

D.R. NO, 82-59

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

PEQUANNOCK TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-82-84

PEQUANNOCK TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation on the basis of an administrative investigation, directs an election among cafeteria and paraprofessional employees to determine whether they wish to be represented by Petitioner within a unit of certified professional staff. These employees are currently not represented for collective negotiations purposes, and may appropriately be included in the existing teachers unit.

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Appearances:

For the Public Employer
McKeon, Curtin, Hubner & McKeon, attorneys
(Thomas Curtin of counsel)

For the Petitioner
William A. Bulmer, UniServ Representative

DECISION AND DIRECTION OF ELECTION

On October 15, 1981, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by the Pequannock Township Education Association (NEA-NJEA-MCCEA) (the "Petitioner"), seeking to add cafeteria workers and paraprofessionals ^{1/} to the existing unit of certificated personnel under full-time contract (teachers, librarians, nurses, guidance counsellors, special service teachers and head teachers) employed by the Pequannock Township Board of Education (the "Board").

1/ The petition initially included part-time guidance counsellors and CETA counsellors but was amended to withdraw that portion of the petition since the employer no longer employs any employees in those titles.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an administrative investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts.

On the basis of the administrative investigation, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing, where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Pequannock Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of the Petition and is subject to the provisions of the Act.

3. The Pequannock Township Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Petitioner seeks to add cafeteria workers and para-professionals to its collective negotiations unit of teachers and other professional employees and agrees to a secret ballot election.

5. The petitioned-for employees are not organized or represented for collective negotiations by a majority representative.

6. There are currently three collective negotiations units covering employees of the Board:

(a) The Pequannock Township Education Association represents a unit of certificated personnel under full-time contract (teachers, librarians, nurses, guidance counsellors, special service teachers and head teachers)

(b) The Pequannock Township Custodial and Maintenance Association represents a unit of custodial and maintenance personnel.

(c) The Pequannock Township Educational Secretaries Association represents a unit of secretaries.

7. The Board does not consent to an election. The Board asserts that it has met with cafeteria workers to discuss terms and conditions of employment and has also followed a practice of discussing salary and other terms and conditions of employment with each of its paraprofessional employees. There have been no collective negotiations agreements entered into between the Board and either of these groups, nor has there been any form of memorandum of agreement. The Board also objects because it "fails to find a commonality among the several employee groups requested to be added to the bargaining unit presently represented by the petitioner or between these employees and the teachers." It also argues that the showing of interest is inaccurate since many of the employees who signed authorization and designation forms are not members of the Pequannock Township Education Association. ^{2/}

^{2/} In accordance with N.J.A.C. 19:11-2.1, the Commission has not furnished the showing of interest to any party. The undersigned is unaware of the source of the employer's knowledge concerning the authorization and designation forms.

The undersigned has given careful consideration to the issues raised by the Board in opposition to the petitioned-for unit. In In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶ 12229 1981) the Commission considered a representation petition seeking to alter an existing negotiations unit structure covering the petitioned-for employees. The Commission held that considerable deference should be accorded to the existing unit structure covering the petitioned-for employees where there has been a well established negotiations history. In the instant matter, an assertion that the employer has met with the employees, in some cases individually, to discuss terms and conditions of employment does not create an established collective negotiations relationship or an existing unit structure and is clearly not comparable with the ten year negotiations history considered in Englewood, and does not therefore present a compelling consideration herein. See In re Moonachie Bd. of Ed., D.R. No. 82-28, 8 NJPER (¶ 13023 1981). Also, see In re Lacey Twp. Bd. of Ed., D.R. No. 82-48, 8 NJPER 269 (¶ 13116 1982) (Englewood analysis inapplicable to previously unorganized employees).

Further, the Act does not preclude the intermingling of professional and nonprofessional employees in the same negotiations unit. Rather, the Act merely instructs the Commission that a mixed professional/nonprofessional unit may not be deemed appropriate unless the professional employees have the opportunity to vote separately as to whether they wish to be included in a unit with nonprofessional employees. If a mixed unit of professional and nonprofessional employees was initially deemed inappropriate by the legislature it would be

pointless for the statute to provide for a professional option. Prior Commission decisions have found that a community of interest exists between professional and nonprofessional employees in an educational setting. See In re West Milford Tp. Bd. of Ed., P.E.R.C. No. 56 (1971), where the Commission found appropriate a petition seeking to add non-professional clerical employees and building aides to a unit of professional employees. In the above matter, the Commission noted that the school district employees have a common employer, work in the same buildings, and have similar goals and purposes i.e., the education and betterment of students. In short, the professional status of the teachers does not automatically render the proposed professional/non-professional unit inappropriate. There has been no specific evidentiary proffer indicating that a community of interest herein is lacking.

Finally, the Board's objection to the showing of interest is misplaced. N.J.A.C. 19:11-2.1 provides that the "director of representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack." The undersigned is satisfied that the showing of interest submitted by Petitioner is accompanied by evidence of support for Petitioner as an employee representative.

On June 9, 1982, the undersigned advised the parties that, based upon the investigation to date, it appeared that a question concerning representation existed in an appropriate unit. The parties were reminded of their obligations under N.J.A.C. 19:11-2.6, to present documentary or other evidence, as well as statements of position relating to the instant Petition and were afforded an additional

opportunity to proffer any supplementary evidence or statements of position relevant to the instant Petition. The parties were further advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned would thereafter issue a decision and direction of election. No additional evidentiary proffers have been submitted.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based on the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: All certificated personnel under full-time contract (including: teachers, librarians, nurses, guidance counsellors, special service teachers, head teachers) cafeteria employees, and paraprofessional employees, but excluding managerial executives, supervisory employees, and confidential employees, superintendent, assistant superintendent, principals, vice principals, director of guidance, supervisors, director of education, and psychologists.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the cafeteria and paraprofessional employees, and that the professional employees be polled through an election as to the exercise of their professional option. N.J.S.A. 34:13A-6(d). The elections shall be conducted no later than thirty (30) days from the date of the start of the September 1982 school year.

Voting Group #1 shall consist of all cafeteria and paraprofessional employees. Employees voting in Voting Group #1 shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Pequannock Township Education Association. The professional personnel in the existing teachers unit shall constitute Voting Group #2. Employees in Voting Group #2 shall vote on whether or not they desire to be included in a unit with nonprofessional employees (cafeteria and paraprofessional employees). If the majority of employees in Voting Group #2 vote for inclusion with the nonprofessional employees, and a majority of Voting Group #1 vote in favor of representation by Petitioner, a certification shall issue adding the cafeteria and paraprofessional employees to the existing collective negotiations unit of teachers and clerical employees. If a majority of Voting Group #2 vote against inclusion with nonprofessionals and a majority of Voting Group #1, vote in favor of representation by Petitioner, then a certification shall issue in a unit limited to cafeteria and paraprofessional employees.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been

rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned and with the Education Association, an eligibility list for each voting group consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Education Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Cafeteria and paraprofessional employees eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Pequannock Township Education Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 24, 1982
Trenton, New Jersey