

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF  
EDUCATION,

Public Employer,

-and-

Docket No. RO-83-91

PISCATAWAY TOWNSHIP EDUCATION  
ASSOCIATION (NJEA/NEA),

Petitioner.

SYNOPSIS

The Public Employment Relations Commission holds that supportive staff should be given the opportunity to vote on whether they wish the representation of the Piscataway Township Education Association (NJEA/NEA) in the same unit as all certified, nonsupervisory professional employees of the Piscataway Township Board of Education. The Commission further holds that professional employees, pursuant to N.J.S.A. 34:13A-6, should be given the option of being or not being in the same unit as the nonprofessional supportive staff.

This case commenced when the Association filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association sought to add the Board's nonsupervisory custodians, maintenance employees, bus drivers, paraprofessionals, secretaries, clerks, and cafeteria workers to its unit. These employees are now represented by NJEA affiliates, all of which support the Association's petition. The Board opposed the proposed addition of these employees to the Association's unit because these employees allegedly did not share a community of interest with professional employees and had previously been represented in separate units.

The Commission finds, consistent with its case law since the extension of the New Jersey Employer-Employee Relations Act to cover public employees in 1969, that, while separate units of teachers and groups of supportive staff are appropriate, teachers and supportive staff share a community of interest and in disputed cases should generally be given the opportunity to choose unified representation in a single unit based on this community of interest. While that approach is not automatically applicable and will not be used when especially compelling circumstances justifying the continuation of separate units are present, such compelling circumstances are not present in the

instant case. In particular, although teachers and supportive staff have been represented in separate units for several years, the majority representatives of these units all welcome, rather than vigorously oppose, the proposed unit and the existing units are not the subjects of long-standing certifications. The Commission thus concludes that all factors relevant to determining appropriate unit structure are sufficiently in balance to permit the desires of the employees for or against unification to control.

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Appearances:

For the Public Employer, Rubin & Rubin, Esqs.  
(David Rubin, Esq., of counsel)

For the Petitioner, Klausner & Hunter, Esqs.  
(Stephen B. Hunter, Esq., of counsel)

DECISION AND ORDER

On October 15, 1982, the Piscataway Township Education Association, NJEA/NEA ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association, which represents a unit of all certified, nonsupervisory professional employees of the Piscataway Township Board of Education ("Board"), seeks to add the Board's nonsupervisory custodians, maintenance employees, bus drivers, paraprofessionals, secretaries, clerks, and cafeteria workers to its unit. These employees are now represented by NJEA affiliates, all of which support the Association's petition.

The Board filed a statement of position opposing the proposed addition of these employees to the Association's unit because these employees allegedly did not share a community of interest with professional employees and had previously been represented in separate units.

On May 6, 1983, the Director of Representation issued a Notice of Hearing.

On September 23 and October 4, 1983, Hearing Officer Mark A. Rosenbaum conducted a hearing. The parties entered stipulations, examined witnesses, and introduced exhibits. Following the hearing, the parties waived a Hearing Officer's report and agreed to submit the matter directly to the Commission. N.J.A.C. 19:11-6.7. They also filed post-hearing briefs.

We have reviewed the record. The following facts appear.

The Board is a public employer and employs approximately 505 certified teachers, 58 secretaries and clerks, 73 custodians and maintenance employees, 23 paraprofessionals, 56 bus drivers, and 60 cafeteria employees.

The Association is the majority representative of all the Board's nonsupervisory certified professional employees and is an affiliate of the New Jersey Education Association ("NJEA").

In addition to the Association's unit, there are four other collective negotiations units of Board employees: (1) custodians, maintenance employees and full-time bus drivers; (2) part-time bus drivers; (3) paraprofessionals; and (4) secretaries and clerks. These four other units are represented, respectively, by the following NJEA affiliates: (1) the Piscataway Township Association of School Custodians and Maintenance Personnel; (2) the Piscataway Township Bus Driver's Association; (3) the Piscataway Township Paraprofessional Association; and (4) the Piscataway Township Association of Educational Secretaries. The nonsupervisory cafeteria personnel whom the Association seeks to represent are not now, and have not been, represented. All employees in

the five represented units have portions of their dues and representation fees forwarded to the NJEA.

In 1969, shortly after the enactment of the law extending representation rights to New Jersey public employees, the Board recognized the Association as the majority representative of a unit of teachers and secretaries. N.J.A.C. 19:11-3.1. After the Board and the Association executed their first agreement, the secretaries withdrew and formed their own unit which the Board recognized.

In 1969, the Board recognized a unit consisting of custodians and maintenance employees and full-time bus drivers. In the mid-1970's, the Board recognized an NJEA affiliate as the majority representative of a unit of part-time bus drivers. In 1977, the Board recognized an NJEA affiliate as the majority representative of its paraprofessionals.

Since 1971, the Board's Director of Personnel has been the Board's key spokesperson in collective negotiations concerning each of the units. The Board has exercised centralized authority over personnel matters affecting all of its employees. In 1971, professional employees engaged in an 11 day strike, but there have been no work stoppages since then.

About 1980, the affiliates representing the various units formed a committee composed of all the affiliates' presidents. This committee met monthly to discuss negotiations, contract administration, and other personnel matters. In 1981-82, the affiliates established a workshop to consider the possible merger of their units. Officers of each affiliate participated.

As a result of the workshop, the Association changed its by-laws and constitution to permit merger and each affiliate passed a resolution favoring merger. During the last round of contract negotiations in 1982-83, the Association's negotiations team consisted of two representatives from each of the supportive staff units and three representatives from the Association's unit. The Board and the combined negotiations team entered contracts covering each of the units.

The Association has demanded recognition as the majority representative of the combined units and the Board has refused recognition. The record shows that units containing both teachers and some or all supportive staff employees are common throughout New Jersey and are becoming increasingly more common.<sup>1/</sup>

The Association contends that the petitioned-for unit is appropriate in light of previous Commission decisions recognizing the community of interest between teachers and supportive staff in various school districts and finding mixed units appropriate. The NJEA affiliates representing the different units of supportive staff support the Association's petition to have an election directed for the purposes of providing the employees an opportunity to vote on whether they desire unified representation. The Board contends that the addition of supportive staff employees is inappropriate because of certain differences between teachers and supportive staff and because of the history of negotiations with separate units.

<sup>1/</sup> Of the 614 school districts in New Jersey, approximately 183 districts have negotiations units containing both teachers and one or more groups of supportive staff; of these 183 districts the mixed unit structure is new in 45. The vast majority of all school district units developed through voluntary recognition.

P.E.R.C. No. 84-124

The New Jersey Employer-Employee Relations Act has the goal of promoting permanent public employer-employee peace and the health, welfare, comfort, and safety of the people of New Jersey. N.J.S.A. 34:13A-2. Towards that end, the Legislature has assigned this Commission, among other functions, the delicate and difficult task of supervising and guiding the voluntary mediation of public employer-employee labor relations disputes. One of the most critical parts of this task is determining how negotiations affecting public sector employees should be structured so that negotiations can proceed smoothly and peaceably throughout New Jersey. Board of Education of the Town of West Orange v. Wilton, 52 N.J. 404, 424 (1971) Discharging this responsibility in the instant case, we believe -- based on our expertise in this area, the reasons set forth below, and our review of the record -- that the present units have been appropriate, that the proposed unit would be appropriate, and that all of the factors that are normally considered in establishing appropriate units are so evenly balanced as to permit the desires of the employees to be the controlling factor. In re West Milford Bd. of Ed., P.E.R.C. No. 56 (1971) ("West Milford"); In re Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶12061 1981); In re Glen Rock Bd. of Ed., P.E.R.C. No. 83-64, 9 NJPER 17 (¶14008 1983) ("Glen Rock").

Subsection 6(d) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., empowers this Commission to resolve questions concerning representation of public employees by conducting a secret ballot election or using any other suitable

method to ascertain the employees' free choice. In the absence of a dispute, section 5.3 statutorily enjoins the Commission from intervening in matters of recognition and unit definition; but when a dispute arises, the Commission must decide in each instance which unit of employees is appropriate for collective negotiations.

State of New Jersey and Professional Association of New Jersey

Dept. of Ed., 64 N.J. 231 (1974), affirming P.E.R.C. No. 68

(1972) Pursuant to N.J.S.A. 34:13A-5.3, the Commission must

define the appropriate negotiations unit "...with due regard for the community of interest among the employees concerned."

Community of interest is, of course, a term of art encompassing a multitude of factors, and the importance of any one factor in a particular case depends upon how it interrelates with other

factors. West Milford; Glen Rock In the final analysis, the

Commission must weigh the facts of each case and the concerns of the employer, employees, and the public in order to decide what

unit structure will promote the statutory goals of labor stability and peace. State of New Jersey and Professional Association of

New Jersey Dept. of Ed., supra.

Representation in New Jersey school districts -- as for example, in this case -- has historically developed by recognition rather than recourse to the Commission's certification procedures. Compare N.J.A.C. 19:11-3.1 and N.J.A.C. 19:11-1.1

Through recognition, many different unit structures have arisen:

some containing teachers alone, some containing one or more

groups of supportive staff alone, and some containing a mixture

of teachers and one or more groups of supportive staff.



Further, even when the Commission's certification procedures have been invoked, the Commission, consistent with section 5.3, has not gone beyond the boundaries of the parties' dispute in making its appropriate unit determinations.<sup>2/</sup> Pursuant to its obligation to make appropriate unit determinations within the context of the dispute presented, the Commission has specifically held that many different types of school district unit structures are appropriate for certification: some containing teachers alone, some containing one or more groups of supportive staff alone, and some containing a mixture of teachers and one or more groups of supportive staff. See, e.g., In re Bergenfield Bd. of Ed., P.E.R.C. No. 7 (1969) (unit of custodians and Board's professional employees appropriate); In re Newark Bd. of Ed., P.E.R.C. No. 20 (1969) (unit of teachers appropriate); In re Montgomery Township Bd. of Ed., P.E.R.C. No. 27 (1969) (unit of clerks, secretaries, teacher aides, and teachers appropriate); West Milford (appropriate to add unrepresented clerical employees and building aides to an existing unit of teachers, nurses and instructional aides if employees so choose). See also, Garfield Bd. of Ed., P.E.R.C. No. 16 (1969) (unit of teachers, guidance counsellors and nurses appropriate); In re South Plainfield Bd. of Ed., P.E.R.C. No. 46 (1970); In re Jefferson Township Bd. of Ed.,

<sup>2/</sup> For example, when an employee representative has sought to represent secretaries in a unit with teachers and the school board has sought to preserve the existing unit structure, the Commission has not on its own questioned the unit placement of other school district employees such as custodians and instead has resolved the dispute as limited by the parties. see, e.g., West Milford.

P.E.R.C. No. 61 (1971); Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (§12204 1982) (addition of supplemental teachers to teacher unit appropriate); In re Cranford Bd. of Ed., E.D. No. 74 (1975); In re Asbury Park Bd. of Ed., E.D. No. 76-41, 2 NJPER 170 (1976); Wildwood Bd. of Ed., D.R. No. 79-20, 5 NJPER 98 (§10054 1979); Spring Lake Heights Bd. of Ed., D.R. No. 79-21, 5 NJPER 100 (§10055 1979); Glassboro Bd. of Ed., D.R. No. 79-28, 5 NJPER 155 (§10086 1979); Haddonfield Bd. of Ed., D.R. No. 80-22, 6 NJPER 80 (§11040 1980); Vocational Bd. of Ed. of County of Atlantic, D.R. No. 80-31, 6 NJPER 176 (§11084 1981); Evesham Twp. Bd. of Ed., D.R. No. 80-41, 6 NJPER 311 (§11150 1976) (unit of supportive staff employees appropriate); Moonachie Bd. of Ed., D.R. No. 82-28, 8 NJPER 58 (§13023 1981); and Lacey Twp. Bd. of Ed., D.R. No. 82-48, 8 NJPER 269 (§13116 1982).

When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and professional school district employees has arisen, the Commission since 1969 has consistently found, as the above cases demonstrate, that teachers and supportive staff have a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment; and that this community of interest generally warrants giving teachers and supportive staff the opportunity to choose a unified representative in a single unit if they so desire. See, e.g., West Milford.<sup>3/</sup> In the Commission's

<sup>3/</sup> Pursuant to N.J.S.A. 34:13A-6, professional employees may not be included in a unit containing nonprofessional employees unless they vote for inclusion in a mixed unit. The Commission has extended a similar option through a self-determination election to nonprofessional employees in cases in which the factors  
(continued)

judgment, affording teachers and supportive staff such an opportunity promotes labor stability since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. State of New Jersey and Professional Association of New Jersey Dept. of Ed., supra.

While the Commission, in disputed cases, has generally given teachers and supportive staff the opportunity to choose unified representation in a single unit based on their community of interest, that approach is not automatically applicable and will not be used when especially compelling circumstances justifying the continuation of separate units are present. In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) ("Englewood") is such a case. There, the Commission rejected a contention of the Englewood Teachers Association that custodians and maintenance employees, then represented by Local 29, RWDSU, AFL-CIO, should be included in the same negotiations unit as teachers.<sup>4/</sup> We found that a long-established and stable negotiations relationship between the school board and the incumbent representative of the custodial and maintenance employees was a particularly

<sup>3/</sup> (continued)

relevant to determining appropriate unit structure are evenly balanced. See West Milford. Compare In re Globe Machine and Stamping Co., 3 NLRB 294, 1-A LRRM 122 (1937).

<sup>4/</sup> While other previously constituted units -- including a unit of aides and a unit of secretaries and clerks -- were also involved in Englewood, the Englewood Teachers Association did not specifically request that the Commission consider the propriety of a unit including teachers and secretaries or aides, but excluding custodial and maintenance personnel. Accordingly, the focus of the Englewood litigation was on the placement of the latter group and Englewood may not be read as rejecting giving employees the opportunity to choose unified representation when the majority representatives of these units favor, rather than oppose, that course. See Glen Rock at p. 19, n. 3.

important consideration, under all the facts of that case, because of the coalescence of other circumstances such as

...the conceded appropriateness of the certified custodial/maintenance unit, twelve years of negotiating history where no claims are present as to lack of stability or effectiveness of representation by the incumbent, objections by the employer and an incumbent employee organization to unit alteration and the absence of evidence that the existing units have in practice conducted negotiations on a broader scope than originally conceived which might, in another instance, lead us to modify an existing unit structure in favor of one more reflective of the practice of the parties. Additionally, there are no claims that any significant changes have occurred which would suggest that the bargaining history since 1969 may no longer be a substantial, if not controlling factor.

Supra at p. 519 (footnotes omitted)

In short, under all these specific and limited circumstances, we believed that labor-management peace and harmony would best be served by continuation of a separate unit of custodians and maintenance employees. Compare Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 8 LRRM 425 (1941). Accordingly, an election was directed to determine the majority representative in the separate unit.

In the instant case, the Board's supportive staff and teachers, despite some disparities in individual terms and conditions of employment, share the same community of interest we have consistently found between supportive staff and teachers in disputes involving other school districts. Further, the Board exercises a centralized authority over the personnel policies affecting all its employees. Thus, we would normally afford supportive staff and teachers the opportunity to choose unified representation in the same unit if they so desire. The

question in the instant case is whether the facts here fit within the narrow contours of Englewood and compel dismissal of the petition, thus negating altogether the factor of employee choice for or against unified representation. The answer is no. Unlike Englewood, the majority representatives of the current supportive staff units all welcome, rather than vigorously oppose, the proposed unit and the existing units are not the subjects of long-standing certifications.<sup>5/</sup> Given these differences, we believe that the factors (including past negotiations history) relevant to determining appropriate unit structure are sufficiently in balance to permit the desires of the employees for or against unification to control. Accordingly, supportive staff should be given the opportunity to vote on whether they wish the Association's representation in the proposed unit.<sup>6/</sup> Further, professional employees, pursuant to N.J.S.A. 34:13A-6, should be given the option of being or not being in the same unit as the supportive staff.

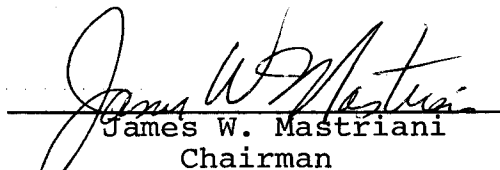
<sup>5/</sup> We note that there is also evidence of consolidated negotiations among the various NJEA affiliates, but we do not consider this evidence especially significant because it concerns post-petition conduct. We also note that the Board's nonsupervisory cafeteria personnel are not and have not been represented and Englewood is accordingly not relevant to determining the unit placement of these employees.

<sup>6/</sup> The self-determination elections should be structured in the manner the Administrator of Representation prescribes.

ORDER

The case is remanded to the Administrator of Representation for further proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch and Graves voted in favor of this decision. Commissioners Suskin and Wenzler voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
April 18, 1984  
ISSUED: April 19, 1984