P.E.R.C. NO. 84-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLEN ROCK BOARD OF EDUCATION,

Public Employer,

-and- Docket No. RO-81-109

GLEN ROCK EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission, applying the guidelines of In re Piscataway Bd. of Ed., P.E.R.C. No. 84-___, 10 NJPER ___ (¶_____ 1984), also decided today, holds that nonsupervisory secretarial and clerical employees of the Glen Rock Board of Education should be given the opportunity to vote on whether they wish the representation of the Glen Rock Education Association in the same unit as all nonsupervisory certified teachers and other professional employees of the Board. The Commission further holds that these 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.

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Appearances:
For the Public Employer, Martin R. Pachman, Esquire

For the Petitioner, Schneider, Cohen & Solomon
(Bruce D. Leder, of Counsel)

DECISION AND ORDER

On October 15, 1980, the Glen Rock Education Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Association represents a unit of all nonsupervisory certified teachers and other professional employees of the Glen Rock Board of Education ("Board") and seeks to add titles represented in a separate unit by the Glen Rock Association of School Secretaries ("GRASS").

GRASS has supported the Association's petition, but appears to be defunct now.

The Board filed a statement of position opposing the addition of these job titles to the Association's unit because of an alleged lack of community of interest between the teachers and the secretaries and a history of negotiations with separate

employee units.[1/]

On July 23, 1982, the Director of Representation dismissed the petition. Relying on In re Englewood, P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) ("Englewood"), the Director concluded that the history of separate negotiations with the Board's professional and secretarial employees outweighed all other factors and mandated continuation of the existing separate unit structure. D.R. No. 83-3, 8 NJPER 473 (¶13221 1982).

On November 18, 1982, the Commission vacated this decision and remanded the matter for a hearing on all relevant community of interest factors. P.E.R.C. No. 83-64, 9 NJPER 17 (¶14008 1982). The Commission stated:

> We see enough differences between Englewood and this case to warrant further consideration of all the relevant community of interest factors rather than to limit our consideration to the single, albeit important, factor of past negotiations relationships. Because the Director considered Englewood's discussion of negotiations history to be dispositive and did not consider all other factors relevant to appropriate unit structure, the record is insufficient at this time to permit us to determine whether the secretarial and teacher units should be merged. 9 NJPER at 19.

On January 26. 1983, Hearing Officer Arnold H. Zudick conducted a hearing. The parties examined witnesses and presented exhibits. Both parties submitted post-hearing briefs.

On July 1, 1983, the Hearing Officer issued a decision

1/ On July 30, 1980, the Board had filed an unfair practice charge against GRASS, asserting that GRASS had unlawfully failed to seek ratification of an agreement. Processing of the instant representation petition was held in abeyance pending completion of the unfair practice litigation which ultimately resulted in a finding that GRASS had violated the Act. In re Glen Rock Association of School Secretaries, P.E.R.C. No. 82-11, 7 NJPER 454 (¶13301 1981).

recommending that the petitioned-for unit be found inappropriate. H.O. No. 84-1, 9 NJPER 465 (¶14198 1983) (copy attached). He found that the teachers and secretaries in question shared a community of interest, but nevertheless concluded that the history of negotiations with separate units precluded giving these employees the opportunity to choose unified representation in the same unit if they so desired.

On July 25, 1983, the Association filed exceptions asserting that Englewood was distinguishable from this case and, in the alternative, that the Commission should overrule Englewood.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 4-14) are accurate. We adopt and incorporate them here.

We disagree with the Hearing Officer's recommendation that the teachers and other professional employees and the supportive staff in this case should not be given the opportunity to choose unified representation in a single unit if they so desire. In a companion case decided today, In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 84-___, 10 NJPER ___ (¶_____ 1984), we extensively reviewed the history, precedents, and policies concerning unit structures in New Jersey school districts (Slip opinion at pp. 5-10); we incorporate that discussion here. When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and other professional school district employees has arisen, the Commission since 1969 has consistently found 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., In re West Milford Bd. of Ed., P.E.R.C. No. 56 (1971). We have also recognized, however, that affording employees such an opportunity is not an automatically applicable approach 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). 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 representative of the supportive staff unit has welcomed, rather than vigorously opposed, the proposed unit and the existing units are not the subjects of longstanding certifications.[2/] Given these differences, we believe that the factors (including past negotiations history) relevant to determining appropriate unit structure are sufficiently in

2/ We note that there is also some evidence of instability in the past negotiations relationship between the Board and the GRASS unit, as witnessed by the unfair practice GRASS committed during the last pre-petition negotiations; indeed, GRASS now appears to be effectively defunct. In addition, there is evidence that teachers and secretaries have used a consolidated negotiations team and have demonstrated support for each other's positions; we do not, however, consider this evidence especially significant because it concerns post-petition conduct.

balance to permit the desires of the employees for or against unification to control. Accordingly, the supportive staff in question here should be given the opportunity to vote on whether they wish the Association's representation in the proposed unit. 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 here.

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

H.O. NO. 84-1

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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Public Employer,

-and-

DOCKET NO. RO-81-109

GLEN ROCK EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommended that a petition seeking to add secretaries to an existing professional unit be found inappropriate because of the long, undisturbed history (10 years) of separate secretarial and professional units in the district. The Hearing Officer concluded that the policy established by the Commission in In re Englewood Board of Education, P.E.R.C. No. 82-25, 7 NJPER 516 (¶ 12229 1981), regarding the application of bargaining history to unit structure, applied herein. The Hearing Officer further concluded that evidence of post-petition protected concerted activity between the secretaries and professionals could not be relied upon to disturb pre-petition evidence of separate and stable activity by each unit.

Although the Petitioner originally only sought a mixed unit of secretaries and professionals, it stated, at the hearing, an alternative desire to represent the secretaries in a separate unit. Consequently, the Hearing Officer, following the pattern established in Englewood, recommended that, absent recognition, an election be directed in a separate secretarial unit.

Finally, the Hearing Officer recommended that there was no basis herein to disturb the Commission's long standing policy generally favoring broad based units including units of secretaries and professionals. The Hearing Officer, therefore, recommended that where Englewood could be distinguished, the broad based unit policy should continue to be applied.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

H.O. No. 84-1

STATE OF NEW JERSEY
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Appearances:

For the Public Employer
Martin R. Pachman, Esq.

For the Petitioner
Schneider, Cohen & Solomon
(Bruce D. Leder, of counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") on October 15, 1980, by the Glen Rock Education Association ("Petitioner" or "GREA"), seeking to add all of the non-professional titles then represented in a separate unit by the Glen Rock Association of School Secretaries ("GRASS"), 1/ and employed by the Glen Rock Board of Education ("Board"), into its existing certified/professional unit. 2/

1/ The GRASS unit as defined in Exhibit J-9, the 1982-1984 GRASS collective agreement, includes the following titles: Clerks, Switchboard Operator, Supplementary Secretaries, School Secretaries, and Secondary School Executive Secretaries.

2/ The Petitioner's professional unit as defined in Exhibit J-1, the 1981-1983 GREA collective agreement, includes the following titles: Classroom Teachers, Nurses, Librarians, Social Workers, Psychologists, Coordinators, Supplementary Teachers, Speech Therapists, Specialists, Remedial Instructors, Department Chairmen Guidance Counselors, and Learning Disabilities Teacher Consultants.

The processing of that Petition, however, was delayed (blocked) by the Board's previous filing of an unfair practice charge, Docket No. CE-81-4-39, on July 30, 1980 (amended on July 31, and September 12, 1980), alleging, in part, that GRASS violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by failing to seek ratification of an agreement. A Complaint and Notice of Hearing was issued regarding that Charge on October 20, 1980, and the Hearing Examiner in that matter issued his Report on April 10, 1981. The Commission, thereafter, considered the Hearing Examiner's Report and the exceptions filed thereto, and issued its own decision therein on July 21, 1981, finding that GRASS violated the Act. 3/

Subsequently, on August 6, 1981, with the resolution of the blocking charge, the Petitioner requested that the processing of the Petition be resumed. Thereafter, on September 4, 1981, the Director of Representation scheduled an informal conference with the parties to the Petition for October 22, 1981, but no agreement was reached at that conference to resolve the matter. The Board, relying upon In re Englewood Bd/Ed, P.E.R.C. No. 82-25, 7 NJPER 516 (¶ 12229 1981) (Englewood II) opposed the Petition and argued that the GREA and GRASS units should not be combined because they each had a lengthy negotiations history as a separate unit. The Board also argued that the units should not be combined because the secretaries in GRASS and the professionals in GREA did not share a community of interest. The Petitioner argued that Englewood II could be distinguished from the instant situation and should not be applied, and that all titles involved herein did share a community of interest.

3/ In re Glen Rock Association of School Secretaries (Glen Rock Bd/Ed) P.E.R.C. No. 82-11, 7 NJPER 454 (¶ 13301 1981). (Glen Rock I).

On January 21, 1982, a Commission staff agent requested that the parties submit detailed statements of position, as well as documentary evidence, regarding the instant matter to the Director of Representation to enable him to decide how to resolve the matter. After the submission of the materials, the Director, by letter dated May 13, 1982, advised the parties that abzent the placing in dispute of material factual issues, he would issue a decision dismissing the Petition. The parties submitted additional material to the Director by June 2, 1983, and the Director, relying extensively upon Englewood II, issued a decision on July 23, 1982 dismissing the Petition. 4/

Pursuant to an extension of time, the Petitioner, on August 24, 1982, filed a Request for Review of the Director's decision with the Commission, and the Chairman granted the review on September 21, 1982. Thereafter, on November 18, 1982, the full Commission issued its decision vacating the Director's decision and remanding the matter for a hearing. 5/

In its remand message the Commission stated that all relevant community of interest factors, in addition to negotiations history, must be considered in determining whether the secretarial and professional units should be merged.

In accordance with the Remand, the undersigned Hearing Officer issued an Order Scheduling Hearing on December 8, 1982, which was followed by the issuance of a Notice of Hearing on January 12, 1983, both of which resulted in a hearing being held herein before the undersigned Hearing Officer on January 26, 1983, in Newark, New Jersey. All parties at the hearing were given the opportunity to examine and

4/ In re Glen Rock Bd/Ed, D.R. No. 83-3, 8 NJPER 473 (¶ 13221 1982). ("Glen Rock DR").

5/ In re Glen Rock Bd/Ed, P.E.R.C. No. 83-64, 9 NJPER 17 (¶ 14008 1982). (Glen Rock II).

cross-examine witnesses, to present evidence, and to argue orally. Both parties filed post hearing briefs, the last of which was received on May 16, 1983.

Pursuant to the Remand, and noting the existence of a question concerning representation which could not be resolved by the parties, this matter is appropriately before the undersigned for Report and Recommendations.

Based upon the entire record in this proceeding the Hearing Officer makes the following:

FINDINGS OF FACT

1. The Glen Rock Board of Education is a public employer within the meaning of the Act, is the employer of the employees who are the s bject of this Petition, and is subject to the provisions of the Act.

2. The GREA and the GRASS are public employee representatives within the meaning of the Act and are subject to its provisions.

3. The Petitoner seeks to add all of the employees in what is commonly known as the GRASS unit into the existing GREA unit. The Petitioner argues that there should be no impediment to achieving such a result, but the Board argues that the two units cannot be combined into one unit. GRASS did not oppose a merger with GREA, and in fact, requested the right to join GREA. (Exhibit J-18B). GREA simultaneously accepted the employees formerly in the GRASS unit into its membership (Exhibit J-18A). In fact, the record shows that the GRASS organization is now a non-entity, and that the employees from that unit are now being represented by GREA in a separate unit, and their dues are now

being forwarded to GREA (Transcript "T" pp. 147,161,186). 6/

4. Although the Petitioner clearly petitioned to accrete the secretaries to the GREA unit rather than merely petitioning to represent the secretaries in their existing separate unit, the record shows that the secretaries wish to be represented by GREA whether in a combined or separate unit (T. p. 161), and GREA is prepared to represent the secretaries in a combined or separate unit. (T. pp. 188-89). 7/

5. History of Unit Structure, Negotiations and Grievance Processing

Prior to 1968 the Glen Rock Teachers Organization was the majority representative of the teachers and other professional employees. (T. p. 5). That Organization was the predecessor to the GREA, and the GREA's first agreement (Exhbit J-8), which covered only professional

6/ Although GRASS no longer exists, since the Board refused to sign new agreements with GREA on behalf of secretaries at least until after the Petition was resolved, it was necessary, particularly for Exhibit J-9 (the 1982-84 secretarial agreement), and to a lesser extent Exhibit J-10 (the 1981-82 secretarial agreement), for those agreements be signed as if they were agreements with GRASS and not GREA. The undersigned is convinced that those agreements were with GRASS only because the Board would not agree to do it any other way. (T. pp. 147-148,161). There was no intent by GRASS to act independently of GREA or to act inconsistent with the purpose of the Petition by signing those agreements. Consequently, those agreements are not evidence that GRASS opposed the Petition. In fact, attached to J-10 is a letter from William Carbone, a GREA official, which indicated that GREA also accepts that agreement even though it was signed by GRASS. He further indicated that if the Commission permitted the units to merge, J-10 would meet the Board obligation to negotiate with GREA.

7/ As a result of the statements by the Board's attorney on the record, it appears that the Board has -- or is willing to -- recognize GREA as the majority representative of the secretaries in a separate unit. (T. p. 189). But, that still leaves the original issue of whether the two units may be combined.

employees, was effective for 1971-1972. 8/ Subsequently, GREA reached six additional collective agreements with the Board prior to the filing of the instant Petition, and reached one agreement (Exhbit J-1), after the filing of the Petition. 9/ The six additional agreements reached prior to October 1980 covered only professional employees. Exhibit J-1, however, although intended to cover only professional employees, did contain a statement in the recognition clause that if the Commission permitted a merger of the units, that said agreement would be reopened to allow negotiations for terms and conditions of employment for secretarial employees.

Regarding the secretarial employees, the record shows that they were not formally represented by any organization for negotiations prior to 1970. (T. p. 5). The first agreement between the Board and GRASS, (Exhibit J-17), covered only secretaries and clerks (including the switchboard operator) and was effective from 1970-71. 10/ Subsequently, GRASS reached six additional collective agreements with

8/ Since there is no record that the Commission ever certified the GREA as majority representative, it is apparent that they achieved that status through recognition.

9/ The six additional collective agreements between the GREA and the Board reached prior to October 1980 are as follows: Exhibit J-7, 1972-73; Exhibit J-6, 1973-74; Exhibit J-5, 1974-75; Exhibit J-4, 1975-77; Exhibit J-3, 1977-79; and Exhibit J-2, 1979-81. Although J-2 covered the 1980-81 period, which was subsequent to the filing of the Petition, it was actually reached prior to the filing of the Petition and also covered the preceding year, 1979-80, which was prior to the filing of the Petition.

The GREA agreement reached after the Petition was filed, Exhibit J-1, covered 1981-83.

10/ GRASS was not certified by the Commission, rather, it was apparently recognized by the Board.

the Board prior to the filing of the Petition, and reached two agreements (Exhibit J-9 and J-10) subsequent to the filing of the Petition. 11/ The six additional agreements in question covered only the titles in the GRASS unit.

The record reveals that from the beginning of their respective negotiations relationship with the Board and continuing at least until the Petition was filed in October 1980, there were no coalition negotiations by GREA and GRASS (T. p. 43); rather, each labor organization negotiated their respective agreements without the help or official assistance of the other organization. (T. pp. 3940,126,127, 163 and 73). It was not until after the Petition was filed that William Carbone, GREA negotiations chairperson, actually negotiated collective agreements (Exhibit J-9 and J-10) on behalf of GRASS. 12/

However, prior to Carbone negotiating on behalf of GRASS, in fact, prior to the filing of the Petition, GREA changed its constitution to permit secretaries to membership. (T. p. 142). In order to change the constitution, GRASS, on or about October 10, 1980, first voted in favor of merging into GREA, and then, GREA, on or about the same day, voted to accept the secretaries into membership. (T. p. 145). Subsequently, after the filing of the Petition, GREA and GRASS began to merge. Carbon negotiated J-9 and J-10, and some secretaries became building representatives or shop stewards for GREA (T. p. 104), and at least one secretary was placed on GREA's executive committee (T. p. 105).

11/ The six additional collective agreements between GRASS and the Board reached prior to October 1980 are as follows: Exhibit J-16, 1971-72; Exhibit J-15, 1972-73; Exhibit J-14, 1973-74; Exhibit J-13, 1974-75; Exhibit J-12, 1975-77; and Exhibit J-11, 1977-80.

12/ Although neither GRASS nor GREA assisted the other in negotiations prior to 1980, both organizations were affiliated with the NJEA, and different NJEA representatives did assist both organizations in negotiations prior to the filing of the Petition. (T. pp. 136,187).

Although Carbone did not assist in GRASS negotiations prior to the filing of the Petition, there is some evidence that he assisted secretaries in processing grievances prior to that time. The record shows that since 1972 GRASS did not have its own grievance chairperson, and that most GRASS grievances were resolved informally and/or at the first step. (T. p. 179). However, certain GRASS unit members apparently asked for Carbone's advise or assistance in processing grievances since e was, at one time, the GREA grievance chairperson and thus had experience in processing grievances. In fact, Jean Grusser, former GRASS president, testified that GRASS never officially authorized Carbone to be its grievance processor, but that people sought his assistance merely because of his knowledge and experience. (T. pp. 153-154).

Carbone testified to two specific instances of what he termed "grievance processing" for GRASS unit members. One incident occurred three to five years ago which apparently occurred prior to the filing of the Petition. A secretary asked Carbone to speak to her school principal regarding a particular problem. Carbone spoke to the principal who agreed to resolve the problem. Although Carbone classified this incident as a "grievance", no formal grievance was actually filed regarding that problem. (T. p. 108). 13/

In the second incident, Carbone stated that approximately two years ago, which was subsequent to the filing of the Petition, a secretary asked him to speak to her principal regarding her evaluation.

13/ Dr. Betty Orloff - Carpenter, Board Superintendent, testified that, to her knowledge, no professional employees represented secretarial employees in the handling and processing of grievances prior to October 1980. (T. p. 46). Although that testimony is not specifically discredited, it cannot be relied upon to discredit Carbone's testimony that some secretaries have asked for his assistance in certain matters.

Carbone complied with her request, but the matter was never formally resolved. (T. pp. 109-110).

Finally, there is some evidence that in 1981, subsequent to the filing of the Petition, teachers and secretaries joined in a mass rally and wore union buttons regarding on-going teacher negotiations. (T. pp. 115-117,125).

6. Community of Interest Factors

The record shows that there are approximately 141 professional employees in the GREA unit and approximately 18 employees in the GRASS unit. (T. pp. 19,144). 14/ Several specific community of interest factors are as follows:

A. Terms and Conditions of Employment

1) Salaries

In addition to professional and secretarial employees receiving substantially different salaries, the employees in each unit move on their respective guides differently. The GRASS guide does not provide a higher salary schedule to reward or recognize educational achievement. (T. pp. 56-57).

2) Health and Other Insurance

The employees in both units receive the same dental, and medical/health insurance coverage (T. pp. 52-53), and disability leave (T. p. 74).

3) Tuition Reimbursement and Workshop Attendance

Both professional and secretarial employees are entitled to tuition reimbursement and may attend workshops. However, the Board has greater discretion to deny tuition reimbursement to secretaries. (T. pp. 59-60,72).

14/ The secretarial and non-supervisory professional employees are not the only organized employees of the Board. The custodial/maintenance employees are represented by the Glen Rock Custodial Maintenance Association (GRCMA), and the administrators are represented by the Glen Rock Administrators Association (GRAA).

4) Separation and Sabatical Leave

Although both professional and secretarial employees are entitled to a separation day, only teachers (professional employees) are entitled to sabatical leave. (T. p. 58).

5) Work Year and Work Hours

But for one or two professional employees who work 12 months, the remainder of the professionals work 10 months. However, the secretaries have the reverse situation. A few secretaries work 10 months, but the majority of secretaries are 12 month employees. (T. pp. 48-49).

The professionals have different work hours than secretarial employees. The professionals work 7 hours 20 minutes a day, whereas, the secretaries work 8 hours a day. However, the secretaries work 7 hours 30 minutes on Fridays. (T. p. 50), (J-9).

6) Holiday's and Vacations

The professional employees, both the 10 and 12 month employees, normally have a full week holiday (vacation) during the Christmas, one week in February, and one week during Easter. Although the secretaries have a portion of those weeks off, they are required to work at least one, and in some instances two days during each of those weeks. (T. pp. 49-50).

The regular vacation schedule also differs. The 12 month professional employee has one summer month off, whereas the 12 month secretarial employees receive two to four weeks vacation depending upon their length of service. (T. pp. 49-50).

7) Lunch, Break and Preparation Time

The lunch and break time of secretaries are not necessarily the same length, nor do they necessarily occur at the same time, as those of the professionals. (T. p. 57). In addition, the secretaries are not entitled to a preparation or free period of time. (T. p. 58).

B. Tenure and Pensions

In addition to the professional employees, the secretarial employees of this Board are entitled to tenure. (T. p. 92). However, the secretarial employees are in the Public Employee Retirement System pension fund, whereas, the professional employees are in the Teacher Pension Annunity Fund. (T. p. 47).

C. Work Location

Although both professional and secretarial employees work in the same buildings, many of them work in different locations in those buildings. For example, teachers predominantly work in their classrooms; guidance counselors, nurses, and child study team members work in thier respective private offices; and, the librarians work in the library. However, the secretaries do not have private offices. Several secretaries work in a common area outside the guidance counselors' offices, several work outside the respective principal and vice principal offices, one secretary works in each of three different nurses offices, two work outside the child study team offices, and two secretaries work in the library. (T. pp. 18-21).

D. Supervision and Evaluation

The professional (non-supervisory) and secretarial employees are primarily supervised and evaluated by the same school

administrators. The principals and vice principals supervise and evaluate their own secretaries, and the vice principals also supervise and evaluate the library secretaries, the guidance secretaries, the nurses secretaries, and the switchboard operator. The Special Education Director supervises and evaluates the child study team secretaries. (T. 30-32). 15/ The professional staff are evaluated by principals, vice principals, or the Special Education Director. 16/

The formal evaluation process varies dramatically between professionals and secretaries. The Board is required to -- and does -- evaluate non-tenured professionals three times a year, and tenured professionals once each year. The Board must complete the evaluations and give notice of future employment by the end of April each year. In addition, the Board must prepare a professional growth plan (PGP) for each professional employee. Although the secretaries are, by the end of April, evaluated three times, there is no requirement to do so, and there is no requirement to prepare growth plans for secretaries. (T. pp. 25-29,91).

15/ The record shows that on a day to day basis the guidance secretaries report to the guidance counselors, the library secretaries report to the librarian, the nurse secretaries report to the nurse, and the child study team secretaries report to child study team members. (T. pp. 22-23). However, the evidence does not indicate that those professionals supervise those secretaries within the meaning of the Act. Consequently, the undersigned finds that the administrators are the supervisors of the secretaries.

16/ Exhibit J-25, a teacher evaluation, was performed by a vice principal. There was no evidence to suggest that anyone other than an appropriate administrator evaluates a professional employee.

In addition, the evaluation form used for professionals is different than the form used for secretaries. (See Exhibits J-24 and J-25). Although both evaluation forms have substantially the same cover page, the form and content of the evaluations differ substantially.

E. Job Requirements

Teachers and other professionals are required to possess State certification in their area of expertise as well as an appropriate college degree. There are neither degree nor certification requirements for secretaries. (Exhibit J-20, J-21, J-22, J-23). Because of the lack of certification requirements for secretaries, there can be no interchange of duties between professionals and secretaries.

F. Student Contact

The professional employees intereact with, and have contact with students on a daily basis for purposes of instruction, supervision, and educational assistance, however, the secretaries are not authorized to -- nor do they have -- such contact with students. 17/ For example, secretaries cannot supervise student lunch or study hall periods, nor can they teach students. (T. p. 88). Consequently, no interchange of duties between secretaries and professionals is possible. (T. p. 60).

G. Additional Differences

There is a formal procedure for teachers to follow

17/ There is some evidence on the record that some secretaries interact with and have contact with students on a daily basis when students go to the library, and when they must meet with principals, vice principals, guidance counselors or child study team members in their respective offices. In addition, there is some evidence that during some of these contact times secretaries may need to monitor or supervise student behavior. However, this contact and supervision is temporary, and, except for the library, is limited to an office environment and is not comparable to the classroom, lunchroom, or study hall environment, nor does it require the same degree of supervision required of professionals.

when calling in sick. They must call a particular person by a particular time. However, the call in sick procedures for secretaries is less riged and may vary from office to office. Generally, secretaries call other secretaries regarding sick leave. (T. pp. 64, 182-183).

Finally, although many teachers and other professional employees are involved in extensive co-curricular and extra-curricular duties, secretaries have no such duties. (T. p. 59).

ANALYSIS

Legal and Procedural Background

In order to fully appreciate the legal considerations involved in this case, a brief history of the matters that led to the issuance of Englewood II is necessary, and must be analyzed with the Director's and Commission's respective decisions in Glen Rock DR, and Glen Rock I, supra.

On October 14, 1980, the Englewood Teachers Association ("ETA"), which is affiliated with the New Jersey Education Association ("NJEA"), filed a timely petition with the Commission seeking to add a separate unit of aides, a separate unit of secretarial/clerical employees, and a separate unit of custodial/maintenance employees into its existing professional unit. The aides and secretaries units were represented by NJEA affiliates, the "EAA" and the "EESA" respectively, and the custodians were represented by Local 29, RWDSU ("Local 29").

The ETA filed separate adequate showings of interest for each of the three separate units it sought to add to the professional unit. The EAA and the EESA did not oppose (and in fact supported) the ETA's attempt to accrete their respective units into the professional unit; however, Local 29 and the Englewood Board did oppose the petition. They argued that none of the units could be combined, in part, because of

the lack of community of interest between professionals and non-professionals, and, in part, because of the history of separate collective negotiations units in the district.

Thereafter, on January 9, 1981, the Director issued a decision regarding that petition, In re Englewood Board of Education, D.R. No. 81-22, 7 NJPER 81 (¶ 12029 1981) ("Englewood DR"), and found that the primary issue involved community of interest. He further found that the Commission had consistently held that a community of interest existed between professional and non-professional employees of a school district. 18/ The Director then held:

> In general, employees in a school district have a common employer, work in the same buildings, and have similar goals and purposes, i.e., the education and the betterment of the students. When making unit determinations the Commission has sought to avoid fragmentation of negotiations units and has favored the formation of units along broadbased functional lines rather than by title or by distinct occupational groupings. 7 NJPER at 81.

Having found that the petitioned for unit in Englewood DR was appropriate, the Director ordered an election. Since the EAA and EESA did not oppose the petition, employees in those units only had a choice to vote for or against inclusion (with the teachers, etc.) in the ETA. However, since Local 29 opposed the petition, employees in its unit had the right to vote for the merger with ETA (inclusion with the teachers, etc.), or to remain in a separate unit with Local 29, or no representation.

18/ The Director in Englewood DR, supra, relied upon In re W. Milford Twp. Board of Education, P.E.R.C. No. 56 (1971), as well as In re Jefferson Twp. Board of Education, P.E.R.C. No. 61 (1971), to support his argument. He pointed out that in W. Milford the Commission found appropriate a petition seeking to add non-professional clerical employees and building aides to a unit of professional employees including teachers, nurses, and instructional aides. He also applied those cases in approving a mixed unit in In re Spring Lake Heights Bd. of Ed., D.R. No. 79-20, 5 NJPER 98 (¶ 10054 1979).

The Englewood Board, and Local 29, filed requests for review of the Director's decision in Englewood DR, and the Commission granted review on February 2, 1981. The Board and Local 29, relying upon the long history of separate negotiations in the units in question, argued that the Directors decision was incorrect. The Commission considered the request for review and then, on March 11, 1981, in In re Englewood Bd/Ed, P.E.R.C. No. 81-100, 7 NJPER 141 (¶ 12061 1981) ("Englewood I"), remanded the matter to the Director for further investigation. In the remand message the Commission explained that although it did not disapprove of self-determination elections as a vehicle for unit determination, it indicated that such a procedure should only be utilized where all factors normally considered in establishing appropriate units were balanced in order to permit the desires of the employees to be the deciding factor. The Commission found that the Director had neither reviewed nor considered the extensive bargaining history as a factor in deciding whether to utilize self-determination as the means to achieve unit determination in that case.

The Director completed his further investigation of the matter and in July 1981,the Commission, pursuant to N.J.A.C. 19:11-8.8, transfered the case to itself for an expeditious determination. The Commission, thereafter, issued its decision in Englewood II, supra, on August 19, 1981, and held that the 12 year history of separate negotiations between the Board and the respective units was a substantial factor militating against permitting a self-determination election as the means to determine the unit structure.

In fact, the Commission in Englewood II held:

> It is an essential ingredient to the maintenance of labor-management peace and harmony that an existing appropriate unit structure of a long-standing nature not be disturbed absent justification.... 7 NJPER at 519.

The Commission then went on to list several factors to support its decision:

> ...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... conducted negotiations on a broader scope than originally conceived...[and]...no claims that any significant changes have occurred which would suggest that the bargaining history... may no longer be a substantial, if not controlling, factor. 7 NJPER at 519.

The Commission in Englewood II also distinguished Jefferson Twp., supra, and W. Milford, supra, from the facts of that case.

Finally, since the ETA submitted separate adequate showings of interest for each of the three units, and since it expressed, in the alternative, a desire to represent the employees in each separate unit, the Commission in Englewood II directed an election in each of the separate units even though the original petition in that case sought only one unit. 19/

After Englewood II issued, the Director, in late 1981 and early 1982, had the opportunity to consider negotiations history as a factor in two different matters. In In re Moonachie Board of Education,

19/ The Commission directed that the employees in the secretaries unit and aides unit, respectively, could vote whether or not they wanted to be represented by the ETA in their separate units. The Commission directed that the custodial employees could vote whether they wanted to be represented by Local 29, or the ETA, or neither, in their separate unit.

D.R. No. 82-28, 8 NJPER 58 (¶ 13023 1981), the petitioner sought to add custodians to an existing professional unit to which the Board, relying upon Englewood II, objected because of the history of separate negotiations units. The Director, in distinguishing Englewood II, ordered an election for the combined unit because he found that negotiations history was not a substantial factor therein because the custodians had only a three year negotiations history with only one collective agreement, and because the custodial labor organization did not oppose the petition. Similarly, in In re Lacey Twp. Bd/Ed, D.R. No. 82-48, 8 NJPER 269 (¶ 13116 1982), the Director distinguished Englewood II again, and directed an election to add blue collar employees to a white collar unit. Although there had been a history of separate negotiations, the Director found that the Board therein had, two years prior to the petition, agreed to alter and expand the white collar unit by adding secretaries to the teachers who were already in that unit, thereby negating the bargaining history.

As a result of the above, it appears to the undersigned that the Englewood II holding is to be applied in a very strict manner, and only where there is a very long, undisturbed, and unaltered negotiations history. 20/

The Glen Rock Matter

Faced with the decisions discussed above, the Director in Glen Rock DR, found that the very long and unaltered separate negotiations history was the compelling factor which justified a finding that the separate

20/ The undersigned does not believe that any one factor in Englewood II, i.e. the objections by a labor organization, or the long bargaining history, is controlling. Rather, the undersigned believes that it is the overall combination of factors which the Commission found to warrant the Englewood II result.

unit structure was, at least in this case, most appropriate. 21/ Since the GREA had not, at that time, expressed a willingness or desire t represent the secretaries in a separate unit, the Director dismissed the Petition in its entirety.

In its Glen Rock II remand message the Commission, by way of example, found two differences between Englewood and Glen Rock:

1. The units in Glen Rock were recognized, not certified as they were in Englewood, and,

2. The incumbent organization in Glen Rock (GRASS), accepts rather than opposes, as in Englewood (Local 29), the proposed merger of the units.

Additionally, the Commission sought more detailed evidence concerning the following issue: Whether GREA and GRASS have coordinated their negotiations by placing a teacher on the secretaries' negotiating team. Finally, the Commission held that the stability of the incumbents' relationship (presumably GRASS's relationship) with the Board be considered in view of the unfair practice decision in Glen Rock I, supra.

The undersigned has considered all of the prior legal history, as well as the evidence and arguments raised herein, and has considered, and attempted to answer, the issues raised by the Commission in Glen Rock II, and finds that Englewood II still applies herein, and that the petitioned for unit is inappropriate.

21/ The Director's decision in that regard was at least partially based upon a finding that GRASS reached a new separate agreement with the Board, Exhibit J-9, subsequent to the filing of the Petition. He thought that agreement demonstrated a willingness by GRASS to continue to represent the secretaries. However, the Director was unaware at that time that GRASS did not have any desire to continue representing the secretaries in any unit.

There are obviously many differences between Glen Rock and Englewood, as well as numerous differences between the professional and non-professional employees. But as the Commission indicated in Englewood II, the various factors must be weighed in order to determine whether a balance exists that would permit a self-determination election. It appears in this case that no such balance exists.

The undersigned first compared and considered the factors relied upon by the Commission in Englewood II with the instant case and finds as follows:

1. In Englewood II the appropriateness of the custodial unit was apparently conceded. Although the GREA in the instant matter did not literally concede the appropriateness of the secretarial unit, there is no question in law that such a separate unit is an appropriate unit.

2. In both Englewood and Glen Rock there was a long history of separate negotiations, and in neither case was there a claim -- or evidence of -- instability or lack of effective representation. In Englewood there was a 12 year negotiations history, and in Glen Rock there ia a 10 year history for the secretaries unit (from 1970-1980), and over 10 years for the professional unit (approximately 1969-1980).

3. In both cases the employer objected to the petition, but only in Englewood did any labor organization (Local 29) object to the petition. In fact, one important similarity between Englewood and Glen Rock is that the secretaries unit in both cases supported the petitioner's efforts to combine units. But despite the secretaries (and aides) support for the petition in Englewood, the Commission still required each unit to remain separate.

4. There was no evidence in either case that the incumbent union (presumably Local 29 in Englewood and GRASS in Glen Rock) conducted negotiations (prior to the filing of the respective petitions) on a broader scope than originally intended.

5. Prior to the filing of the respective petitions there were no significant changes in Englewood or Glen Rock which would suggest that the negotiations history would no longer be a substantial factor. That is not to imply that GREA did not make claims of significant changes, only that those changes occurred subsequent to the filing of the instant Petition. For example, GREA claimed, and the evidence shows:

(a) That a member of the GREA unit negotiated J-9 and J-10 for GRASS, that some secretaries became shop stewards for GREA, and, that one secretary is on GREA's executive committee. However, all of these events occurred subsequent to the filing of the Petition and, therefore, should not be relied upon to negate the history of separate negotiations which occurred prior to the filing of the Petition.

(b) That many secretaries demonstrated their support for GREA at rallies and by wearing union buttons. Once again, these activities occurred after the Petition was filed and, therefore, should not be used to negate the pre-Petition history.

Turning now to the additional evidence sought by the Commission in Glen Rock II, the undersigned had already concluded that the GRASS negotiations which included a GREA member occurred after the instant Petition was filed and should be discounted. Obviously, the concerted activities between GRASS and GREA which occurred subsequent to the Petition were intended, at least in part, to diminish

the prior history of separate negotiations. However, that history is well intact and should not be disturbed because GREA now negotiates for the secretaries.

With regard to the unfair practice decision in Glen Rock I, the undersigned finds that there is nothing in that decision to suggest that GRASS was unstable, or that it was unable to provide fair representation to its members at that time. The Commission in that case had found GRASS to be in violation of the Act for failing to submit a tentative agreement to its membership for ratification. There was no indication at that time that GRASS was unwilling or unable to represent the secretaries in a separate unit. In fact, the Commission in that decision noted that the GRASS representatives were experienced negotiators.

Notwithstanding the above, the facts now show that GRASS no longer desires to continue to represent the secretaries, but that GREA desires to represent them either in a mixed or separate unit. Consequently, even if it appeared that GRASS was unstable as a result of Glen Rock I, its behavior would not affect GREA's ability to represent the secretaries in separate unit.

Two additional elements which the undersigned considered herein are:

1. The assistance the GREA grievance chairperson gave GRASS unit embers prior to the filing of the Petition, and

2. The effect of GRASS signing J-9 and J-10.

Regarding the former, the undersigned finds that the evidence of Carbone's assistance to certain secretaries in grievance matters prior to the filing of the Petition is insufficient to establish that GREA had any responsibility toward processing GRASS grievances at

that time. The facts showed that GRASS did not authorize Carbone, nor any GREA official, to handle secretarial grievances; rather, secretaries on their own approached Carbone, as an individual, and requested his assistance because of his experience in handling such matters, rather than because of his relationship to GREA. Moreover, the record reveals only one incident prior to the filing of the Petition, and that incident did not actually include the filing or processing of a grievance, but only concerned a pre-grievance meeting. Consequently, any grievance Carbone may have handled on behalf of secretaries prior to October 1980, is insufficient to establish assistance between GREA and GRASS for purposes of negating the history of separate units.

Regarding the latter element, the evidence shows that J-9 and J-10 were only signed by GRASS because the Board would not, at that time, sign agreements concerning secretaries with GREA. There was no intent by GRASS to continue to represent secretaries. The Director in Glen Rock DR believed that J-9 represented an intent by GRASS to continue to represent secretaries only because he was unaware that GRASS signed the agreement due to the Boards' position. However, even though J-9 can no longer be used to show an intent by GRASS to represent secretaries, it does not negate the Director's final conclusion in Glen Rock DR, because the remaining combination of factors still justify the application of Englewood II.

Finally, perhaps the most important comparison between Englewood and Glen Rock is not the comparison between Local 29 in Englewood and GRASS in Glen Rock, but is between EESA (and EAA) in Englewood and GRASS. In both cases the secretaries associations were willing to support the efforts of the ETA and GREA, respectively, in combining

secretaries with teachers. If the Commission in Englewood II felt that the incumbent unions' position on the respective petitions was compelling, it could have ordered a separate election for a separate unit for the custodial employees since Local 29 objected to the merger, and ordered a self determination election for the aides and secretaries so that those employees could determine whether they wanted to merge with the teachers since the EESA and the EAA supported the merger. However, the Commission applied the same unit sturcture to the aides and secretaries as it did to the custodians: separate units. Consequently, the undersigned must assume that the Commission did not intend to give compelling or independent weight to the position of the incumbent union on the merger issue. Rather, it appears that the negotiations history itself is the more compelling factor, and combined with the other factors resulted in the decision in Englewood II. Therefore, the undersigned believes that the fact that no union in Glen Rock opposed the Petition, had only minimal effect on the overall determination herein which is based primarily on a combination of factors which, taken as a whole, are very similar to the combined factors in Englewood II.

Having considered all of the above factors, the undersigned concludes that there is a remarkably close similarity between Englewood and Glen Rock which, notwithstanding the community of interest argument, must result in a finding that the petitioned for unit is inappropriate because of the combination of factors which include the lengthy history of separate units. 22/

22/ The undersigned's determination to recommend the application of Englewood II herein takes into account the factual differences between that case and the instant matter. The undersigned believes, however, that those differences are not significant enough to justify distinguishing Englewood II to the extent that it would be inapplicable (Continued)

Community of Interest

In addition to arguing that Englewood II applied herein, the Board sought a determination that professionals and secretaries of a school district generally lacked a community of interest with one another. It was not surprising that the evidence herein showed some similarities, but also many differences, between professional and secretarial employees. However, those differences are neither new nor unusual, and have generally been considered by the Commission and the Director in reaching decisions in the past which favored the broad-based unit concept including the merger of professional and non-professional employees of a school district. 23/

The undersigned believes it would be inappropriate in this matter for the Director or the Commission to change the general policy regarding community of interest. First, a change of policy in this

22/ (Continued) here. However, the parties in this case must realize, as does the undersigned, that any decision to distinguish Glen Rock from Englewood is a policy determination ultimately to be made by the Commission and not this Hearing Officer. There are certainly enough differences between Glen Rock and Englewood for the Commission to distinguish one from the other if it so desires. For example, the Commission may find that since no union in the instant case objected to the Petition, and/or since GREA has already -- post petition -- (and unlike the facts in Englewood) assisted the secretaries in negotiations, and placed secretaries in official GREA positions, that it would approve of the petitioned for unit. The undersigned is not suggesting that the Commission will distinguish the two cases, or that the above examples should be considered significant, quite the contrary (for the reasons stated herein above). Rather, the undersigned is merely acknowledging that there are enough differences between Glen Rock and Englewood that the Commission could, for policy reasons, refuse to apply Englewood II herein.

23/ Se In re W. Milford, supra; In re Jefferson Twp., supra; In re Spring Lake Heights, supra; In re Moonachie, supra; and In re Lacey Twp., supra.

case is unnecessary because the undersigned had already recommended that the proposed merger of secretaries and professionals herein is inappropriate because of the application of Englewood II. Second, there were no new community of interest elements presented in this case that the Commission and Director have not previously considered in reaching decisions approving mixed units. Consequently, the undersigned recommends that the policy generally favoring mixed units remain intact, and that where Englewood II can be properly distinguished, such as in Moonachie, supra and Lacey, supra, that petitions for broad based units be appproved. 24/

Directed Election

In Englewood II the Commission directed separate elections for each unit because it found that the ETA was willing to represent the employees in separate units even though its petition sought one broad based unit. In Glen Rock DR, the Director was not made aware of GREA's willingness and desire to represent the secretaries in a separate unit if its petitioned for unit was inappropriate; consequently, the Director dismissed the Petition. However, now that it is clear that GREA is willing to represent a separate unit of secretaries, an election should be directed, absent recognition, giving the employees currently holding titles covered in J-9 an opportunity to vote to be represented by GREA in a separate unit, or to have no representation. The proposed unit is set forth in the following Recommendations.

24/ Once again, any decision with respect to changing the well established policy favoring broad based units, which might include professional and non-professional employees, would involve a major policy determination that ultimately must be made by the Commission, not this Hearing Officer.

RECOMMENDATIONS

Accordingly, based upon the entire record herein, and for the above-stated reasons, the undersigned Hearing Officer recommends the following:

1. That the petitioned for unit is inappropriate because of the lengthy history of separate units as well as other factors discussed in Englewood II.

2. That since the Petitioner desires to represent the secretarial employees even if only in a separate unit, that, pursuant to N.J.A.C. 19:11-5.1, a secret ballot election be directed, absent recognition, in the following appropriate unit: Included: All clerks, switchboard operator, supplementary secretaries, school secretaries, and secondary school executive secretaries employed by the Board. Excluded: All managerial, confidential, and supervisory employees within the meaning of the Act, all professional employees, and all other employees employed by the Board.

3. That only those employees of the Board occupying included titles are eligible to vote in this election. They shall vote as to whether they wish to be represented for the purpose of collective negotiations in the above-described separate unit by the GREA, or whether they wish no representation. 25/

Respectfully Submitted,

Arnold H. Zudick
Hearing Officer

Dated: July 1, 1983
Trenton, New Jersey

25/ Since the record already indicates that the Board did -- or may be willing to -- recognize GREA as the majority representative of the secretaries in a separate unit, the Director should ascertain the Board's position in that regard prior to scheduling an election.