

D.R. NO. 93-24

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

In the Matter of

CITY OF SOUTH AMBOY,

Public Employer,

-and-

Docket No. RO-93-103

MUNICIPAL EMPLOYEES UNION OF SOUTH AMBOY,

Petitioner.

SYNOPSIS

The Director of Representation finds that school nurses are appropriate to add to a broad-based unit of non-supervisory municipal employees and orders an accretion election among them. The Director rejects the employer's argument that the nurses are employed by the parochial schools to which they are assigned, and, applying the control of labor relations test, finds that the City is the employer.

The Director determines that no separate professional option is necessary as the nurses are separately voting on representation within the existing appropriate unit.

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Appearances:

For the Public Employer  
Savage & Serio, attorneys  
(Thomas J. Savage, of counsel)

For the Petitioner  
William P. McDonnell, Inc.  
(Dr. William P. McDonnell, labor negotiator)

DECISION AND DIRECTION OF ELECTION

On November 24, 1993, the South Amboy Municipal Employees Union filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Union seeks to add school nurses to its existing unit of blue and white collar municipal employees.<sup>1/</sup>

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<sup>1/</sup> The MEU initially raised the issue of the nurses' inclusion in the unit in an unfair practice charge; in the charge, it alleged that the City was refusing to recognize the nurses as part of the MEU unit. The parties signed a settlement agreement there, agreeing that the issue of whether to include the nurses in the unit would be addressed by the Commission in a representation petition.

The City contends that the nurses are not City employees, but rather are employed by the parochial schools to which they are assigned. Further, the City contends that nurses are professional employees and therefore not appropriate for inclusion in the MEA blue collar and white collar employee unit.

We have conducted an administrative investigation into the facts concerning the proposed addition of the nurses to the negotiations unit. N.J.A.C. 19:11-2.2. On May 27, 1993, I advised the parties that it appeared the material facts were not disputed and I intended to direct an election. No responses were filed. These facts appear.

The MEU's most recent agreement with the City which expired in 1990,<sup>2/</sup> covered a unit comprised of:

all regular blue collar and white collar employees of the City located in various departments, now employed or hereafter employed, but excluding professional, craft and confidential employees, managerial executives, police, supervisors (foremen and above); seasonal employees, casual employees and school crossing guards, and those employees working twenty (20) or fewer hours per week, on average, in a 180-day period.

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<sup>2/</sup> The parties have negotiated but have not signed, a successor agreement.

The MEU does not dispute that nurses are professional employees as defined by N.J.A.C. 19:10-1.1 (21).<sup>3/</sup> However, the MEU asserts that the unit already includes other professional titles, and the fact that the school nurses are professional employees is not sufficient to keep them out of the negotiations unit.

Two of the petitioned-for positions are held by Mary Ellen Quirk and Theresa Lovely; the third is vacant. The school nurses work out of the City's Department of Health and Welfare. South Amboy is a civil service employer subject to the laws and regulations of the State Department of Personnel. Under DOP, the City is the appointing authority for nurses. The school nurses were hired by the City after having taken an open competitive examination and receiving a civil service certification .

The City funds the three nurse positions and issues the nurses' paychecks. It sets the salary, fringe benefits and leave allotments for the school nurses. By Ordinance No. 11-92, passed March 10, 1992, "authorizing certain offices, positions and job

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3/ N.J.A.C. 19:10-1.1(21) defines professional employee as:

any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological or social sciences or in the field of learning...The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

classifications and providing for compensation for municipal employees...", the City approved a 1992 annual salary range for school nurses of \$14,637 to \$25,460. It also provided for three personal days annually. The nurses are members of the State Public Employees Retirement System, to which the City contributes on their behalf.

The nurses are each assigned to work in one of the community's parochial schools. They report their time records to the City Finance Department. In September, 1992, the City Administrator asked the parochial school to which the school nurses are assigned to keep independent time records for the nurses assigned to their buildings and report that information to the City.

In deciding who is the employer of certain employees, the Commission focuses on which entity generally controls the employees' hiring, performance evaluations, promotions, discipline, firing, work schedules, vacation, hours of work, wages, benefits, funding and expenditures. Cty. of Morris, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985), adopting H.O. No. 85-12, 11 NJPER 418 (¶16146 1985); Bergen Cty. Freeholder Bd. v. Bergen Cty. Pros'r and Mercer Cty. Freeholder Bd. and Mercer Cty. Pros'r, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978), aff'd P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 172 N.J. Super 363 and 172 N.J. Super 411 (App. Div. 1980); Mercer Cty. and Mercer Cty. Superintendent of Elections, P.E.R.C.

No. 78-78, 4 NJPER 221 (¶4111 1978), aff'd 172 N.J. Super. 406 (App. Div. 1980).<sup>4/</sup>

Applying the "control of labor relations test" to the facts here, I find that the responsibility for the effectuation of labor relations and personnel decisions for these employees lies with the City. It is the City, as the civil service appointing authority, which approves all personnel actions. The City hires the nurses, sets their salaries, contributes to their pension plan, pays their health benefits, controls their vacation and sick leave time, assigns them to the various schools, and determines the number of hours per week they will work, if not their specific working hours. While the parochial schools' administration may have been given certain authority over the nurses' day-to-day assignments and keep track of their time, these activities are insufficient to overcome the significant control over the employees' negotiable terms and conditions of employment which the City exercises. Accordingly, I find that the City is the employer of the school nurses.

The City also argues that, because they are professional employees, the school nurses should not be included in the

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<sup>4/</sup> See also, Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984); Ocean Cty Pros'r, D.R. No. 82-29, 8 NJPER 60 (¶13024 1981); Bonnie Bray Child Care Counselors Assn., D.U.P. No. 80-7, 5 NJPER 457 (¶10231 1979); Newark Housing Development and Rehabilitation, D.R. No. 78-34, 4 NJPER 328 (¶10175 1979); Passaic Cty Bd. of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977); Cape May Cty. Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977) and ARA Services, Inc., E.D. No. 76-31, 2 NJPER 112 (1976).

Association's negotiations unit of non-professional blue collar and white collar employees. In this regard, the City notes that the parties' contract recognition clause specifically excludes professional employees.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act) does not prohibit the inclusion of professional employees in units with non-professional employees; rather, it provides that in the event that professional employees are to be included in a unit with non-professional employees, the professionals must be given a choice about whether or not they wish to be included in such a mixed unit. N.J.S.A. 34:13A-5.3 and 6. It is noted that the existing unit appears to now include professional employees such as public health nurses. Given the finding that the City is the employer, we see no more appropriate unit for the school nurses than the MEA's existing broad-based unit of non-supervisory municipal employees which now includes both non-professional and professional employees, notwithstanding the contrary recognition clause language.<sup>5/</sup>

Based upon the foregoing, I find that the City of South Amboy is the employer of the petitioned-for employees and that appropriate unit placement of the school nurses is in the Association's unit of non-supervisory, non-professional and

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<sup>5/</sup> Since the school nurses are voting as a separate group on whether they wish representation within the existing mixed unit, they are effectively exercising their professional option.

professional employees. Therefore, I direct that an election be conducted among the nurses to determine whether they wish to be represented by the Municipal Employees Union of South Amboy in the existing unit.

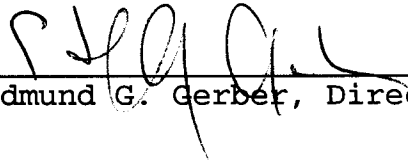
The election shall be conducted within thirty (30) days of the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. The election will be conducted by mail ballot. 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 school nurses, together with their last known mailing addresses. 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 Association 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

  
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Edmund G. Gerber, Director

DATED: June 16, 1993  
Trenton, New Jersey