatchers are supervised by the police chief.

The police officers who perform dispatching work may not be included in the petitioned-for clerical unit, inasmuch as the Act prohibits the inclusion of police employees in units with non-police employees. N.J.S.A. 34:13A-5.3. The secretary who performs dispatching work on a part-time basis is already included in the unit on the basis of her clerical title.

Commission policy favors the formation of broad-based, employer-wide units. State of New Jersey and Prof. Ass'n of New Jersey, 64 N.J. 231 (1974). Although certain differences exist between the terms and conditions of employment of dispatchers as compared with other clerical/white collar employees of the Borough, nevertheless, we find that a strong community of interest exists between dispatchers and the other petitioned-for employees. The dispatchers and clerical employees share the same employer, perform white-collar type tasks, contribute toward the same governmental mission, and are part of a relatively small work force. The fact that the dispatchers' terms and conditions of employment are not completely homogenous with those of the clerical employees is not sufficient to overcome the strong Commission policy favoring the formation of broad-based units. Accordingly, based upon the record in this matter, we conclude that the dispatcher is appropriate for inclusion in the petitioned-for unit. Winslow Township, D.R. No. 87-24, 13 NJPER 208 (¶18087 1987).

Crossing Guards -- The Borough states that crossing guards are part-time employees with statutory, one-year appointments to their positions. The Borough contends that the crossing guards do not share a community of interest with clerical employees and therefore are not appropriate for inclusion in the petitioned-for unit. Local 930 asserts that crossing guards work on a regular basis -- that is, they have a fixed schedule by which they work, week after week. Local 930 argues that the crossing guards share a community of interest with the other members of the clerical unit.

The crossing guards' work year runs from September through June. They work five days per week, three-plus hours per day -- one hour during the morning, one hour at noon and one hour during the afternoon. They work outdoors, on streets at various locations around the Borough. The crossing guards are supervised by the police chief.

The part-time status of the crossing guards will not bar their inclusion in the petitioned-for unit. In Borough of Avalon, H.E. No. 79-30, 5 NJPER 71 (¶10044 1979), specifically adopted by the Commission in Borough of Seaside Park, P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980), the Hearing Examiner noted the factors which the National Labor Relations Board relies upon to determine employment regularity and continuity:

...when the employees are drawn from the same labor force each season (Kelly Brothers Nurseries Inc., 140 NLRB 82, 51 LRRM 1572 (1962)), where former employees are given preference in rehiring (Aspen Skiing Corp., 143 NLRB 707, 53 LRRM 1397 (1963)), and where there is a relatively stabilized demand for, and dependence on, such employees by the employer and, likewise, a reliance on such employment by a substantial number of employees who return each year (California Vegetable Concentrates, Inc., 137 NLRB 1779, 50 LRRM 1510 (1962)).

Avalon at p. 74.

In City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶13247 1982), we found that a unit comprised of crossing guards is appropriate for collective negotiations purposes. In that decision, the Director stated:

As several of the above cases indicate, the Commission has found that part-time personnel who enjoy a regularity and continuity of employment are public employees. The regular part-time employee has been distinguished from the casual employee, whose work is sporadic and occasional. See, in particular, In re Clearview Reg. Bd. of Ed., supra, and In re Bridgewater-Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978).

The school crossing guards involved in this matter work a regular, part-time daily schedule of 4 1/2 hours per day. Assuming satisfactory performance, they can expect continuous employment throughout the school year. Their employment is neither sporadic, nor occasional. The undersigned concludes, therefore, that the instant crossing guards are regular part-time personnel and are public employees within the meaning of the Act.

City of Rahway, at 539.

Again, while certain differences exist between the conditions of employment applicable to crossing guards as compared with other employees in the petitioned-for unit, nevertheless, we find that strong community of interest exists between the guards and other unit employees. In West Milford Bd. of Ed., P.E.R.C. No. 56 (1971), the Commission, in affirming the Hearing Officer, found that part-time, hourly employees were appropriately included in a unit with full-time employees. In Clearview Reg. Schl. Dist. Bd. of Ed., E.D. No. 76-24, 2 NJPER 63 (1976), the Executive Director found appropriate a unit of full-time and regular part-time school bus drivers. See Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Assn., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), affm'd App. Div. Dkt. No. A-4503-83T6 (4/9/85) and Fairview Bd. of Ed., D.R. No. 80-7, 5 NJPER 427 (¶10222 1979).

Accordingly, the school crossing guards are appropriate for inclusion in the petitioned-for unit.

Employees of the Bloomingdale Board of Health and Bloomingdale Library -- The Borough contends that both the Board of Health and the Library Board are separate, autonomous employers. The Borough states that the employees of those Boards are not controlled by the Borough. The Borough notes that the Library and Health Boards are statutorily empowered to adopt rules and regulations governing the compensation and working conditions of their employees. The Borough states that it has no authority concerning the hiring of these employees or the fixing of compensation or other terms and conditions of employment of Library and Health employees. Library and Board of Health employees are hired by those Boards and each of the Boards controls their employees' compensation and working conditions. Inasmuch as the Borough contends that Library and Health employees are not employees of the Borough, the Borough argues that these employees are not appropriate for inclusion in the petitioned-for unit. In support of its position, the Borough cites N.J.S.A. 26:3-19, Grosso v. City of Paterson, 55 N.J. Super 164 (Ch. Div. 1959); N.J.S.A. 40:54-12, F.O. NJ Attorney General No. 10, 1959; Board of Trustees of Public Library of City of Union City v. City of Union City, 112 N.J. Super 484 (Ch. Div. 1970). Local 930 did not contest the Borough's assertions concerning this issue. Rather, they argued that the employees of the Library and Health Boards should be included in the Borough unit in order to avoid unit proliferation.

The Commission has indicated that in resolving disputes concerning who is the employer of certain public employees, it has focused on identifying that authority which exercises substantial control over labor relations and the terms and conditions of employment of the affected employees. Such factors as control of hiring, direction of work, evaluations, promotions, discipline, work schedules, vacations, wages and benefits of employees and the source(s) of the funding for employees' compensation and benefits are considered in determining who is the employer of public employees. Township of Neptune, D.R. No. 87-26, 13 NJPER 386 (¶18155 1987); Bergen Cty. Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978), req. for rev. P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 172 N.J. Super 363 (App. Div. 1980) [Dkt. No. A-4785-77; pet. for certif. dism'd by Ct. 5/2/80]; and Ocean Cty. Prosecutor, D.R. No. 82-29, 8 NJPER 60 (¶13024 1981).

In the instant matter, it appears that the Board of Health and the Library Board each exercises substantial control over labor relations and the terms and conditions of employment of their employees. The statutory and case authority cited by the Borough provide that the Health and Library Boards are empowered to set the conditions of employment for their respective employees. Terms of hire, salaries and various other working conditions have been set by the Health and Library Boards, not the Borough.

Based upon the materials provided on this issue, we find that the Bloomingdale Board of Health and the Bloomingdale Library

Board of Trustees are separate employers from the Borough of Bloomingdale. Accordingly, the employees of those Boards may not be included in the petitioned-for unit of Borough employees.

Pursuant to N.J.A.C. 19:11-2.6 we direct that an election be conducted in a unit comprised as follows: Included -- All clerical employees and school crossing guards employed by the Borough of Bloomingdale, including clerk-Tax Collector's Office; clerk-Tax Collector's Office/Assessor's Office; secretary-Police Department/Finance Department; payroll clerk; clerk-Borough Office; clerk-Treasurer's Office; clerk-Water Department; dispatchers; and secretary to the Borough Administrator. Excluded -- All blue collar employees, confidential employees, managerial executives, professional employees, craft employees, police employees, firefighters and supervisors within the meaning of the Act.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date of this decision, including employees who did not work during that period because they were out ill, on vacation, temporarily laid off, or in military service. 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 are ineligible to vote.

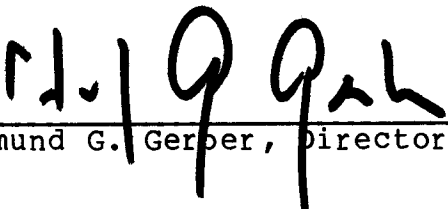
We direct the Borough to simultaneously submit to us and to the Petitioner, an eligibility list consisting of an alphabetical listing of the names of all eligible voters, together with their

last known mailing addresses and job titles, pursuant to N.J.A.C. 19:11-9.6. The eligibility list must be received by the Commission no later than ten (10) days prior to the date of the election. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances. The Borough shall also file with us a proof of service upon the Petitioner of the eligibility list.

Those eligible to vote shall vote on whether they wish to be represented for the purpose of collective negotiations by Local 930, National Union of Public Employees, or no employee organization.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the Commission's rules within 30 days of the date of this decision.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: August 14, 1987
Trenton, New Jersey