

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

ENGLEWOOD TEACHERS ASSOCIATION,  
NJEA,

Petitioner,

-and-

Docket No. RO-81-92

LOCAL 29, RWDSU, AFL-CIO,

Intervenor,

-and-

ENGLEWOOD AIDES ASSOCIATION,  
NJEA,

Employee Organization,

-and-

ENGLEWOOD EDUCATIONAL SECRETARIES  
ASSOCIATION, NJEA,

Employee Organization.

SYNOPSIS

Subsequent to the issuance of an order granting review of a Decision and Direction of Election by the Commission's Director of Representation, the Commission remanded the matter to the Director for further investigation inasmuch as a significant standard in the determination of appropriate units, the history of bargaining of an established bargaining unit, was not considered prior to the issuance of the direction of election.

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ASSOCIATION, NJEA,

Employee Organization.

Appearances:

For the Public Employer, John Miraglia, Consultant

For the Petitioner, Vincent Giordano, NJEA UniServ  
Representative

For the Intervenor, Yudenfriend & Patterson, Esqs.  
(Lester Yudenfriend, of Counsel)

DECISION AND ORDER

On January 9, 1981, the Commission's Director of  
Representation (the "Director") issued a decision and direction  
of election from which the Englewood Board of Education (the "Board")

and Local 29, RWDSU, AFL-CIO ("Local 29") have filed requests for review. An order granting review was issued by the Chairman of the Commission on February 2, 1981 after consideration of the requests for review and the statement in opposition to the requests for review filed by the Englewood Teacher's Association (the "Association"). Briefs concerning the issues raised on request for review have been filed by all parties.

The Englewood Teachers Association, NJEA, is the exclusive representative of approximately 250 certificated professional employees; the Englewood Aides Association, NJEA, currently is the exclusive representative of approximately 58 non-professional aides; the Englewood Educational Secretaries Association, NJEA, currently is the exclusive representative of approximately 31 non-professional secretarial/clerical employees and Local 29, RWDSU, AFL-CIO currently is the exclusive representative of approximately 45 custodial/maintenance employees. Each of the four units are parties to separate agreements all of which expire on June 30, 1981.

The Englewood Teachers Association, NJEA, on October 14, 1980, filed a timely Petition for Certification of Public Employee Representative, supported by an adequate showing of interest seeking to add all non-professional employees in the aforementioned negotiating units to the existing unit of professionals. The Englewood Aides Association, NJEA, and the Englewood Educational Secretaries Association, NJEA, did not intervene under their separate agreements in this proceeding. Local 29, RWDSU, AFL-CIO, an intervenor by agreement, does not consent to an

election for custodial/maintenance employees which it currently represents in the unit sought by the petitioner, but would consent to an election solely in the unit in which it is the exclusive representative. The Englewood Board of Education, citing a history of separate units for negotiations, does not consent to an election in the overall unit petitioned for herein.

In the absence of a consent agreement for an election,<sup>1/</sup> the Director, on January 9, 1981, issued his decision which was based upon an administrative investigation.<sup>2/</sup> He directed a self-determination election with a professional option; the professionals would choose whether or not they desired to be represented in a unit with non-professionals; the aides would vote on whether they desired to be represented by the Englewood Teachers Association, NJEA, or to choose against representation; the secretaries would vote on whether they desired to be represented by the Englewood Teachers Association, NJEA, or to choose against representation; and the custodial/maintenance employees would vote on whether they desired to be represented by the Englewood Teachers Association, NJEA, in the unit of professionals and non-professionals (assuming the professional employees voted for inclusion with

<sup>1/</sup> N.J.S.A. 34:13A-6(d) provides: "The Commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees....Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings."

<sup>2/</sup> N.J.A.C. 19:11-2.6(b)(3) provides that the director of representation may, after an investigation, "Issue a decision directing an election in an appropriate unit, if it appears to the director of representation that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit."

non-professionals) or whether they desired to continue to be represented in their existing unit by voting for Local 29, RWDSU, AFL-CIO or to choose against representation. Certification or certifications of representative, if any, and the unit structure would be dictated by the voting patterns of the aforementioned employees.

Local 29 objects to the appropriateness of the petitioned for unit and cites an extensive history of successive collective negotiations agreements in excess of ten years as the basis for its argument that the unit for which the instant petition was filed<sup>3/</sup> is inappropriate.

The Board objects to the finding that the petitioned for unit of professional and non-professionals is appropriate given its history of separate negotiations with each unit. The Board argues that the Director's decision is inconsistent with NLRB case law which stands for a reluctance to disturb an existing unit which has a lengthy history of successful bargaining.

The Association cites previous decisions of the Commission which support the appropriateness of an overall professional and non-professional unit<sup>4/</sup> and in particular In re Haddonfield Board of Education, D.R. No. 80-22, 6 NJPER 80 (¶11040 1980) in which a similar self-determination election was directed. Citing the decision, the Association asserts that the Director considered

<sup>3/</sup> In response to a request by the Director for a statement of position relevant to the petition prior to the direction of election, Local 29 asserted the element of bargaining history and requested that a hearing be convened in which to examine the appropriateness of the unit. The Director determined that bargaining history did not constitute a substantial or material factual issue in dispute.

<sup>4/</sup> In re Jefferson Twp. Bd. of Ed., P.E.R.C. No. 61 (1971); In re West Milford Bd. of Ed., P.E.R.C. No. 56 (1971).

and gave due regard on review herein, to the history of collective negotiations in his decision:

Local 29 argues that a 'global election' is inappropriate in the circumstances presented herein because there is a history of separate collective negotiations for each of the three units petitioned-for by the Teachers Association for inclusion in the professional unit. See In re Haddonfield Bd. of Ed., D.R. No. 80-22, 6 NJPER 80 (¶11040 1980), wherein the undersigned gave due consideration to the history of separate collective negotiations units. The undersigned found the petitioned-for unit appropriate, but nevertheless directed that the employees in each separate unit vote independently on their choice of representative. Director's decision, pg. 5.

The Association argues that the purposes of the Act are served by permitting employees to choose their unit configuration.

We have carefully reviewed the Director's decision and the arguments presented by all parties. To the extent necessary to reach a final determination of this dispute, we do not have a full and complete factual record. While in Jefferson we did not find an existing unit of professionals and non-professionals to be inappropriate, substantial consideration was given to collective negotiations history in deciding the appropriateness of the unit including the stability of the existing relationship and whether responsible representation had been provided by the incumbent organization:

The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of

interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

Here we have a unit created by recognition, not demonstrated to be inappropriate, covered by two successive agreements, and represented by an organization not shown to have provided less than responsible representation. Under these circumstances, the Commission is not prepared to upset that relationship on a single premise that bus drivers enjoy a variety of common interests.

The Director determined that, under the circumstances presented herein, a self-determination was the proper vehicle for fixing the collective negotiations unit structure. We do not disapprove of the utilization of the self-determination election as a vehicle for unit determination.<sup>5/</sup> However, this procedure should be employed where it has been determined that all of the factors which are normally considered in establishing appropriate units are so balanced as to permit the desires of the employees to be the controlling factor. This preliminary determination is particularly necessary where, as in the instant matter, it is asserted that there is an established history of collective negotiations in the existing unit structure.<sup>6/</sup> Notwithstanding the

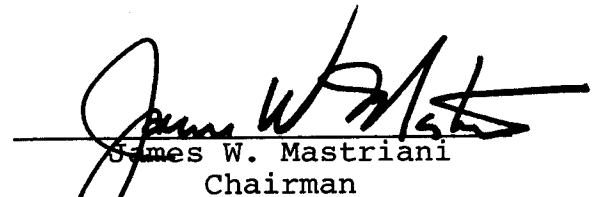
<sup>5/</sup> The self-determination election is a procedure adopted by the NLRB in In re Globe Machine and Stamping Co., 3 NLRB 294, 1A LRRM 122 (1937). It provides that when all other factors do not allow for a clear determination as to the appropriate unit, the choice of employees shall be determinative.

<sup>6/</sup> It is an established principle in unit determination questions that the history of bargaining is one of the significant standards in the determination of appropriate units. Pittsburgh Plate Glass Co., v. NLRB, 313 U.S. 146 (1941) U.S. Supreme Ct. 8 LRRM 425.

Director's reliance on Haddonfield as controlling herein, we do not find Haddonfield to be applicable inasmuch as the element of bargaining history was not a factor which was reviewed or considered in the Director's decision and direction of election.

Inasmuch as the Director's decision does not contain a review of or a weighing of the factors normally considered in rendering unit determinations, the Commission is unable, at this time, to ascertain the propriety or need for a self-determination election. Accordingly, this matter is remanded to the Director pursuant to N.J.A.C. 19:11-2.6.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani and Commissioners Parcells and Hartnett voted for this decision. None opposed. Commissioners Graves, Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
March 10, 1981  
ISSUED: March 11, 1981