

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-85-6

MONTVILLE TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission adopts a predominant interest order of an Administrative Law Judge. Ten supplemental teachers filed a petition with the Commissioner of Education seeking the same salaries, emoluments and benefits, albeit pro-rated, as tenured teachers received. The Montville Township Board of Education filed a unit clarification petition seeking a declaration that the supplemental teachers were in the same negotiations unit as the tenured teachers, but had waived their rights to the same salaries, emoluments and benefits. The Administrative Law Judge found that the Commission had the predominant interest, and the Commissioner of Education had affirmed that ruling. The Commission also adopts it.

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Appearances:

For the Petitioner, Rand and Algeier, Esquires
(Robert M. Tosti, Of Counsel)

For the Respondent, Bucceri & Pincus, Esquires
(Gregory T. Syrek, Of Counsel)

DECISION AND ORDER

Ten supplemental teachers employed by the Montville Township Board of Education ("Board") filed a petition with the Commissioner of Education. The petitioners claimed that under the education laws, as interpreted in Spiewak v. Rutherford Bd. of Ed., 70 N.J. 63 (1982) ("Spiewak") and Rutherford Ed. Assn. v. Rutherford Bd. of Ed., ___ N.J. Super. ___ (1984), certif. granted, ___ N.J. ___ (1984) ("Rutherford"), they were entitled to tenure and the same salaries, emoluments, and benefits, albeit pro-rated, as tenured teachers received.

The Board contends that the petitioners have waived their statutory rights under Spiewak and Rutherford because the Montville Education Association ("Association"), which represents the Board's regular teachers, has not sought to negotiate on their behalf and specifically has not preserved their right to

receive benefits provided under the Board's and Association's 1983-84 collective negotiations agreement.

On July 24, 1984, the Board filed a Clarification of Unit petition with the Public Employment Relations Commission. The Board sought two rulings: (1) supplemental teachers should be included in the Association's negotiations unit because of their community of interest with regular classroom teachers; and (2) the supplemental teachers have waived their rights under the Board's and Association's current contract.

The Board filed a motion to consolidate the proceedings before the Commissioner of Education and this Commission. It contended that this Commission had predominant interest and should decide all issues of statutory entitlement, waiver, and unit clarification.

The Association opposed consolidation. It contended that the issues of statutory entitlement and waiver of statutory rights were unrelated to the issue of unit clarification and therefore each agency could address the severable issues within its jurisdiction.

On October 22, 1984, Administrative Law Judge Ward R. Young issued a decision on the consolidation motion. He ordered consolidation and determined that this Commission had the predominant interest. He found that only the Commission could address the issue of unit clarification; that either the Commission or the Commissioner could address the waiver issue, and that only the Commissioner had final authority over the statutory entitlement issues under Spiewak and Rutherford. Given these

findings, he concluded that this Commission should adjudicate the unit clarification and waiver issues and then, if the dispute had not been mooted, transfer the case to the Commissioner for a ruling on the statutory entitlements issue.

The Administrative Law Judge served his decision on the parties, the Commission, and the Commissioner of Education and informed them that the order would be deemed adopted if neither agency head reversed or modified it within 45 days or received an extension of time to consider the order. The Commission then asked for and received a 20 day extension so that it could review the order at its next scheduled meeting. On December 5, 1984, the Commissioner approved this order.

The petitioners have filed a memorandum seeking reversal of the consolidation order and a determination that each petition involves separate issues which may be litigated independently before each agency. The Board has filed a response supporting the consolidation order.


We have reviewed the records in both the proceedings before this Commission and the Commissioner of Education. For purposes of this decision, there are no facts to review or set forth other than the procedural history. Under all the circumstances of this case, we will accept the determination of the Administrative Law Judge, already adopted by the Commissioner of Education, that we have the predominant interest in this case.

While we would not ordinarily consider questions of entitlement or waiver of contractual benefits in a unit clarification case, we are willing to do so in this case as a matter of administrative comity and efficiency.

ORDER

The order of the Administrative Law Judge is adopted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
December 19, 1984
ISSUED: December 21, 1984