

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

In the Matter of

LAWRENCE TOWNSHIP BOARD  
OF EDUCATION,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-81-69

LAWRENCE TOWNSHIP EDUCATIONAL  
AIDES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies the composition of a negotiations unit which includes Library Aides, Classroom Aides and Lunchroom/Playground Aides employed by the Board. The parties were engaged in a good faith dispute concerning the status of part-time employees with the aforementioned titles. Through communications with the Director, the parties consented to a determination by the Director which would clarify the definitional scope of the negotiations unit based exclusively on unit composition considerations.

Reviewing the facts and relevant case law, the Director determines that the employees in question demonstrate a regularity and continuity of employment and share a community of interest with full-time employees represented by the Association. Accordingly, the Director determines that the negotiations unit be clarified to include the part-time employees in question, effective immediately.

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Appearances:

For the Public Employer-Petitioner  
McGinnis Associates  
(William McGinnis, Consultant)

For the Employee Representative  
New Jersey Education Association  
(Harry Donnelly, Field Representative)

DECISION

On May 14, 1981, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the Lawrence Township Board of Education (the "Board"), seeking a clarification of the composition of a collective negotiations unit represented by the Lawrence Township Educational Aides Association (the "Association"). The Board states that employees who work less than twenty hours a week are not included in the unit represented by the Association. The Association disputes this claim.

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 to determine the facts. Pursuant to this investigation, the parties herein have submitted documentary evidence and statements of position.

Based upon the administrative investigation, the undersigned finds and determines the following:

1. The disposition of this matter is properly based upon 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 Lawrence 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 this Petition, and is subject to the provisions of the Act.

3. The Lawrence Township Educational Aides Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. In November 1980, the Board recognized the Association as the majority representative of those employees holding the titles of Library Aide, Classroom Aide and Lunchroom/Playground Aide. The recognition process was informal. The Board recognized

the Association at a Board Executive session. There was no written resolution passed by the Board, nor did the Board implement the notification procedures of the recognition process as described in N.J.A.C. 19:11-3.1(b). The Board states that it intended to recognize the Association as the majority representative of all full time Library Aides, Classroom Aides and Lunchroom/Playground Aides. The Association states its belief that it was recognized as the majority representative of all full and part-time Library Aides, Classroom Aides and Lunchroom/Playground Aides.

5. At the first negotiations session between the parties, their divergent positions on the scope of the negotiations unit became apparent. "The dispute constituted a good faith dispute between the parties and the Board of Education indicated to the Association that in order to resolve the dispute it would file a clarification of unit petition with the Public Employment Relations Commission." (Board's letter, May 8, 1981).

6. The Board objects to the inclusion in the negotiations unit of employees in the aforementioned titles who work less than twenty hours a week. The Board asserts that these employees are casual employees and further asserts that they do not have a continuing community of interest with the employees in the negotiations unit who work more than twenty hours a week. The Board also argues that "... historically, collective bargaining in the district has resulted in collective bargaining agreements that recognize bargaining units which exclude part-time personnel who work less than twenty hours per week. The Board believes

that the history of bargaining and consistency in treatment of bargaining unit and non-bargaining unit personnel demands that all educational aides working less than twenty hours or more per week ... be excluded from this bargaining unit."

7. The Association contests the characterization of employees who work less than twenty hours per week as casual employees and further argues that these part-time employees share a community of interest with the full-time employees in the same titles.

8. The parties agree that nine employees are in dispute. Eight employees are employed five days per week over a forty week work year: Four of the aides work three hours per day, fifteen hours per week; four aides work two hours per day, ten hours per week. One employee works five hours a week, once a week, over a forty week work year.

9. By letter of March 2, 1982, the undersigned reviewed the nature of the unit clarification request herein with the parties. The undersigned indicated that " ... the Commission [was] being requested [by the parties] to render a determination that clarifies the definitional scope of the negotiations unit based exclusively upon appropriate unit composition considerations, and that upon clarification the Board and the Association will negotiate with respect to the defined unit." The parties have indicated their concurrence with this statement of the issues.

10. The Board asserts that the employees in question herein are casual employees who " ... could not be considered to

have a continuing community of interest with employees in the bargaining unit who work more than twenty hours per week .... " 1/ The Board does not contend that other factors relevant to a community of interest determination compel a finding that the part-time personnel herein should be excluded from the unit of full-time educational aides. Specifically, the Board does not suggest that the part-time educational aides perform work that is any different from the full-time aides nor that the part-time aides work under conditions any different from the full-time aides.

N.J.S.A. 34:13A-3(d) defines the term "public employee."

This term shall include any public employee, i.e. any person holding a position by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commission, managerial executives and confidential employees.

In past decisions, the Commission and the undersigned have found that the above definition does not include casual employees. Casual employees, however, are employees whose employment is "not characterized by regularity and continuity," In re Somerset Cty. College, D.R. No. 82-24, 8 NJPER 6 (¶ 13003 1981), and it is apparent that the employees in dispute herein are not implicated in that term.

The significant issue raised herein is whether the part-time nature of some of the aides' employment negates their community of interest with full-time aides so as to preclude mutual representation. Commission precedent appears to answer

1/ Statement of Position of the Lawrence Township Board of Education, November 27, 1981.

this issue in the negative.

In Clearview Reg. Dist. Bd. of Ed., E.D. No. 76-24, 2 NJPER 63, 64 (1976), the Executive Director found:

In the instant matter part-time employees do substantially similar work to that done by those employees the Board considers to be full-time employees and share a community of interest with respect to virtually all other terms and conditions of employment. The undersigned is unable to find any difference between the employee scheduled to drive less than eighteen hours per week and those who drive more than eighteen hours, other than the difference in the number of hours per week worked. The only other prerequisite to their inclusion in a unit with the other regularly employed, so-called full-time employees, is that the pattern of their employment demonstrate a fair degree of regularity and frequency. This pattern of employment is to be distinguished from that of casual employees who perform an occasional job for a temporary purpose, who are hired for a special or limited engagement, etc..

Similarly, In Spring Lake Heights Bd. of Ed., D.R. No. 79-21, 5 NJPER 100 (¶ 10055 1979), the undersigned indicated that " ... regular part-time nonprofessional school employees share a community of interest with other full-time school employees." Compare: In re Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd as modified P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980); In re Hamilton Tp. Bd. of Ed., D.R. No. 80-23, 6 NJPER 99 (¶ 11051 1980); and In re Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977).

Under the facts presented herein, which are not disputed by the parties, the part-time employees in question work every

week of the school year for a minimum of five hours a week and up to fifteen hours a week, perform the same functions as full-time aides, work under the same conditions and share the same goals and purposes. The part-time employees in question demonstrate a fair degree of regularity and continuity of employment, and are thus not casual employees. They share a community of interest with the full-time employees in the negotiations unit represented by the Association.

On April 12, 1982, the undersigned advised the parties that, based on the investigation, it appeared that the negotiations unit which is the subject of the Board's Petition herein should be clarified as including the part-time educational aides working in the titles and patterns of employment described above. 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 related to the instant Petition, and were afforded an additional opportunity to proffer any supplementary evidence or statements of position relevant to the instant Petition. In the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned stated that he would thereafter clarify the unit herein in the manner described above. The parties did not submit any additional material.

Accordingly, there being no further evidentiary proffer by the parties, the undersigned clarifies the unit by determining that the part-time educational aides working in the titles and



patterns of employment described above, be included in the negotiations unit effective immediately.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: April 27, 1982  
Trenton, New Jersey