

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEARNY BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2004-069

KEARNY TEACHERS' AIDES ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a representation petition filed by the Kearny Teachers' Aides Association seeking to represent nine full-time aides employed by the Kearny Board of Education. The Director of Representation had directed an election to determine whether the aides wanted to be represented by the Association. D.R. No. 2005-5. The Chairman granted the Board's request for review of that decision and stayed the election. The Board contended that the appropriate negotiations unit must include its approximately 173 part-time aides. The Commission, citing its long-established practice of favoring broad-based units, its opposition to undue fragmentation, and its refusal to certify negotiations units that exclude regular part-time employees, holds, under all the circumstances of this case, that the desire of the full-time aides to organize does not overcome the presumption that a separate unit of full-time employees is not the appropriate unit.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2005-42

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Appearances:

For the Public Employer, Genova, Burns & Vernioia,
attorneys (Joseph M. Hannon, of counsel)

For the Petitioner, John Dillon, NJEA Representative

DECISION

On October 28, 2004, the Kearny Board of Education requested review of D.R. No. 2005-5, 30 NJPER 425 (¶139 2005). In that decision, the Director of Representation directed an election to determine whether a negotiations unit of nine full-time aides employed by the Board wanted to be represented by the Kearny Teachers' Aides Association. On November 10, the Chairman granted review and stayed the election pending the issuance of this decision. See N.J.A.C. 19:11-8.2.

The Association filed a representation petition on January 12, 2004. The Board would not consent to an election. The Board contended that the appropriate negotiations unit must include its approximately 173 part-time aides. The Association responded

that part-time aides are not interested in representation and the majority representatives of the Board's existing negotiations units have rejected inclusion of the full-time aides.

The Association had petitioned to represent a unit of full-time aides in January 2000. The then Director of Representation dismissed the petition, finding that a unit limited to only full-time aides could result in whipsawing, transfer of unit work claims and undue fragmentation, and would ignore the community of interest between full and part-time aides. Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (132030 2000). The Director added, however, that the Association could re-petition for only the full-time aides if, after a reasonable time, no organization sought to represent a broader unit.

In the instant case, the Director found that the petitioned-for unit was appropriate given that: in an educational setting, no one most appropriate unit fits all circumstances; although full and part-time aides share a community of interest, that is not the controlling factor in deciding the appropriate unit; as with residual units, the issue of employee group abandonment is relevant; the part-time aides have not sought representation; the representatives of two other negotiations units have disclaimed any interest in representing these employees; no other employee organization has sought to represent the full-time aides since the dismissal of the previous petition; the only other

unrepresented Board employees are the part-time aides, central office personnel, and security guards; and dismissal of this petition may result in full-time aides being unable to secure representation. The Director determined that the statutory right of the full-time aides to be represented in an appropriate unit outweighs the employer's administrative desire for a broad-based unit of all aides. In response to the Board's concern about a proliferation of units, the Director stated that, absent Board consent, he was unlikely to approve a future, separate unit of part-time aides; should part-time aides seek representation, the appropriate unit would be one including part-time aides with full-time aides.

The Board argues that: the Director's decision ignores longstanding Commission precedent that units be organized along broad-based lines and that part-time and full-time workers share a community of interest; the decision improperly analogizes the full-time aides to a residual unit; and permitting full-time aides to organize without part-time aides overturns Commission policy that the majority of employees in the appropriate unit determines its exclusive representative. The Association has not filed a response.

We have long refused to certify negotiations units that exclude regular part-time employees. This case asks whether it

is appropriate to carve out an exception given the circumstances presented.

We are charged with determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). 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." We have long favored broad-based units and have opposed undue fragmentation. See State v. Professional Ass'n, 64 N.J. 231 (1974) (dismissing representation petition seeking to exclude registered nurses from statewide unit of professional employees).

This agency does not approve negotiations units that exclude regular part-time employees who have a community of interest with full-time employees. In Monmouth Cty. Voc. Reg. Bd. of Ed., D.R. No. 79-31, 5 NJPER 179 (¶10097 1979), the parties had agreed to exclude part-time employees from a proposed unit of custodians and head custodians. The Director of Representation advised the parties that he would not approve their consent agreement since such approval would be inconsistent with Commission policy. He stated that, "[i]n determining appropriate unit structure, . . . the Commission does not distinguish between full-time and part-time personnel." Similarly, in Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997), the employer argued that the proposed unit should be limited to full-time employees. The union was not seeking to represent part-time employees, but was willing to

accept them in its unit. Citing Monmouth, the Director stated that part-time status alone is insufficient to destroy a finding of community of interest and force a separate negotiations unit for part-time employees.

The National Labor Relations Board makes unit determinations in the private sector. It will approve narrower negotiations units than we will based on its statutory obligation to define "an appropriate unit," as contrasted with our obligation to define "the appropriate unit." Compare Dezcon, Inc., 295 NLRB 109 (1989) with State v. Professional Ass'n at 257. Yet even the NLRB has determined that full-time and regular part-time employees who perform the same duties and who otherwise share a community of interest belong in the same unit. University of Tulsa and Security Officer's Cooperative, 304 NLRB 773 (1991) (reversing Regional Director's decision excluding part-time employees from proposed unit).

Against this backdrop, we will consider whether the facts of this case warrant an exception to this policy.

The Director correctly noted that in educational settings, many different unit structures are appropriate for certification. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984). We have certified units of teachers alone, units of support staff alone, and units with both teachers and support staff. Full-time aides could be represented in one of the

existing negotiations units, or they could be represented in a unit of all aides. See, e.g., West Milford Tp. Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971) (building aides added to unit of teachers and instructional aides); Elizabeth Bd. of Ed., D.R. No. 79-37, 5 NJPER 248 (¶10140 1979) (directing election in unit of all school aides). The main argument for permitting full-time aides to organize apart from part-time aides is that dismissing this petition will likely leave them unorganized since the Association either has not tried or has not been able to organize part-time aides. Unit structure, however, does not ordinarily depend on the extent of a petitioner's willingness or ability to organize employees; instead it must be based on a range of factors, including the community of interest in a given case.

In the seminal case endorsing our policy favoring broad-based units, our Supreme Court rejected the petitioner's bid to represent a unit of State nurses and concluded that a broad-based unit of all professional employees, including nurses, was the appropriate unit. State v. Professional Ass'n. The Court observed, however:

If, after rendition of our determination herein, there continues for a substantial period to be no movement in that direction, [toward organizing professional employees en masse] it will be open to any interested organization or group of professional employees to lay the matter of appropriate units before the Commission anew. Clearly,

the ultimate organization of all employees who desire collective negotiation with the State is a logical objective of the public policy underlying the statute.

In any event, nothing in our holding or in the decision of P.E.R.C. precludes a later determination, under the circumstances then existing, authorizing units of less than the total body of professional employees. [Id. at 253]

Thus, Professional Ass'n laid the groundwork for finding a professional nurses unit to be the most appropriate should the facts warrant.

In UMDNJ, P.E.R.C. No. 91-2, 16 NJPER 431 (¶21183 1990), we found that a number of factors combined to produce the extraordinary circumstances necessary to warrant a separate unit of professional nurses. The professional nurses had a strong occupational identity; they were more than a third of the professional workforce; professional nurses units had been permitted elsewhere; a ten-year period had elapsed since a failed attempt to organize an all professional unit; and creating a large unit of professional nurses did not portend a proliferation of small, single occupation units.

Similar factors are not present in this case. The full-time aides do not have a strong occupational identity separate from the part-time aides; units limited to full-time employees have not been permitted elsewhere; full-time aides are only a small percentage of all aides; and we know of no failed attempt to

organize all the aides. Thus, the extraordinary circumstances justifying a separate unit suggested in Professional Ass'n and found in UMDNJ are not present here.

We understand the desire full-time aides may have to organize. Considering all the circumstances of this case, however, we conclude that their desire does not overcome the presumption that a separate unit of full-time employees is not the appropriate unit. Accordingly, we dismiss the petition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: December 16, 2004
Trenton, New Jersey
ISSUED: December 16, 2004