

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

Garfield Board of Education
Public Employer

and

Docket No. R-74

Garfield Education Association
Petitioner

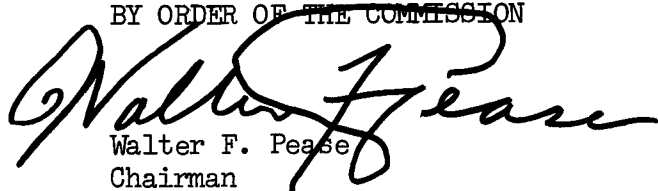
Decision

Pursuant to a Notice of Hearing to resolve a question concerning the representation of Nurses of the Garfield Board of Education, a hearing was held on June 19, 1969 before ad hoc Hearing Officer Daniel House at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Thereafter, on August 18, 1969 the ad hoc Hearing Officer issued a Report and Recommendations. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. The Commission has considered the record and the Hearing Officer's Report and Recommendations and finds:

1. The Garfield Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Garfield Education Association is an employee representative within the meaning of the Act.
3. The Public Employer having refused to include the Nurses in the unit represented by the Garfield Education Association, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.

4. In the absence of Exceptions to the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's Report and Recommendations pro forma.
5. Accordingly, the Commission finds the appropriate collective negotiating unit is: "all teaching personnel employed by the Garfield Board of Education, including Guidance Counselors and Nurses."
6. The unit, exclusive of Nurses, has been recognized by the Board. No issue exists regarding the desire of the Nurses to be included in the teaching unit. Therefore, there is no need for an election to be directed in this matter. The Commission accordingly directs the Board to negotiate with the Association for the unit set forth in section 5 above.

BY ORDER OF THE COMMISSION



Walter F. Pease
Chairman

Dated: October 1, 1969
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Representation
Proceedings Concerning

GARFIELD BOARD OF EDUCATION,
the Board,

and

GARFIELD EDUCATION ASSOCIATION,
the Association

REPORT AND RECOMMENDATIONS

OF HEARING OFFICER

The undersigned, Daniel House, was designated by the Commission as ad hoc hearing officer in the above matter to conduct hearings concerning the question of representation involved and to make a report and recommendations in the matter. Pursuant to the notice of hearing dated May 28, 1969, a hearing was held before me on June 19, 1969, in Newark, New Jersey.

There appeared for the Board:

Thomas J. Ryan, Esq., Attorney

There appeared for the Association:

Robert Chanin, Esq., Attorney

Toward the end of the hearing, I allowed the Board one day to inform me in person or by telephone whether the Board desired further hearing to present additional information for the record. Mr. Ryan informed me by telephone on the following day that the Board did not desire further hearing. During the course of the hearing Mr. Ryan undertook to supply the record with forms of the contracts used for nurses and for teachers; and to supply a stipulation in writing between the Board and the Association showing the regular hours and calendar for the various categories of employees of the Board. Neither set of documents has been supplied; however the relevant and material information which might be adduced from these documents has been otherwise supplied in the record.

On the basis of the record, I find:

1. The Garfield Board of Education, referred to herein as the Board,

is a public employer within the meaning of Section 3 (c) of the Act and is subject to the provisions of the Act.

2. The Garfield Education Association, referred to herein as the Association, is an employee representative within the meaning of Section 3 (e) of the Act.

3. The Association having requested of the Board and the Board having refused to recognize the Association as the exclusive representative for nurses as part of the same negotiating unit as teachers, although offering so to recognize the Association for the nurses in a separate bargaining unit including only the nurses, a question of representation of public employees exists, and the matter is appropriately before the Commission.

4. Since the Board has acknowledged that the Association is entitled to recognition as the exclusive representative of the nurses and has already recognized the Association as the exclusive representative of all teaching personnel including Guidance Counselors, the sole question to be determined in this proceeding is whether the appropriate negotiating unit in the circumstances of this case includes the nurses with all teaching personnel or whether the nurses alone shall here be in a separate negotiating unit.

Section 8 (d) of the Act charges the Commission in resolving questions concerning representation to "decide in each instance which unit of employees is appropriate for collective negotiation"; in addition to the negative criteria set forth in Section 8 (d), the only criterion explicitly specified to give guidance in determining the appropriate unit is that in Section 7: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned"; the negative criteria set forth in Section 8 (d) are: "that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees

vote for inclusion in such unit or (3) both crafts and non craft employees unless a majority of such craft employees vote for inclusion in such unit."

Further aid in determining the appropriate unit is found in Section 7 of the Act: To effectuate the policies set forth in Section 2 of the Act, employees are given the right freely to form, join and assist any employee organization or to refrain from such activity; the organization selected by a majority of employees in a unit appropriate for collective negotiations must be recognized and negotiated with by the public employer as the exclusive representative of the employees in that unit; the exercise of that freedom of choice and recognition and acceptance of that right by employers is generally considered to be basic in the long run to avoiding or minimizing labor disputes. The use of the indefinite article in the phrase in the second paragraph of Section 7 ("a unit appropriate...") clearly contemplates that there may be more than one possible appropriate unit among a group of employees. Thus, if there were to be more than one unit meeting the explicit positive and negative criteria listed in Sections 7 and 8 (as will be found to be the case in the instant matter), then the unit which, without running counter to the express policies of the Act, implements the free choice of the employees should be found to be the appropriate unit. The decision in each case as to what degree of fragmentation of the largest unit based on community of interest will be consistent with the policies of the Act must necessarily be a matter of judgment for the Commission based on the particular facts of each case in which the issue arises; it is not a problem raised in this case. The problem presented in this case is answered in the end by the express desires of the involved public employees.

Community of Interest

The fact that the nurses and the teachers involved in this case are employed by the same public employer establishes a general community of

interest between the two categories in respect to negotiating with that employer about the terms and conditions of their employment: a common employer establishes some degree of community of interest among his employees. The evidence also established other conditions of employment of the two categories in which they have a common interest:

1. They sign similar individual agreements;
2. They have basically the same hours of work and calendar;
3. They have the same holidays;
4. They sign in and out the same way;
5. They have the same hierarchy of supervision;
6. They are paid for from the same budget;
7. Their fringe benefits are the same;
8. Their facilities, such as lunch rooms, rest rooms, etc., are the same;
9. Each is required to be certificated (although by different certificates);
10. Each spends most of work time in pupil contact.

In addition, the evidence established that according to custom in the State (more than a majority of the 593 school districts in the State having recognized as appropriate units including both teachers and nurses), there is a community of interest for negotiating purposes between the two categories.

This is not to say that there are not areas of differences between the categories: clearly they perform different specific functions, the nurses being responsible almost entirely in the area of the health of the pupils, with teaching being an incidental function, while^{for} the teachers, teaching (except for the Guidance Counselors) is the basic function. But from the point of view of collective negotiations, this difference is not critical; indeed it is moot whether the difference between the functions of the nurses and the teachers is greater than the difference between the functions of the Guidance Counselors and the other teachers.

I also do not intend to imply that there are not, as pointed out by the Board, other categories of employees, such as custodial employees, of the Board who share some of the noted areas of common interest with the teachers and the nurses; those categories of employees* are not involved in this case, so no discussion with relation to them is necessary.

Other Criteria

The Association submitted a statement for the record in support of the inclusion of the nurses in the same unit with the other teachers. It showed, in addition to some of the items common to nurses and other teachers I have listed above, that school nurses are considered to be within the definition of "teacher" in Title 18A - Education, New Jersey Statutes. This fact alone is not decisive in this case. In spite of the large amount of community of interest between nurses and other teachers, their basic functions are different, as I noted above; and, I believe, different enough so that a separate appropriate unit might be made of the nurses, if they elected it and if the resulting fragmentation of the larger unit of all teachers were not deemed harmful to the purposes of the Act. We are not, however, faced with this question here: the record shows that the nurses have elected to be in the same unit with the other teachers and the other teachers have elected to have the nurses in the same unit with them.

None of the negative criteria are applicable to the facts in this case. There was no conflict about the fact that the Association had been designated by a majority of the employees in a unit composed of all teaching personnel employed by the Board, including Guidance Counselors and Nurses, which unit I will recommend as the appropriate unit in this case.

RECOMMENDATION

I hereby recommend that the appropriate unit for the purposes of collective negotiations between the Garfield Board of Education and the Garfield Education Association be composed of all teaching personnel employed by the Garfield Board of Education, including Guidance Counselors and Nurses.

Dated: August 18, 1969
New York, N. Y.


DANIEL HOUSE, Hearing Officer