

D.R. NO. 2015-10

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

In the Matter of

BRIDGETON BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2015-020

BRIDGETON EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation certifies by card check the addition of psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants to the existing unit of teachers, master teachers, physical therapist, speech therapist, librarians, school nurses, secretaries, guidance counselors, substance awareness coordinators, cafeteria workers, technology coordinators, facilitators, and athletic trainers employed by the Bridgeton Board of Education. The Director finds that the unit is appropriate in light of the Commission's policy favoring broad-based units of non-supervisory education employees and the statutory rights of eligible public employees to representation. Moreover, the Director determines that the Board failed to demonstrate that no community of interest exists between the psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants and the titles in the existing unit.

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Appearances:

For the Public Employer,
Chance & McCann, LLP, attorneys
(Kevin McCann, of counsel)

For the Petitioner,
(James Jameson, Representative)

DECISION

On October 20, 2014, the Bridgeton Education Association ("Association") filed a representation petition seeking to add the titles psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants, employed by the Bridgeton Board of Education ("Board"), to its existing collective negotiations unit. The unit description as set forth in the recognition provision of the parties' most recent collective negotiations agreement, extending from July 1, 2012 through June 30, 2015, includes "Teachers,

Master Teachers, Physical Therapist, Speech Therapist, Librarians, School Nurses, Secretaries, Guidance Counselors, Substance Awareness Coordinators, Cafeteria Workers (exclusive of Cafeteria Managers), Technology Coordinators, Facilitators, and Athletic Trainer." The petition sought certification by election.

At the time the petition was filed, the petitioned-for employees were represented for purposes of collective negotiations by the Bridgeton Association for Non-Teaching Specialist ("BANTS"). On November 28, 2014, the Association filed an amended representation petition seeking certification by valid authorization cards signed by a majority of employees in the petitioned-for titles. N.J.S.A. 34:13A-5.3. On December 16, 2014, BANTS filed a letter disclaiming interest in representing the petitioned-for titles. The Board opposes the petition, arguing that the petitioned-for titles lack a community of interest with the existing unit.

We have conducted an administrative investigation. N.J.A.C. 19:11-2.2. The petition appears to be timely filed. N.J.A.C. 19:11-2.8(c)3. On January 6, 2015, we requested that the Board provide a list of employees identified in the petition, and to post a notice to public employees describing the petitioned-for unit. On January 21, 2015, the Board provided the list of

employees and advised that it posted the notice on January 12, 2015. Based on the Board's list, we have determined that a majority of the petitioned-for employees timely signed valid authorization cards designating the Association as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b).

On January 23 and 26, 2015, the Association and the Board submitted position statements, respectively. Neither position statement included certified facts. By letter dated January 30, 2015, the Board requested that the matter be decided on the written submissions, as it had "nothing additional to offer with regard to the issue." The Association was similarly satisfied with reliance on the written submissions. On March 17, 2015, we issued a letter enclosing a Stipulation of Appropriate Unit and requested that the parties execute same and return it to us. On March 18, 2015, the Association returned an executed copy of the Stipulation of Appropriate Unit. On May 7, 2015, we again issued a letter to the Board requesting the return of the signed Stipulation of Appropriate Unit, or evidence, including certifications, in support of its refusal to sign same. The Board filed a letter dated May 12, 2015, stating that it could not execute the Stipulation "for the reasons set forth in our initial position papers submitted on January 26, 2015", with no

certifications. After reviewing the parties' submissions, I believe that no disputed substantial and material facts warrant a formal hearing. N.J.A.C. 19:11-2.6(f). The following facts appear.

The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). N.J.S.A. 34:13A-1 et seq.

Seventeen (17) psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants are currently employed by the Board. The Board argues that no community of interest exists among the petitioned-for titles and current unit employees because the petitioned-for titles are non-teaching professionals, and the vast majority of the current unit members are teachers. Therefore, the Board maintains that asserted circumstance deprives the petitioned-for unit of a community of interest.

The Board also argues that permitting the psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants to join the Association is likely to "open the floodgates and encourage other unions to consolidate." The Board argues that if all unions consolidated, the Board's costs for negotiations and legal expenses would increase. The Board did not identify any other unions that may consolidate.

The Association contends that its petition is appropriate because there is a strong community of interest between the current unit members and the petitioned-for unit members, as all of the titles are certificated, with the exception of Cafeteria Workers and Secretaries, and those certificated titles "work closely together educating the most vulnerable students." The Association also contends that prior to 1991, the petitioned-for unit had been represented by the Association, and although there were "sound reasons" for a separation into two units in the past, recent changes in public education including new testing requirements and new employee evaluation requirements "make this merger sensible" now.

Furthermore, the Association contends that the current contracts are "virtually identical in all major areas", with the exception of the length of the work year, as Association certificated members work 186 days, and the petitioned-for unit members work 196. The Association adds that there are also 10 month secretaries that work 196 days as well as 12 month secretaries.

The Commission determines in each instance which unit is appropriate for collective negotiations. N.J.S.A. 34:13A-6(d). We are obligated to define the appropriate unit with "due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. Our Supreme Court has affirmed the

Commission's policy favoring broad-based negotiations units over units structured along departmental or occupational lines. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974).

Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations" that could result from negotiations with numerous smaller units. Id. at 241 (quoting State of New Jersey (Prof'l Ass'n), P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972)).

The Commission has long held that broad-based units of education employees are appropriate for collective negotiations. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); West Milford Bd. of Ed., P.E.R.C. No. 56 NJPER Supp. (¶56 1971). It has specifically found that a community of interest exists among virtually all non-supervisory employees in an educational setting. Ramsey Bd. of Ed., D.R. No. 2011-8, 37 NJPER 124 (¶36 2011), aff'd P.E.R.C. No. 2011-84, 38 NJPER 58 (¶9 2011).

The Board objects, arguing that no community of interest exists because the "duties and daily responsibilities of non-teaching professionals are so different" from the current Association members, and thus the Association will "be unable to advance a cohesive bargaining position." However, the Association is already a mixed unit, including both teachers and non-teachers such as Cafeteria Workers and Secretaries.

Furthermore, the Board has not submitted any evidence of employee job responsibilities, nor any evidence suggesting that the proposed unit could not advance a coherent bargaining position. No facts suggest that differing job duties and responsibilities within the petitioned-for unit will generate any undue collective negotiations burdens or instabilities.

Also, despite the fact that the Board has argued that granting this petition will "open the floodgates and encourage other unions to consolidate," the Board has also not identified any other units that may wish to consolidate. The petitioning psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants have a statutory right to representation for purposes of collective negotiations, notwithstanding the Board's concern about increased costs.

I find that eligible public employees have exercised their statutory right to choose an exclusive representative and a majority representative seeks to change the scope of its unit by adding the titles of those employees. Under all of the circumstances, I find that the titles in the proposed unit are appropriate for representation and shall be included in the extant unit.

I find that the following unit is appropriate for collective negotiations:

Included: All psychologists, child study team social workers, non-child study team social workers and learning disability teacher consultants to be added to the existing unit of teachers, master teachers, physical therapists, speech therapists, librarians, school nurses, secretaries, guidance counselors, substance awareness coordinators, cafeteria workers, technology coordinators, facilitators, and athletic trainers employed by the Bridgeton Board of Education.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police, casual employees, secretary to the superintendent, secretary to the business administrator, secretary to the assistant superintendent, secretary to the human resource administrator, payroll manager, 12-month secretary to the superintendent, cafeteria managers, and all other employees employed by the Bridgeton Board of Education.

ORDER

I certify the Bridgeton Education Association as the exclusive representative of the unit described above based upon its authorization cards.^{1/}

/s/Gayl R. Mazuco
Gayl R. Mazuco
Director of Representation

DATED: June 23, 2015
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by July 6, 2015.

^{1/} An appropriate Certification of Representative will issue with this decision.