

P.E.R.C. NO. 2012-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTVILLE TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. RO-2011-022

MONTVILLE TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Montville Township Board of Education's request for review of D.R. 2011-6. That decision granted a representation petition filed by the Montville Township Education Association seeking to add all secretarial, custodial/maintenance, and paraprofessional employees to the professional employees' unit. The Commission holds that the Board has not set forth a compelling reason pursuant to N.J.A.C. 19:11-8.2 to grant review.

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.

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Appearances:

For the Petitioner, Schwartz, Simon Edelstein & Celso,
attorneys (Stephen J. Edelstein, of counsel)

For the Respondent, Oxfeld Cohen (Gail Oxfeld Kanef, of
counsel)

DECISION

On January 21, 2011, the Deputy Director of Representation granted a representation petition filed by the Montville Township Education Association. D.R. No. 2011-6, 37 NJPER 34(¶11 2011). The petition, supported by the required number of signed authorization cards, sought to add all secretarial, custodial/maintenance, and paraprofessional employees of the Montville Township Board of Education to the Association's unit of professional employees. The Deputy Director concluded that consolidation of the previous support staff units with the unit of professional employees was warranted by the community of interest among the Board's employees, the desire of a majority of

employees within each unit for a consolidated unit, the disclaimers of interest filed by the majority representatives of the support staff units, and longstanding case law favoring broad-based units of school employees. The Deputy Director also explained why the Board's objections to a consolidated unit did not warrant an evidentiary hearing.

Pursuant to N.J.A.C. 19:11-8.1, the Board timely requested review of the consolidation order. It asserts that the Deputy Director made a legal error in applying an implicit per se rule that a community of interest exists among all school employees to the facts of this case and disturbing a stable system of separate units that has worked well for decades. In particular, the Board asserts that the Deputy Director should not have discounted the privatization of 35 of the 42 custodial/maintenance positions or the good faith negotiations the Board has engaged in with the unit of paraprofessional employees since 2008. The Board also asserts that the Deputy Director factually erred in determining that the separate units that had previously represented custodians and maintenance employees had merged at some point between 2002 and 2005.

The Association responds that the Commission has consistently approved wall-to-wall negotiations units in school districts and that the facts of this case do not require a different result. In particular, the Association asserts that

the bargaining history of separate units cannot override the desire of the employees in these units to consolidate now; the privatization argument does not change the community of interest among the seven custodial employees who remain and other employees of the Board; and the date of the previous consolidation of the units of custodians and maintenance employees is irrelevant given the absence of any dispute that these units have in fact been merged.

The Board received our permission to file a supplemental certification. In that certification, Board member Michael Palma states that he is the chairperson of the Board's committee for negotiating with the unit of paraprofessional employees formed in 2008 and that on January 30, 2011, he received a request from the leadership of the former Montville Paraprofessional Association to restart negotiations. Palma believes that this request indicates that paraprofessionals were unaware that the order consolidating the units made continued negotiations with individual groups inappropriate. He further states that other groups of employees have voiced similar demands during public Board meetings and that the misunderstanding on the part of the former majority representatives about the consolidation order should prevent that consolidation.

Pursuant to N.J.A.C. 19:11-8.2, a request for review will be granted only if one or more of the following reasons compels review:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

This case presents no such compelling reason so we deny review.

The Deputy Director's decision reviews the pertinent precedents thoughtfully and thoroughly. That decision considered and reasonably rejected the Board's arguments that the community of interest generally found among school employees should not be found to exist among the Board's employees given the particular facts of this case. In this regard, the history of privatization concerning custodians and maintenance employees does not diminish the community of interest between the seven remaining employees in that unit and other school employees since subcontracting decisions are not mandatorily negotiable. State of New Jersey v.

Local 195, IFPTE, 88 N.J. 393 (1982). The decision also properly acknowledged the longstanding stable relationship in the multiple unit structure, but reasonably concluded under settled case law that this relationship did not negate the employee organizations' rights to seek a consolidated structure that would also accord with policies favoring labor relations stability. In this regard, we see no reason to believe that including paraprofessional employees in a consolidated unit will undermine labor relations stability. Thus, this case does not present either a substantial question of law concerning the interpretation and administration of our Act or our rules or a need to reconsider an important Commission rule or policy.

We also find no factual error sufficiently substantial, clear, or prejudicial to warrant review. The precise date of the previous consolidation of the units of custodians and maintenance employees is immaterial since it is undisputed that the consolidation of these units had occurred.

Finally, the misunderstanding asserted in the supplemental certification does not warrant reconsideration of the consolidation order. That order was issued on January 21, 2011, just nine days before Palma received the request to restart negotiations. It is not surprising to us that not everyone knew about that decision so soon after its issuance. Further, it is clear that the majority representatives of the support staff

units had disclaimed interest in continued representation and that the majority of employees in each unit favored consolidation. Whatever confusion may have existed shortly after the issuance of the consolidation order has surely been eliminated by now or will be eliminated by this decision denying review.

ORDER

The request of the Montville Township Board of Education for review of D.R. No. 2011-6 is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: August 11, 2011

Trenton, New Jersey