

D.R. NO. 91-19

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

In the Matter of

MT. HOLLY TP. BOARD OF EDUCATION,  
Public Employer,

-and-

Docket No. RO-91-42

MT. HOLLY EDUCATION ASSOCIATION,  
Petitioner.

SYNOPSIS

The Director of Representation orders that a representation election be conducted among instructional aides employed by the Mt. Holly Township Board of Education. Over the Board's objections, the Director determined that these employees are not "casual" employees. They have the requisite regularity and continuity of employment to vote on whether they wish to be represented for purposes of collective negotiations by the Mt. Holly Education Association.

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Appearances:

For the Public Employer  
Mushinski & Andronici, attorneys  
(Stephen J. Mushinski, of counsel)

For the Petitioner  
New Jersey Education Association  
(Hriar Zakarian, UniServ Field Rep.)

DECISION AND DIRECTION OF ELECTION

On September 20, 1990, the Mt. Holly Education Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The Association seeks to represent a unit of all instructional aides including special education teacher assistants, prep-coverage teacher assistants and kindergarten teacher assistants employed by the Mt. Holly Township Board of Education ("Board").

The Board will not consent to an election. It contends that the employees in the petitioned-for positions are casual employees who have no expectation of either continued re-employment

or consistent employment. Therefore, the Board argues that this unit is not appropriate for collective negotiations.

The Association seeks a secret ballot representation election among the employees in the unit. The Association contends that the employees in the petitioned-for positions are regularly employed. Accordingly, the Association argues these employees are entitled to all rights granted to public employees by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act").

We conducted an administrative investigation to determine the relevant facts. There are no substantial and material factual disputes which warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

On May 22, 1989, the Commission issued a certification of representative to the Mt. Holly Education Association for a unit of all teachers, nurses, librarians, special services personnel and all support staff, cafeteria workers, cafeteria/playground aides, library aides, specially designated aides (bilingual), custodians, bus drivers and secretarial/clerical employees.

There are 12 aides in the existing certified unit: three library teacher assistants; three bilingual teacher assistants; and six cafeteria/playground teacher assistants. The library and bilingual teacher assistants work seven hours per day and are considered regular full-time employees. The cafeteria/playground teacher assistants work two and one-half hours per day and they are considered regular part-time employees.

The 17 instructional aides who are the subject of this petition are currently unrepresented. Among the 17 instructional aides, there are: ten special education teacher assistants, three prep-coverage teacher assistants and four kindergarten teacher assistants. These employees do not receive sick leave, paid personal days, health insurance or any other insurance benefits. However, if they are employed for 100 total days, the Board will make Public Employees Retirement System deductions for them. Sixteen of the 17 employees are paid a \$55 per diem rate; one is paid \$6.35 per hour for six and one-half hours per day, for a daily total pay of \$41.27.

Teacher assistants work the entire school year. In the petitioned-for unit, fourteen of the teacher assistants work five days per week, seven hours per day. One teacher assistant works five days per week, six and one-half hours per day. One teacher assistant works four days per week, seven hours per day and another works three days per week, seven hours per day. None of the petitioned-for employees works less than 21 hours per week during every week of the school year.

At the end of each school year, the Superintendent sends currently employed teacher assistants a letter inviting them to return as a teacher assistant during the next school year. Teacher assistants then notify the school of their intent to return or not return for the upcoming school year. Among the petitioned-for employees, twelve of the seventeen current teacher assistants were

employed in the 1989-90 school year and returned to work during the current (1990-91) school year. Each August, the teacher assistants receive verification letters with instructions pertaining to the upcoming school year. The teacher assistants attend a meeting the day before school starts at which time they are given their assignments. They are usually assigned to the same position which they held the prior year. The Board also selects some of its teaching assistant personnel from its list of certified substitute teachers and from responses to teaching assistant job postings.

The Board employs teacher assistants year after year. The Board notes that the teacher assistant employment is dependent on class sizes and can vary from year to year. For the 1990-91 school year, 10 special education teacher assistants were hired by the Board. The three prep-coverage teacher assistants and the four kindergarten teacher assistants hired for 1990-91 were taken from the Board's substitute teacher lists.

The Board contends that the instructional aides -- i.e., the special education teacher assistants, prep-coverage teacher assistants and kindergarten teacher assistants -- are "casual" employees. Our decisions have distinguished between "casual" employees hired on a limited, nonrecurring basis and those employees possessing a sufficient degree of regularity and continuity of employment to warrant collective negotiations rights. Casual employees are not afforded collective negotiations rights; employees who have a continuity and regularity of employment are deemed to be

public employees eligible for representation in collective negotiations units. See State of New Jersey, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987); Cranford Tp., D.R. No. 86-26, 12 NJPER 566 (¶17214 1986); Mt. Olive Bd. of Ed., P.E.R.C. No. 86-66, 8 NJPER 102 (¶13041 1982); Rutgers Univ. v. Rutgers Univ. Coll. Teachers Ass'n, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), D.R. No. 77-5, 3 NJPER 12 (1976) [dism. elec. objections], aff'd. App. Div. Dkt. No. A-1652-76 (1/26/78), certif. den. 76 N.J. 243 (1978).

The Commission has also determined that generally, employees who work less than 1/6 of the number of hours worked by regular full-time employees are "casual" employees and do not qualify for representation rights under the Act. See Mt. Olive; Cranford; Lakewood Bd. of Ed., P.E.R.C. No. 87-166, 13 NJPER 603 (¶18227 1987); Red Bank Reg. Bd. of Ed., D.R. No. 86-5, 12 NJPER 35 (¶17013 1985); and Bridgewater-Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978). Significantly, in Bridgewater, we found that substitute personnel who work a minimum of 30 days during a given school year and who express a willingness to accept employment as substitutes for the next succeeding school year meet the test of regularity and continuity of employment and qualify for representational rights under the act.

The 17 instructional aides employed by the Board work regular schedules. Fourteen aides work seven hours per day for five days per week; one works seven hours per day for four days per week;

one works seven hours per day three days per week and one works six and one-half hours per day for five days per week. The instructional aide who works the least number of hours still works 21 hours per week.<sup>1/</sup> Additionally, there is a high rate of return from year to year among instructional aides. Twelve of 17 employees who worked in 1989-90 returned to continue their employment in 1990-91.

Therefore, I conclude that the instructional aides -- including the special education teacher assistants, prep-coverage teacher assistants and the kindergarten teacher assistants -- are public employees entitled to representational rights under the Act. The petition is supported by an adequate showing of interest. Further, we find that the petitioned-for unit is appropriate for collective negotiations.

Accordingly, I direct that an election be conducted among the employees in the petitioned-for unit, as follows:

Included: All instructional aides including the special education teacher assistants, prep-coverage teacher assistants and kindergarten teacher assistants employed by the Mt. Holly Township Board of Education.

Excluded: All managerial executives, confidential employees, police employees, supervisors within the meaning of the

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<sup>1/</sup> The aides in the existing bargaining unit work seven hours per day for five days per week, except for the cafeteria/playground aides who work only two and one-half hours per day.

Act, professional employees, craft employees and all other employees employed by the Mt. Holly Township Board of Education.


The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.



The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerbet, Director

DATED: January 28, 1991  
Trenton, New Jersey