

D.R. NO. 86-23

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

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-86-52

BELLEVILLE AIDES AND BUS
DRIVERS ASSOCIATION,

Employee Representative.

Synopsis

The Director of Representation dismisses a Clarification of Unit Petition filed by the employer one month after the Commission certified the present collective negotiations unit. Noting that the parties had stipulated to the appropriateness of the unit in the representation matter, the Director finds that such a clarification of unit petition is inappropriate, absent a change in circumstances, to seek redefinition of the unit based upon an alleged lack of community of interest.

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Appearances:

For the Public Employer
Schwartz, Simon & Pisano, Esqs.
(Nathanya Simon, of counsel)

For the Employee Representative
New Jersey Education Association
(Carol Rosenfeld, UniServ Rep.)

DECISION

On March 11, 1986, the Belleville Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to clarify an existing unit of bus drivers and aides which is currently represented by the Belleville Aides and Bus Drivers Association ("Association"). Specifically, the Board seeks to remove classroom aides from the unit and place that title within the existing teachers' unit. The Association objects to the Board's petition.

I have caused an administrative investigation to be conducted in this matter in order to determine the facts. Based upon the administrative investigation, I find the following:

The Board and the Association entered into an Agreement for Consent Election on January 10, 1986. The agreement provides in relevant part that "...the undersigned parties hereby waive a hearing and all issues that could properly be raised at said hearing and agree as follows..." The agreement included the following unit description:

Included: All classroom aides, bus aides, part-time bus drivers employed by the Belleville Board of Education.

Excluded: All other employees including supervisors, managerial executives craft, police and fire employees employed by the Belleville Board of Education.

The Commission conducted a secret ballot election among the employees in the unit and the employees unanimously voted to be represented by the Association.

On February 25, 1986, I certified the Belleville Aides and Bus Drivers Association/NJEA as the exclusive representative of the employees in the collective negotiations unit. The unit description in the Certification is identical to the one in the consent agreement as quoted above.

The Board is now seeking to redefine the appropriate unit by excluding the classroom aides from this unit and placing that title instead in the existing teachers' unit. That teachers' unit is currently represented by a separate organization, the Belleville

Education Association ("BEA"), which is also affiliated with the NJEA. The extant aides and bus drivers unit consists of 31 employees, 7 of which are teachers aides. The proffered reason for the requested unit clarification is a lack of community of interest between the classroom aides and the bus drivers and bus aides.

The Association opposes the petition on the basis that (a) the Board's objection to the appropriateness of the recently certified unit is an issue that the Board failed to raise in the representation proceeding, and (b) the placement of classroom aides in the teachers' unit would be inappropriate since the BEA has not sought to represent them.

* * *

For the reasons stated below, I am inclined to dismiss the instant unit clarification petition.

By the very terms of the Agreement for Consent Election the Board has waived its right to allege a lack of community of interest among the employees in the recently certified unit. When the Board signed the agreement on January 10, 1986, it waived a hearing on all issues. Such a waiver includes the right to challenge the appropriateness of the unit; the parties effectively stipulated that the unit is appropriate.

In In re Township of Warren, D.R. No. 82-10, 7 NJPER 529 (¶12233 1981), the Director found that, absent a change in circumstances or a substantial change in job duties, the simple allegation of community of interest is not enough to place a title

which had been excluded by the mutual consent of the parties, into a recently certified unit. The same rationale applies here: it is not sufficient to allege a lack of community of interest as the basis for removing titles which the parties had mutually consented to include in the unit. In re Clearview Regional Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), the then Director outlined the purposes for which a legitimate clarification of unit petition may be used:

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification, or as set forth in the parties recognition agreement. Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or to diminish the scope of the negotiations unit for reasons other than the above. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition and the matter relates primarily to identification. Occasionally, a change in circumstances has occurred, ...a new title may have been created...[or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate.

In Clearview, the then Director contrasted a unit clarification proceeding with a representation proceeding to resolve a question concerning the representational status of a unit of employees, e.g., an "RO" petition. The Director noted that the processing of the latter type of petition (RO) initially involves a determination as to the appropriateness of the collective negotiations unit. Pursuant to N.J.S.A. 34:13A-5.3 and 6(d), such

determination are made with consideration for the employees' community of interest and appropriate statutory prohibitions.

Compare, Borough of Park Ridge, D.R. No. 86-6, 12 NJPER 37 (¶17014 1985).

Here, the Board has not alleged a change in circumstances; nor has it alleged any statutory basis for the exclusion of classroom aides. Therefore, I find that the petition to clarify titles out of the extant unit on the claim of lack of community of interest is inappropriate, and must be dismissed.

Secondly, the Board's request to add the classroom aides to the existing teachers unit must also be denied. That request raises a question concerning the representation of employees -- these employees are currently represented by the Belleville Aides and Bus Drivers Association. Any petition which seeks a change in the collective negotiations representative of a group of employees can only be raised by the filing of a representation petition and in accordance with the time limitations as set forth in N.J.A.C. 19:11-2.8.^{1/} Arguments as to the appropriateness of the unit do not alter these filing restrictions.^{2/} Additionally, I note that the Association which represents the teachers, the BEA, has not

^{1/} N.J.A.C. 19:11-2.8(b) provides that such petitions may not be filed within 12 months of the certification of the exclusive representative.

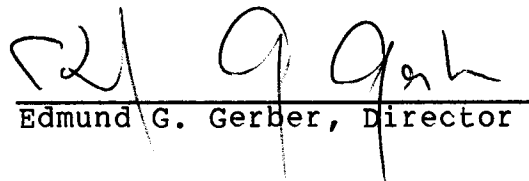
^{2/} See, Lenape Reg. H.S. Dist. Bd. of Ed., D.R. No. 77-15, 3 NJPER 94 (1977).

sought to represent the aides. The Commission's policy is not to force employees into a unit where the organization has not indicated a desire to represent them. See In re Camden Board of Education, E.D. No. 76-32 (1976) aff'd P.E.R.C. No. 76-50, 2 NJPER 228 (1976); In re University of Medicine and Dentistry of N.J., D.R. No. 83-27, 9 NJPER 293 (¶14136 1983), aff'd P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983).

For the foregoing reasons, I reject the Board's application to place the classroom aides in the teachers' unit.

By letter dated April 22, 1986, I advised the parties of my intention to dismiss the petition based upon the facts presented and the relevant case law. That letter afforded the parties an opportunity to present any additional facts or additional statements of position relating to this matter. No further submissions have been made. Under all of the circumstances found here, the petition for unit clarification is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 19, 1986
Trenton, New Jersey