

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

In the Matter of

VOCATIONAL BOARD OF EDUCATION
OF THE COUNTY OF ATLANTIC,

Public Employer,

-and-

DOCKET NO. RO-80-80

THE ATLANTIC COUNTY AREA
VOCATIONAL TECHNICAL SCHOOL
EDUCATION ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election to ascertain whether supportive staff employees desire to be represented by the Petitioner in a negotiations unit with certificated teaching personnel. The Director determines that the proposed unit is prima facie appropriate and rejects the Board's objections to the appropriateness of the proposed unit based upon the claims that the two groups of employees have historically divergent terms and conditions of employment and different lines of supervision. The Director refers to previous determinations finding a community of interest among such employees and notes the absence of any evidence either in support of a claim that as a result of differences in terms and conditions of employment inconsistent interests exist among the proposed unit employees which cannot be accommodated through negotiations or that the different supervisory structure precludes an effective and viable collective negotiations relationship.

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Appearances:

For the Public Employer
Gerald L. Dorf, P. A.
(David A. Wallace of counsel)

For the Petitioner
Greenberg & Melk, attorneys
(Arnold M. Melk of counsel)

DECISION AND DIRECTION OF ELECTION

On October 15, 1979, a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Atlantic County Area Vocational Technical School Education Association/NJEA (the "Association") seeking to add full and part-time supportive staff employees employed by the Vocational Board of Education of the County of Atlantic (the "Board") to the existing

unit of professional certificated employees represented by the Association. ^{1/} The Atlantic County Area Vocational Technical School Supportive Association ("ACAVTSSA") presently represents the supportive staff in a separate collective negotiations unit. ^{2/} The undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts.

- ^{1/} The Association's showing of interest was obtained from among the supportive staff employees. The Board contends that a showing of interest must also be submitted from among the professional employees. The showing of interest is a requirement solely for administrative convenience which demonstrates that there is sufficient interest among employees for representation by a particular negotiations representative to warrant the processing of a petition. Upon the presentation of a petition raising a question concerning representation of employees, the Commission determines the appropriateness of a proposed collective negotiations unit. However, where the unit designated by the Commission as the appropriate unit will be comprised of both professional and nonprofessional employees, N.J.S.A. 34:13A-6(d) provides professional employees with the option of choosing or rejecting the concept of a mixed unit structure. In the circumstances presented herein, a question concerning representation has been raised solely with respect to the issue of whether supportive staff desire to be represented by the Education Association which currently represents professional employees. While the designation of the appropriate collective negotiations unit for these supportive staff employees may result in a unit consisting of professionals and nonprofessionals and trigger the requirement that professional employees vote concerning the mixed unit structure, the professional employees have already selected their collective negotiations representative and there is no question concerning their representation by a given organization. Thus, the Commission does not require a separate showing of interest from among the professional employees as a prerequisite for processing the instant Petition.
- ^{2/} The ACAVTSSA currently represents a unit including nonprofessional employees including secretarial, clerical, and data processing personnel. The ACAVTSSA has not sought to intervene in this matter.

On the basis of the administrative investigation herein, 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 at a 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 Vocational Board of Education of the County of Atlantic is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Atlantic County Area Vocational Technical School Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association is seeking to add currently represented nonprofessional employees employed by the Board, specifically full and part-time supportive staff, to the existing unit of professional employees.

4. The Petitioner agrees to a secret ballot election among employees in the petitioned-for unit, including a professional option election, if necessary. See N.J.S.A. 34:13A-6(d).

5. The Board does not consent to a secret ballot election, contending that a unit consisting of professional and nonprofessional employees is inappropriate. In particular, the Board alleges that the professional and nonprofessional employees have historically enjoyed vastly divergent terms and conditions of employment and have historically been subject to separate and independent lines of supervisory control.

The primary question at issue appears to be whether a community of interest exists between the professional and nonprofessional school employees. It appears to the undersigned that the unit sought by the Petitioner is prima facie appropriate in light of the existing Commission policy concerning unit definition for employees of a school district. Prior Commission decisions have consistently held that a community of interest exists between professional and nonprofessional employees, notwithstanding certain differences in terms and conditions of employment. In general, employees in a school district have a common employer, work in the same buildings, and have similar goals and purposes, i.e., the education and the betterment of the students. ^{3/} When making unit determinations the Commission

^{3/} See In re West Milford Tp. Bd. of Ed., P.E.R.C. No. 56 (1971) wherein the Commission found appropriate a petition seeking to add nonprofessional clerical employees and building aides to a unit of professional employees: teachers, nurses, and instructional aides. See also In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971) with respect to the appropriateness of a unit of professional and nonprofessional employees. The Commission determined that the existing mixed professional and nonprofessional unit, which included cafeteria personnel, was not prima facie inappropriate. See also, In re Glassboro Bd. of Ed., D.R. No. 79-28, 5 NJPER 155 (¶ 10086 1979); In re Spring Lake Heights Bd. of Ed., D.R. No. 79-21, 5 NJPER 100 (¶ 10055 1979); In re Wildwood Bd. of Ed., D.R. No. 79-20, 5 NJPER 98 (¶ 10054 1979).

has sought to avoid fragmentation of negotiations units and has favored the formation of units along broad-based, functional lines rather than by title or by distinct occupational groupings.

As to the Board's contention of "historically divergent terms and conditions of employment," no documentary or other evidence has been proffered by the Board in support of a claim that inconsistent interests exist among the proposed unit employees which cannot be accommodated in the proposed collective negotiations unit structure.

As to the more specific contention of different lines of supervision, there is, similarly, no evidentiary proffer indicating that the different supervisory structure precludes an effective and viable collective negotiations relationship. It is not uncommon that employees within a negotiations unit have different and distinct lines of supervision.

On March 14, 1980, the undersigned notified the parties that on the basis of the administrative investigation to date, it appeared that no substantial and material factual issues had been placed in dispute and that a valid question concerning representation exists in a prima facie appropriate unit. The undersigned provided an additional opportunity to all parties to present evidence as well as statements of position relating to the Petition. The undersigned stated that in the absence of any substantial and material factual disputed issues, he would thereafter issue a decision and direction of election. No

further evidentiary proffer or statement has been provided to the undersigned, other than a statement of consent by the Petitioner.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit is: all certified, full time teaching personnel and full and part-time supportive staff employed by the Vocational Board of Education of the County of Atlantic, but excluding coordinators, supervisors, managerial executives, craft employees, confidential employees and police within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below. Professional employees shall be accorded a professional option election, consistent with N.J.S.A. 34:13A-6(d).

Those eligible to vote are the employees 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, or on vacation, or temporarily laid off, including those in 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 the undersigned and with the Atlantic County Area Vocational Technical School Education Association an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Atlantic County Area Vocational Technical School Education Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented the Atlantic County Area Vocational Technical School Education Association.

The exclusive representative, if any shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

DATED: April 1, 1980
Trenton, New Jersey


Carl Kurtzman, Director