

P.E.R.C. NO. 87-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-85-135

CAMDEN CITY SCHOOL
PSYCHOLOGIST ASSOCIATION,

Petitioner.

CAMDEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-86-1

CAMDEN EDUCATION ASSOCIATION,

Employee-Representative.

SYNOPSIS

The Public Employment Relations Commission declines to certify the Camden City School Psychologist Association/NJEA as the exclusive representative of the approximately fourteen psychologists employed by the Camden Board of Education and holds that the most appropriate unit for the psychologists continues to be the broad-based unit of professional employees represented by the Camden Education Association. The Commission, therefore, remands the case to the Director of Representation for an election among the psychologists to determine whether they wish the Camden Education Association to represent them in the overall professional unit.

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Employee-Representative.

Appearances:

For the Camden Board of Education, Murray & Granello, Esqs.
(Karen Bulsiewicz, of counsel)

For the Psychologist Association, Freeman, Zeller & Bryant,
Esqs. (Allen S. Zeller, of counsel)

For the Camden Education Association, Selikoff & Cohen,
Esqs. (Steven R. Cohen, of counsel)

DECISION AND ORDER

On April 18, 1985, the Camden City School Psychologist Association/NJEA ("Association") filed a petition seeking its certification as the exclusive representative of the approximately 14 psychologists employed by the Camden Board of Education ("Board").

The Board opposes this petition. Relying on Bd. of Ed. of the City of Camden and Camden City School Psychologists, E.D. No. 76-32, 2 NJPER 123 (1976) ("Camden Psychologists I"), it contends that a separate negotiations unit of psychologists is inappropriate and instead the psychologists should be placed in the unit of professional employees represented by the Camden Education Association, NJEA ("CEA"). On July 8, 1985, the Board filed a Clarification of Unit Petition seeking a determination that CEA's professional unit included the psychologists.

CEA has intervened in these proceedings. It supports the Association's petition and opposes the Board's petition. It has disclaimed any interest in representing the psychologists.

On July 15, 1985, the Director of Representation consolidated the petitions for hearings.

On September 23 and 30, October 31, November 13 and December 10, 1985, Hearing Officer Richard C. Gwin conducted hearings. The parties examined witnesses, introduced exhibits, and made motions. They waived oral argument, but filed post-hearing briefs by February 20, 1986.

On July 24, the Hearing Officer issued his report and recommended decision. H.O. No. 87-1, 12 NJPER ____ (¶____ 1986) (copy attached). He found that CEA's refusal to represent psychologists over the past ten years warranted a separate unit for psychologists despite Camden Psychologists I and the Commission's well-established preference for broad-based units. He recommended

dismissal of the Board's petition since he found that placement of the psychologists raised a question of representation which could not be appropriately resolved through a clarification of unit petition.

Pursuant to N.J.A.C. 19:11-8.7, the Commission has transferred this case to itself.

On August 19, after receiving an extension of time, the Board filed exceptions. It asserts the Hearing Examiner erred in making or omitting certain findings of fact; relying on University of Medicine and Dentistry of New Jersey, D.R. No. 83-27, 9 NJPER 293 (¶14136 1983), aff'd P.E.R.C. No. 84-28, 9 NJPER 548 (¶14253 1983) ("UMDNJ"); allowing CEA to veto the psychologists' inclusion in its professional unit; not permitting the Board to inquire into the good faith of CEA's refusal to represent psychologists or to introduce CEA's constitution; and dismissing the Board's Clarification of Unit Petition.

On September 3, the Association filed a response. It supports the Hearing Officer's recommendations.^{1/}

On September 15, CEA filed a response. It also supports the Hearing Officer's recommendations.

^{1/} The Board has opposed the filing of this response, asserting that the regulations do not permit a response without the permission of the Director of Representation or the Commission. N.J.A.C. 19:11-7.3(g). We will permit the filing of the Association's response. We note, however, that the response contains extraneous allegations concerning alleged representations of the Board's new superintendent. We will not consider these allegations or the Board's reply to these allegations.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-8) are accurate. We adopt and incorporate them here. We add these facts.

Joint Exhibit 15 lists the different negotiations units of Board employees. CEA represents four units: (1) a professional unit containing about 1253 teachers, librarians, nurses, guidance counselors, social workers, child study team leaders, speech therapists and learning disability teaching consultants ("LDTC's) and department chairpersons; (2) a unit of about 156 clerks and secretaries; (3) a unit of about 365 instructional assistants, community coordinators and media persons and (4) a unit of about 35 school police and attendance officers. The Communications Workers of America, Local 1079, AFL-CIO represents a unit of about 243 janitors and maintenance employees. The Camden Administrators Council, affiliated with the American Federation of School Administrators, AFL-CIO, Local 39, represents a unit of about 109 principals, directors, coordinators, supervisors, dean of students, assistant principals, administrative assistants and chief attendance officers. Negotiations units of about 80 cafeteria workers and 100 bus aides exist, but are unaffiliated. Several other employees are unrepresented including about 250 lunch aides and 20 clerical aides.^{2/}

^{2/} CEA is seeking to represent the clerical aides as part of its secretarial and clerical unit.

Before the 1977-78 school year, psychologists, social workers, and learning disability teaching consultants (LDTCs) worked and were housed in separate divisions within the Social Services department. Each position was headed by its own chief. The Board then abolished the separate divisions and replaced them with the child study teams described in the Hearing Officer's report (p. 5). A supervisor of child study teams supervises each team member and may recommend discipline.

The collective negotiations agreement between the Board and CEA covering professional employees contains a recognition clause specifying that child study team leaders are in the unit. The salary schedules do not list salaries for employees in this position; instead a separate schedule lists a stipend for team leaders beyond the salary they receive as a speech therapist, social worker, LDTC or psychologist.^{3/}

About April 1981, Ray Hughes Cordier, Jr., a psychologist, asked the president of the Camden Administrators' Council if the Council would represent the psychologists. The president said no.

^{3/} We disagree with the Board's assertion that psychologists, as psychologists, fall within the recognition clause of the CEA-Board contract covering professional employees. Child study team leaders are covered and a psychologist serving in that position may be entitled to the specified stipend. Ocean Tp. Bd. of Ed., P.E.R.C. No. 82-9, 7 NJPER 446 (¶12199 1981). But there is no evidence that CEA and the Board intended the recognition clause to encompass psychologists in their capacity as psychologists.

Cordier then asked CEA's president, Harry Stevens, to address the psychologists. Cordier sought representation with the express purpose of retaining the psychologists' uniqueness -- in particular their own salary scale. The psychologists feared that they would suffer great harm if they gave CEA carte blanche to take them over. As an example of such harm, Cordier cited the fact that during the 1985 negotiations CEA agreed to a merger of the teachers' salary guide and the separate salary guide covering social workers and LDTCs.^{4/} The psychologists wanted a safeguard against such a possibility.

Stevens told the psychologists that he could not speak for the Executive Committee, but CEA could not and would not represent them in the contract negotiations about to commence. Stevens stated that there were many differences between psychologists and other employees, including salary scales, educational credentials and working conditions. Stevens explained that a formal request for representation should be put in writing.

In February 1983, the Association's attorney wrote the Board seeking recognition of the Association. Two weeks later the Board declined.

In June 1984, Cordier wrote CEA's Executive Committee. He stated that a clear majority of the psychologists wished the Executive Committee to consider the psychologists' inclusion in

^{4/} No salaries were reduced as a result of the merger.

CEA. According to Cordier, this request was the first stage: would CEA consider representing psychologists at all? If the answer was yes, then unit placement could be discussed. The psychologists, however, continued to desire representation that would preserve their uniqueness and separate salary scale and they opposed being lumped into another group. Anything less than retaining their separate salary scale would have been unacceptable to psychologists.

On September 19, 1984, CEA's Executive Committee denied the psychologists' request for representation. According to CEA's secretary, the main issue was the higher salaries of psychologists and a subsidiary issue was that CEA already represented a lot of people. According to CEA's president, the biggest problem was the salary differences; CEA did not want to "cut up the professional pie" any more than it was already doing. Accepting psychologists into the professional unit, she believed, would create divisiveness. At the time she considered the psychologists' request, she was not aware of their insistence on retaining a separate salary guide.^{5/}

In March 1985, the Association started discussing affiliation with NJEA representatives. NJEA accepted the

^{5/} As of November 27, 1985, psychologists' salaries for a 12 month work year ranged from \$20,400 to \$31,980 while as of the 1984-85 school year teachers' salaries for a ten month work year ranged from \$12,145 (step 1, no degree) to \$26,805 (step 18, doctorate). The Teacher Quality Employment Act, N.J.S.A. 18A:29-5 et seq., has since established a minimum salary of \$18,500 for teaching staff members.

Association's application. The NJEA field representative who also represents CEA then filed the instant petition.

N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." In State v. Prof. Ass'n of N.J. Dept. of Ed., P.E.R.C. No. 68 (1972), we dismissed a representation petition seeking to exclude registered nurses from a State-wide unit of professional employees. The Supreme Court affirmed this determination. 64 N.J. 231 (1974). The Court stated:

The contention of the petitioning organizations that designation of a statewide unit of professional employees ignores the statutory criterion of "due regard" for the "community of interest" of the employees concerned cannot be sustained. What is called for on the part of the Commission is "due regard for", not exclusive reliance upon such community of interest. We have shown above that the interests of the employer and of the public at large are also relevant factors. In any event, we conceive the State is not unreasonable in arguing that there is a common interest and character in relation to professional employees, as such, with respect to their status, training and functions, as well as with respect to their fairly common expectations concerning the range of compensation and working conditions negotiated on their behalf, in contradistinction to other groupings of employees. Finally, the very allusion in the statute to units comprised of "professional employees", N.J.S.A. 34:13A-6(d), supports the idea that due regard for community of interest of employees could, in the discretion of the Commission, be founded either on units of separate professions or of all professions collectively.

As to the suggestion that in a general professional employees unit, the special problems and interests of the registered nurses will be submerged and inadequately dealt with by the

common representative, this is always a problem where discrete categories are placed in a common negotiating unit. It must be assumed, however, except where shown to the contrary in a particular case, that the common representative will perform its duty fairly in respect of all within the unit and exercise its good judgment as to when or whether different characteristics within the group warrant different demands. See Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192, 203, 204, 65 S.Ct. 226, 232, 233, 89 L.Ed. 173, 183, 184 (1944). [Id. at 257-158; footnote omitted]

We have continued to favor broad-based units and to oppose undue fragmentation. See, e.g., Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); 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 (4/4/85). For example, in Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12004 1981), we rejected the employer's position that part-time supplemental teachers should not be included in a unit of regular certificated teachers since we found that these two groups consisted of professional employees with similar duties and goals directed towards fulfilling the employer's educational mission.

In Camden Psychologists I, our former Executive Director dismissed the Association's first petition to represent the psychologists in a separate unit. He stated:

Finally, as noted by the Hearing Officer, the desires of the employees, while a factor to be considered, is not dispositive. The Commission, charged with determining the most appropriate unit in disputed cases, must consider the overall context of the situation. As noted previously, the Board has a collective negotiations relationship with six or eight units of employees. The Board must negotiate with each of

these units. The CEA represents almost all professional, nonsupervisory employees of the Board. While it is true that the CEA has stated that it does not desire to represent the psychologists, that does not mean that the psychologists alone constitute a separate appropriate unit. In this regard, it is noted that the Commission, in disputed cases, aware of its duty to foster stable and harmonious labor relations in the public sector, has adopted a clear policy of finding broad-based units to be appropriate, rejecting the claims of particular occupations or professionals for separate status. See, for example, In re State of New Jersey, P.E.R.C. No. 68; In re South Plainfield Board of Education, P.E.R.C. No. 46 (1970); In re Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972); In re Union County Board of Chosen Freeholders, E.D. No. 49 (1974). [2 NJPER at 125; footnotes omitted]

Based on our review of the record, we believe that the most appropriate unit for the psychologists continues to be the broad-based unit of professional employees CEA represents. This is especially so in light of the introduction of child study teams in 1977. Psychologists work very closely with the other team members, all of whom are represented in the unit of professional employees. The central issue is thus whether CEA's unwillingness to represent the psychologists in the most appropriate unit warrants an exception to our policy favoring broad-based units and a reversal of Camden Psychologists I.

In UMDNJ, an NJEA affiliate sought to represent a residual unit of undergraduate allied health faculty; the AAUP had twice declined to represent these employees in its unit of graduate school faculty. Stressing the difference between graduate and undergraduate faculty, the minimal fragmentation which the proposed

unit would cause, and AAUP's refusal to represent these employees, we directed an election.

Under all the circumstances, we believe UMDNJ is distinguishable and that it would not be appropriate to carve out a separate unit of psychologists represented by one NJEA affiliate from the overall unit of professional employees represented by another NJEA affiliate. Unlike UMDNJ, where the graduate and undergraduate faculties did not work together, psychologists work on child study teams with other professional employees, all of whom CEA represents. Also, unlike UMDNJ, where the employees unconditionally sought AAUP's representation, the psychologists initially conditioned their request for CEA representation upon being assured that they would be treated differently from other professional employees and would retain a separate salary guide. These conditions, although not expressly reiterated, were not renounced when the psychologists renewed their request for representation. CEA, for its own part, did not want to have the monetary pie available to teachers and other professional employees cut into by the salary demands of psychologists. A solution to these interrelated problems could be found by having psychologists represented in a separate unit by another NJEA affiliate. This arrangement, however, would impermissibly permit employees and employee organizations to substitute their preferred unit configurations for those which are appropriate under the statutory


cafeteria. Accordingly, we will not establish a separate unit of psychologists.^{6/}

The Board contends that its clarification of unit petition should be granted and the psychologists should thus be automatically added to CEA's negotiations unit. For the reasons stated by the Hearing Officer, we believe this course of action is not appropriate. However, under the perhaps unique circumstances of this case, we believe the psychologists are entitled to have an opportunity to secure representation in the most appropriate unit. Accordingly, we will remand this case for an election among the psychologists to determine whether they wish CEA to represent them in the overall professional unit.

ORDER

This case is remanded to the Director of Representation to conduct an election in accordance with this petition.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
October 30, 1986
ISSUED: October 31, 1986

^{6/} We agree with the Hearing Officer's rulings concerning the absence of a prior negotiations relationship between the Board and the Association.

H.O. No. 87-1

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CAMDEN CITY SCHOOL PSYCHOLOGIST
ASSOCIATION,

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CAMDEN BOARD OF EDUCATION

Petitioner,

-and-

Docket No. CU-86-1

CAMDEN EDUCATION ASSOCIATION,

Employee-Representative.

SYNOPSIS

The hearing officer recommends that the Commission order an election among school psychologists employed by the Camden Board of Education to determine if they desire to be represented in collective negotiations by the Camden City School Psychologist Association. The Board maintains that the psychologists belong in an existing professional unit represented by the CEA. The CEA, however, does not want to represent the psychologists. Applying residual unit principles, the hearing officer balances the Commission's policy favoring broad-based units against the position of the professional unit and the psychologists' lack of representation and concludes that a separate unit of psychologists is appropriate.

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For the Camden Board of Education
Murray & Granello
(Karen Bulsiewicz of counsel)

For the Camden City School Psychologist Assn.
Freeman, Zeller & Bryant
(Allen S. Zeller of counsel)

For the Camden Education Association
Selikoff & Cohen
(Steven R. Cohen of counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDED DECISION

On April 18, 1985, the Camden City School Psychologist
Association, N.J.E.A. ("Association") filed a petition seeking

certification as the exclusive representative of all school psychologists employed by the Camden Board of Education ("Board").

On May 6, 1985, the Board filed a statement of position opposing the Association's petition. The Board cited a 1976 decision in which the Executive Director determined that the unit sought by the Association was inappropriate. See Board of Education of the City of Camden and Camden City School Psychologists, 2 NJPER 123 (1976) ("Camden Psychologists") request for review denied 2 NJPER 228 (1976). The Board maintains that the psychologists should be placed in an existing unit of professional employees, which is represented by the Camden Education Association, NJEA ("CEA").

The CEA, however, does not want to represent the psychologists in its professional (or any other) unit.

On July 8, 1985, the Board filed a petition seeking a clarification of the CEA professional unit to include the psychologists. Both the CEA and the Association oppose the Board's petition.

On July 15, 1985, the Director of Representation issued an order consolidating the petitions for hearing.

On July 16, 1985, I issued an order scheduling hearing dates for August 29, September 23 and 30, 1985.

I conducted hearings on September 23 and 30, October 31, November 13 and December 10, 1985. The CEA and Association moved to

dismiss the Board's clarification of unit petition. I reserved.^{1/}
The parties examined witnesses and introduced documents. They waived oral argument but filed briefs, the last of which was received on February 20, 1986.

Based on the entire record, I make the following:

FINDINGS OF FACT

The Board is a public employer within the meaning of the Act and is subject to its provisions. The CEA and the Association are employee organizations within the meaning of the Act and subject to its provisions.

The Board employs approximately 13 school psychologists. The psychologists have never been represented by an employee organization in collective negotiations. In 1975 the Association filed a petition (RO-76-3) seeking certification as the exclusive representative of school psychologists. The petition was dismissed. The Executive Director found that the unit was inappropriate. He determined that the record in that case suggested that the psychologists should be included in the professional unit represented by the CEA. Camden Psychologists, 2 NJPER at 125.

^{1/} I conclude that the Board's clarification of unit petition should be dismissed. The issue presented raises a question concerning representation not appropriately resolved through the Commission's clarification of unit process. Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977); Camden Psychologists.

When RO-76-3 was filed, the CEA took the position that it did not desire to represent school psychologists in its professional unit. Camden Psychologists, 2 NJPER 124. The CEA also denied a request by the psychologists in 1981 to consider them for inclusion in the professional unit. The CEA asserts that it does not want to represent psychologists in its professional (or any other) unit because it already represents several titles, the psychologists' salaries are generally higher than other unit members, and the psychologists' work-day and work-year are unique. The main reason appears to be that the CEA is concerned about potential inter-unit problems which may arise from the psychologists' higher salaries. This concern is shared by the psychologists.

CEA represents four collective negotiations units in the Camden school district. The professional unit includes teachers, librarians, nurses, guidance counsellors, social workers, vocational education teachers, child study team leaders, and department chairpersons. The CEA also represents a unit of secretaries and clerks, a unit of instructional assistants, media persons, media assistants and community coordinators, and a unit of school police officers and attendance officers. The Camden Administrators Council (affiliated with the American Federation of School Administrators, AFL-CIO, Local 39) represents a unit of principals, directors, coordinators, supervisors, dean of students, assistant principals, administrative assistants and the chief attendance officer. The Communications Workers of America, Local 1079, AFL-CIO, represents a

unit of the Board's custodial, maintenance and supply department employees.

Psychologists work in teams with speech therapists, social workers and learning disability teaching consultants ("LDTC's"). The latter three titles are included in the CEA's professional unit. The child study team is responsible for the educational placement and program development of special education students. Students are typically referred to the team by a guidance counsellor. The team tests the student to determine if a special program is needed. Psychologists use assessment tools to measure a student's intelligence. The other members of the team also assess the child. Afterwards, the team determines whether to accept the referral and, if it does, develops and monitors a program for the student.

Each child study team selects a leader, who is responsible for relaying information between the administration, other team members, and the parents of special education students. Team leaders also coordinate the efforts of the team and keep team members aware of the progress of their cases. Child study team leaders, which have included psychologists, receive a stipend provided by the contract between the Board and the CEA's professional unit.

Psychologists work a twelve-month year and receive 21 days of vacation. Other child study team members work a ten-month year but may volunteer to work (for compensation) an extra month during the summer. Most of the summer work is student testing.

The psychologists' work day is approximately one hour longer than that of other child study team members.

The minimum education requirements for a psychologist exceed the requirements for other professionals employed by the Board. A psychologist must possess a masters degree with a heavy emphasis in psychology, another 30 credit hours in the use of psychological instruments, and a 450-hour internship.

The salary levels of psychologists are generally higher than those of other professionals employed by the Board.

Salaries and other terms and conditions of the psychologists' employment have been established by meetings between representatives of the psychologists and the Board. The Association asserts that the manner in which their employment conditions have been established amounts to a de facto recognition of the Association by the Board. The Board disagrees.

The meetings between a Board representative and two or three psychologists (representing the entire group) usually began after the Board had concluded negotiations with the district's recognized negotiations units. The psychologists presented the items they were most concerned about. The Board informed the psychologists of what benefits it was willing to provide. The parties met two or three times and the result was that the

psychologists received essentially what the Board told them they would receive at their first meeting.^{2/}

In 1981 the psychologists presented a list of proposals to the Board covering sick leave buy-back, reimbursement of travel expenses, accumulated sick leave, vacation, insurance benefits and other items (P-1). This list, modified to reflect benefit levels received by other professionals, reappeared in a Board resolution setting the terms and conditions of employment for psychologists for the 1983-84 and 1984-85 school years. The resolution begins with this "whereas" clause:

2/ Following is the testimony of Ray Cordier, a psychologist who has been involved in discussions with the Board about salary and working conditions:

Q. Since you have been a school psychologist in February of 1979, have you ever, on behalf of the other psychologists, told the Board that you don't want what they have given you or offered to give you as psychologists?

A. Yes, we have said those words.

Q. In response to salary?

A. Yes.

Q. And has that ever changed what the Board has given you, first told that it is available and this is what you are going to get, has that ever changed?

A. No, it hasn't changed.

Q. Whatever the Board has told you is available is what the psychologists have end up receiving right?

A. It has within the two times I have been a representative.

This testimony is taken from the transcript of the September 30, 1985 hearing date at page 89.

WHEREAS, School psychologists employed by the Board of Education of the City of Camden are not represented by any recognized employee representative organization for purposes of negotiation concerning terms and conditions of employment; (J-6).

The resolution was prepared in response to the psychologists' request to reduce their working conditions to writing. A salary guide for the 1983-84 and 1984-85 school years is attached to the resolution and contains the signatures of three school psychologists and three Board representatives.

ANALYSIS

In resolving disputes involving questions of representation, the Commission is guided by the mandate of N.J.S.A. 34:13A-5.3:

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned.

The Commission early adopted a strong policy favoring broad based units and avoiding undue fragmentation. That policy has been endorsed by the New Jersey Supreme Court. State v Prof. Assoc. of New Jersey Dept. of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (May 23, 1972). ("Professional Association"). In Camden Psychologists, the Executive Director relied on this policy and dismissed RO-76-3. The policy has not changed. Bordentown Regional Board of Education, P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984) aff'd App. Div. Dkt. No. A4503-83T6, 4/9/85, 11 NJPER 33 (¶16122 1985); Piscataway Township Board of Education, P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 2984); Glen Rock Board of Education, P.E.R.C.

No. 84-125, 10 NJPER 275 (¶15135 1984); Bergen County Vocational Schools, P.E.R.C. No. 84-127, 10 NJPER 279 (¶15137 1984); Freehold Township Board of Education, P.E.R.C. No. 84-128, 10 NJPER 280 (¶15138 1984); Barrington Board of Education, P.E.R.C. No. 84-129, 10 NJPER 282 ¶15139 1984). In Camden Psychologists, the Executive Director, reversing the hearing officer, also determined that there was no conflict of interest between psychologists and other professionals that would warrant the psychologists' claim for separate status. 2 NJPER at 125. This also is unchanged. Psychologists work with the Board's other professionals, particularly the other members of the child study team, in identifying and meeting the needs of special education students.

Also unchanged since 1976 are the Board's position that the CEA's professional unit is where the psychologists belong, and the CEA's position that it does not want to represent the psychologists.

N.J.S.A. 34:13A-5.3 also provides that, "public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization."

The issue is the appropriateness of the unit sought by the Association in light of the Board's claim that the existing professional unit is more appropriate and the CEA's refusal to represent the psychologists over the past 10 years.

A similar issue was addressed by the Director of Representation in University of Medicine and Dentistry of New

Jersey, D.R. No. 83-27, 9 NJPER 293 (¶14136 1983) ("UMDNJ"), affirmed by P.E.R.C. No. 84-28, 9 NJPER 598 (¶ 14253 1983). In UMDNJ, the Director ordered an election among allied health faculty despite the University's claim that a university-wide unit of instructional employees (represented by a union that did not want to add the allied health faculty to the unit) was more appropriate. The Director reasoned that:

While due regard for the community of interest of the employees is a factor to be considered in such a determination, the community of interest among employees must be examined in the context of all salient factors. State v. Prof. Assoc. of New Jersey Dept. of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (May 23, 1972).

Notwithstanding the Commission's preference for broad-based units which avoid unnecessary fragmentation, factual circumstances may dictate that the most appropriate unit in a given situation be limited in scope and added alongside an already established structure of negotiations units. Thus, in County of Middlesex and District 1199J, D.R. 81-4, 6 NJPER 423 (¶ 11212 1980), where a public employer participated and consented to the initial establishment of a multiplicity of negotiations units, a residual unit of previously excluded employees was found to constitute the appropriate unit. In residual unit contexts, concern has focused not only on the posture of the employer, but on the positions of the existing majority representative and the petitioning employees seeking the residual unit. Parsipanny-Troy Hills Bd. of Ed., D.R. No. 79-7, 4 NJPER 394 (¶ 4177 1978); Essex Cty. Sheriff's Office, D.R. No. 83-5, 8 NJPER 477 (¶ 13323 1982). UMDNJ, Id. at 294.

The Director also explained that:

[I]n endorsing the Commission's view that one broad-based professional employee unit was the appropriate employee unit under the

particular facts of Professional Assoc., where no State professional employees enjoyed any prior history of representation, the Court proffered that the question of unit structure would require re-examination if the practical consequences of the decision left employees without representation.

The history of an unrepresented status for the petitioned-for employees, notwithstanding the representation of all other UMDNJ faculty, is a significant concern herein. When UMDNJ, upon creation of this new faculty division did not seek to include the allied health faculty in the AAUP's negotiations unit, it ran the risk that it could not, more than six years later, persuasively argue that those employees rightfully belonged in the overall faculty unit. These employees have sought to enter the overall faculty unit to have twice been advised by the AAUP that it has no interest in representing them. At this juncture it would be fundamentally unfair to deprive the instant employees of representation of their choice by dismissing the within petition. It would appear to be consistent with the Court's instruction in Professional Assoc., supra, to consider at this time the practical consequences of a decision which would leave these employees without representation.
Id. at 295

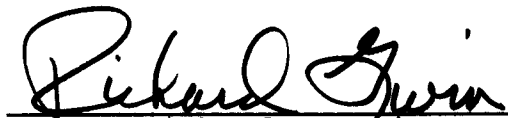
Application of the policy set forth in UMDNJ and the cases cited therein leads me to recommend that the Commission order an election among the psychologists to determine whether they desire to be represented in collective negotiations by the Association. I conclude that the psychologists' lack of representation, the CEA's persistence in refusing it, and the lack of any evidence that the formation of another collective negotiations unit would cause an

undue hardship on the Board^{3/} outweigh, in this case, the policy favoring broad based units. To hold otherwise would deny to the psychologists the representational rights guaranteed by N.J.S.A. 34:13A-5.3 and would ignore the Supreme Court's direction in Professional Association, to consider the practical consequences of a decision involving a question of representation.

RECOMMENDED ORDER

I recommend that the Commission order an election among Camden City School Psychologists to determine whether they desire to be represented in collective negotiations by the Association.

I also recommend that the Commission dismiss the Board's clarification of unit petition.


 Richard C. Gwin
 Hearing Officer

DATED: July 24, 1986
 Trenton, New Jersey

3/ The record is filled with evidence of the Board's discussions with the psychologists about their working conditions, dating to the mid-1970's. These discussions do not rise to the level of de facto recognition. The give-and-take of negotiations is not demonstrated (see pp. 6-8, supra.) In re Henry Hudson Reg. Bd. Ed., E.D. No. 12 (1970); In re Township of Teaneck, E.D. No. 23 (1971); In re West Paterson Bd. Ed., P.E.R.C. No. 77 (1973); Compare PBA Local 53 v. Town of Montclair, 131 N.J. Super 505 (1974) vacated and remanded 70 N.J. 130 (1976); In re Collingswood Bd. Ed., P.E.R.C. No. 86-50, 11 NJPER 694 (¶16240 1985); In re Atlantic County Sewerage Authority, P.E.R.C. No. 81-91, 7 NJPER 99 (¶12041 1981). The Board proffered no evidence, however, that would suggest that it would suffer a hardship by formalizing its discussions with the psychologists into negotiations.