

MASSACHUSETTS LABOR CASES

CITE AS 11 MLC 1508

FREETOWN-LAKEVILLE REGIONAL SCHOOL DISTRICT COMMITTEE AND FREETOWN-LAKEVILLE ADMINISTRATORS ASSOCIATION/MTA, MCR-3451 (3/5/85).

- 18. Employer
- 34.1 appropriate unit
- 36. One Person Units
- 37. Multi-Employer Units

Commissioners participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

- | | |
|-----------------------|---|
| Ralph Calderaro, Esq. | - Representing the Freetown-Lakeville
Regional School District Committee |
| Americo Salini, Esq. | - Representing the Freetown-Lakeville
Administrators Association/MTA |

DECISION

Statement of the Case

On February 13, 1984, the Freetown-Lakeville Administrators Association/MTA (Association) filed a petition with the Labor Relations Commission (Commission), pursuant to Section 4 of Massachusetts General Laws Chapter 150E (the Law), seeking certification as the exclusive bargaining representative for a system-wide unit of principals, assistant principals, and guidance directors.

Pursuant to notice,¹ a formal hearing was conducted on April 27, 1984, at the offices of the Commission by Diane M. Drapeau, Esq., a duly designated hearing officer of the Commission. The Freetown-Lakeville Regional School District Committee (Regional Committee) and the Association had full opportunity to present testimonial and documentary evidence. Both parties filed post-hearing briefs which have been carefully considered.

Findings of Fact

The Freetown School Committee, comprised of three members elected by the Town of Freetown, is responsible for the operation of one elementary school (grades

¹The Freetown-Lakeville Regional School District Committee, the Freetown School Committee and the Lakeville School Committee were all notified of the petition and the date, time, and place of the hearing. Although the Regional Committee's attorney represents all three school committees and acknowledged receipt of notice on behalf of all three school committees, he appeared at the hearing specifically representing only the Regional Committee. No appearance was filed on behalf of the Freetown School Committee or the Lakeville School Committee.



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pre-kindergarten through four). The Lakeville School Committee, comprised of five members elected by the Town of Lakeville, is responsible for the operation of one elementary school (grades pre-kindergarten through four).

Several years ago, Freetown and Lakeville decided to create a regional school district which would include a middle school and a high school. Prior to the decision to create a regional school district, the children of Freetown and Lakeville were required to attend schools in Taunton and New Bedford. At the time the regional school district was created, both towns discussed having the elementary schools included in the regional district, but this idea was rejected. Approximately seven years ago, the Town of Lakeville again discussed this idea and rejected it. The same action occurred in Freetown approximately five years ago.

The Regional Committee is comprised of six members: two elected by the Town of Freetown, two elected by the Town of Lakeville, one appointed by the Freetown School Committee (who serves concurrently as a member of the Freetown School Committee) and one appointed by the Lakeville School Committee (who serves concurrently as a member of the Lakeville School Committee). The Regional Committee appoints the superintendent for the regional school district. Dr. Michael Perrone was appointed as superintendent of the regional school district approximately four years ago.

Pursuant to G.L. c.71, Section 61, the Freetown School Committee and the Lakeville School Committee formed a Superintendency Union composed of six members. Three members each from the Freetown School Committee and the Lakeville School Committee are appointed to the six-member Superintendency Union. The Superintendency Union has the responsibility of employing the superintendent of schools for the Towns' elementary schools and the central office staff. Dr. Perrone is the superintendent of schools for both the Freetown and the Lakeville elementary schools. The Superintendency Union has no budget and meets once-a-year. Perrone prepares the agenda for those yearly meetings.

The Superintendent's office is located in the Freetown elementary school building. The cost of maintaining the office and its staff is shared by all three school committees. The Superintendent and his staff receive three separate pay checks. The central office staff includes a business manager, a director of special needs/director of instructional programs, and six secretaries.

The Superintendent is responsible for scheduling meetings and preparing the agenda for all three school committees. All three committees have indicated to Perrone that they prefer to meet separately. In the past four years, the school committees have met jointly only twice: once to discuss the negotiations for transportation contracts and once to discuss the school calendar. Separate agendas were prepared for those joint meetings. Each committee met privately to discuss matters pertinent only to that school committee, and they convened together only for issues of mutual concern. The Superintendent is secretary for all three committees.



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Although the school committees met jointly to discuss transportation needs, separate contracts were prepared by the business manager and approved by each individual school committee. The same procedure was followed regarding invitations to bid for fuel and milk; the business manager prepared the bid specifications which were then submitted to each individual school committee for its approval.

The school budgets are approved by each town. The staff of each school system makes recommendations to the principal; the principal makes recommendations to the superintendent; the superintendent makes his recommendations to each individual school committee. After the school committee approves its budget, the budget is forwarded to the Town's Finance Committee by the superintendent, and ultimately an article appears on the town warrant for approval by the town meeting.

With respect to the Regional Committee, the process is slightly different. After the Regional Committee approves the budget, the Superintendent prepares an article for each town warrant which contains the assessment for each town's contribution to the maintenance of the regional district system. The percentage of the assessment is based upon the number of children from each town who attend the middle school and the high school. Currently Freetown is assessed 60% of the Regional Committee's budget and Lakeville 40%. The article to fund the Regional Committee's assessment appears on the same town warrant as the elementary school budget for each town. Each article must be voted by town meeting. The Superintendent coordinates the budget calendar for each school committee so that the budgets are presented simultaneously at the respective town meetings.

The hiring process is identical for all three school committees. A prospective candidate is interviewed by the principal or a department head who makes a recommendation to the Superintendent. The Superintendent in turn makes a recommendation to the school committee. The Superintendent's recommendations on budgetary and employment matters are accepted the majority of the time. Each school committee votes independently to employ its own personnel. Freetown School Committee personnel receive their paychecks from the Town of Freetown. Lakeville School Committee personnel receive their paychecks from the Town of Lakeville. The checks are sent to the Superintendent's office and the Superintendent places them in the mail boxes of school personnel. The checks are signed by the town treasurer of each respective town. The regional school district employs its own treasurer who signs the checks of Regional Committee employees. The name of "Freetown-Lakeville Regional School District" appears across the top of each check.

Although there is no interchange of personnel among the school committees, two employees are shared by the school committees. One employee is an adaptive physical education teacher who helps handicapped children. His salary is included in the budget of the Regional Committee, and the other two school committees are assessed for his services. The other employee is an adjustment counselor who works with different students in both Freetown and Lakeville. Freetown pays 60% of her salary, and Lakeville pays the remaining 40%. In order to hire these two personnel, the Superintendent had to receive approval from each individual school committee.



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Differences in salaries and benefits exist between unorganized employees of each school system and organized employees. For example, secretaries employed by the Regional Committee are organized. They and their counterparts employed by the Freetown School Committee have identical salary ranges, while the secretaries employed by the Lakeville School Committee receive lower salaries. Disparities in wages and benefits also exist for teacher aides and custodians.

Teachers and nurses belong to separate system-wide bargaining units. The negotiations involving these two units are carried out by representatives of each of the three school committees and the superintendent in conjunction with the Association representatives. The ratification process for the 1983-1986 collective bargaining agreements illustrates the role of the school committees. The nurses' agreement was presented to each individual school committee for its approval. Ultimately, all three school committees approved, and the contract was subsequently signed. The teachers' contract was submitted to each school committee through its bargaining representative. The individual school committees generally grant its representative the authority to bind them on certain issues and ultimately to bind them on the entire agreement. In this instance, the Freetown School Committee and Lakeville School Committee approved the agreement, and the Regional Committee did not approve the agreement because it was dissatisfied with the agency fee provisions. Ultimately all parties reached a compromise, and the agreement was ratified and signed. The Towns do not approve the specific collective bargaining agreement, but appropriate funds in the budget to cover the costs of the agreements. If the appropriations are insufficient, the school committees do not renegotiate the agreement. Instead, they return to the towns for additional appropriations.

When Perrone became Superintendent of Schools, he discovered a disparity among the schedule of the various administrators of the three school systems, particularly with respect to work hours and vacation time. Because of the different work schedules, it became very difficult for him to schedule meetings with the administrators. In order to alleviate this problem, the Superintendent recommended that certain guidelines for administrators be adopted by all three school committees. Although the Lakeville school principal and several Regional administrators objected to some of the guidelines, they were eventually adopted by all three committees. These guidelines provide as follows:

PREAMBLE

1. Recognizing that our prime purpose is to provide education of the highest possible quality for the children of Freetown and Lakeville and that good morale, given present circumstances, within the staff of the Freetown-Lakeville Administrators is essential to achievement of that purpose, It is declared that:
 - A. Under the Law of Massachusetts, the Committees, elected by the citizens of Freetown and Lakeville, have final



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responsibility for establishing the educational policies
of the public schools of Freetown and Lakeville;

- B. The Superintendent of Schools of Freetown and Lakeville has responsibility for carrying out the policies so established;
- C. The administration of public schools of the Freetown-Lakeville School Department has a responsibility for administering the schools, in order to provide, in the classroom, education of the highest possible quality;
- D. Fulfillment of those respective responsibilities can be facilitated and supported by consultations and free exchanges of views and information between the committees, the superintendent, and the administrators, through the superintendent, in the formulation and application of policies relating to wages, hours, and other conditions of employment for the administration; and so
- E. To give effect to these declarations, the following principles, procedures and schedules are hereby adopted.

ADMINISTRATIVE PRINCIPLES, PROCEDURES AND SCHEDULES

- I. COMPENSATION
Each administrator's salary will be determined in accordance with the attached schedule reflecting ratio and work year in accordance with his/her step and level in the teachers' contract.
- II. WORK YEAR
The work year for all administrators will be determined in accordance with the attached schedule reflecting his/her group placement.
- III. DUTIES
Each administrator shall perform faithfully, to the best of his/her ability, duties as noted in his/her job description.
- IV. FRINGE BENEFITS
Each administrator shall be entitled to the following fringe benefits:
 - A. Medical and Life Insurance, as approved by the respective governmental unit.
 - B. Membership in Massachusetts Retirement Association, as required by M.G.L. Chapter 32, Section 2.



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*C. Vacations and holidays, as defined in the work year schedule.

D. Sick Leave - Administrators entitled to 12 sick days per work year for work year Categories B and C. Administrators whose work year is in Category A will be entitled to 15 sick days per year. The accumulation of sick days is unlimited.

E. Professional Days - unlimited, with prior approval of the Superintendent.

F. Upon written request of the Superintendent the administrators may be granted a leave of absence without loss of pay as follows:

2 Personal Days

3 Family Emergency or illness days

3 days due to death in the immediate family

None of the above will be charged to sick leave.

G. Religious Leave - Up to 3 days per school year will be granted without loss of pay for major religious holidays. None of the above will be charged to sick leave.

*All accrued past vacation days will be honored. Beginning with the 1982-83 school year, all additional accumulated vacation days shall not exceed 50 unless approved by the Superintendent.

V. The Freetown-Lakeville Administrators shall be entitled to all additional rights and benefits, where applicable, enjoyed by the professional teaching staff of the Freetown-Lakeville Public Schools, except as noted in this agreement.

VI. The Freetown-Lakeville Administrators shall adhere to the rules and regulations, where applicable, as noted for the professional teaching staff, except as noted in this agreement.

VII. PROFESSIONAL IMPROVEMENT

3 credit hours, or a suitable inservice alternative, are required within the limits of any 3 year period. These credit hours, or a suitable alternative, will be subject to the approval of the Superintendent.

VIII. WORK DAY

The work day for the administrators will encompass the normal business hours of the respective school offices.



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IX. EVALUATION

The Superintendent, or his designee, shall meet with each administrator at least once each year for the purpose of discussing with the administrator his performance in relationship to his/her goals and objectives and his/her job descriptions. Additionally, the working relationship between the administrator and the Superintendent will be discussed. A formal written evaluation will be completed each year by the Superintendent or his designee for each administrator.

DURATION

These procedures noted above and attached schedules will be in effect as of July 1, 1982 and remain in full force and effect until June 30, 1985.

In addition to the system-wide guidelines for administrators, the Superintendent has received approval from the three school committees to establish a system-wide curriculum committee and sub-committee. The Superintendent proposed the curriculum committee to coordinate the curriculum of grades kindergarten through twelve and to bring the curriculum more under his control. A sub-committee was established to deal with computer literacy in grades kindergarten through four. Several teachers from each elementary school and the administrators of each school comprised the sub-committee.

Position of the Parties

The Regional Committee takes the following positions: 1) the petition, on its face, is violative of Commission regulations and should be dismissed; 2) as a matter of law, the Commission cannot compel three separate school committees to jointly bargain with a system-wide unit of administrators; and 3) the appropriate bargaining units are three separate units, recognizing each school committee as the sole employer of its employees.

The Association contends that 1) the three school committees function as a single employer and that such a determination by the Commission does not violate G.L. c.71 or G.L. c.150E; 2) the unit is a system-wide unit of administrators; and 3) the Regional Committee is estopped from challenging the appropriateness of the unit because of the 1982 consent agreement for the same unit of administrators, because the Regional Committee has long recognized a system-wide unit of teachers, and because the unit in question should not be treated differently.

Opinion

The issue presented in this case is whether a system-wide unit of principals, assistant principals, and guidance directors constitutes an appropriate bargaining unit under Section 4 of the Law.



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The Regional Committee's first argument is that the Association's petition, on its face, is violative of Commission regulations and should be dismissed. 402 CMR 14.03(1) requires that a petitioner designate the correct name of the employer. In this case the petitioner names the "Freetown-Lakeville School District" as the employer and the Regional Committee claims that no such entity exists. Even if this is true, the incorrect designation is a mere technicality, and the petition should not be dismissed on this basis. Moreover, a prior petition (MCR-3339) filed by the Association to represent the same unit at issue here named the employer in the same manner. The same representative signed a consent agreement for the administrators' unit with the employer's name on the consent form listed in several places as the "Freetown-Lakeville School District."² The designation of the employer on the petition does not prevent us from concluding that the employing entity received full and adequate notice that the petition was identifying the Regional Committee, together with the two school committees, as the employer. We note that the Excelsior list naming the employees eligible to vote in the election was submitted by Michael J. Perrone as "Superintendent of Schools" under the letterhead "Freetown and Lakeville Public Schools."

The second argument presented by the Regional Committee is that the Commission, as a matter of law, cannot compel three separate committees to jointly bargain with a system-wide unit of administrators. Specifically, the Regional Committee claims that the legal analysis applied in the Commission's previous decisions, Nauset Regional School District, 5 MLC 1453 (1978), Freetown School Committee, 6 MLC 1138 (1979), aff'd, 6 MLC 1572 (1979), and Martha's Vineyard Regional School District, 9 MLC 1160 (1982), is erroneous. The issue not raised in any of those cases and raised here for the first time is whether G.L. c.71 prohibits the Commission from ordering the three school committees to bargain jointly.

In Nauset, *supra*, the Commission first articulated the "single employer" concept later applied in Freetown, and Martha's Vineyard. The Commission stated:

There are four configurations of employers historically recognized under the National Labor Relations Act, 29 U.S.C. section 151 *et seq.*, and to a lesser extent, under G.L. c.150E. First, and most common, is the solitary employer, such as a town or a school committee. Second is the multi-employer, where individual employers join together to bargain a single contract with a union which represents the employees of all of the participating employers. Third is the joint employer, where distinct entities exercise common control over employees. Fourth is the "single" employer, where facially distinct entities actually constitute a single entity by virtue of

²On January 27, 1983, the Commission certified the results of the election conducted in Case No. MCR-3339. A majority of employees in the unit did not vote to be represented by the Association.



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common ownership and management. The various entities in the present case share characteristics with all of these configurations, but do not fit neatly into any one mold. However, the characteristics considered by the National Labor Relations Board (Board) in establishing bargaining units which cut across employer lines are helpful in deciding the present case. These factors lead us to establish a system-wide bargaining unit for clerical employees.

...In finding a "single" employer, the Board looks for characteristics such as shared management, shared facilities, similar services, interchangeable employees, common ownership, and shared labor relations policy. See American District Telegraph Co., 128 NLRB 345, 46 LRRM 1315 (1960); U.S. Mattress Corp., 135 NLRB 1150, 49 LRRM 1668 (1962); Liebmann Breweries Inc. of New Jersey, 142 NLRB 121, 52 LRRM 1527 (1963). While the school committees do not have all of the characteristics of a single employer, the analogy is largely appropriate.

The various school committees have evinced an intention to deal with their employees in a system-wide manner. They already do so with respect to teachers and aides. They also do so with unorganized employees through the Superintendent and his staff at the central office. The clerical employees throughout this system share a community of interest as much as employees ever do in a farflung system; specifically, they have common duties, work rules, and ultimate supervision. Bargaining on a system-wide basis will be more efficient for the school committees. Under their proposed unit structure there will have to be joint bargaining for one unit and separate bargaining for other units; with a system-wide unit there will be only one round of bargaining. Finally, a system-wide unit will best safeguard the rights of this small number of employees to effective representation. 5 MLC 1453 at 1456-1457.

Although the school committees maintain a certain degree of independence, it is clear that they have chosen as a matter of both educational and labor relations policy to administer the school system in a unified manner. The school committees have adopted the Superintendent's suggestion to coordinate curriculum and other school-related matters on a system-wide basis, under his specific direction. The Superintendent has expressed his desire to avoid disparities in the system and has sought a variety of ways to standardize school policies. The three school committees approved the Superintendent's establishment of uniform administrative and personnel policies applicable to all administrators. These policies encompass terms and conditions of employment, such as compensation, fringe benefits, duties and sick leave, which are common to all administrators in the school system. Thus, the school committees, through their superintendent, have chosen to deal with their administrators in a single, integrated manner. The school committees also have demonstrated the efficacy of this unified approach through their voluntary participation in system-wide collective bargaining with a unit of teachers



employed by the Freetown School Committee, the Lakeville School Committee and the Regional Committee.³ While we do not find that the "single" employer rationale developed in the private sector is fully applicable to the Employer's organization,⁴ we conclude that the school committees in this particular case comprise a single employing entity for the purposes of collective bargaining. Central to our conclusion is the fact that the school committees jointly determine the working conditions of the administrators and supervise the administrators through a single superintendent. The superintendent exercises control over labor relations. Just as the school committees approved the superintendent's uniform "guidelines" for the administrators, so, we find, could the school committees approve a single collective bargaining agreement covering the administrators. In sum, the school committees are capable of co-determining the wages, hours, terms and conditions of employment to be specified in a collective bargaining agreement. The fact that the wages or other benefits of employees may be subject to variance from town to town because of differences in town by-laws⁵ does not alter our conclusion. Such variations do not destroy the community of interest that otherwise exists between the administrators of the schools and can be recognized and incorporated into the provisions of any collective bargaining agreement negotiated. Bargaining on a system-wide basis should be more efficient for the school committees and will best protect the rights of the administrators to effective representation.⁶

³We note that the Employer has bargained with a system-wide unit of school nurses pursuant to a certification that issued in case number MCR-2578. The Commission certified the system-wide unit of school nurses following an election. The appropriateness of the system-wide unit had been stipulated by the Employer. In late 1978 the Employer refused to bargain and contended that the nurse unit was inappropriate. A hearing officer found that the nurse unit was appropriate and ordered the Employer to bargain. The Commission affirmed the hearing officer's conclusion. Freetown School Committee, et al., 6 MLC 1138 (H.O. 1978), aff'd, 6 MLC 1572 (1979).

⁴The private sector "single employer" analysis relies on certain factors, such as common ownership, which are not present in the instant case. We consider that ownership is of less concern in the public sector than is shared management and control of labor relations.

⁵Although no evidence was introduced to demonstrate that the different by-laws of the Towns might mandate slight variations in benefits, we take administrative notice of the fact that certain provisions of the General Laws might be adopted in one Town, but not in another.

⁶The units which would result if we adopted the Regional Committee's arguments would include a unit of the administrators of the Regional School, and separate units of each of the elementary school principals. Although we have never prohibited creation of a one-person unit, we do not consider that creation of two, one person units in the circumstances presented here would be conducive to stability of labor relations in the Towns involved in this petition.



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WHEREFORE, based upon the foregoing, we conclude as follows:

1. The Freetown-Lakeville Regional School District, and the towns of Freetown and Lakeville, are public employers within the meaning of G.L. c.150E, Section 1, and are represented for the purpose of dealing with school employees by their respective school committees.
2. The Freetown-Lakeville Administrators Association/MTA is an employee organization within the meaning of G.L. c.150E, Section 1.
3. A question of representation has arisen concerning the representation of certain employees of the Freetown-Lakeville Regional School District, Freetown School Committee and Lakeville School Committee within the meaning of Section 4 of G.L. c.150E.
4. The unit appropriate for the purpose of collective bargaining consists of:

All principals, assistant principals, and guidance directors employed by the Freetown-Lakeville Regional School District, Freetown School Committee, and Lakeville School Committee, and excluding all other school employees.
5. An election shall be held for the purpose of determining whether or not a majority of employees in the unit described above, wish to be represented by the Freetown-Lakeville Administrators Association/MTA, or by No Employee Organization.
6. The list of all eligible voters shall consist of all persons whose names appear on the payroll of the Freetown-Lakeville Regional School District, the Freetown School Committee, and the Lakeville School Committee on December 1, 1984 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws, IT IS HERE DIRECTED, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid bargaining unit at such time and place and under such conditions that shall be contained in the notice of election issued by the Commission and served on all parties and posted on premises of the employer together with copies of the specimen ballot.

The eligible voters shall include all those persons within the above-described unit whose names appear on the payroll of the School Committee for the payroll period immediately preceding the date of this decision, and who have not since quit or been discharged for cause.



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In order to assure that all eligible voters shall have the opportunity to be informed of the issues and the exercise of their statutory right to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them. Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an election eligibility list, containing the names and addresses of all the eligible voters must be filed by the employer with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202, no later than fourteen (14) days from the date of this Decision.

The Executive Secretary shall make the list available to all parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

