

D.R. NO. 87-21
D.U.P. NO. 87-12

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

In the Matter of

CALDWELL-WEST CALDWELL
BOARD OF EDUCATION

Public Employer, Respondent,

-and-

Docket No. RO-87-84 and
CE-87-11

CALDWELL-WEST CALDWELL
EDUCATION ASSOCIATION

Petitioner, Charging Party.

SYNOPSIS

The Director of Unfair Practices and Representation orders an election to determine whether an athletic trainer employed by the Caldwell-West Caldwell Board of Education wishes to be represented in collective negotiations in a unit of certificated personnel represented by the Caldwell-West Caldwell Education Association. The Director also dismissed an unfair practice charge filed by the Board alleging that the Association violated subsection 5.4(b)(3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it refused to negotiate the proposed incorporation of the athletic trainer into the unit of certificated personnel. The Director determined that the Board had not alleged sufficient facts to support the allegation.

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Appearances:

For the Respondent,
Ronald Skopak, Board Secretary

For the Charging Party,
Carol Rosenfeld, NJEA UniServ Rep.

REFUSAL TO ISSUE COMPLAINT
AND DECISION

On October 15, 1986, the Caldwell-West Caldwell Education Association ("Association") filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to add the athletic trainer to the existing unit of teachers, nurses, disability consultants and others employed by the Caldwell-West Caldwell Board of Education ("Board").

On November 6, 1986, the Board filed an Unfair Practice Charge with the Commission, alleging that the Association had engaged in unfair practices, specifically subsections 5.4(b)(3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it refused to place "all aspects of the proposed incorporation of the athletic trainer" on the bargaining table. The Board also alleged that the Association's filing of grievances in matters unrelated to the petitions and which were before the Commission for scope of negotiations determinations, violated N.J.S.A. 34:13A-2 of the Act.^{2/}

There are no substantial and material factual issues presented herein which would warrant the convening of an evidentiary hearing. Accordingly, this determination is properly based upon the administrative investigation conducted in this matter. (N.J.A.C. 19:11-2.6)

On November 10, 1986, a Commission staff agent conducted an informal conference at which the Association and the Board presented

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (5) Violating any of the rules and regulations established by the commission."

^{2/} This subsection of the Act is a declaration of policy. It cannot properly be considered an unfair practice charge which is set forth at N.J.S.A. 34:13A-5.4. Accordingly, the Director dismisses this portion of the Board's charge.

their respective positions. The investigation revealed the following:

1. Caldwell-West Caldwell Board of Education is a public employer within the meaning of the Act and employs the employees who are the subject of these matters.

2. Caldwell-West Caldwell Education Association is an employee representative within the meaning of the Act and is the majority representative of a collective negotiations unit composed of certificated personnel, including teachers, nurses, learning disability consultants and others.^{3/} The current collective negotiations agreement executed by the Board and the Association runs from July 1, 1985 to June 30, 1987.

3. The Board created the athletic trainer position in or around 1981. Originally a part-time salaried position, the Board in August 1985 upgraded the athletic trainer to 10-month, full time salaried position. The trainer is sometimes required to work on Saturdays and during summers. The trainer advises school athletes in physical training programs and provides therapy to injured athletes.

3/ Also included in the negotiations clause of the current collective negotiations agreement are psychologists, guidance counselors, librarians, social workers, speech therapists, supplemental teachers employed one-half day or longer and coordinators of elementary art including cooperative education.

4. The Board does not dispute that the athletic trainer position should be included in the broad-based teachers unit. It argued at the conference and alleged in its unfair practice charge that it wanted to negotiate with the Association on or about October 9, 1986, the "aspects of the proposed incorporation" of the title into the unit.^{4/}

5. On January 14, 1987, the Association filed a Clarification of Unit Petition seeking to include the athletic trainer in the unit.

In Piscataway Twp. Board of Education, P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984), the Commission articulated its authority to decide in disputed cases which unit of employees is appropriate for collective negotiations. Pursuant to N.J.S.A. 34:13A-5.3, the Commission must define the appropriate negotiations unit "with due regard for the community of interest among the employees concerned." Community of interest is, of course, a term of art encompassing a multitude of factors and the importance of any one factor in a particular case depends upon how it interrelates with other factors. In the final analysis, the Commission must weigh the facts of each case, the concerns of the employer, the employees and the public interest in order to decide what unit structure will promote the statutory goals of labor stability and peace.

^{4/} The Board did not file a written response to the Representation Petition filed on October 15, 1986.

Many different types of school district unit structures are appropriate for certification -- some contain teachers alone, some contain one or more groups of supportive staff alone and some contain a mixture of teachers and one or more groups of supportive staff. Piscataway at 295. Generally, employees in a school district have a common employer, work in the same buildings and have similar goals and purposes and thus share a community of interest. Mullica Tp. Board of Education, D.R. No. 82-45, 8 NJPER 207 (¶13087 1982).

The proposed inclusion of the athletic trainer satisfies these criteria. The trainer, like other certificated personnel, works with students at one or more of the schools, is salaried and receives health benefits. Accordingly, we find that the trainer's community of interest with the existing unit of certificated personnel is sufficient for us to direct that the trainer be permitted to vote on whether she wishes to be included in that unit.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission has the authority to prevent anyone from engaging in any unfair practice and may issue a complaint stating the unfair practice charge.^{5/} The Commission has delegated its authority to

^{5/} N.J.S.A. 34:13A-5.4(c) provides: The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof,

issue complaints to the Director of Unfair Practices and has established a standard upon which unfair practice complaints shall issue. The standard provides that complaints shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act.^{6/} The rules also provide that the Director may decline to issue a complaint where appropriate.^{7/} The essence of the Board's charge is that the Association engaged in unfair practices when it filed the Petition for Certification of Public Employee Representative. The Association filed the petition less than one week after the Board requested to negotiate the inclusion of the title into the unit. The Board has alleged no additional facts which would suggest that the Association has refused to negotiate the matter. Furthermore, a party's filing of a representation petition with the Commission cannot be a basis for an unfair practice charge. Finally, no facts alleged by the Board suggest any basis for us to issue a complaint because the Association has filed grievances about matters which were arguably negotiable at the time the charge was filed.

5/ Footnote Continued From Previous Page

shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof.

6/ N.J.A.C. 19:14-2.1.

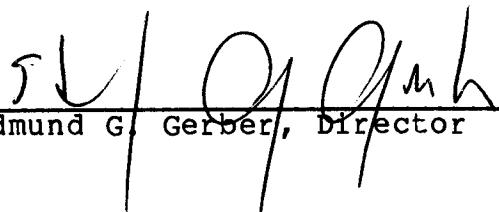
7/ N.J.A.C. 19:14-2.3.

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7.

Accordingly, for all of the reasons set forth above, we find that the Commission complaint issuance standard has not been met and we decline to issue a complaint and notice of hearing in this matter.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION AND
UNFAIR PRACTICE PROCEEDINGS


Edmund G. Gerber, Director

DATED: February 11, 1987
Trenton, New Jersey