D.R. NO. 99-5

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 11,

Docket No. RO-98-130

Petitioner,

-and-

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a petition for certification of public employee representative filed by the International Brotherhood of Teamsters, Local 11. Local 11 seeks to represent secretaries employed by the Middletown Township Board of Education and currently represented in a mixed unit of teachers and secretaries represented by the MTEA, NJEA. The Director finds that the existing relationship is not so unstable or the union's representation so irresponsible as to warrant severance.

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Appearances:

For the Public Employer
Kenney & Gross, attorneys
(Malachi Kenney, of counsel)

For the Petitioner
Cohen, Weiss & Simon, attorneys
(Susan J. Panepento, of counsel)

For the Intervenor
Klausner & Hunter, attorneys
(David Rosenberg, of counsel)

DECISION

On June 16 and June 24, 1998, a Petition and amended Petition for Certification of Public Employee Representative were filed with the Public Employment Relations Commission

("Commission").[1/] The International Brotherhood of Teamsters, Local 11 ("Teamsters" or "Petitioner"), seeks to represent all full-time and part-time secretarial and clerical employees employed by the Middletown Township Board of Education ("Board"). These employees are currently represented by the Middletown Township Education Association, NJEA ("MTEA" or "Association") in a collective negotiations unit which also includes teachers and other certificated staff.

Local 11 asserts that severance of the secretaries is appropriate because the MTEA has failed to responsibly represent secretaries in negotiating their terms and conditions of employment and in the investigation and processing of grievances on their behalf. Local 11 also maintains that the MTEA has failed to responsibly represent secretaries by discouraging their participation in the organization.

The MTEA intervened in this matter based upon its expired collective negotiations agreement which includes the secretaries. N.J.A.C. 19:11-2.7. The MTEA objects to the proposed severance from its existing unit. It requests that the petition be dismissed.

The Board takes a neutral position as to which employee organization should represent the group, but indicates that it will consent to a secret ballot election among the employees in the petitioned-for unit.

1/ The petition was originally filed by the Secretarial Unit of the Middletown Township Education Association and later amended to substitute the Teamsters as Petitioner.

We have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. The parties have submitted position statements and affidavits. On the basis of the administrative investigation, I have found the following facts:

The secretaries have been represented by the MTEA since December 1983 when they voted in a secret ballot election to be added to the professional employee unit.2/ Currently, there are approximately 850 teachers employed by the Board and approximately 79 secretaries. The MTEA and Board are parties to a collective negotiations agreement covering the period of July 1, 1993 through June 30, 1996. The contractual grievance procedure permits individual employees to process grievances from the initial step (principal-immediate superior) through the Board hearing level. The grievance process provides for binding arbitration as a final step and may only be invoked by the Association.

Since this petition was filed, the MTEA and Board have successfully negotiated a successor agreement. The parties ceased negotiations over the secretaries during the pendency of this petition.

Petitioner argues that the MTEA has not provided responsible representation in regard to collective negotiations, because the parties were without a contract for two years during

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2/ The Commission conducted a secret ballot election including a professional option ballot for certificated employees pursuant to N.J.S.A. 34:13A-6(d).

prolonged negotiations for a successor agreement, the MTEA presented seven negotiations proposals of which only three proposals impacted the secretaries, the MTEA did not incorporate all of the secretaries' negotiations proposals, and the secretaries' chosen representative was not allowed to present the secretaries' proposals at a negotiations session.

Petitioner also asserts that the MTEA has failed to provide responsible representation in regard to the investigation and processing of grievances. In support of its position, petitioner contends that the MTEA has filed only two grievances on behalf of the secretaries while processing numerous grievances on behalf of the teachers, that the Association refused to process six other individual and/or group grievances and that in one incident the MTEA representative supported a teacher in a disagreement between the teacher and two secretaries.

Additionally, Local 11 asserts that the MTEA has provided irresponsible representation by discouraging secretaries from participation in the Association. Local 11 also contends that the existing MTEA unit is unstable. Specifically, it contends that the internal structure of the MTEA governing body prevents participation of the secretaries and that MTEA meetings are inconveniently scheduled. Moreover, Petitioner maintains that the secretaries were made to feel uncomfortable at one representation council meeting when attendance was taken and were intimidated at an Association meeting when a roll call strike vote was taken. Furthermore, it

maintains that general statements were made by the MTEA president about the failure of the secretaries to support MTEA negotiations positions and about her desire not to represent the secretaries any longer. Finally, Petitioner states that the MTEA has not replaced the secretarial representative to the MTEA executive committee after her resignation from that position.

After reviewing the arguments presented by the parties, I find that the petitioned-for unit is inappropriate. The Commission has long held that severance from broad-based units may only occur under very limited circumstances. In Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248, 249 (¶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 redefinition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such 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.

In applying the Jefferson standards, we review the parties' entire relationship, not just isolated occurrences. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed., P.E.R.C. No. 87-73, 13 NJPER 63 (¶18026 1986).

The duty referred to in the context of our Act as the duty of fair representation requires that the majority representative not act arbitrarily, discriminatorily, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 64 LRRM 2369 (1967); Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976); N.J.S.A. 34:13A-5.4 (b)(1). In proceeding with this type of analysis, I recognize the difference between the review required in determining whether a statutory violation has occurred in the unfair practice context and the review triggered by the representation question raised in a petition to sever employees from an existing bargaining unit. In the first instance we examine isolated incidents whereas in the latter context we look to the entirety of the parties' relationship. A finding that the incumbent organization has breached its duty of fair representation on one occasion does not necessarily mean that employees must be severed from the existing unit. If this were the case, units would be constantly subject to redefinition and labor instability would inevitably result. Passaic Cty. Tech. & Voc. H.S. Bd. of Ed.

In W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218, 219 (¶56 1971) the Commission stated:

> The measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances.

Accordingly, the issue before me is whether the MTEA has responsibly represented secretaries in contract administration, grievance

processing, and in the negotiation of agreements. I also consider whether the present unit's labor relations are unstable.

CONTRACT ADMINISTRATION/GRIEVANCE PROCESSING

In support of its claim that the MTEA has failed to effectively represent the interests of the secretaries in grievance processing, Local 11 has submitted numerous affidavits asserting that since 1990, the MTEA has filed only two grievances on behalf of the secretaries (reclassification grievance and snow day grievance) while filing numerous grievances on behalf of teachers. Local 11 further states that at representative council meetings, these two grievances were not on the grievance agenda and were only discussed if individual secretaries inquired as to their status.

In Vaca v. Sipes, the Supreme Court held that a union's processing of a grievance (e.g. the refusal to take a grievance to arbitration) would violate the duty of fair representation if the union's conduct towards the employee "is arbitrary, discriminatory or in bad faith."

In OPEIU, Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983), the Commission, relying on Vaca, discussed the appropriate standards for reviewing a union's conduct in investigating, presenting and processing grievances:

> In the specific context of a challenge to a union's representation in processing a grievance, the United States Supreme Court has held: "A breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca, supra at 190. The Courts and this Commission have

> consistently embraced the standards of Vaca in adjudicating such unfair representation claims. See, e.g., Saginario v. Attorney General, 87 N.J. 480 (1981); In re Board of Chosen Freeholders of Middlesex County, P.E.R.C. No. 81-62, 6 NJPER 555 (¶11282 1980), aff'd App. Div. Docket No. A-1455-80 (April 1, 1982), pet. for certif. den. (6/16/82) ("Middlesex County"); New Jersey Turnpike Employees Union Local 194, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979) ("Local 194"); In re AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978). [footnote omitted.]
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> We have also stated that a union should attempt to exercise reasonable care and diligence in investigating, processing and presenting grievances; it should exercise good faith in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlesex Cty.; Local 194. All the circumstances of a particular case, however, must be considered before a determination can be made concerning whether a majority representative has acted in bad faith, discriminatorily, or arbitrarily under Vaca standards. [OPEIU Local 153 at 13.]

The duty of fair representation does not require a union to press non-meritorious grievances. Individual employees do not have an absolute right to have a grievance taken to arbitration. Vaca; Essex-Union Joint Meeting, D.U.P. No. 91-26, 17 NJPER 242 (¶22108 1991). To establish a claim of a breach of the duty of fair representation, such claim "...carried with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of American v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971). Further, where a majority representative exercises its discretion in good

faith, proof of mere negligence, standing alone, does not suffice to prove a breach of the duty of fair representation. Service Employees International Union, Local No. 579, AFL-CIO, 229 NLRB 692, 95 LRRM 1156 (1977); Printing and Graphic Communication, Local No. 4, 249 NLRB No. 23, 104 LRRM 1050 (1980), reversed on other grounds 110 LRRM 2928 (1982).

Here, the disparity in the number of teacher grievances verses the number of secretary grievances processed, alone and absent a showing that the refusal to file grievances was done arbitrarily, discriminatorily or in bad faith, cannot constitute a violation of the duty to fairly represent the secretaries. In other words, the issue is not how many grievances the MTEA filed on behalf of the secretaries but whether it treated the secretaries, as a group and/or individually, equally in comparison to the teachers and whether the secretaries were granted equal access to the grievance procedure and arbitration for similar grievances of equal merit. Middlesex Cty.; Local 194.

The MTEA disputes that it only filed two grievances on behalf of the secretaries. It provided copies of grievances filed on behalf of the secretaries both individually and as a group since 1990. Therefore, I cannot find as a matter of fact that the disparity claimed by Local 11 exists. Moreover, the absence of the specific grievances on the agenda for discussion at MTEA meetings does not constitute a breach of duty absent an allegation that the Association refused to discuss the status of the two grievances if raised at the union meetings. No such allegation was made.

Petitioner also contends that because the two grievances (snow day and reclassification) which were filed in 1994 are still not resolved, the MTEA has provided irresponsible representation. However, the length of time in processing grievances does not establish that the MTEA has failed to diligently process the grievances.

The reclassification grievance went to arbitration and an interim award issued on June 21, 1997, remanding to the parties the duty to negotiate a mutually agreeable classification system. N.J. State Board of Mediation, Case No. 96-1127.3/ These negotiations are on-going.

As to the snow day grievance, the Board filed a scope of negotiations petition on July 10, 1994. The Commission declined to restrain arbitration and the parties are in the process of selecting an arbitrator. Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-30, 21 NJPER 392 (¶26241 1995). Neither instance demonstrates arbitrary, discriminatory or bad faith behavior rising to the level of a violation of the duty of fair representation.

Next, Petitioner asserts that the MTEA failed to file grievances on behalf of the secretaries. Specifically, it alleges that the MTEA failed to file a grievance on behalf of Linda Runyon

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3/ At the investigatory conference on July 15, 1998, Petitioner stated that the MTEA had not informed the secretaries of the status of this arbitration. However, secretary Jean Ottone states in her affidavit that she was faxed a copy of the arbitrator's award in August 1997.

relative to her entitlement to vacation days, that the MTEA did not file a grievance involving secretaries' lunch breaks, that it refused to file a grievance for Nancy McBride relative to her failure to get a promotion, that the MTEA did not file a grievance protesting the variance in secretarial work hours, that it did not file a grievance seeking stipends for bookkeeping duties and that it did not file a grievance for Rene Zappala in 1988 when she was denied the right to act as advisor to the yearbook because she was not certificated.

The Association asserts that in each instance it either acted on the matter raised by the aggrieved individual or investigated and determined not to proceed. Specifically, it explains that Linda Runyon was advised by MTEA President Diane Swaim that there appeared to be a contract violation in regard to the refusal to give her vacation days and that Runyon should contact the personnel department. Runyon admits that she did not do so nor did she contact Swaim again.4/

In regard to the grievance concerning lunch periods and other breaks, Association UniServ Representative John Molloy wrote a letter to the building principal on behalf of one secretary, Marion Mayer, who had contacted the Association about this issue. The letter requested that a directive denying a 15-minute morning break

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4/ There is a dispute as to whether Swaim was to contact Runyon or Runyon was to contact Swaim. However, this dispute of fact is not material since Runyon could have pursued the grievance on her own and did not do so.

be rescinded as it constituted a new work rule which had not been negotiated prior to implementation. Swaim stated that the letter resulted in a resolution of the grievance. No grievance was subsequently filed by Mayer or any other secretary about the lunch periods or other breaks.

As to the refusal to file a grievance on behalf of McBride concerning her failure to get a promotion, the MTEA investigated and determined that another secretary who had been displaced as a result of a reduction in force had a senior claim to the promotional position. Therefore, it determined that the grievance was not meritorious.

In regard to the complaint by the secretaries of a variance in secretarial work hours, the Association investigated and determined that the variations were voluntary in that individual secretaries were making choices not to take breaks or have a shortened lunch period in order to leave work early.

Petitioner claims that the Association never filed a grievance as to a bookkeeping stipend. The Association responds that those who took bookkeeping work home received additional pay and it advised secretaries who were requested to work beyond their seven and a half hour work day not to stay beyond that time.

Finally, the MTEA asserts that it did not file a grievance on behalf of Rene Zappala because it determined that it was the Board's managerial prerogative to require a certificated teacher to act as yearbook advisor and that Zappala only held the position

because no certificated personnel had volunteered. Once a certificated teacher volunteered for that position, Zappala was not entitled to hold that position.

Petitioner argues that the MTEA's actions in regard to grievance processing rises to the level of irresponsible representation demonstrated in County of Camden, D.R. No. 81-3, 6 NJPER 415 (¶11209 1980), where the Director of Representation permitted severance of a group of registered nurses from an existing county-wide unit. The facts in that case revealed that the majority representative had not informed the nurses that it was not seeking arbitration of one grievance and refused to disclose its reasons for refusing to arbitrate another grievance. Neither situation applies to the MTEA's processing of secretarial grievances.

None of the incidents cited by Petitioner individually rises to the level of a violation of the duty of fair representation; nor when taken together do they demonstrate that the MTEA failed to provide responsible representation to the secretarial employees. Moreover, once the MTEA investigated each complaint and determined not to file a grievance, the individuals involved, under the parties' collective negotiations agreement, could have filed and processed grievances on their own behalf, however, they chose not to do so in each instance. Therefore, I find that the failure by the MTEA to file these grievances does not constitute a lack of responsible representation.

Local 11 argues one further incident demonstrates the MTEA's lack of responsible representation and/or unequal treatment of the secretaries. This incident which occurred in 1991 involved a teacher's demand that telephone messages were always to be delivered to the teacher in the classroom and not held until later in the day. Petitioner alleges that the MTEA supported the teacher's position and ignored the explanation of the secretaries. It is alleged that MTEA representative D'Allesandro stated that a letter of reprimand would be sent to their principal, but acknowledged that the principal spoke to the secretaries later and confirmed that they were not at fault. The MTEA alleges that D'Allesandro only counselled the teacher and secretaries and that no further action was taken. Even assuming that D'Allesandro sided with the teacher, this incident alone does not rise to the level that would create a lack of responsible representation or instability under Jefferson which would warrant disturbing the existing unit configuration.

COLLECTIVE NEGOTIATIONS

In Ford Motor Co. v. Huffman, 346 U.S. 330, 23 S.Ct. 681, 31 LRRM 2548 (1953), the Court in reviewing a union's conduct in negotiating a provision granting seniority credit for prior military service held that "[t]he complete satisfaction of all who are represented is hardly to be expected and a wide range of reasonableness must be allowed an employee representative in serving the unit it represents, subject to complete good faith and honesty of purpose in the exercise of its discretion."

In support of its contention that the existing collective negotiations relationship is unstable and that the MTEA has not provided responsible representation to the secretarial employees, Petitioner asserts that there has been no successor collective negotiations agreement since the expiration of the prior contract in 1996. However, it admits that there have been numerous negotiations sessions since the expiration of the prior contract, the parties have participated in mediation and fact finding, and the Board rejected the fact finders report and imposed a contract on the teachers.[5/] However, I do not find that these facts demonstrate that the Association acted inconsistently with its duty of responsible representation for contract negotiations as enunciated in Lullo and Ford.[6/] Nor do I find that an unstable negotiations relationship warranting severance exists merely because successor negotiations have been protracted.

Petitioner also argues that four of the Association's seven negotiations proposals involved only teachers, two covered both teachers and secretaries relative to salary and benefits and only one proposal related solely to secretaries (i.e., salary increment

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5/ A contract was not imposed on the secretaries because of the filing of this petition. The parties have since concluded negotiations for a successor contract for the teachers.

6/ I note that the MTEA proposed a higher percentage increase for the secretaries during negotiations for the successor agreement. I take administrative notice of the fact finder's recommendation proposing a 2 percent higher increase for the secretaries than was recommended for the teachers in the first two years of the contract.

related to additional educational credits). By way of explanation for the proposals presented during negotiations, the MTEA explains that prior to the expiration of the contract in 1996 it disseminated a survey to the membership seeking input for the upcoming negotiations. The survey revealed that the secretaries and teachers had similar concerns except in the area of additional pay for educational credits. A proposal was eventually formulated addressing this latter concern based on the recommendation of Jean Ottone, the secretary member to the MTEA executive committee. I do not find that under the circumstances presented by the parties the MTEA's negotiation's proposals evidenced a breach of their duty to responsibly represent the secretaries. Indeed, three of seven proposals directly impacted the secretarial employees which comprise only approximately ten percent of the unit.

Petitioner asserts that not all of the secretaries' negotiations proposals were incorporated and presented to the Board as demands at the bargaining table -- i.e., stipend for bookkeeping duties, equalization of secretary work hours, reclassification system as per the arbitrator's award. However, the standard of responsible representation in the context of contract negotiations as set forth in Ford recognizes a wide range of reasonableness which includes the idea of near-term compromises with a view toward long range advantages. The fact that all of the secretaries' proposals were not presented to the Board does not establish irresponsible representation by the MTEA nor indicates instability. A breach of

the duty of fair representation in regard to contract negotiations exists "when...the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm." Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982). Such deliberate decisions have not been demonstrated to be operating here.

Next, Local 11 alleges that Ottone was not allowed to speak on behalf of the secretaries at the negotiations sessions with the Board. The Association disputes this assertion and states that Ottone presented the stipend proposal for educational credits at a 1997 fact finding session. Accepting Local 11's version of Ottone's role during the negotiations sessions, as previously stated in Middletown Tp. Bd. of Ed., D.R. No. 88-11, 13 NJPER 765 (¶18291 1987), mot. to consider den. P.E.R.C. 88-44, 13 NJPER 841 (¶18323 1987) (Middletown I), the manner in which a secretary is elected to the Association negotiations committee is strictly an internal union matter and does not demonstrate irresponsible representation. I further find that who on a negotiations committee is chosen to serve as spokesperson at the table is likewise an internal matter and does not act to demonstrate irresponsible representation. Local 11 is not asserting that the Association refused to propose the stipend, only that Ottone was not permitted to present the proposal. Therefore, I do not find that this circumstance constitutes a failure to responsibly represent the secretaries in contract negotiations.

Based on the foregoing, I cannot conclude that the secretaries have not been responsibly represented during contract negotiations nor that manner in which negotiations were conducted showed unit instability. I cannot accept Local 11's argument that the actions of the MTEA in the context of collective negotiations rise to the level of irresponsible representation demonstrated in Camden. Camden held that the majority representative did not provide responsible representation when (1) it changed the agreement reached between the Registered Professional Nurses Unit #1 ("RPNU") and the County without advising the RPNU of the changes and without responding to the RPNU's request to meet with the majority representative and when (2) the County and the RPNU resolved the negotiations dispute without the participation of the majority representative. The facts in Camden and here are dissimilar.

DISCOURAGING SECRETARIAL PARTICIPATION IN THE MTEA

Local 11 asserts that the internal structure of the MTEA prevents the secretaries/clericals from having meaningful representation in the union. The MTEA governing structure consists of an executive council and a representative council. It is argued that the executive council consists of five officers, three representatives from the high school, middle school and elementary school, two at-large representatives and one secretary representative. Local 11 asserts that the secretary representative under the MTEA by-laws is to be elected by the secretaries only, but that under the present system the entire membership selects the

executive council representatives thereby effectively removing the opportunity to select a representative of the secretaries' own choice. The Association disputes this contention claiming that the secretaries have their own executive committee and that only secretaries may vote for the secretarial representative. Local 11 further alleges that of the 50 members on the representative council only 3 are secretaries and the level of membership is unlikely to change since the representatives are elected by the MTEA members in each building, a majority of whom are teachers.

We have long held that the identity of individuals who control and speak on behalf of the majority representative is an internal union matter. Absent a claim that the organization has an illegal structure, we have declined to intercede in matters involving the internal affairs of unions. Middletown I; N.J.E.A., D.U.P. No. 90-14, 16 NJPER 375 (¶21149 1990). In City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982), the Commission stated that "...labor organizations are essentially private associations..." and noted that the Act's conferral of unfair practice jurisdiction does not empower it to resolve intra-union disputes. Indeed, absent allegations of arbitrary, discriminatory or bad faith conduct we do not have jurisdiction over matters involving internal union activities.

In prior decisions considering a petitioner's organizational structure, the Commission has interpreted the Act's requirements to allow for a wide range of appropriate structures.

This is supported by the public policy underlying the Act permitting the organization of all appropriate public employees who desire collective negotiations. N.J.S.A. 34:13A-2.

In Camden Police Dept., P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission explained, "we particularly emphasize that a petitioner is not required to have certain attributes in order to file a representation petition. N.J.S.A. 34:13A-3(e). It is only required not to have an illegal structure. Beyond enforcing the Act's specific prohibitions, we will not interfere in a petitioner's internal affairs." 8 NJPER at 227, n. 2. Here, there is no allegation of an illegal structure nor does the asserted structure of the MTEA preclude effective representation of the secretaries or prohibit secretaries from actively participating in union activities. The MTEA's structure does not destabilize the existing collective negotiations relationship.

Petitioner also asserts that the inconvenient scheduling of Association meetings discourages the secretaries from participating in the MTEA. The Association disputes that meetings are scheduled only during secretarial working hours. Specifically, Swaim states that meetings at the Bayshore School are held before school hours and meetings of the representation council are held at 4:00 p.m., after the secretaries' work day is concluded. Swaim further disputes the time of the scheduled Association meetings at Navesink School which she claims begins at 3:15 p.m. not 2:15 p.m. as stated by Ottone. Local 11 has not refuted Swaim's statements as to

Bayshore and the Council meetings. Further the Affidavit of Georgia Doyle, a representative from Thomson School on the executive council asserts that meetings at that school are scheduled so as not to conflict with the secretaries' work day. As stated in Middletown I, even assuming that some Association meetings are inconveniently scheduled for secretarial participation, this fact does not support a finding of a lack of responsible representation under the Jefferson standards. Unless it is demonstrated that the scheduling of meetings was deliberate to exclude the secretaries, it cannot constitute a basis for a violation of the duty to provide responsible representation. Mercer Cty., P.E.R.C. No. 89-112, 15 NJPER 277 (¶20121 1989).

Next, Petitioner argues that at one particular representation council meeting in February 1998, the secretaries in attendance were treated differently and made to feel unwanted because the secretaries were asked to sign in on a separate attendance sheet and sit in the back of the room. Swaim explains that attendance is always taken at representation council meetings and that there is a pre-printed list of the elected members which is circulated for purposes of attendance. The secretaries at this particular meeting were not elected members and, therefore, a separate attendance sheet was required. Further, Swaim insists that the secretaries were asked to sit separately in order to facilitate the voting procedures by allowing for a distinction between voting and non-voting members.

Also, in support of its assertion that the secretaries were discouraged from participating in the Association, Local 11 describes a May 1997 Association meeting at which a strike vote was taken by roll call vote which intimidated several of the secretaries. As stated in Middletown I, general feelings of discomfort or of intimidation are subjective characterizations. The facts alleged as to the February 1998 representation council and May 1997 Association meetings support the observation stated in Middletown I. Further, the manner by which attendance is taken and seating is arranged at particular Association meetings are internal union matters and do not run to the issues of responsible representation or instability.

Another example of discouraging secretarial participation in the Association asserted by the Petitioner is the failure of the Association to replace Ottone on the executive council following her resignation. However, the Association contends that it actively solicited for a replacement for Ottone by placing two notices in the Association's newsletter and by orally addressing groups of secretaries to volunteer for the position. The Association points out that it sought a teacher representative replacement in the same manner. Local 11 fails to demonstrate that the Association did not act in good faith or that the lack of a replacement for Ottone is evidence of an unstable relationship or a failure to responsibly represent the secretaries.

Finally, it is alleged that at executive council meetings Swaim and MTEA vice president Bette Shreiber stated that secretaries were going to be the weak link in regard to public support for the Association at Board meetings and other public forums. Further, Petitioner asserts that at the February 1998 representation council meeting, during a discussion with Ottone relative to negotiations, Swaim stated that she wished to remove the secretaries from the negotiations unit and that the secretaries could bargain for themselves. Swaim admits she angrily suggested on this one occasion that the secretaries should represent themselves in negotiations. However, Swaim asserts that this statement was made in the heat of the moment and did not reflect her true sentiments or the position of the MTEA.

In N.J.I.T., D.R. No. 79-22, 5 NJPER 102 (¶10056 1979), the union president expressed a desire to release administrators from the broad-based faculty unit. We rejected the administrators' petition to sever and held that absent actual examples of irresponsible representation, even the lack of desire to represent a group of employees cannot constitute proof of a failure to responsibly represent them.

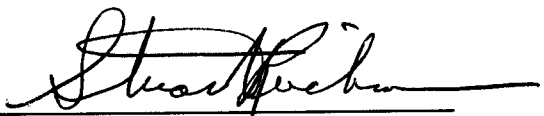
Here, I do not conclude that the Association has failed to fairly represent the secretaries based upon Swaim's one statement. Similarly, statements by Swaim and Shreiber characterizing the strength or weakness of the secretaries' support at public appearances cannot by itself support a petition to sever.

Based upon the totality of the circumstances reviewed above, I find that Petitioner's allegations do not support a claim of irresponsible representation or an unstable negotiations relationship and that the Petition must be dismissed as it does not present an appropriate basis for supporting a severance of employees from the existing unit.

ORDER

The Petition and amended Petition for Certification of Public Employee Representative are dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Stuart Reichman, Director

DATED: November 12, 1998
Trenton, New Jersey