

D.R. NO. 97-7

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

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-97-65

WILLINGBORO EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that a petition to consolidate negotiations units was timely when filed after all contracts had expired, and that mediation does not bar the filing of a petition.

The Director finds that the proposed consolidated unit of teaching and support staff is appropriate in light of the disclaimer of interest by the support staff incumbent representative, notwithstanding the parties' lengthy history of separate negotiations units. The Director rejects the employer's demand for a professional option vote, finding that the professional option election we previously conducted satisfied the statutory requirement. Finally, an election was ordered among the support staff to determine if they want representation by the Education Association.

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Appearances:

For the Public Employer  
James P. Granello, attorney

For the Petitioner  
New Jersey Education Association  
(George Suleta, Field Representative)

DECISION AND DIRECTION OF ELECTION

On November 14, 1996 the Willingboro Education Association filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association seeks to consolidate a unit of aides, custodial, maintenance, warehouse and security employees with the unit of professional and clerical personnel it currently represents.

The Board objects to the petition and proposed consolidation. It asserts that the petition was not timely filed, and that processing the petition now would disrupt ongoing contract negotiations for both units. The Board also contends that the long-standing structure of the existing units should not be disturbed. It further argues that the units should not be merged

unless the professional employees are permitted a separate vote on unit inclusion with non-professional employees.

\* \* \* \*

We have conducted an administrative investigation in this matter which revealed the following facts. N.J.A.C. 19:11-2.6.

The Willingboro Education Association has represented the Board's teaching and other professional staff members for at least 25 years. In 1987, the WEA petitioned to expand the teachers' unit to also include secretarial and clerical employees (Docket No. RO-87-75). Over the Board's objections, we ordered a secret ballot election among the secretaries and among the professional employees. Willingboro Bd. of Ed., D.R. No. 87-13, 13 NJPER 52 (¶18021 1986). Pursuant to N.J.S.A. 34:13A-6, the professional employees were given a "professional option" vote, in which an overwhelming majority voted by secret ballot to be included in the same unit with non-professional employees.<sup>1/</sup> The secretarial unit also voted affirmatively for representation by the WEA, and we certified the WEA to represent the consolidated unit.

The WEA unit now consists of about 550 employees. The unit includes the following:

Included: certificated teachers, reading specialists, nurses, head nurse, librarians, counselors, social workers, speech therapists,

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<sup>1/</sup> Administrative notice is taken of the Tally of Ballots issued February 4, 1987, which shows the professionals voted 393 to 22 in favor of inclusion in a unit with non-professionals.

learning disability teacher-consultants, psychologists, tv program director, tv specialist, certificated tv professional personnel, non-supervisory professional personnel in the summer credit make-up session and summer curriculum projects, and non-supervisory professional personnel in the Saturday/Sunday suspension program, secretaries, clerks, administrative clerk-typists, clerk-typists, half-time clerk-typists, learning resource center clerks, PBX operators, accounts payable clerks, accounts receivable clerks, payroll clerks, graphic arts personnel; tv specialist/technician, assistant aerospace position, research assistant, repro printer, in-school suspension teacher, public information clerk, registrar, ROTC teacher, sub-caller position.

Excluded: supervisors of instruction (plus those in child study and special education), guidance directors, athletic director, music coordinator, reading supervisor, and director of vocational education, administrative secretary to the superintendent, administrative clerk-typist to the superintendent, administrative secretary to the business administrator, administrative clerk typist to the business administrator, confidential clerk-typist to the Board secretary, administrative secretary to the assistant superintendent, administrative secretary to the accountant, secretary to the personnel manager, and administrative clerk-typists in the personnel office; employee benefits coordinator, inventory clerk, parent school coordinator/affirmative action officer, secretary to the school district accountant, data processing clerk/computer operator, and 12-month clerk/typist position assigned to the Board secretary's office.<sup>2/</sup>

The WEA's most recent collective agreement with the Board covering this unit expired June 30, 1996. Negotiations for a successor

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<sup>2/</sup> This definition is a combination of the parties' 1992-95 contract recognition clause and a 1996 settlement agreement in Commission Docket No. CU-96-29, clarifying the unit to include and exclude certain titles.

agreement have reached an impasse and the Commission has appointed a mediator.

The custodial/maintenance and aides unit has been represented by the Employees Association of Willingboro for at least 20 years. The contract recognition clause describes the unit as:

...buildings, grounds, and pool maintenance;  
custodians and custodial assistants;  
transportation maintenance and mechanics;  
warehouseman; food handlers and drivers; food  
service personnel; aides; security aides; bus and  
van drivers; special education teacher  
assistants; maintenance electrician, boiler  
engineer, guidance assistant and licensed plumber.

Although the recognition clause includes food service and transportation service employees, these services have been contracted out and the Board no longer employs these categories of personnel. The unit now consists of about 160 employees.

The EAW's most recent contract with the Board for this unit expired June 30, 1995. The EAW and the Board have been negotiating for a successor contract for this unit, and a Commission mediator has been assisting the parties. The parties have not yet reached agreement.

On November 27, 1996, the EAW advised us that it disclaims further interest in representing the custodial/ maintenance and aides unit and it supports the WEA petition.

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### Procedural Issues

The Board argues that the petition was not timely filed under the Commission's Representation Rules, and that processing the petition now would disrupt ongoing contract negotiations in both units.

First, the petition appears to be timely. A request to consolidate negotiations units must be filed as a representation petition. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). The petition must be timely, both as to the group to be accreted, and as to the existing unit. State Public Advocate, D.R. No. 94-7, 19 NJPER 530 (¶24247 1993). N.J.A.C. 19:11-2.8 bars filings during certain periods: subsections 2.8(a) and (b) prohibit filings within 12 months of a Commission conducted representation election, certification or proper recognition; 2.8(c) prohibits filings "during the period of an existing written agreement" except during certain window periods; for education employees, that window period is September 1 through October 15 of the last year of the contract. This Rule section is commonly referred to as the "contract bar" rule.

The purpose of the contract bar rule is to balance two competing goals of the Act: to provide stability in the parties' relationship, and to enable employees to use their statutory right to select their negotiations representative. N.J.S.A. 34:13A-2 and 5.3. The contract bar gives the parties stability for the stated length of the contract; however, the Rules provide a contract "window period" during which employees may seek to change

negotiations representatives. But, once the term of the contract expires, the parties are no longer guaranteed freedom from competing representation claims upon the unit employees. To prohibit employees from changing representatives after contract expiration would not foster contract settlements, and would indefinitely bar employees from exercising their statutory right to select negotiations representatives.

Here, there is no current contract in effect for either unit to bar the filing of the petition. The contracts' "continuation" clauses extend employees' terms and conditions of employment until a new agreement is reached -- indefinitely -- and, therefore, cannot act to bar a representation petition. See Lower Tp., D.R. No. 77-1, 2 NJPER 291 (1977).

Further, there is no support for the Board's argument that the parties' ongoing negotiations or mediation should bar processing of the petition. Therefore, I find the petition to be timely filed and appropriate to process to an election.

#### The Appropriate Unit

The Board argues that the structure of the long-standing existing units should not be disturbed. The New Jersey Supreme Court has affirmed the Commission's policy of favoring broad-based, employer-wide negotiations units rather than small units of specific occupational groupings. Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." that result from

negotiating with numerous smaller units. State of N.J. and Prof. Assn. of N.J. Bd. of Ed., 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68. The Commission has long held that broad-based units of education employees -- both units of all school support staff employees and units combining support staff and professional staff -- are appropriate. West Milford Bd. of Ed., P.E.R.C. No. 56 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

In Piscataway, 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. See West Milford Bd. of Ed., P.E.R.C. No. 56 (1971). 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. State of New Jersey and Professional Assn of N.J. Dept. of Ed., 64 N.J. 231 (1974). (Emphasis in original.) Piscataway, at p. 274.

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, except where certain compelling circumstances may justify continuing separate



units. See Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981). Englewood was not decided solely on the basis of a long history of negotiations in separate units but on a combination of factors including the strenuous objection by the incumbent organization. As we have found in numerous decisions since Englewood, deciding whether to permit employees to vote on whether they wish to have a unified negotiations unit requires a balancing of factors.

Shortly after Englewood, in Glen Rock Bd. of Ed., P.E.R.C. No. 83-64, 9 NJPER 17 (¶14008 1982), the Commission reversed a Director of Representation decision finding that the history of negotiations in separate units mandated dismissal of a petition to consolidate units. The Commission found that the Director erred in relying exclusively on the negotiations history and remanded the matter for hearing. On remand, the hearing officer also found that the 10-year history of separate negotiations units precluded consolidating the units. The Commission again reversed, finding that negotiations history alone will not control unit structure in the face of the incumbent's support for consolidation. Glen Rock Bd. of Ed., P.E.R.C. No. 84-125, 10 NJPER 275 (¶15135 1984).<sup>3/</sup> We

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<sup>3/</sup> Simultaneous with Glen Rock, the Commission issued five other decisions clarifying the applicability of Englewood. Piscataway, Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd App. Div. Dkt. No. A-4503-83T6 (4/9/85); Bergen Cty. Vocational Schools Bd. of

have continued to permit consolidation of support units with teachers where the incumbent representative relinquishes its representation rights to the support unit and supports the consolidation petition. In Cherry Hill Bd. of Ed., D.R. No. 90-18, 16 NJPER 107 (¶21041 1990), I found a petition to add support staff employees to a teachers' unit appropriate even though there was a twenty-year history of stable negotiations in separate units. See also, Essex Cty Voc Tech Bd. of Ed., D.R. No. 93-8, 19 NJPER 32 (¶24015 1992); Orange Bd. of Ed., D.R. No. 92-6, 18 NJPER 2 (¶23001 1991); Logan Tp. Bd. of Ed., D.R. No. 91-22, 17 NJPER 134 (¶22054 1991); Deptford Tp. Bd. of Ed., D.R. No. 90-31, 16 NJPER 370 (¶21146 1990).

Here, the incumbent representative has disclaimed further representation rights to the employees in the custodial/maintenance and aides unit. The EAW supports, rather than objects to the petition. Therefore, I find that the proposed consolidated unit is appropriate for collective negotiations.

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3/ Footnote Continued From Previous Page

Ed., P.E.R.C. No. 84-127, 10 NJPER 279 (¶15137 1984); Freehold Reg. Bd. of Ed., P.E.R.C. No. 84-128, 10 NJPER 280 (¶15138 1984); and Barrington Bd. of Ed., P.E.R.C. No. 84-129, 10 NJPER 282 (¶15139 1984). In each of these cases, the Commission found that giving employees a chance to choose unified representation in a consolidated unit was appropriate even where there had been a lengthy negotiations history of separate support staff units, if the supportive staff's incumbent representative favors, rather than vigorously opposes the petition to consolidate units.

The Board also argues that the professional employees (teachers and other certificated staff) should not be consolidated in a unit with the custodial/maintenance and aides employees unless they are given a "professional option" election to vote on such inclusion. N.J.S.A. 34:13A-6 provides,

The [Commission] shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes... (2) both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such unit....

The Board is correct that we ordinarily would not consolidate a support staff group with a purely professional unit without conducting a professional option vote to determine whether the professional are willing to be in a mixed unit. See, for example, Piscataway, Cherry Hill. Here, however, the professional employees have already been given their statutory right to vote on a combined unit of professionals and non-professionals. In 1987, we conducted a professional option vote when the secretarial/clerical unit consolidated with the teachers' unit. The professionals overwhelmingly approved the mixed unit. There is no requirement that the professional option provision of the Act be satisfied more than once. Accordingly, I find that there is no need to again conduct a professional option vote among the professional employees.

I direct that an election be conducted among the employees in the voting unit described below:

Included: Building, grounds, and pool maintenance; custodians and custodial assistants; transportation maintenance and mechanics; warehousemen; aides; security aides; special education teacher assistants; maintenance electrician, boiler engineer, guidance assistant and licensed plumber.

Excluded: All professional employees, managerial executives, confidential employees, and supervisors within the meaning of the Act; all other district employees.

The support employees in this unit will vote on whether they wish representation by the Willingboro Education Association within the existing WEA unit.

If a majority of the voting employees vote in favor of representation by the Willingboro Education Association, then the unit will be consolidated with the existing WEA unit of professional and clerical employees as described above. If a majority do not vote in favor of such representation, then the employees in the support unit will be unrepresented.

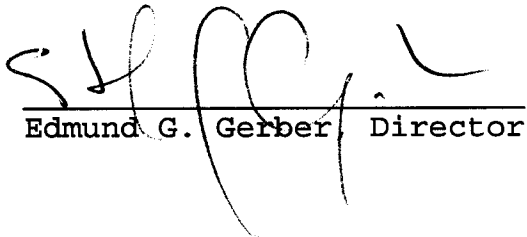
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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. 19:11-10.1, 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 units, 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 simultaneously provided to the employee organization 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, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Edmund G. Gerber Director

DATED: January 17, 1997  
Trenton, New Jersey