

D.R. NO. 81-11

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-78-42

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation adopting the findings and conclusions of a Hearing Officer, clarifies the composition of a collective negotiations unit of teaching personnel to include "English as a Second Language" teachers. The Director agrees with the Hearing Officer that prior to the creation of the "English as a Second Language" teacher position, the parties had expanded the unit definition to include part-time teachers. The Director finds that the "English as a Second Language" teachers are accreted to the unit effective with his determination.

D.R. NO. 81-11

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-78-42

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Rubin, Lerner & Rubin, attorneys
(David B. Rubin of counsel)

For the Petitioner
Rothbard, Harris & Oxfeld, attorneys
(Sanford R. Oxfeld of counsel)

DECISION

On March 21, 1978, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Piscataway Township Education Association (the "Association") raising a question concerning the composition of a collective negotiations unit represented by the Association. The Association states that teachers in

the title of "English as Second Language Teachers" ("E.S.L. teachers") are classroom teachers and are included in its unit of nonsupervisory professional personnel. The Piscataway Township Board of Education (the "Board") argues that E.S.L. teachers are not included in the unit because they are hourly employees and because they do not share a community of interest with unit employees.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Joan Kane Josephson on February 5, 1980, at which all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Post-hearing letter memoranda were filed by both parties. The Hearing Officer submitted her Report and Recommendations on July 6, 1980. No exceptions to the Hearing Officer's Report have been filed.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations and the transcript, and on the basis thereof, finds and determines as follows:

1. The Piscataway 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.

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

3. The Association has filed a Petition for Clarification of Unit seeking a determination that E.S.L. teachers are identified within the term "classroom teachers," which classification is contained in the recognition clause of the parties' contractual agreement. The Board disputes this assertion and argues that E.S.L. teachers do not share a community of interest with unit personnel.

Accordingly, there is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for determination.

The Hearing Officer found that the Association has been the majority representative for classroom teachers and other professional employees before and after 1968, and that the recognition clause of the 1970-71, 1971-73, and 1973-75 agreements included only full time employees. The 1975-78 contractual recognition clause, however, eliminated the words "full time" and covered all nonsupervisory personnel, as listed. The Hearing Officer concluded that the purpose of this change was to include part-time positions under the contract. The Hearing Officer further found that the position of E.S.L. teacher was a new title created in the 1977-78

school year and after the execution of the parties' contract. ^{1/}

The undersigned concludes, in agreement with the Hearing Officer, that the petitioned-for employees are included in the unit. E.S.L. teachers teach English to students whose native language is other than English. The teachers report directly to the building principals in the school to which they are assigned, and are under the jurisdiction of the administrative assistant to the Superintendent. They receive an informal evaluation by the building principals and the administrative assistant to the Superintendent. They are regular part-time teachers in that they teach a specified number of hours each week throughout the school year, and are paid on an hourly basis. There are certified professional teachers in other Board remedial programs who are included in the unit.

The undersigned therefore adopts the Hearing Officer's recommendation that E.S.L. teachers are unit employees. Since they occupy a newly created title, such

^{1/} A clarification of unit proceeding is appropriate for the purposes of identifying whether a newly created title is identified within the definitional scope of a collective negotiations unit. See, In re Clearview Regional High School Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

clarification is effective immediately. 2/

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 3, 1980
Trenton, New Jersey

2/ In re Clearview Regional High School Bd. of Ed., supra, n.1

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. CU-78-42

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

In a clarification of unit proceeding a Commission Hearing Officer recommends that the definition of a negotiations unit be clarified to include the title English as a Second Language (E.S.L.) Teacher. The Hearing Officer found the CU proceeding appropriate since the petition was filed when the position was created which was during an existing contract between the parties. She based the recommendation on her finding that they were certificated professional teachers who shared a community of interest with other classroom teachers. They were found to be part-time teachers paid on an hourly basis, employed on a regular basis with continuity of employment.

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.

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. CU-78-42

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Rubin, Lerner & Rubin, Esqs.
(David B. Rubin, of Counsel)

For the Petitioner
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On March 21, 1978, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") seeking a clarification of the negotiations unit represented by the Piscataway Township Education Association (the "Association").

The petition sought to clarify the definition of the following recognition clause of the contract. ^{1/}

"...all non-supervisory personnel whether under contract, on leave, presently employed or hereafter employed by the Board in the units as listed below:

^{1/} The recognition clause was contained in the contract in effect between the parties at the time the petition was filed (1975-78 agreement).

Classroom Teacher
 Nurse
 Guidance Counselor
 Librarian
 Social Worker
 Psychologist
 Teacher-Coordinator
 Learning Disabilities Specialist
 Speech Therapist
 Assistant Director of Resource Teacher Services
 District AVA Coordinator..."

The petitioner requested that certain titles should be included within the "classroom teacher" designation. The Association originally proposed inclusion of the following titles: bedside instructors, E.S.L. (English as a second language) teachers, bilingual teachers and long term substitutes. The parties reached voluntary agreement as to all titles except E.S.L. and the other titles were withdrawn from the petition. The Association contends that E.S.L. teachers are certificated teaching staff members who should be subsumed within the classroom teacher title. The Board argues they should not be included and raises community of interest arguments and argues that a clarification of unit proceeding is not appropriate for this inclusion since the Association did not seek inclusion of E.S.L. teachers at the negotiating table.

Pursuant to a Notice of Hearing dated January 8, a hearing was held on February 5, 1980. The hearing had been postponed many times with the consent of both parties in an attempt to resolve the matter. ^{2/} At the hearing all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Letter memoranda were filed by both parties.

Based on the entire record in these proceedings, the Hearing Officer finds:

^{2/} Two previously filed clarification of unit petitions were originally consolidated with this CU petition and during the pendency of the hearing the parties resolved the disputed titles in the other two petitions and withdrew them and also resolved all but one of the petitioned-for titles in this petition.

1. The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association has filed a Petition for Clarification of Unit seeking a determination as to whether the title of E.S.L. teacher (English as a second language) should be included within the "classroom teacher" designation of the parties' recognition clause and the Board disputes this inclusion. Accordingly, there is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for a report and recommendation.

Since before 1968 the Piscataway Township Education Association has been the majority representative for classroom teachers and other professional employees. The recognition clause of the contracts covering the periods 1970-71 and 1971-1973 was as follows:

"The Piscataway Township Board of Education hereby recognizes the Piscataway Township Education Association as exclusive negotiating agent for the following categories of full-time personnel units employed in the district: ..."

Following this introductory language was a list of titles. The 1973-1975 contract had introductory language covering "all full time personnel whether under contract, on leave, presently employed or hereafter employed by the Board in the units as listed below:" followed by a list of titles. The introductory language of the 1975-1978 recognition clause eliminated the words "full time" and read as follows: "...for all non-supervisory personnel..." The Board and the Association agreed to delete the term "full time" during the negotiations for the 1975-1978 contract in order to clarify that certain part-time positions could be included under the contract. 3/

3/ Tr. p. 81 testimony of Gordon H. Moore, Director of Personnel, head of the Board's negotiating team.

The position of English as a Second Language, E.S.L. Teacher, was created for the 1977-78 school year. An E.S.L. teacher teaches English to students whose native tongue is other than English. On recommendation of a classroom teacher, following testing, the student is scheduled to see the E.S.L. teacher on a regular basis to teach the student English as a second language. There are six E.S.L. teachers working in elementary and middle schools and one E.S.L. teacher working in the high school who teaches English as a second language in a regularly assigned class period. The other E.S.L. teachers take the students away from their regular class work -- a "pull-out" program. While the high school E.S.L. teacher gives grades for his students the other E.S.L.'s do a more informal evaluation.

They report directly to the building principals and are under the jurisdiction of the administrative assistant to the Superintendent, Mary Ruth B. Nelson. Ms. Nelson has monthly staff meetings with E.S.L. teachers. They do not have assigned duties in their respective schools and are not required to attend faculty meetings or in-service training days scheduled for regular teachers. They are not formally evaluated but are informally evaluated by the building principals and Ms. Nelson (Tr. 71).

They are paid at an hourly rate based on monthly payroll sheets the teachers submit to the Board. They do not receive fringe benefits (Tr. 25, 49).

The Board argues E.S.L. teachers should not be contained within the bargaining unit because they are hourly as opposed to part-time employees and the Association did not propose in the 1975-78 negotiations to include hourly employees in the recognition clause; therefore, these employees are specifically left out of the unit and cannot be added by a clarification of unit proceeding. The Board also disputes their community of interest with other teachers in the unit.

The Association argues that E.S.L. teachers are but one of many categories of teachers subsumed within the classroom teacher designation in the contract. They point out that E.S.L. teachers are part of the district's certificated teaching staff members because under N.J.A.C. 6:31-1.1 they must be certified as part of the bilingual education program and that they do share a community of interest with other teaching staff personnel. They point out that the E.S.L. teachers are regularly employed and have a continuity of employment. (At least one of the teachers has been employed as an E.S.L. since the inception of the program.) And they note that a clarification of unit proceeding is appropriate in this case because the program was not in existence when this unit was formed.

Analysis

In In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977) the Director of Representation found that a clarification of unit proceeding was appropriate when the clarification determination involved a newly created job title after the execution of the parties' contract. In this matter the parties had executed the 1975-1978 agreement, the position was created in 1977-78 ^{4/} and the CU petition was filed on March 21, 1978. The instant matter would appear to fall within Clearview and a CU petition is therefore appropriate to determine whether the E.S.L.'s fall within the unit definition.

The petitioned-for employees are public employees who display a regularity and continuity of employment. See In re Bridgewater-Raritan Regional Board of Education, D.R. No. 79-12, 4 NJPER 444 (¶4201, 1978) where certain teachers were found to be public employees when adequate demonstration was made of regularity and continuity of employment. The E.S.L.'s are employed on a regular basis, teaching a specified number of hours each week throughout the school year

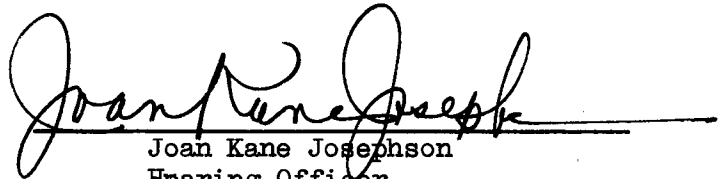
^{4/} Part-time employees paid on an hourly basis came into existence after execution of the 1975-78 contract. The Association could not have proposed inclusion of hourly employees in the contract from 1975-78 as the Board argues since there were no such positions.

(see PE2 in evidence) and there has been a continuity of employment. At least one teacher has been there since the program's inception; another has been an E.S.L. or bilingual teacher (this program has been eliminated) since 1977. Therefore, under Bridgewater-Raritan I recommend that they meet the standard to quality as public employees.

These are certificated professional teachers working in various schools throughout the district. They are regular part-time teachers paid on an hourly basis. There is substantial community of interest E.S.L.'s have with other professional employees in this negotiations unit. There are other remedial programs with teachers who are in the negotiations unit (Tr. p. 69). There is no reason that language remedial teachers should not be in the same negotiations unit with other substantive remedial teachers.

Recommendation

Based on the above I recommend that the definition of the negotiations unit be clarified to include the title English as a Second Language (E.S.L.) teacher. ^{5/}


Joan Kane Josephson
Hearing Officer

DATED: July 16, 1980
Trenton, New Jersey

^{5/} Since the collective negotiations agreement in effect between the parties when the instant petition was filed has expired, this recommendation can be implemented without delay if adopted by the Director of Representation. In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977).