

H.E. NO. 2001-10

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

In the Matter of

EAST BRUNSWICK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-99-115

EAST BRUNSWICK EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Martin R. Pachman, attorney

For the Charging Party
Oxfeld Cohen, attorneys
(Nancy Iris Oxfeld, of counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On October 19, 1998, the East Brunswick Education Association (Association or Charging Party) filed an unfair practice charge (C-1).^{1/} with the Public Employment Relations Commission against the East Brunswick Board of Education (Board or Respondent) alleging that the Board violated certain provisions of the New

^{1/} "C" refers to Commission exhibits received into evidence at the hearing in the instant matter. "CP", "R" and "J" refer to Charging Party's exhibits, Respondent's exhibits and Joint exhibits, respectively. The transcript of the hearing is referred to as "T".

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Specifically, the Charging Party alleged that the Board violated provisions 5.4a(1) and (5)^{2/} of the Act when in early October 1998, the Respondent's Assistant Superintendent for Personnel, Brenda Witt refused to negotiate with the Association over salaries for three employment positions which had been posted by the Respondent in August and September 1998. The Association alleged that the job duties and qualifications for the proposed after school media specialist and the after school media center assistant are an extension of, or the same as, those required of positions currently included in the existing negotiations unit represented by the Association. The asserted equivalent positions included in the unit are media specialist, aides, and multi-media technical specialist (J-1, p. 2; T42-T44). Alternatively, the Association alleged that even if the duties and qualifications were not the same as those of existing unit positions, the posted positions belong in the existing unit due to the nature of the required duties and the general community of interest the positions share with all of the positions in the existing unit.

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The job duties and qualifications of a third position, after school media center manager, are alleged to differ only slightly from the posted after school media specialist, and therefore the position is also allegedly appropriate for inclusion in the existing unit. The Association asserts that the Respondent's refusal to negotiate salaries and other terms and conditions of employment for the three posted positions violated the Act.^{3/}

On June 10, 1999, the Director of Unfair Practices issued a Complaint and Notice of Hearing with respect to the unfair practice charge.

On September 16, 1999, the Respondent filed an Answer in which it admitted that it posted notices for three positions which had not existed prior to August 1998 (C-3). The Respondent also admitted that the Association made requests to negotiate over salaries for these positions subsequent to their posting, and that in early October 1998 the Respondent's Superintendent for Personnel refused to negotiate. The Respondent's Answer denied that the job duties and qualifications for the posted positions were the same as those for positions included in the existing negotiations unit, or that the nature of the job duties for the posted positions otherwise make those positions appropriate for inclusion in the unit. The Respondent denied that its refusal to negotiate over the salaries of the three positions constituted a violation of the Act.

^{3/} The dispute in this case revolves around the after school media specialist and after school media center assistant positions.

A hearing was held on September 21, 1999. At the hearing, the parties stipulated that the East Brunswick Board of Education is a public employer within the meaning of the Act and that the East Brunswick Education Association is an employee representative within the meaning of the Act. The parties also stipulated that the positions at issue had not been filled for the 1999-2000 school year (T89). Subsequently, the Board filed correspondence on September 24, 1999 and January 10, 2000, in which it clarified and admitted that the after school media specialist/manager position had been filled during the 1999-2000 school year and that the after school media center assistant position had not been filled. In its September correspondence, the Board confirmed that it would maintain the after school media program and fill the positions. A response to the September 24 letter was received from the Association. I find no dispute concerning the subsequent information from both parties that the after school media program was to be continued in 1999-2000.

During the hearing, the Board argued that the positions in issue were part of the East Brunswick Adult-Evening (adult school) Program and therefore were not represented by the Association. The Board does not assert that the adult school is a separate employer or that the Board is not the employer of the positions at issue.

At the conclusion of the hearing, both parties waived closing arguments. The transcript of the hearing was received on October 25, 1999. Both parties submitted post-hearing briefs. The record was closed on January 10, 2000.

Based on the entire record in this case, I make the following:

FINDINGS OF FACT

1. The Association is the exclusive negotiations representative for certain full-time and part-time certificated and non-certificated personnel employed by the Board. Included in the Association's broad-based unit are personnel employed at East Brunswick High School holding titles of librarian, media specialist and multi-media technical specialist (J-1). The Association also represents "aides" (J-1).^{4/} The parties' current collective negotiations agreement covers the period from July 1, 1997 through June 30, 2000.

2. The Board provides an adult school curriculum which is open to the entire East Brunswick community (T11, T15; CP-13). Financing for the adult school is provided in the annual budget prepared by the Board. It is included as a line item of that budget

^{4/} Throughout the hearing, the existing unit position librarian/media specialist was referred to as media specialist or educational media specialist (R-1; T64) and aides were alternately referred to as aides or media specialist aides. After school media center assistants were referred to as after school technology assistant or after school technical aide in the media center. To the extent possible, for consistency the positions at issue here are identified as after school media center specialist (inclusive of the "manager" reference) and after school media center assistants. The parties' hearing and post-hearing references to the after school media specialist/manager position vary (T76; Board's letter of January 10, 2000).

and is identified there as "special schools, adult education, summer school" (CP-1, CP-2). Personnel hired for the adult school are approved by the Board (T45-T46).

3. The Association does not represent employees in the adult school (T77).

4. Catherine Schwartz is a teacher employed by the Board who, at the time of the hearing, was on a leave of absence to serve as the president of the Association. Schwartz has served continuously in that capacity since July 1, 1988 (T17, T18).

In or about November or December 1997, Schwartz learned that the Board intended to create an after school media center specialist and two after school media center assistant positions. She learned of the creation of these positions through conversations with School Superintendent Dr. Jon Kopko (T19-T20). According to Schwartz, the reason given for creation of the two positions was to enable the Board to keep the high school media center open in the evening so that the students in the school district could have more time to access the technology and research resources available there (T19-T20). Schwartz's testimony on this point is corroborated by a March 1998 newsletter publication entitled "Spotlight on Education" prepared by Amy Fisher - a non-unit employee of the Board, representatives of the Association, the Principals and Supervisors Educational Association, the Parent/Teacher Association, and the District Superintendent (CP-1; T23-T25). The March 1998 newsletter was distributed to all parents of East Brunswick students and

Schwartz believed the newsletter also went to all other community members (T27). The newsletter was distributed prior to the vote on the school budget which was conducted on April 21, 1998.

The newsletter states in pertinent part:

In addition, a new media specialist and two new media center aides will make it possible to keep the media center at East Brunswick High School open in the evening. This will give students in grades eight through twelve additional opportunities to use the computers, software and other technological equipment being installed. The newly renovated and expanded media center at the high school is expected to be ready for occupancy next month (CP-1).

Schwartz testified that at meetings of the newsletter committee, Fisher stated that the media center specialist and media center aides positions would be incorporated into the Board's budget proposal to be voted on in April (T26). According to Schwartz, Fisher stated that the positions would be created to keep the library open in the after-school hours (T26).

There were a number of visual slides prepared by the Superintendent and his staff which explained the 1998-1999 budget proposals to the East Brunswick staff and public. Copies of those slides in evidence show that the media center specialist and two media center aides for the high school evening media center were being proposed as part of the Board's 1998-1999 budget (CP-2).

In a December 16, 1998 letter to students and parents, East Brunswick High School Principal, Benedict Tantillo informed the students and parents that the high school media center was open to "our students" during the evening. The December 16 letter also provides:

The media center will be available only for East Brunswick students grades 8 - 12. The extended hours of operation are on Monday through Thursday from 7:10 a.m. to 8:30 p.m.

The media center will be staffed by a supervisor and two aides. Also, an East Brunswick Auxiliary Police Officer will be present during the after school hours.

A copy of the rules for the after school use of the media center are on the reverse side. Please review the rules with your son or daughter, as they will be strictly enforced to insure productive use of the media center for our students.

One very important aspect of operating the media center is to have students picked up by 8:30 p.m. I am asking you to make the proper arrangements to comply with this request (CP-11).

The rules referred to in the letter provide:

RULES FOR HIGH SCHOOL MEDIA CENTER - AFTER SCHOOL

The media center will be open Monday - Thursday from 4 p.m. to 8:30 P.M. on days when school is in session.

The media center will be open to East Brunswick Public School students from the High School and Churchill Junior High School only.

Failure to comply with the following rules will result in students being asked to leave the media center and notification of the assistant principal for appropriate disciplinary action the following day (CP-11).

... Upon arrival, student identification card must be given to the media specialist.

Based upon Schwartz's credible testimony concerning the purpose for the creation of the positions at issue and the extension of time during which the media center would be open, along with the documents in evidence discussed above, I find that the Board extended the hours of the media center from 7:10 a.m.

through 8:30 p.m. Monday through Thursday for use only by students of the Brunswick Middle School and Brunswick High School. I further find that the positions at issue were created to fill the need to staff the extended media center hours and that employees in those positions would serve the needs of the East Brunswick matriculated students only.

5. Between April 1998 and August 13, 1998, Schwartz spoke regularly with Brenda Witt, the Assistant Superintendent for Personnel, concerning the proposed after school media center specialist and after school media center assistant positions. During those conversations, Schwartz asked Witt about beginning negotiations for salaries and benefits of the employees who would be holding those position (T30). Witt's response was that "she (Witt) would get back to me. We would talk about it" (T31).

Prior to the postings in August 1998, Witt never told Schwartz that the new positions would not be part of the Association's negotiations unit (T31). However, Witt also never told her the positions would be in the unit, but that she (Witt) did not know what was going to happen and "it" would be dealt with later (T72). Witt did not testify at the hearing.

6. On August 13, 1998, the Board posted and circulated notices of position vacancies for "After-School Media Center Assistant and After-School Media Specialist", both positions were to be available beginning September 1, 1998 (T33; CP-3A, CP-3B).

7. After the August 13 postings, Schwartz called Witt to question her about the postings, including how the salary amount had been assigned since there had been no negotiations. Witt responded that the positions were to become a part of the adult school and therefore the Board would not negotiate their terms. Schwartz told Witt that she was shocked at the Board's position because in their prior conversations there was no information that the Board intended to exclude these positions from the unit (T34-T35).

Based on the documents in evidence (CP-1, CP-2); Schwartz's credible testimony concerning the Board's asserted purpose for the proposed positions; Witt's responses to Schwartz between April 1998 and August 13, 1998 to the effect that the issue would be dealt with later; and Witt's response to Schwartz after the August 13 posting, I find that the Board did not intend to place these positions in the adult school throughout the entire budget planning and passage process from late 1997 through April 21, 1998. I also find that shortly before the August 13, 1998 posting of the vacancies, after Schwartz's earlier conversations with Witt concerning negotiations for the proposed positions, the Board determined that the positions at issue would be referred to as being in the adult school.

8. On September 1, 1998, Schwartz sent a formal written request for negotiations to Witt (CP-4).

9. On September 25, 1998, an after school media center manager position was posted (CP-5). In early October, in response to that posting, which Schwartz believed was a reposting of the August 13 after school media specialist title, Schwartz informed Witt that the Association also claimed the new title as a unit position. Witt's response was that it was not (T36).

10. In or about October 1998, the Respondent refused to negotiate with the Association over salaries or other terms and conditions of employment for the positions of after school media specialist, after school media assistant, and after school media center manager (T36).

11. The after school media center specialist/manager position was filled in November 1998 for the 1998-1999 school year (CP-6). The position remained filled in school year 1999-2000, and is referred to by the Board as after school media center manager. (Board's letter of January 10, 2000).

12. I find that the position after school media center specialist and after school media center manager are one and the same. I base this finding on record exhibits CP-1, CP-3, CP-6, CP-8 and credible testimony at T30, T36, T37, T38, T64, T65, T75 and T76. (Throughout I will refer to the position in issue as after school media specialist).

13. The after school media center assistant positions (2) were filled in November 1998 and February 1999 (referred to in CP-6 and CP-7 as "after school technical aide in the media center

and after school technology assistant") for the 1998-1999 school year. The positions had not been filled for the 1999-2000 school year as of January 10, 2000. (Board's letter of January 10, 2000).

14. As of January 10, 2000, the Board intended to reinstitute the extended media center hours program for school year 1999-2000. (Board's letter of January 10, 2000).

15. The normal day for teaching staff in 1998-1999 began at approximately 7:10 a.m. and ended at 2:50 p.m. (T20-T21).

16. Prior to the creation of the positions at issue, the high school library/media center was open from approximately 7:30 a.m. to 4 p.m. Monday through Friday (T20, T22). The media center specialists assigned to the media center during those school day hours worked staggered hours. One specialist started early in the day and worked seven hours. The other specialist started later in the day, so that the library could be kept open until 4 p.m. (T22, T23). The second also worked seven hours (T22-T23).

17. The existing unit position, educational media specialist (R-1) referred to as "media specialist" in the parties' collective negotiations agreement is required to hold or be eligible for N.J. certification as an educational media specialist. The job description for this position shows that the position reports to the building administrator (R-10).

18. A comparison of the job descriptions of the educational media specialist (herein after "media specialist") and

the after school media specialist shows that the latter requires a degree in library science or advanced course work toward that degree while the former requires at a minimum eligibility for the N.J Educational Media Specialist Certificate (CP-8, R-10). The employee chosen to fill the after school media specialist position, however, did not have a degree in library science but rather was certified as a health teacher (T59, T60, T71, T72). The job description for the media specialist reflects specific duties which include working with other personnel in integrating media services with classroom teaching programs; selection of books and instructional material to meet curricular, developmental and recreational needs; conducting literature programs for primary grades; providing staff workshops in the use of media equipment and material; leading staff and students in the production of audio-visual materials; awareness of and application of current trends in library science; working with the principal in setting goals, policies and the budget for the library; scheduling and managing the media center operations and providing the school community with information about library media programs; and attending school sponsored activities and in-service activities. None of these duties are specifically reflected in the position vacancy notice or job description for the after school media specialist (CP-3B, CP-8) (or for after school media center manager) (CP-5, CP-8).

19. The position vacancy notice and the job description for the after school media specialist list the duties for that position as supervising and assisting students who use the after school media center from 3:45 p.m. to 8:45 p.m., Monday through Thursday, assisting students includes helping them locate and use media center technology and resources, particularly as it is useful to homework and research assignments. Supervision entails enforcing student discipline and acceptable use policies for the use of media facilities. It also entails supervision of the media center assistants and security guards and closing the media center at the end of each evening. Finally, the after school media specialist must keep records for the media specialist and high school principal. The job description also emphasizes an ability to work with high school students and the need for strong management and supervisory skills.^{5/}

20. In addition to the job duties of the media specialist described in finding of fact 18, the media specialist is also expected, pursuant to the existing job description (R-1), to create an environment in the media center which is conducive to developing students' usage skills for media center resources; match and or be aware of students' listening and reviewing skills appropriate to their levels of maturity, interest and needs based

^{5/} The vacancy posting for after school media center manager required only a Bachelor's Degree and the duties did not include preparation of records for the media specialist or high school principal (CP-5).

upon the curriculum applied to the students; instruct students and faculty in the use of media center resources; participate in selection and supervision of media center support staff; adhere to school policies and procedures set forth by the Board and administrators; and generally present himself or herself in a professional manner with regard to appearance, self control and enthusiasm and communications with other staff, students, and parents,

The after school media specialist position description and vacancy posting likewise requires that the after school media specialist exercise supervisory skills over students and other media center staff. The after school media specialist, like the media specialist, is required to manage the media center. This involves closing at the end of the evening pursuant to procedures, preparing records of the center for the media specialist and principal, and managing students and enforcing policies on acceptable use of the resources at the center. The after school media specialist is also responsible for assisting students in locating and using center resources and technology, as is the media specialist. This assistance performance requires that the after school media specialist be aware of students' viewing and listening skills and requires that books and instructional materials suitable to the students' development and course of study are made accessible. Based upon this comparison of duties between the educational media specialist and the after school

media specialist, I find that the qualifications and tasks required of the educational media specialist are broader than those of the after school media specialist. However, I also find that the after school media specialist is required to possess many of the same skills and to perform a substantial number of the same tasks or duties performed by the unit position, educational media specialist.

21. As to the after school media center assistant, or as it has been referred to, the after school technology assistant, the position vacancy notices and job description (CP-3A, CP-9, CP-10) show that this position, like the after school media specialist position, is required to have the ability to work well with high school students and enforce discipline and acceptable use policies. Additionally, this position is required, under the direction of the after school media specialist, to assist and monitor students in their use of media center resources. The after school media center assistant is also required to act as an aide to the after school media specialist managing the center, including closing the center at the end of the evening. Both the job vacancy notice and the position description include the requirement that the after school media assistant has knowledge of computers and computer programs and the ability to apply the Dewey Decimal System to shelving books in the library.

Based on the duties to be performed by the after school media center assistants as set forth in the job description and

vacancy posting, I find that the after school media center assistant position is generally a supportive staff position.^{6/}

22. Along with the job title aides, the parties' collective negotiations agreement includes computer technician and technology services personnel in its broad-based unit description. I find these existing positions also to be supportive staff unit positions, differentiated from certificated professional instructional staff positions as set forth in the parties' recognition clause.

ANALYSIS

The Association asserts that the positions of after school media specialist and after school media center assistant are employee titles assigned to the library/media center which fall within the definitional scope of titles already in the existing negotiations unit, and/or which share a community of interest with the unit as a whole. Based upon this assertion, the Association charges that the Board's refusal to negotiate wages and other terms and conditions of employment for these positions violated the Act.

The Board asserts that employees in the positions of after school media specialist and after school media center

^{6/} The Board, at page 19 of its brief, refers to the after school technology assistant position, i.e., after school media center assistant, as the position that is "more clerical in nature." I agree.

assistant are not part of the existing unit because they are part of the adult school and the Association admittedly does not represent instructors in the adult school.^{7/} The Board further argues that the positions in issue are not extensions of, or equivalent to, any of the positions currently part of the existing negotiations unit. In this regard, the Board asserts that the duties and qualifications of the after school media center positions are markedly different from existing unit positions. These asserted differences, according to the Board, preclude the positions from being extensions of positions already in the unit. Finally, the Board argues that the employees in the after school media center share no community of interest with positions in the negotiations unit and thus are not appropriate for inclusion therein.

^{7/} The Board also argues in its brief that employees in the positions at issue are not continuously and regularly employed, nor would they have an expectation of being so. Therefore, according to the Board, they are not covered by the Act. However, as was noted previously, the Board's post-brief submission in this case acknowledges that the Board intends to maintain the after school media center services and to maintain the positions as described in the initial job postings and descriptions. The after school media center employees are scheduled for the entire school year and work approximately five hours, four days per week (CP-3A, CP-3B). Given this representation, I need not address the Board's argument that these positions do not provide continuous and regular employment. However, under the standards set forth in Mount Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982), the positions at issue here are regularly employed, non-casual employees. Whether the same employees have held the positions during the relevant time period here is not determinative of the existence of regularity of employment.

Initially, I note that the central issue presented is whether the positions created are appropriate for inclusion in the unit for any of the reasons asserted by the Association, notwithstanding that the preferred mechanism for resolving these kinds of disputes is a non-adversarial unit clarification petition. State of New Jersey, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd NJPER Supp.2d 246 (¶206 App. Div. 1991); State of New Jersey (Trenton State College), P.E.R.C. No. 91-93, 17 NJPER 124 (¶22050 1991); Passaic Cty. Reg. H.S. Dist. #1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976). The Act does not require that an unfair practice charge filed in this context be dismissed solely because either party to the dispute did not file such a petition. Either party could have filed a petition or together they could have filed a joint petition. Moreover, an employer acts at its peril of committing an unfair practice if its judgment about its obligation to negotiate with a collective negotiations representative over job titles which are assertedly part of an existing negotiations unit proves incorrect. See Passaic Cty., 3 NJPER at 35; City of Newark, H.E. No. 88-3, 13 NJPER 621 (¶18233 1987), adopted P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987) (City committed unfair practice when it unilaterally withdrew recognition of police recruits from police negotiations unit); Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987). Thus, in the instant case, if the Board's assessment of the status of the positions at issue in relation to

the existing negotiations unit proves to be incorrect, its refusal to negotiate with the Association for wages and other terms and conditions of employment for these positions constitutes an unfair practice.

The Board has argued that the positions at issue are part of the adult (evening) school program. I find that they are not. The record testimony and documentary evidence support this conclusion.^{8/} Letters and presentations during 1997-1998 to the East Brunswick community at large from the Board and Superintendent, created with the aid of the Association, contain information which reveals that the adult education program is encompassed in the Board's budget as "special schools." There is no reference in the budget to the media center as being part of either the adult education program or "special schools." Moreover, the positions and costs of media center specialist and media center aides, as they are referred to in the Board literature, are identified in the budget material as "other instruction-related positions", a subtitle of "New Initiatives, Projects and Programs." These programs are not linked to the adult school. The district's "Spotlight on Education", distributed to the community in March 1998 describes the reason for the positions at issue being proposed. The positions are

^{8/} In its brief at page 16, the Board states that "it is undisputed that the new positions are part and parcel of the adult (evening) school...." I do not agree that this is an "undisputed" fact.

described as a way to meet the need of keeping the media center open in the evening so that "students in grades eight through twelve have additional opportunities to use the technological equipment in the high school media center." (emphasis added). The literature discusses funding for the positions in the context of the overall budget. There is no reference in this particular publication to the services of the after school media specialist, the after school media center assistant, or the media center facility itself being open to the public at large.

A letter from the East Brunswick High School Principal to "students and parents" dated December 16, 1998, approximately eight months after the community passed the district's budget, advises that the high school media center is available "only" for the East Brunswick students grades eight through twelve during the evening. The letter identifies the media center staff as including a media center supervisor (formerly "specialist") and two "aides." The letter has attached to it a list of rules for the center to be followed by students using the center. The rules reiterate that the center will be open to East Brunswick public school students from the high school and Churchill junior high school only. (emphasis included in rules document). The rules further provide that failure of students to comply will be reported to the East Brunswick Assistant Principal who is authorized to take disciplinary action as a result of an evening media center student's potential infraction.

There is no indication in any of these documents that the expanded hours for the media center and its staff were intended to be "part and parcel" of the adult school. Additionally, the adult school has its own class catalogue. The catalogue for spring 1999 courses does not list or refer to the media center or to the expanded hours of the media center. Courses in the adult school are, for the most part, non-credit fee based offerings which require prospective students to register prior to the beginning of the course.^{9/} The course offerings described in the adult school catalogue address interested adults and senior citizens in the community. They run for a ten week period only. While any person high school age or older can register for the adult school courses, no evidence suggests that persons above high school level may use the media center facilities during its expanded evening hours. As noted previously, there are prohibitions on use of the media center by anyone except East Brunswick middle and high school pupils.

While organizationally the after school media specialist initially reports to the supervisor of reading/testing/adult and community program supervisor, ultimately, that supervisor reports to the Board's deputy superintendent of the school district. The educational media specialist (regular school hours) reports to the building administrator who is the high school principal. I view

^{9/} The GED program and literacy courses carry no fee.

this organizational reporting structure as an administrative convenience for the district, given the hours during which the media center is open and the attendant administrative staff coverage. I do not find it to be evidence that the after school media specialist or assistants are a part of the adult school. The evidence describing their purpose outweighs the organizational factor.

Additionally, even if Association President Schwartz was told in mid-August 1998 that the positions were going to become part of the night (adult) school, the December 16, 1998 letter from the high school principal to parents and students belies the notion that the expanded media center hours were available as part of the adult school for use by its registrants. The documentation as late as December 1998, supports the inference that the Board did not genuinely intend or view the after school media center positions to be part of the adult school program.

For all of the foregoing reasons, I find that the expansion of the media center hours to include evening hours did not create an adult school offering; that the additional staff hired to cover the expanded hours did not become a part of the adult (evening) program and; that neither the after school media center specialist (manager) nor the after school media center assistants can be excluded from the existing unit on the assertion that they are unrepresented adult school employees.

Having found that the positions at issue here cannot be excluded from the existing unit on grounds of being adult school positions, the question remains whether these positions are sufficiently similar to positions in the existing collective negotiations unit to justify a finding that they are extensions of, or equivalent to, existing unit positions.

The Association has attempted to compare and equate the after school media specialist to the existing recognized unit position of media specialist (also as noted earlier herein, the unit position is referred to by both parties as educational media specialist). The Association has also attempted to assert that the after school media center assistant position can be identified as part of the "aides" title in the recognition clause of the parties' collective negotiations agreement. For positions to be found to be part of an existing unit, the analysis rests on determining whether the titles which the representative seeks to include in the unit fall within the definitional scope of the existing recognition clause in the parties collective negotiations agreement. Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983); Irvington Housing Auth., D.R. No. 98-15, 24 NJPER 244 (¶29116 1998). In Barnegat Tp., the Director of Representation found that the negotiations representative was attempting to redefine and expand the definitional scope of the unit by filing a clarification of unit petition to clarify the library technician title into the parties' recognition clause

which included only "Board secretarial personnel." The Director found that the negotiations representative in Barnegat failed to indicate in any way that the title sought performed any duties of the titles already in the unit. Therefore, the Director found that clarifying them into the existing unit was inappropriate. The standard applied in a clarification of unit analysis is whether the position(s) at issue were contemplated by the titles in the existing unit or entail job functions similar to positions already covered by the description of the existing unit. Barnegat, 10 NJPER at 55, citing to In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

I begin with the after school media specialist position. The record shows that the after school media specialist duties are not as extensive as those of the daytime educational media specialist, that the professional degree requirements are different, and that each reports to a different district administrator. However, the duties of the after school media specialist do encompass managing the media center, assisting students who use the media center after regular hours inclusive of helping them locate the center's technology, and instructing them on the use of the technology. The after school media specialist is located in the same facility as the educational media specialist and must be equally familiar with and able to explain to students how to use that technology. The after school media specialist is required to aid students in their use of the media

center facilities and technology for completing homework and research assignments assigned by daytime instructional staff. This assistance by its nature helps students and instructional staff meet curriculum requirements and developmental needs, just as is the case with the aid provided by the educational media specialist. Moreover, assisting students in their use of different technologies requires a degree of awareness of students' listening and usage skills. Also, the after school media specialist is responsible for supervising the after school media staff and students, following and enforcing school policies, maintaining hours beyond the regular school ending time of 2:50 p.m., and preparing reports for the high school principal and educational media specialist. All of these activities are activities performed by the educational media specialist. I recognize that the qualifications and duties of the educational media specialist are greater than those of the after school media specialist. However, in order to show whether a position falls within the definitional scope of an existing unit position it is not necessary to find that all of the qualifications and duties of the positions at issue are the same as those of the existing unit position. This is particularly true where the existing unit is a wall-to-wall certificated and non-certificated unit. Morris Cty. Voc.-Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992); Middletown Tp. Bd. of Ed., D.R. No. 95-31, 21 NJPER 253 (¶26163 1995). Therefore, based upon the similarities in the two

positions as evidenced in the record, I find that the after school media specialist position falls within the definitional scope of the existing unit position of educational media specialist and is a part of the existing collective negotiations unit.

After School Media Center Assistant

There is record evidence that the Association represents the positions "multi media technical specialist" and "aides" in the existing unit. The parties' recognition clause also reflects that the Association represents computer technicians, technology personnel, secretaries and clerks. Except for the identification of these existing titles there is no evidence of the specific tasks required of those titles.

The position vacancy and job description for the after school media center assistant reveals that the qualifications and tasks required for the position include knowledge of computers and computer programs, assisting students in the use of computers and computer programs, enforcing discipline, shelving books for the library, and assisting the after school media specialist. The Board refers to the after school media center assistant and the after school technology assistant synonymously, and describes the position as having a "more clerical nature" (Board's brief at p. 19). Although the Board may be correct in its assertion that the after school media center assistant position has no counterpart in the day library staff, the parties' recognition clause includes daytime "clerical" titles in the wall-to-wall unit. The

Commission favors broad-based employer-wide negotiations units and has long found that broad-based units of educational employees, inclusive of support staff and professional staff are appropriate. State of New Jersey and Prof. Ass'n of N.J. Bd. of Ed., 64 N.J. 231 (1974). Considering that preference in the context of this case (in which a broad-based unit already includes titles comparable to those in dispute), I determine that the title after school media assistant falls within the general definitional scope of the existing unit and is, therefore, a part of that unit.

CONCLUSIONS OF LAW

Accordingly, I conclude that the East Brunswick Board of Education violated N.J.S.A. 34:13A-5.4a(1) and (5) when it refused the Association's demand to negotiate for salaries and other terms and conditions of employment for the after school media specialist and after school media center assistants.

RECOMMENDATIONS

I recommend that the Commission ORDER that the Respondent

A. Cease and desist from:

1. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment.

B. Take the following affirmative action:

1. Include in the existing unit the position after school media specialist and after school media center assistant otherwise referred to as after school media center manager and after school technology assistant.

2. Negotiate in good faith with the Association over terms and conditions of employment for the unit titles - after school media specialist and after school media center assistant.

3. Negotiate retroactively to the extent that any of the positions were filled in the 1998-1999, 1999-2000 and 2000-2001 school years.

Susan L. Stahl
Hearing Examiner

DATED: September 29, 2000
Trenton, New Jersey

!!@GH0!!!@BT0!!!/120!!!@LN20!

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

WE WILL place the after school media specialist and after school media center assistant in the existing collective negotiations unit.

WE WILL negotiate in good faith with the Association over terms and conditions of employment for the after school media specialist and after school media center assistant.