

D.R. NO. 95-26

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

In the Matter of

RANCOCAS VALLEY REGIONAL
BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-95-145 and
CU-95-17

RANCOCAS VALLEY REGIONAL HIGH
SCHOOL EDUCATION ASSOCIATION,

Charging Party-Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition seeking to clarify a broad-based teachers' and support staff unit to include the "Naval Junior Reserve Officers Training Corps" teachers. The Director determined that the Association did not demonstrate due diligence in identifying the title.

Since the unit could not be "clarified" to include these teachers, the Director also dismissed a charge alleging that the Board unlawfully denied benefits to the disputed title.

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Appearances:

For the Respondent
Stephen J. Mushinski, attorney

For the Charging Party
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

DECISION

On September 29 and October 31, 1994, the Rancocas Valley Regional Education Association/NJEA filed a clarification of unit petition and an unfair practice charge concerning an alleged unit employee of the Rancocas Valley Regional Board of Education. The petition seeks to clarify the professional and support staff unit to include two Naval Junior Reserve Officer Training Corps teachers. The charge alleges that on or about May 31, 1994, the Board denied a training corps teacher's request upon retirement to repurchase unused sick leave and accrued personal time, "having unilaterally determined that [the position] is not part of the bargaining

unit...." The employer's action allegedly violates 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

The parties' 1992-95 collective agreement has a recognition article enumerating titles under the categories, "professional staff" and "support staff." The former includes classroom teachers, nurses, guidance counselors, social workers, department chairpersons, etc. The latter includes secretaries, library assistants, etc.

Article 12 of the agreement permits unit employees to "re-purchase" sick leave and unused personal time.

On October 28 and November 21, 1994, the Board filed responses to the petition and charge. The Board denies that the Association ever negotiated concerning the training corps teachers. "The salary given to this individual position was done on an annual basis and set by the Board following receipt by the Board of federal government fund[s]...." The Board specifies that salaries were set annually between January and May and were retroactive to the preceeding September, based upon receipt of federal dollars.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The Board also denies that the training corps teacher who was denied benefits upon retirement held a teaching certificate and a bachelor of science degree.

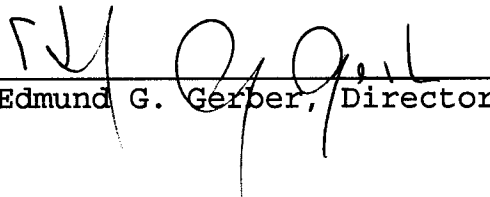
The now-retired training corps teacher was employed 17 years by the Board and received health benefits and vacation time. (The Board asserts that it extends similar benefits to other non-unit employees.) These teachers provide instruction in naval science, act as advisors, and share in cafeteria duty. About one-half of their salaries are federally funded.

The clarification of unit petition and its dependent charge must be dismissed. Beginning in Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), the then Director of Representation observed that these petitions were appropriate to resolve disputes over newly created titles. In Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980), he dismissed a petition because the majority representative had failed to "...exercise due diligence in searching out employees who are within definitional scope of the collective negotiations unit." Due diligence requires that a union identify existing titles that are within the definitional scope of the unit prior to the signing of a second collective agreement with the public employer. Id. at 63. Accord, Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983); Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984).

The Association has asserted no facts showing that the disputed title is included in the unit or that it ever negotiated terms and conditions of employment on its behalf. That the title is arguably eligible for unit inclusion under the recognition article ("classroom teacher") does not raise a factual dispute justifying a formal hearing. The Association has not rebutted the Board's representation that the title has existed for many years and that the Board has unilaterally determined salary, a primary term and condition of employment. The Board maintains that other benefits were voluntarily extended to the disputed title. Our investigation to date reveals no evidence that the Association negotiated on behalf of the training corps teachers.

The Association has not exercised due diligence in timely identifying the disputed title. Accordingly, I dismiss the petition. Similarly, the charge is dependent upon the merits of the petition--if the disputed title is not part of the unit, the public employer could not have violated the Act by unilaterally denying the employee in the disputed title contractual benefits. Accordingly, I refuse to issue a Complaint in this matter and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES/REPRESENTATION


Edmund G. Gerber, Director

DATED: March 15, 1995
Trenton, New Jersey