

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH PLAINFIELD BOARD OF EDUCATION

Public Employer

and

Docket No. R-89

NEW JERSEY STATE NURSES' ASSOCIATION

Petitioner

and

SOUTH PLAINFIELD EDUCATION ASSOCIATION

Intervenor

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning representation of nurses of the South Plainfield Board of Education, hearings were held before Jeffrey B. Tener, Hearing Officer, on December 2 and December 16, 1969 at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Thereafter, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto. Exceptions were filed by the Employer and Petitioner. The Commission has considered the record, the Hearing Officer's Report and Recommendations, and the Exceptions and, on the facts in this case, finds:

1. The South Plainfield Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The New Jersey State Nurses' Association and the South Plainfield

Education Association are employee representatives within the meaning of the Act.

3. The petition seeks to establish a separate negotiating unit for school nurses; they were previously represented by the Intervenor in a unit of teachers, nurses, counselors and librarians, pursuant to the Employer's grant of recognition. The Hearing Officer found that the one year contract, covering the unit above and executed before the filing of the instant petition, should be given effect for the duration of its term and thereby bar an election during its term. 1/ He further found, however, that school nurses could be separated from the existing contract unit and would constitute a separate appropriate unit unto themselves. He therefore recommended that an election be directed in a unit of nurses at a time following the expiration of the one year contract. 2/ The Employer excepts to the Hearing Officer's recommended unit finding. The Petitioner also excepts, essentially on the grounds that the Employer was notified, well in advance of the contract's execution, that the Intervenor was relinquishing its status as negotiating representative for the nurses, that the nurses had designated a new representative, namely, the Petitioner, that the contract subsequently executed did not, and was not intended by Intervenor, to cover nurses, and therefore it could not operate to bar an election in a nurses'

1/ The Commission's Rules and Regulations became effective after the operative facts and the issues of this case arose. The Hearing Officer declined to apply the Rules and Regulations retroactively. Rather, he premised his conclusion of contract bar on the underlying consideration that the Act and the policy behind it were designed to promote stability as well as to confer the right of organization.

2/ The effective term of this agreement was July 1, 1969 to June 30, 1970.

unit during its term. In support of its position, Petitioner notes the absence of objective evidence indicating that the Intervenor ever represented a majority of the nurses and further notes that their inclusion within the unit recognized by the Employer resulted solely from the Intervenor's representation that the nurses were in the unit for which it had majority support. 3/

After due consideration, the Commission finds Petitioner's exceptions to be without merit. Any attempt to cast doubt upon the validity of the Employer's initial grant of recognition to the Intervenor for a unit including nurses cannot be sustained. The Hearing Officer found, and there is no evidence to the contrary, that the Employer's grant of recognition to the Intervenor as majority representative was made in good faith. Furthermore, Intervenor's President affirms that at the time of recognition no one questioned the absence of written authorizations from a majority of the employees: "...everyone was obviously supporting this at this particular moment." The record is quite clear that what triggered the nurses' dissatisfaction was not a claim that they had never authorized the Intervenor to negotiate for them, but that having agreed to this spokesman (by whatever means then sufficient for the purpose), they were no longer satisfied with the results achieved. It was then that they sought release from the teachers' association and representation by the nurses' association. But the

3/ Petitioner offers no affirmative evidence demonstrating that Intervenor lacked majority support of the nurses or of the unit as a whole at the time it was recognized.

Employer, having granted exclusive recognition in good faith, pursuant to Chapter 303, was not obligated to yield to the nurses' request for severance. Nor was it obligated to recognize the Intervenor's attempted disclaimer of representation for nurses. In the absence of a petition to this Commission raising a question concerning representation, the Employer, under the circumstances of this case, was free to pursue contract negotiations to a conclusion. The contention that the Intervenor no longer spoke for the nurses and did not intend the contract to cover them is immaterial in view of the Employer's refusal to depart from the boundaries of the recognition it had granted. Moreover, the contract does encompass nurses and no evidence of a contrary intent can operate to alter the express terms of the agreement. 4/

The bilateral agreement of the parties to include nurses in the unit covered by the contract is not altered by the statement that the nurses will seek to appeal to this Commission their inclusion in such unit. In the opinion of the Commission, the statement regarding the nurses' intent to appeal is not a reservation by the signatories to the contract whereby the nurses' status is undetermined or held in abeyance pending the Commission's determination.

4/ The contract clause indicating that the nurses requested severance from the unit and intend to appeal "...their present designation as part of the unit..." to this Commission can, by no construction, be interpreted as a mutual agreement that they be removed from the unit. Short of mutual agreement, expressions of intent have no legal effect.

This is not, therefore, a situation where the parties to this contract, the public employer and the South Plainfield Education Association, have inserted a unit reservation. Rather, the provision merely sets forth a fact relating to a third party beneficiary of the contract. We do not construe this provision in the agreement as creating any infirmity in the binding nature of the contract relating to the nurses nor do we conclude that this requires the granting of a severance election to the nurses.

It is axiomatic in labor relations that in determining an appropriate unit or in achieving an agreement, the specific wishes of each group may not always be satisfied. If the desires of each group of employees were to be given controlling weight complete chaos would result since, in any appropriate unit, there are groups whose interests are of same variance to the total complement of the unit and there are employees or categories of employees who do not want the designated representative to represent them for purposes of collective negotiations. However, one of the principles of labor relations is that employees who are found to constitute an appropriate unit are governed by the contract negotiated by their exclusive negotiating representative. (See Lullo v. International Association of Firefighters, 55 N.J. 409)

The representative in seeking to meet the desires of the majority may, in some instances, alienate a minority or may fail to satisfy the needs of some particular group. Were all such groups whose needs were not met permitted to obtain separate representation or none at all, the concepts of an appropriate unit of exclusivity of majority representation and of collective negotiations would soon disappear to be replaced by individual

or group dealings. Whether this unit is one established by this Commission or is one agreed upon by the parties to a contract is not material providing it is basically an appropriate unit. Thus, where as here, the parties to a contract have agreed upon an appropriate unit without a reservation, the existence of some dissatisfaction by numbers of the unit will not constitute a basis to separate or sever a dissatisfied group from an appropriate unit.

The Commission concludes, in agreement with the Hearing Officer, that the contract should be given full effect throughout its term. On that basis, and without reference to rules later promulgated by the Commission regarding timeliness of petitions, the instant petition should be dismissed as one raising no question concerning representation. However, the Commission takes note of the fact that the term of that agreement has now expired. Rather than require a new petition, timely filed under existing rules, and burden the parties with a fresh presentation of the unit question, the Commission will proceed to dispose of that question here.

The Commission concludes, under all the circumstances of this case, that it is not appropriate to permit the separation of nurses from the contract unit. It is not enough to observe that nurses enjoy a community of interest among themselves. Any group having common qualifications, duties and conditions of employment will meet this test. The issue is whether their interests are so distinct from those with whom they were formerly grouped as to negate a community of interest. It is true that a nurse's training and qualifications differ from that of a teacher but she is not limited thereby, for the school nurse functions in both the medical and educational spheres. And

even where she performs purely medical duties, her professional service is directed toward the maintenance and betterment of the educational process, whether it be an annual physical examination or a home visit to determine the cause of a student's school behavior problem. The medical characteristics of the job are dominated by educational interests and integrated with the teaching process in order to achieve a common object, the education of students. In addition to this overriding interest, nurses share with teachers a variety of common conditions such as hours, fringe benefits, daily supervision by the school principal, 5/ as well as formal classroom instruction duties. Under all the circumstances, the Commission concludes that the interests of the nurses are so closely related to the educational process that the factors distinguishing nurses from teachers are submerged in recognition of the broader community of interest shared by the two groups. Furthermore, in this case, the nurses have been included with the teachers for purposes of representation for approximately six years. This history of prior representation constitutes an additional factor in determining their community of interest. Accordingly, the nurses should not be removed from the existing unit. The petition is dismissed on the procedural grounds earlier discussed in this decision as well as our finding that the nurses may not, under the facts in this case, constitute a separate unit.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: August 28, 1970
Trenton, New Jersey

5/ Although nurses also report to the school physician on medical matters.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH PLAINFIELD BOARD OF EDUCATION

Public Employer

and

NEW JERSEY STATE NURSES' ASSOCIATION

Docket No. R-89

Petitioner

and

SOUTH PLAINFIELD EDUCATION ASSOCIATION

Intervenor

Appearances: For the Public Employer - LeRoy P. Lusardi, Esq.
For the Petitioner - John J. Harper, Esq.
For the Intervenor - Milton Jayson, President

REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission June 17, 1969 by the New Jersey State Nurses' Association. Pursuant to a Notice of Hearing to resolve a question concerning representation of nurses of the South Plainfield Board of Education, hearings were held before the undersigned on December 2 and December 16, 1969 at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Briefs were filed by two of the parties on January 28, 1970. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The South Plainfield Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The New Jersey State Nurses' Association and the South Plainfield Education Association are employee representatives within the meaning of the Act.

3. The Public Employer having refused to recognize the New Jersey State Nurses' Association as the majority representative of the nurses employed by the South Plainfield Board of Education, a question concerning representation exists and the matter is appropriately before the undersigned for Report and Recommendations.

ISSUES

There are two main issues in this case: first, whether or not the petition is timely; second, if it is timely, do the nurses constitute an appropriate unit.

The Act is silent with respect to the timeliness of petitions although the Rules and Regulations of the Commission do treat this subject. It should be noted, however, the August 29, 1969 effective date of the Rules postdates the filing of the petition in this case by almost two and one half months.

Section 6(d) of the Act does empower the Commission "...to resolve questions concerning representation of public employees...." and to "... decide in each instance which unit of employees is appropriate for collective negotiation...."

Section 7 of the Act provides the only specific guideline regarding appropriate units: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned...."

A decision of the Commission, Garfield Board of Education and Garfield Education Association, P.E.R.C. No. 16, was concerned with the question of the appropriateness of a unit including school nurses.

TIMELINESS OF THE PETITION

The record indicates that negotiations between the public employer and the intervenor commenced in early November, 1968. On December 9, 1968, the public employer and the intervenor agreed upon the unit which

was to be recognized. Nurses were included in the unit. On January 14, 1969, the Board passed a resolution recognizing the South Plainfield Education Association as the majority representative for a unit which included teachers, nurses, and several other groups. At least up until this time, there was a nurse who attended some of the meetings including the meeting of January 14, 1969.

Apparently there was no question concerning the majority status of the Education Association at the time of recognition. The South Plainfield Education Association had represented the teachers for at least six or seven years. The Board did not ask for authorization cards and the Education Association did not solicit them from their members. There is no evidence that the nurses did not want to be included in the unit at the time of recognition.

In November, 1968 when the Education Association made their first proposal to the Board, they asked that nurses be placed on the teachers salary guide. On January 14, 1969, the Board negotiator made an offer with respect to nurses. The nurses were dissatisfied with this offer and urged the negotiating representative to attempt to get a better offer. Several meetings were held at which the salary guide of nurses was discussed. The Education Association attempted at least until March to negotiate a better guide for the nurses. These efforts were not successful. Finally, on June 11, 1969, a contract was signed by representatives of the Board and the Education Association. The contract clearly covers nurses and it includes Schedule B, Nurses Salary Guide, which is incorporated by reference into the contract as is Schedule A, the guide for teachers.

In February, 1969 - apparently because they were frustrated in their efforts to get a better guide - the nurses joined the New Jersey State Nurses'

Association. The Education Association agreed in March to release the nurses. This release was contained in a letter dated March 21, 1970 from Mr. Jayson, President of the Education Association to Mr. Harper of the State Nurses' Association. There is no evidence that the Board of Education was officially informed of this action until October 31, 1969 when Mr. Jayson wrote a letter to Dr. Vansant, Superintendent.

The action of the Education Association may not have been completely consistent. On one hand, they released the nurses from the negotiating unit. On the other hand, they concluded and signed a collective agreement which covers the nurses.

It should also be noted that the contract was signed before the petition was filed although it is true that the New Jersey State Nurses' Association did ask for recognition on April 11, 1969.

The undersigned regards stability - but not inflexibility - as an important consideration in the development and implementation of the policy desired by the legislature when Chapter 303, Laws of 1968 was enacted.

To deny a recognized negotiating agent - such as the South Plainfield Education Association in the instant case - a reasonable opportunity to negotiate a contract after being recognized would not contribute to stability. This conclusion is not based upon the Rules and Regulations of the Commission which became effective August 29, 1969 - several months after the petition in this case was filed. However, it is evident that the Commission recognized this consideration because the Rules which they did adopt do make provision for a protected period during which negotiations may take place following recognition (Section 19-11:15(b)).

Nevertheless, the Hearing Officer agrees with the petitioner that the Rules should not be applied retroactively. To find otherwise would require a finding that the South Plainfield Education Association is not

entitled to a protected period (19-11:15(b)) because the conditions precedent thereto set forth in Section 19-11:14 were not satisfied in this instance.

The Board of Education acted in good faith in recognizing the unit which included nurses. They signed this agreement which covered nurses. The majority representative of the employees also signed an agreement covering nurses.

The case cited by Mr. Harper on Page 11 of his brief differs from this one in that in this case, not only did negotiations take place but an agreement was signed. Furthermore, the contract does contain substantive terms and conditions of employment. The only difference in coverage between nurses and teachers is the salary guide. All other items including the grievance procedure apply equally to teachers and nurses.

Based upon the above, the undersigned finds that the contract signed June 11, 1969 by the Board and the Education Association should continue in effect. However, this finding does not preclude the possibility of a recommendation that an election be directed at some future time if the unit is found to be appropriate.

APPROPRIATE UNIT

We now turn to the question of whether or not the eight nurses constitute an appropriate unit.^{1/}

Teachers and nurses have much in common. They share many aspects of the employment relationship. The two groups do have a community of interest and there is no apparent conflict of interest. In an earlier case, Garfield Board of Education and Garfield Education Association, P.E.R.C. No. 16, the

^{1/} It should be noted that one of the eight nurses is a Nursing Coordinator. The parties stipulated and the evidence reveals that this is not a supervisory position as defined in the Act.

Commission found appropriate a unit which included teachers and nurses.

However, this may not be the only appropriate unit. It is an appropriate unit. There are a number of factors which set the nurses off and make them a separate, recognizable group with a unity based upon factors unique to nurses. They must wear uniforms. They must be registered nurses. They are concerned primarily with the health of the students and with performing tests and other functions related thereto. The teaching that they do pertains to the health functions which they perform.

These facts do satisfy the undersigned that the nurses have a community of interest and that they do constitute an appropriate unit.

RECOMMENDATIONS

Based upon the facts in this case, the Hearing Officer recommends that the nurses be found to constitute an appropriate unit. However, no election should be directed during the term of the current agreement between the South Plainfield Education Association and the Board of Education. Therefore, there would be no election until sometime after June 30, 1970. It may not be practical to conduct an election until the start of school next September.^{2/}

Dated: March 26, 1970
Trenton, New Jersey

Jeffrey B. Tener
Jeffrey B. Tener
Hearing Officer

2/ A difficult question - if these recommendations are accepted by the Commission - relates to the status of the nurses prior to an election. However, this question is not an appropriate part of this proceeding and may, if it becomes an issue, reach the Commission through another vehicle.