

D.R. NO. 91-22

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

In the Matter of

LOGAN TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-91-90

LOGAN TOWNSHIP EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among aides, food service workers, custodial/maintenance employees and secretarial/clerical employees employed by the Logan Township Board of Education to determine whether they wish to be represented by the Logan Township Education Association. Also ordered is a professional option election to be conducted among the employees in the existing unit to determine whether they wish to be included in a unit with the non-professional employees. Both elections were ordered over the objections of the employer.

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Appearances:

For the Public Employer
Capehart & Scatchard, attorneys
(Alan Schmoll, of counsel)

For the Petitioner
New Jersey Education Association
(Eugene Sharp, UniServ Field Rep.)

DECISION AND DIRECTION OF ELECTION

On October 15, 1990, the Logan Township Education Association ("Association") filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to add certain unrepresented support staff -- all aides, food service workers, custodial/maintenance employees and secretarial/clerical employees employed by the Logan Township Board of Education ("Board") -- to the existing unit of non-supervisory certificated employees represented by the Association.

The Board will not consent to an election, arguing that the petitioned-for employees lack a community of interest with each

other and with the existing unit. It further asks that each distinct employee group be allowed to vote separately on the question of representation. Additionally, the Board believes certain employees are confidential and/or supervisory and should be excluded from any appropriate negotiations unit.

The Association contends that a community of interest exists between the petitioned-for employees and the existing represented unit. Additionally, since there is no history of separate negotiations among the petitioned-for employees, the Association does not believe it is appropriate for each employee group to vote separately on the question of representation.

The Board and the Association were unable to reach an agreement on the supervisory status of the cafeteria manager.^{1/}

We conducted an administrative investigation in this matter. There are no substantial and material factual disputes which warrant convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

There are approximately 60 employees in the unit represented by the Association. Their contract expires June 30, 1991. The unit is comprised of all non-supervisory certificated employees employed by the Board. They are professional employees

^{1/} The Association and the Board agree that the duties of employees in the following four job titles should exclude them from the petitioned-for negotiations unit: Maintenance Supervisor (supervisory), Board Secretary (supervisory and confidential), Secretary to the Board Secretary (confidential) and Superintendent's Secretary (confidential).

within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

There are approximately 30 employees in the petitioned-for support staff unit. There is no history of negotiations for these employees, either in separate units or in one unit. The petition is supported by an adequate showing of interest.

There are 11 aides in the petitioned-for unit. Special education and kindergarten aides must have 60 college credit hours. Clerical, cafeteria and playground aides must be high school graduates. Aides are not eligible for tenure. In all cases except for the clerical aides, the aides report to classroom teachers. The clerical aide reports directly to the building principal. Classroom aide duties generally include providing assistance to teachers to achieve classroom objectives. Cafeteria aides assist in providing a smoothly functioning cafeteria. Playground aides assist the teacher in supervising students on the playground. The clerical aide provides clerical and general office support to the principal. In 1989-90, aides did not receive salary increases, but in 1990-91, they received a 10% increase. Aides work 10 months per year. Full-time aides work 7 hours per day and part-time aides work 3.5 hours per day. The aides share the same holiday schedule as the teachers. Aides receive no vacation. Aides do not receive a clothing allowance.

There are 8 food service employees in the petitioned-for unit. The supervisory status of the cafeteria manager remains

disputed between the parties.^{2/} Cafeteria workers must be high school graduates. Cafeteria workers have not been given tenure. Cafeteria workers perform general duties required to prepare meals, serve students and teachers and clean the kitchen area after meals are served. Cafeteria workers report to the cafeteria manager. Cafeteria workers received a 27.6% wage increase in 1989-90 and a 7.7% increase in 1990-91. Cafeteria workers work 10 months per year and 6 hours per day. They share the teacher's holiday schedule and receive 3 extra days off when teachers attend in-service training. They do not receive vacation. They receive an annual clothing allowance.

There are 5 custodial/maintenance employees in the petitioned-for unit. There are no particular educational requirements for the positions of day and night custodians. Custodians have never been given tenure. Custodians report to the maintenance supervisor. They perform cleaning and maintenance tasks in order to provide students a safe, attractive, comfortable and clean environment. Custodial/maintenance employees received a 10% wage increase in 1989-90 and an 11% increase in 1990-91. Custodial/maintenance employees work 12 months per year and 8 hours per day. They receive 11 legal holidays plus Christmas Day and New Years Day. They receive two weeks vacation annually. They receive an annual clothing allowance.

^{2/} We do not have enough information to determine whether she is a supervisor within the meaning of the Act.

There are 6 secretarial/clerical employees in the petitioned-for unit. They are required to have a high school diploma. Two secretaries who were excluded from the petitioned-for unit based upon their confidential duties have additional education and experience specific to their positions.^{3/} Secretaries have a statutory right to acquire tenure. Secretaries are assigned throughout the Board's school facilities and to the Board's administrative office, so they report to various supervisors. Secretaries perform general secretarial and clerical functions. In 1989-90, they received a 35% wage increase and in 1990-91, they received a 9.5% increase. Secretaries work 12 months per year. Full-time secretaries work 7.5 hours per day and part-time secretaries work 6 hours per day. Secretaries receive the same holidays as teachers plus July 4. They receive two weeks vacation annually and do not receive a clothing allowance.^{4/}

There are approximately 60 non-supervisory certificated professional employees in the existing unit represented by the Association. Their terms and conditions of employment are embodied in their contract which expires June 30, 1991. Qualifications for

^{3/} These are the Superintendent's Secretary and the Secretary to the Board Secretary.

^{4/} As a group, the secretaries submitted a letter to the Board Personnel Committee which the Board submitted as one of its exhibits. This letter, signed by seven secretaries, expressed their desire not to become part of the petitioned-for broad-based negotiations unit and to continue to be represented individually or as a separate group.

teachers are set by the State Board of Education; they are required to at least hold a baccalaureate degree and various certifications. They are statutorily eligible to acquire tenure.^{5/} In 1989-90, teachers received an 8.2% wage increase and in 1990-91 received an 8.4% increase. Teachers work 10 months per year and 7 hours per day. They do not receive vacation or clothing allowances. Their holiday schedule is in their contract.

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

^{5/} No job description was provided for the certificated employees. The Board provided job descriptions for all other employment titles involved in this case.

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. Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

Here, as we have found in other districts, the aides, food service workers, custodial/maintenance employees and secretarial/clerical employees share a community of interest with teachers and each other. The employees work together in the schools and share the common goal of advancing students' education. The Board's centralized authority in the Superintendent's office controls its personnel policies affecting its employees.
Piscataway.

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 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. 84-125, 10 NJPER 275 (¶15135 1984).

Simultaneous with Glen Rock, the Commission issued five other decisions clarifying the applicability of Englewood: Piscataway Bd. of Ed., 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 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 unified representation in a consolidated unit was appropriate even where there had been a lengthy negotiations history of separate support staff units, if the incumbent representative welcomes, rather than vigorously opposes, the proposed unit and the existing unit is not the subject of a longstanding certification.^{6/} In Cherry Hill Board of Education, D.R. No. 90-18, 16 NJPER 107 (¶21041 1990), the Director found a petition to consolidate support staff and teachers was appropriate even though there was a twenty year history of negotiations in stable separate units.

Significantly, the Commission noted in Piscataway,

...the focus of the Englewood litigation was on the placement of [custodians represented by an AFL-CIO affiliate].... Englewood may not be read as rejecting giving employees the opportunity to choose unified representation when the majority representatives of these units favor, rather than oppose, that course. Piscataway at p. 275, n. 4.

Because there is no history of separate negotiations among any of the support staff groups in the petitioned-for unit, there is no reason to deny the petition for a broad-based unit. Englewood.

^{6/} In Bergen, the Commission found a five-year history would not control where the incumbent support staff representative did not oppose unification. In Freehold, the Commission found the 10-year history of separate representation for secretaries did not control where the incumbent support staff representative did not oppose unification. In Barrington, the Commission found a history of more than 10 years of separate representation for secretaries did not control where the incumbent support staff representative did not oppose unification.

Although the secretaries have asked to be treated separately, their subjective preferences cannot override the community of interest that their positions share with the other positions in the petitioned-for unit.

Accordingly, I conclude that the petitioned-for unit is appropriate for collective negotiations. I direct that an election be conducted among the employees in the petitioned-for unit and that a professional option be conducted among employees in the existing professional unit, as follows:

Included: All support staff including all aides, food service workers, custodial/maintenance employees and secretarial/clerical employees to be added to the existing unit of all professional, non-supervisory, certificated personnel employed by the Logan Township Board of Education.

Excluded: Maintenance Supervisor, Board Secretary, Secretary to the Board Secretary, Superintendent's Secretary, all managerial executives, confidential employees, police employees, craft employees, supervisory employees within the meaning of the Act and all other employees employed by the Logan Township Board of Education.

The election shall be conducted in accordance with the Commission's rules, as follows:

Two voting groups are established for purposes of this election.

Voting Unit 1 -- Included: All support staff employees including all aides, food service workers, custodial/maintenance

employees and secretarial/clerical employees employed by the Logan Township Board of Education. Excluded: Maintenance Supervisor, Board Secretary, Secretary to the Board Secretary, Superintendent's Secretary, all professional employees, managerial executives, confidential employees, police employees, craft employees, supervisory employees within the meaning of the Act and all other employees employed by the Logan Township Board of Education.

Voting Unit 2 -- Included: All professional employees employed by the Logan Township Board of Education. Excluded: Maintenance Supervisor, Board Secretary, Secretary to the Board Secretary, Superintendent's Secretary, all support staff employees (aides, food service workers, custodial/maintenance employees and secretarial/clerical employees), managerial executives, confidential employees, police employees, craft employees, supervisory employees within the meaning of the Act and all other employees employed by the Logan Township Board of Education.

Professional employees (Voting Unit 2) shall vote on whether they wish to be included in a unit with non-professional employees. Support staff employees (Voting Unit 1) shall vote on whether they wish to be represented in collective negotiations by the Logan Township Education Association/NJEA.

If a majority of voting professional employees (Voting Unit 2) votes for inclusion in a unit with non-professional employees and a majority of voting support staff employees (Voting Unit 1) votes for representation by the Logan Township Education Association/NJEA,

then the Logan Township Education Association/NJEA will represent both groups in one unit.

If a majority of voting professional employees (Voting Unit 2) does not vote for inclusion in a unit with non-professional employees, but a majority of voting support staff employees (Voting Unit 1) votes for representation by the Logan Township Education Association/NJEA, then the Logan Township Education Association/NJEA will represent the support staff employees in a separate unit from the professional employees.

If a majority of voting support staff employees (Voting Unit 1) does not vote in favor of representation by the Logan Township Education Association/NJEA, then the support staff employees will not be represented by any organization for purposes of collective negotiations and a certification of results shall issue.

The employee in the cafeteria manager position shall vote by challenge ballot since we are unable to determine her supervisory status.

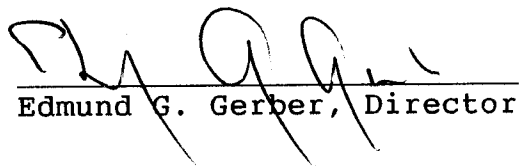
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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. 19:11-9.6, 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 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: February 19, 1991
Trenton, New Jersey