

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

BARNEGAT TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-83-43

BARNEGAT FEDERATION OF TEACHERS
LOCAL 3751, NJSFT, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Administrator of Representation Proceedings, on the basis of an administrative investigation, dismisses the Federation's petition seeking to add classroom aides and library technicians to an existing secretarial negotiations unit. The classroom aides title has existed in the school district for at least ten years and the Federation has not submitted any evidence to establish a mutual intent on the part of the parties to have ever included this title in the unit. Moreover, classroom aides do not perform secretarial functions. Likewise, library technicians, a new employment category, do not arguably perform secretarial duties. The Federation's request for unit clarification is premised upon its desire to "streamline and facilitate the collective negotiations process." The Administrator notes that the Federation's desire to expand the definitional scope of its negotiations unit raises a question concerning representation which should be placed before the Commission through the filing of a Petition for Certification of Public Employee Representative.

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Appearances:

For the Public Employer
Sim, Sinn, Gunning & Fitzsimmons, attorneys
(Steven A. Pardes of counsel)

For the Petitioner
Rodman N. Smith, Representative, N.J.S.F.T.

DECISION

On January 10, 1983, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Barnegat Federation of Teachers, Local No. 3751, NJSFT, AFT, AFL-CIO ("Federation") seeking to include classroom aides and library technicians employed by the Barnegat Township Board of Education ("Board") in a negotiations unit currently consisting of Board secretarial personnel. ^{1/}

^{1/} Disputes concerning other Board employees which were initially presented in the Petition have subsequently been resolved by the parties.

In accordance with N.J.A.C. 19:11-2.2(a), an administrative investigation has been conducted into the matters and allegations involved in the Petition in order to determine the facts. Pursuant thereto, an informal conference was convened with the parties by a Commission staff agent on March 9, 1983. Further investigation ensued.

Based upon the administrative investigation, 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 an evidentiary 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 Barnegat Township 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. ("Act"), is the employer of the employees who are the subject of the Petition and is subject to the provisions of the Act.

3. The Barnegat Federation of Teachers, Local No. 3751, NJSFT, AFT, AFL-CIO, is an employee representative within the meaning of the Act, is subject to its provisions, and is the current certified representative of a unit of Board secretarial personnel.

On February 2, 1979, in Docket No. RO-79-139, the Commission, after the conduct of a representation election, certified

the Federation as the majority representative for a unit of: "All secretaries including principal's secretary and general secretary employed by the Barnegat Township Board of Education but excluding all other employees including police, craft workers, confidential employees, managerial executives, professionals and supervisors within the meaning of the Act."

4. The Federation seeks to add four classroom aides and three library technicians to the existing secretarial negotiations unit.

5. The Board objects to adding these titles to the Federation's secretarial negotiations unit since, it argues, the titles have been in existence for a considerable period of time and the personnel in the titles have not been represented in any collective negotiations unit. The Board argues that the Federation should be precluded from utilizing a clarification of unit petition to add already existing titles to a negotiations unit.

Commission policy with respect to the filing and processing of clarification of unit petitions is generally set forth in two leading decisions. In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), describes the difference between clarification of unit (CU) and certification (RO) petitions, and sets forth the various appropriate uses of clarification of unit petitions, as opposed to certification petitions. In In re Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980), the Commission set

forth a test to be applied to determine whether a clarification of unit petition is the appropriate petition in a given set of circumstances.

Clearview, supra, describes the two major categories of proceedings to resolve disputes concerning representational status: first, those proceedings which resolve questions concerning representation (i.e., the establishment of negotiations units) through election, and second, those proceedings which resolve questions concerning the composition of existing negotiations units by interpreting the language that defines the unit. It was observed that certification petitions may be filed in instances where unrepresented employees seek to form a unit or to be added to a unit already in existence. Certification petitions were distinguished from clarification of unit petitions, which are filed to determine whether a particular title is already contemplated by the parties to be within the scope of the unit. Examples of a proper use of the clarification of unit procedure are where there are significant changed circumstances in the job function of a particular title to warrant reexamination of the proper unit placement of the title, or where a new title is created entailing job functions similar to those already covered by the unit and a determination must be made as to unit placement.

In Wayne, supra, the Commission affirmed that it was an inappropriate use of a clarification of unit petition to seek the inclusion of a title(s) which was in existence at the time the

unit was formed and, knowingly, not then placed in the unit, or where an employee representative has, for a considerable period of time, "slept on its rights" concerning an unrepresented title. Under these circumstances, a question concerning representation exists and the clarification of unit petition should be dismissed. Thus, where a title existed at the time the unit was formed, and the parties did not by their conduct display a mutual intent to include that title within the unit, a question concerning representation exists and a clarification of unit petition should be dismissed.

In the instant matter, based upon the information gathered during the informal conference, it is apparent that the Classroom Aide title was in existence for a considerable period of time predating the Federation's certification of representative. ^{2/} No evidence has been proffered to establish a mutual intent on the part of the parties to include this title within the unit. No claim has been raised that the aides perform secretarial duties and are therefore encompassed within the definitional scope of the unit.

The Federation submits that the title of Library Technician is a new title which came into existence in Fall, 1982. However, here too, the Federation has not indicated in any way that Library Technicians perform secretarial duties.

Federation correspondence of September 30, 1983, indicates that it wishes to have the library technicians and classroom aides

^{2/} It appears that the classroom aides have been employed for at least ten years.


included with secretarial employees in one unit "in order to streamline and facilitate the collective negotiations process."

It thus appears that the Federation's desire in the instant matter is to expand the definitional scope of its unit beyond the secretaries it presently represents. As noted above, if the Federation is seeking to redefine its unit, the proper means to seek this objective is through the filing of a certification petition in accordance with Commission rules.

On November 10, 1983, the undersigned requested the Federation to withdraw the instant Petition, or alternatively, if it desired the further processing of this matter, the Federation was reminded of its obligation, under N.J.A.C. 19:11-2.6, to present documentary and other evidence as well as statements of position and was provided an additional opportunity to proffer any supplementary evidence or statements of position which would place in dispute substantial and material factual issues. No response or evidentiary proffer has been received by the undersigned.

Therefore, based on the above, it appears that the Federation has not demonstrated a basis for adding the petitioned-for titles to its secretarial negotiations unit by means of a clarification of unit petition. Accordingly, the instant Petition is hereby dismissed.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: December 15, 1983
Trenton, New Jersey