

D.R. NO. 88-15

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

In the Matter of

BARNEGAT BOARD OF EDUCATION,

Public Employer,

-and-

BARNEGAT EDUCATION ASSOCIATION/NJEA,

Docket Nos. RO-88-40  
RO-88-54

Petitioner,

-and-

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

Intervenor.

Synopsis

The Barnegat Education Association filed a representation petition challenging the majority status of the incumbent employee representative in the extant unit of only professional employees. The Barnegat Federation of Teachers filed a representation petition seeking the consolidation of the professional unit and the secretaries, food service and custodial and maintenance employees units. The Director of Representation held that an election in the historical professional unit should be conducted in order to determine the majority representative before the consolidation election. The Director found that where the petitioned-for unit is the historical unit, it is long-standing Commission policy to proceed with an election in that unit before processing requests to modify the historical unit. Accordingly, the Director directs that an election be held in the professional unit to determine the majority representative, if any, in that unit.

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Appearances:

For the Public Employer  
Garry Whalen, Consultant

For the Petitioner  
Klausner, Hunter & Oxfeld, Esqs.  
(Stephen B. Hunter, of counsel)

For the Intervenor  
Dwyer & Canellis, Esqs.  
(Michael Buckley, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 30, 1987, the Barnegat Education Association/NJEA ("BEA") filed a Petition for Certification of Public Employee Representative (Docket No. RO-88-40), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission") seeking to represent all

professional employees currently covered by the collective agreement in effect between the Barnegat Board of Education ("Board") and the Barnegat Federation of Teachers, Local 3751, AFT, AFL-CIO ("BFT"), including all classroom teachers, teachers of music, teachers of art, teachers of physical education, reading specialists or teachers, teacher librarians, title I teachers, special education instructors, nurses, psychologists, learning disability teaching consultants (LDTC), guidance counselors and social workers.

On October 2, 1987, the BFT filed a Petition for Certification of Public Employee Representative (Docket No. RO-88-54), supported by an adequate showing of interest, seeking to consolidate the teachers' unit with the secretaries' unit,<sup>1/</sup> the food service employees' unit,<sup>2/</sup> and the custodial and maintenance employees' unit.<sup>3/</sup>

On October 20, 1987, an informal investigatory conference pertaining to Docket Nos. RO-88-40 and RO-88-54 was conducted by a Commission staff attorney with representatives from each of the parties in order to determine the relevant facts pertaining to the petitions. See N.J.A.C. 19:11-2.2 and N.J.A.C. 19:11-2.6. The parties have declined to enter into an Agreement for Consent

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1/ The secretaries' unit is comprised of principals' secretaries, general secretaries, and child study team secretaries.

2/ The food service employees' unit is comprised of food service workers and aides.

3/ The custodial and maintenance employees' unit is comprised of all custodial and maintenance employees.

Election with respect to the above-captioned matters. On October 27, 1987, the Director of Representation invited the parties to file detailed statements of position complete with all arguments and supporting authority relevant to the issues raised in the above-captioned matters. Each of the parties has filed statements of position.

We do not find any substantial and material factual disputes which may more appropriately be resolved through the conduct of a formal hearing. See N.J.A.C. 19:11-2.6(b). Accordingly, we have determined that the disposition of this matter is properly based on our review and consideration of the parties' positions expressed during the informal investigatory conference and set forth in their statements of position and through our administrative investigation and determination of the facts.

At issue here is the status of four separate collective negotiations units comprised of Board employees currently represented by the BFT:<sup>4/</sup> the teachers' unit, the secretaries' unit, the food service employees' unit, and the custodial and maintenance employees' unit.

Prior to June 1987, employees in the food service unit and the custodial and maintenance unit were represented by the Service Employees International Union, Local 389, AFL-CIO ("SEIU") for

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<sup>4/</sup> The BFT also represents other collective negotiations units of Board employees. However, no question concerning representation has been raised regarding such other units.

purposes of collective negotiations. On or about June 9, 1987, the Board received a letter from the SEIU informing it that the employees which it represented in the food service and custodial and maintenance units had chosen, with prior approval of the SEIU, to change their affiliation to the BFT, and the BFT was prepared to then commence negotiations on behalf of the employees in those units. In light of this letter, the Board accepted BFT dues authorization cards, executed and submitted by a majority of employees in each unit (food service and custodial), as proof of the BFT's majority status in the two units. The Board and the BFT have conducted numerous negotiations sessions regarding terms and conditions of employment covering the employees in the food service and custodial and maintenance units. However, the Board did not post notices regarding this recognition nor did it convey any written grant of recognition to the BFT.

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The parties have argued extensively over the question of unit structure and the appropriateness of the BFT's unit consolidation petition. The BFT asserts that a broad-based unit, inclusive of professionals and non-professionals, is the preferred unit structure. Therefore, it argues that the unit consolidation petition must be processed first and an election held in the consolidation matters prior to processing the BEA's petition in the professional unit. The Board and the BEA contend that separate units of professional and non-professional employees should be

maintained. The current unit configuration represents the historical unit structure and has resulted in stable and successful collective negotiations.

Notwithstanding the parties' arguments concerning unit structure, we do not perceive this case as requiring a ruling upon what constitutes the most appropriate unit structure. Both unit configurations suggested by the parties are appropriate. Indeed, in Piscataway Township Board of Education, P.E.R.C. No. 84-124, 10 NJPER 272, 274, (¶15134 1984) ("Piscataway"), the Commission stated:

...the Commission has specifically held that many different types of school district unit structures are appropriate for certification: some containing teachers alone, some containing one or more groups of supportive staff alone, and some containing a mixture of teachers and one or more groups of supportive staff. See, e.g., In re Bergenfield Bd. of Ed., P.E.R.C. No. 27 (1969) (unit of clerks, secretaries, teacher aides, and teachers appropriate); West Milford (appropriate to add unrepresented clerical employees and building aides to an existing unit of teachers, nurses and instructions; aides if employees so choose). See also, Garfield Bd. of Ed., P.E.R.C. No. 16 (1969) (unit of teachers, guidance counselors and nurses appropriate); In re South Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970); In re Jefferson Township Bd. of Ed., P.E.R.C. No. 61 (1971); Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12204 1982) (addition of supplemental teachers to teacher unit appropriate); In re Cranford Bd. of Ed., .E.D. No. 74 (1975); In re Asbury Park Bd. of Ed., E.D. No. 76-41, 2 NJPER 170 (1976); Wildwood Bd. of Ed., D.R. No. 79-20, 5 NJPER 98 (¶10054 1979); Spring Lake Heights Bd. of Ed., D.R. No. 79-21, 5 NJPER 100 (¶10055 1979) Glassboro Bd. of Ed., D.R. No. 79-28, 5 NJPER 155 (¶10086 1979) Haddonfield Bd. of Ed., D.R. No. 80-22, 6 NJPER 80 (¶11040 1980); Vocational Bd. of Ed. of County

of Atlantic, D.R. No. 80-31, 6 NJPER 176 (¶11084 1981); Evesham Twp. Bd. of Ed., D.R. No. 80-41, 6 NJPER 311 (¶11150 1976) (unit of supportive staff employees appropriate); Moonachie Bd. of Ed., D.R. No. 82-28, 8 NJPER 58 (¶13023 1981); and Lacey Twp. Bd. of Ed., D.R. No. 82-48, 8 NJPER 269 (¶13116 1982).

Consequently, it is unnecessary for us to render a determination specifically finding one unit or the other to be the most appropriate. At the proper time, the unit configuration will be decided through Commission processes. See Piscataway, supra; See also, West Milford Bd. of Ed., P.E.R.C. No. 56 (1971); In re Globe Machine and Stamping Co., 3 NLRB 294, 1-A LRRM 122 (1937).

The threshold issue here is whether the Commission should first conduct an election among the employees in the professional unit only, in order to determine the employee representative in that unit, or conduct an election among the support staff employees in order to determine whether support staff employees wish to be represented by the BFT in a wall-to-wall unit. We conclude that the BEA petition seeking an election to determine the employee representative in the extant professional unit should take place first, given the facts in this case.

Professional employees in Barnegat have been represented in a unit comprised of only professional employees. As indicated previously, a unit of only professional teaching staff employees is appropriate in a school district. The BEA is petitioning for an election among the employees serving in titles contained in the historical unit.

The Commission has addressed the issue of modifications sought in an extant collective negotiations unit during the pendency of a legitimate question concerning representation. Where a petitioner challenges the majority status of an incumbent representative and seeks an election in the historical unit, it is long-standing Commission policy to proceed as promptly as possible with an election in the historical unit and to not process requests made by any party to modify the existing unit. City of Hoboken, D.R. No. 85-4, 10 NJPER 597 (¶15276 1984) ("Hoboken"). See also, City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶ 16126 1985); State of New Jersey (New Jersey Civil Service Assn.), D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), request for review den. P.E.R.C. No. 81-112, 7 NJPER 189 (¶12083 1981); and Township of North Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977).

The BFT contends that its petition "seeks only to entitle individuals holding recognized positions in established negotiations units the right to vote for consolidation within the Federation." (BFT statement of position, p. 4, emphasis in original). Therefore, the issue of determining whether a particular title should be included in any of the units is not present in this case since there is no dispute among the parties concerning the titles currently included in the various units. The BFT concludes that Hoboken and its supporting cases are not controlling since no issue of unit clarification exists and no unit clarification petition is pending.



We disagree. We do not find that Hoboken and its supporting cases stand only for the proposition that the Commission will not process unit clarification matters during the pendency of a representation petition. When the cited cases are read together, some of which involve pending unit clarification petitions and some of which do not, a broader policy is readily discernable. Hoboken and its supporting cases stand for the general principle that the Commission will not disturb the historical unit when a valid representation petition has been filed challenging the majority status of the incumbent employee representative. In this case, running the consolidation election first could result in a modification of the historical structure of the professional unit before the employees in that unit are given the opportunity to select a majority representative.<sup>5/</sup>

Accordingly, we direct that an election be conducted among the employees in the professional unit for the purpose of

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<sup>5/</sup> In light of our determination to initially conduct an election in the professional unit only, we need not address here the Board's contention that there exists a recognition bar to an election among employees in the food service and custodial and maintenance units. In the event the election in the professional unit results in the selection of the BEA as employee representative, the BFT would no longer have standing to seek the consolidation of the food service and custodial units with the professional unit and its petition would be dismissed. Should the BFT's petition be dismissed, the issue of whether a recognition bar to the election exists becomes moot. Accordingly, we have decided to defer the resolution of the recognition bar issue until after the outcome of the election between the BFT and the BEA in the professional unit.

determining the employee representative in that unit.<sup>6/</sup> Employees shall be provided the opportunity to vote on whether they wish to be represented by the Barnegat Education Association, the Barnegat Federation of Teachers or no representative. Those eligible to vote are all professional (certificated) employees employed by the Barnegat Board of Education and whose titles are included in the collective negotiations unit currently represented by the Barnegat Federation of Teachers, including all classroom teachers, teachers of music, teachers of art, teachers of physical education, reading specialists or teachers, teacher-librarians, title 1 teachers, special education instructors, nurses, psychologists, learning disability teaching consultants (LDTC), guidance counselors and social workers. Those not eligible to vote are all managerial executives, confidentials, supervisors, non-professional, craft and police employees within the meaning of the Act employed by the Barnegat Board of Education, including all principals, secretaries, substitute teachers, teacher aides, custodians, bus drivers, cafeteria personnel, superintendent of schools, assistant superintendent, transportation secretary, maintenance secretary and managers, all other employees included in any other collective negotiations unit and all other employees employed by the Board.

The election shall be conducted no later than thirty (30) days from the date of this decision unless good cause for an

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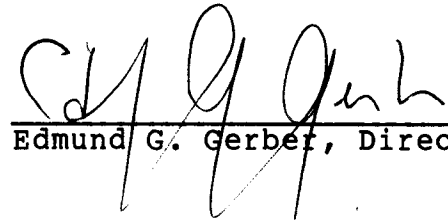
<sup>6/</sup> The processing of the consolidation petition shall await the outcome of the election in the professional unit.

extended date is demonstrated. Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date of issuance of this decision, 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 those employees shown above as not eligible and 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 and a statement of service shall be 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



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Edmund G. Gerber, Director

DATED: December 1, 1987  
Trenton, New Jersey