

D.R. NO. 89-3

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

In the Matter of

SPRINGFIELD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-89-6

SPRINGFIELD EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders that an election be conducted among certificated, secretarial and custodial employees of the Springfield Board of Education. Over the Board's objections to a consolidated unit, the Director finds that the petitioned-for unit of all employees is appropriate and that the petition is timely filed (The employer argued that a representation petition could be filed only during the open period and urged that the Commission apply a negotiations bar to the processing of the petition).

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Appearances:

For the Public Employer
Poltrock, Berger & Greenspoon, Esqs.
(Yale L. Greenspoon, of counsel)

For the Petitioner
New Jersey Education Association
(Ronald Harvey, UniServ Rep.)

DECISION AND DIRECTION OF ELECTION

On July 13, 1988, the Springfield Education Association ("SEA" or "Petitioner") filed a petition seeking certification as the exclusive representative of certificated teaching employees, secretarial employees and custodial employees of the Springfield Board of Education ("Board"). The petition was accompanied by an adequate showing of interest. About eighty-one certificated teaching personnel are currently represented by the SEA, eight clerical and secretarial employees are represented by the Springfield Educational Secretaries Association and about ten custodians, maintenance employees and bus drivers are represented by

the Springfield Custodians Association. Petitioner seeks consolidation of all the units into one unit.

On July 29, 1988, a Commission staff agent conducted an informal conference with the parties. The Board refused to consent to a secret ballot election. It contended that the petition was untimely filed and that current negotiations were disrupted by the filing. It alleged that the units have separate, long-established bargaining histories that should be retained. It asserted that the employees in the petitioned-for unit do not share a community of interest, i.e., their goals of employment and job responsibilities differ. It claimed, for example, that secretaries have an impermissible conflict with teachers because they type first level grievance responses and that teachers provide "feedback" to supervisors about custodial employee performance.

We have conducted an administrative investigation of this matter which reveals the following facts. The parties have a negotiations relationship dating to 1976 or earlier. The Board negotiated its first agreement with petitioner and a few years later negotiated separate agreements with custodial and secretarial units. The contracts have run concurrently, the last set of which ran from July 1, 1986 - June 30, 1988. No employee representative has executed a successor contract or memorandum of agreement with the Board. In September 1987, the SEA requested the Board to recognize a consolidated unit for collective negotiations. In late October, the Board declined the request.

Board employees in all units work in the same building(s). Secretarial employees work from 8 a.m. - 4 p.m. and custodial and maintenance employees work three shifts -- 9 a.m. - 5:30 p.m., 3 p.m. - 11:30 p.m. and a split shift, 6 a.m. - 10 a.m. and 1:30 p.m. - 5:30 p.m. All employees receive comparable benefits which include health insurance, sick leave and vacation periods. Petitioner has denied the Board's allegations about the absence of community of interest and impermissible conflict among the units. On August 4, 1988, the Educational Secretaries Association and the Springfield Custodians Association filed letters asserting their desires not to represent their respective employees in separate negotiations units and not to intervene in this matter.

The Board maintains that the Administrative Code (N.J.A.C. 19:11-2.8) does not state (and does not permit) that a certification petition is timely filed after the expiration of a collective negotiations agreement and before a successor agreement is executed. The Board also asserts a negotiations bar. In City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985), the Director stated that a representation petition may be timely filed:

(a) for employees covered by an existing written collective negotiations agreement, during the "open period" for filing representation petitions (in accordance with N.J.A.C. 19:11-2.8); (b) after the expiration of a collective negotiations agreement and prior to the execution of a successor agreement (my emphasis); (c) if employees are in a unit covered by a certification, election or recognition bar, after the expiration of said bar and prior to the execution of an agreement covering the employees; or (d) at any time concerning a unit of hitherto unrepresented employees.

[Id. at 351]

Petitioner's argument is essentially that a petition must be filed only during the window period (September 1 through October 15 of the last year of the contract, pursuant to N.J.A.C. 19:11-2.8(c)3). In Borough of Fair Lawn, D.R. No. 79-30, 5 NJPER 165 (¶10091 1979), the Director dismissed such an argument, stating that, "the [employer] misconstrues the nature of the contract bar rule, which is intended to insulate only existing agreements. The Commission's policy, ...is to permit filing a petition once an agreement expires." [Id. at 169]. See also Tp. of Franklin, P.E.R.C. No. 64 (1971); City of Atlantic City, D.R. No. 78-31, 4 NJPER 56 (¶1027 1977); County of Passaic, D.R. No. 77-7, 3 NJPER 22 (1976). Similarly, the Commission has rejected the notion that a party may assert a negotiations bar to prevent processing of an otherwise timely filed petition. Such a bar would "effectively and permanently bar the legitimate aspiration of employees who have petitioned for representation of their choice." Township of Lower, D.R. No. 77-1, 2 NJPER 291 (1976). We found that the petition is timely filed.

The Board asserts that the custodians and clerical employees do not share a community of interest with the teachers and should be required to maintain separate units. The Board states that the support staff have different hours and interests than the teachers have.

The petitioned-for unit is appropriate. In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984), the Commission found:

When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and professional school district employees has arisen, the Commission since 1969 has consistently found, ...that teachers and supportive staff have a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment and that this community of interest generally warrants giving teachers and supportive staff the opportunity to choose a unified representative in a single unit if they so desire....In the Commission's judgment, affording teachers and supportive staff such an opportunity promotes labor stability since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. (Citations omitted, emphasis in original.) Piscataway, at p. 274. See Ridgefield Bd. of Ed., D.R. No. 85-65, 11 NJPER 464 (¶16166 1985).

Further, the Board has not produced any facts which show that secretaries are confidential employees within the meaning of N.J.S.A. 34:13A-3(g)^{1/} or that teachers act as "supervisors" over custodians.

Although the Commission has generally given teachers and support staff employees the opportunity to choose unified representation in a single unit based on their community of interest, certain compelling circumstances justify the continuation of separate units. See Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981). We do not find such compelling

^{1/} "Confidential employees" of a public employer are those 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.

circumstances to exist in this case. While the Board asserts that there exists a long history of separate and successful negotiations between it and the three units, we believe that the facts of this case do not fit within the narrow contours of Englewood. The Secretarial Association and Custodians' Association advised the Commission that they do not wish to intervene in this matter or to otherwise assert a representational interest. In fact, they are unopposed to consolidation. Unlike Englewood, the incumbent majority representative is not opposed to an election.

Accordingly, we direct that an election be conducted among the employees in the petitioned-for unit and employees included in the existing professional unit as follows:

Voting Unit #1 - Shall consist of all office personnel employed by the Springfield Board of Education and represented by the Springfield Educational Secretaries Association, including secretaries and clerical employees. The unit shall exclude the Secretary to the Superintendent, Assistant Secretary to the Superintendent and Secretary to the Board Secretary.

Voting Unit #2 - Shall consist of all custodians, bus drivers and maintenance personnel employed by the Springfield Board of Education and represented by the Springfield Custodians' Association. The unit shall exclude summer maintenance employees and Coordinator of Buildings and Grounds.

Voting Unit #3 - Shall consist of all professional personnel currently included in the negotiations unit represented by

the Springfield Education Association, including certificated teaching personnel dealing directly with children, all certificated personnel in the Division of Special Services, guidance counselors and librarians. The unit shall exclude the Superintendent, Board Secretary/Business Administrator, Director of Special Services and Instruction, principals and assistant principals.

If a majority of professional employees (Voting Unit #3) vote in favor of inclusion in a unit with nonprofessional employees and Voting Unit #1 (Secretarial Employees) votes in favor of representation by the Springfield Education Association, then a certification shall issue adding the secretarial employees to the professional unit. Similarly, if the professional employees vote in favor of inclusion in a unit with nonprofessional employees and the custodial employees (Voting Unit #2) vote in favor of representation by the Springfield Education Association, then a certification shall issue adding the custodial employees to the professional unit. If the professional employees vote in favor of inclusion with nonprofessional employees and Voting Unit #1 and Voting Unit #2 votes in favor of representation by the Springfield Education Association, then a single certification combining all units shall issue.

If either Voting Unit #1 or Voting Unit #2 votes against representation by the Springfield Education Association, then a separate certification of results shall issue for that unit stating it does not wish to be represented.

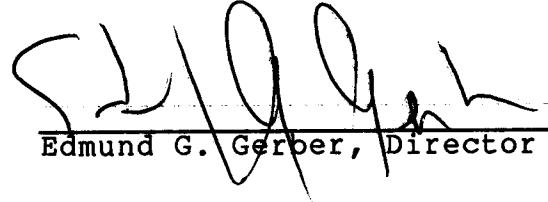
If the professional employees vote against inclusion in a unit with nonprofessional employees, separate certifications shall issue covering the secretarial and custodial units.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are 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.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be filed simultaneously with the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative of the petitioned-for employees, if any, shall be determined by a majority of the valid votes cast in the election by these employees. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

A handwritten signature in black ink, appearing to read "Edmund G. Gerber", is written over a horizontal line. The signature is stylized and cursive.

Edmund G. Gerber, Director

DATED: August 19, 1988
Trenton, New Jersey