

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

In the Matter of

CLIFTON BOARD OF EDUCATION,

Public Employer,

-and-

CLIFTON SCHOOL MAINTENANCE
ASSOCIATION,

DOCKET NO. RO-80-35

Petitioner,

-and-

CLIFTON CUSTODIAL EMPLOYEES
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, dismisses a Petition filed by maintenance personnel who seek to be severed from a unit consisting of blue collar personnel employed by the employer. Although the Petitioner claimed that the "skilled tradesmen" were a minority whose votes were outnumbered by other unit personnel, the documentation presented to support their claim that they were not properly represented by the majority representative did not indicate that they had not been accorded responsible representation.

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

In the Matter of

CLIFTON BOARD OF EDUCATION,

Public Employer,

-and-

CLIFTON SCHOOL MAINTENANCE
ASSOCIATION,

DOCKET NO. RO-80-35

Petitioner,

-and-

CLIFTON CUSTODIAL EMPLOYEES
ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer

Mr. Ron Piliere, Secretary Business Manager

For the Petitioner

Mr. Robert Gibson, President

For the Employee Representative

Mr. William J. Flynn, Representative
New Jersey Education Association

DECISION

On September 13, 1979, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission"), by the Clifton School

Maintenance Association (the "Petitioner") with respect to a proposed unit comprised of "tradesmen who do skilled maintenance work" employed by the Clifton Board of Education (the "Board"). The Clifton Custodial Employees Association (the "Association") currently is the majority representative of these employees within a collective negotiations unit comprised of: custodians, maintenance man, truck drivers, stadium crew, janitors/janitress, stadium head, and head custodian. The undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts.

Based upon the administrative investigation, 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 disputed 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 Clifton Board of Education 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 proceeding, and is subject to the provisions of the Act.

3. The Clifton School Maintenance Association and the Clifton Custodial Employees Association are employee representatives within the meaning of the Act and are subject to its provisions.

4. The Petitioner is seeking to represent employees who are employed in the title of "maintenance employees." Thus, Petitioner seeks to sever these employees from the existing custodial unit.

5. The Board is willing to consent to a secret ballot election and raises no questions as to the appropriateness of the unit described in the Petition.

6. The Association, however, does not consent to a secret ballot election contending that all employees in the custodial unit have been fairly represented and that the current unit is the most appropriate.

7. Accordingly, a Petition for Certification of Public Employee Representative has been filed, a dispute exists, and the matter is appropriately before the undersigned for determination.

8. Petitioner relies on the following to support its claim that severance from the existing custodial unit is warranted. First, Petitioner asserts that members have not been fairly represented by the Association in negotiations. In support of this contention, Petitioner states that the current collective negotiations agreement which was ratified by the Association, contains a fixed across-the-board increase for all classifications of employees within the custodial unit. The maintenance employees allegedly favored a percentage increase, but did not have a sufficient number of votes to reject the proposed agreement. Moreover, Petitioner notes that certain classifications of head

custodians earn higher salaries than maintenance employees who are at the maximum step of the salary schedule. The Petitioner argues that the maintenance employees are skilled in their profession and should qualify for salary levels enjoyed by similar employees in private employment. The Petitioner suggests that it could achieve these higher salary levels in a separate maintenance unit.

9. On November 15, 1979, the undersigned advised the parties that on the basis of the investigation to date, it did not appear that the specific evidence placed in dispute any substantial and material factual issues and that it appeared that the unit sought was not appropriate in light of existing Commission policy. ^{1/}

The Petitioner was advised that the matters raised in the instant Petition were similar to those arguments advanced in previous cases and that disparate salary treatment of individuals under collective negotiations agreements does not, in itself, constitute unfair representation. ^{2/} Further, Petitioner was

^{1/} See In re Jefferson Township Bd. of Ed., P.E.R.C. No. 61 (1971) where the Commission set forth the standards to be applied to petitions seeking severance of employees from an existing appropriate collective negotiations unit. In Jefferson, the Commission stated that it would not sever employees from an existing collective negotiations unit upon a claim that a community of interest exists within a subgroup of employees in that unit in the absence of a showing that the existing relationship is unstable or that the incumbent organization has not provided responsible representation.

^{2/} See In re Township of Springfield and Springfield Municipal Employees Association, D.U.P. No. 79-13, 5 NJPER 14 (§ 10008 1978). In the matter herein it is not claimed that the contract provides disparate salary treatment. Rather, it appears that there is a claim that the negotiation of an across-the-board increase results in unfair representation.

advised that in situations where two groups of employees within the same unit have different views of economic or noneconomic interest, the undersigned has declined to find a conflict of interest. Rather, this not infrequent occurrence raises an issue of "competing interests" as opposed to "conflict of interest" and, therefore, does not warrant the severance of employees from an appropriate unit. ^{3/}

In response to the undersigned's letter, the Petitioner provided a statement which addresses issues related to its claim of improper representation and its claim that "skilled tradesmen" should "negotiate separately from janitors who are unskilled laborers."

Regarding the improper representation claim, the Petitioner states in part:

How can you make a statement like this when eleven skilled men among eighty janitors are not able to make suggestions or proposals because we are always voted down being the minority. Is this just and fair? I call it discrimination.

Furthermore, in past negotiations the head janitors have received [sic] percentage raises on top of across the board raises and are presently negotiating for, the same thing at higher percentages from what I understand. Where does that leave us the minority?

* * *

We were offered more money by The Board of Education during the last salary negotiations but we were voted down by the custodians because again, we are the minority.

^{3/} See In re Mercer County Prosecutor, D.R. No. 79-18, 5 NJPER 60 (¶ 10039 1979).

The statement provided by the Petitioner adds little to the claim, already advanced, that as a minority grouping, maintenance personnel are not receiving appropriate representation. In a severance Petition the standard applied by the undersigned is whether the Association has failed to provide responsible representation. The claim that maintenance employees "are not able to make suggestions" is not logically supported by the rationale that "we are always voted down." There is nothing in the submission to indicate that maintenance employees have been denied a forum by the majority representative to advance their suggestions and to have those suggestions responsibly considered. Additionally, the claim that head janitors have in the past received additional increases not accorded to other unit members does not mean that the maintenance employees have been targeted for less than responsible representation. The last submission by Petitioner, that more money was offered to maintenance personnel in the last negotiations, adds little additional perspective to the claim, earlier advanced and considered by the undersigned in his November 15 letter, that the unit employees rejected a percentage formula and chose to accept an across-the-board increase. A fixed increase for all employees is not indicia of irresponsible representation.

Where different classifications of employees within a negotiations unit have different views of economic interest,

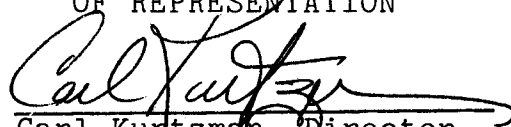
it is understandable that the views of the minority are often not favored and not accepted. A majority representative's responsibility is to assure, however, that the views of the minority are responsibly considered. It is the responsibility of the minority petitioner in a PERC proceeding to show that the majority representative has violated its responsibility. The ratification power of the majority of unit employees is at most one isolated factor relating to the analysis of the representative's responsibilities and the fact that the majority out votes the minority does not create a substantial and/or material factual issue warranting a hearing into the alleged improper conduct of the majority representative.

Lastly, the Petitioner reasserts the claim that the kind of work engaged in by maintenance personnel, i.e., major construction work and repairs, warrants their separation from "unskilled labors" for negotiations purposes. There is no basis, however, from the documentation or argument presented for concluding that any uniqueness in the terms and conditions of employment relating to the level of skill exercised by the maintenance employees cannot be accommodated in the negotiations process within a unit comprised of both skilled and unskilled blue collar employees.

Accordingly, for the reasons stated above and in the absence of substantial and material factual issues, the undersigned dismisses the instant Petition.

DATED: December 21, 1979
Trenton, New Jersey

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director