

D.R. NO. 2001-4

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

In the Matter of

KEARNY BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2000-79

KEARNY TEACHERS AIDES ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a petition for certification filed by the Kearny Teachers Aides Association seeking to represent a unit of full-time classroom aides excluding part-time aides employed by the Board. The Director finds the proposed unit, restricted to full-time aides, is impermissibly narrow. Full-time and part-time aides share a community of interest and restricting the unit to full-time aides may lead to fragmentation. The Director noted that while various unit structures may be appropriate in educational settings, there was no reason in this case to limit the Association's organizing abilities.

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Appearances:

For the Public Employer
Richard M. Copland, attorney

For the Petitioner
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Richard A. Friedman, of counsel)

DECISION

On January 24, 2000, the Kearny Teachers Aides Association (Association) filed a Petition for Certification with the Public Employment Relations Commission (Commission). The Association seeks to represent a unit of approximately eight full-time classroom aides employed by the Kearny Board of Education (Board).

The Board opposes the petition. It contends that since it employs about 94 aides with similar duties, a collective negotiations unit limited to only the eight "full-time" aides would be inappropriate. The Board does not speculate on what unit configuration would be most appropriate under the circumstances.

The Association disagrees. It asserts that a unit of only full-time aides is appropriate. It argues that a combined unit of

all aides would compromise the representational rights of full-time aides who are significantly outnumbered by the part-timers.

We have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. By letter dated November 9, 2000, we advised the parties of our understanding of the relevant facts and our intention to dismiss the petition as the proposed unit, limited to full time aides, is not appropriate. The parties were given until November 20, 2000 to contest our factual and legal determinations. The Association requested, and was granted, an extension of time to December 1, 2000 to make its submission.

On December 1, 2000, the Association filed a response raising two matters. The Association contests our proposed finding of fact that eleven aides waived health benefits. It asserts that "waiver" is a fact-sensitive question of law that is not supported by the record in this case, not relevant to the issue of appropriate unit, and potentially prejudicial to future claims by the employees. The Association also reiterated its argument that the desires of eight full-time aides to be collectively represented should not be defeated by the approximately 85 part-time aides who have demonstrated their "collective disinterest to formal representation of any kind."

On December 5, 2000, the Board responded. It maintains that, although the record includes a waiver of health benefits signed by all but one aide, the waivers do not have any bearing on

the unit determination issue. The Board also notes that the Association's submission does not present any new facts.

On December 6, 2000 the Association responded, questioning whether the Board's December 5 submission was timely. The Association also notes that the parties essentially agree that the effect of employee health benefit waivers is irrelevant to the unit determination issue.

We have not found any substantial or material factual dispute which may more appropriately be resolved at a hearing. N.J.A.C. 19:11-2.6(d). Based upon our investigation, we make the following:

FINDINGS OF FACT

The Board has employed aides in various titles since 1991.^{1/} The Board currently employees approximately 94 aides including three that are "approved but inactive", meaning that they are not currently assigned any duties, and three "sub aides" who are called in to replace absent, active aides on a temporary basis. The Board does not maintain aide job descriptions, however, there are eight aide titles: clerk aides, lunch aides, student aides, classroom aides, bus aides, hall monitor aides, special education aides, and office aides.

^{1/} While the Board early on referred to the aides interchangeably as "teacher aide", "special education aide", and "special education teacher aide", the aides' assignments have expanded over the years.

Aides do not receive health, pension, life insurance or dental benefits. They do not receive sick leave, compensatory time-off or vacation days. Health benefits are available to aides working "full-time." It appears that in October 1992, the Board considered making all aide positions part-time to avoid being required to pay medical benefits to full-time aides. Currently, one aide, Delores Leadbetter, receives health benefits.

Aides function as assistants to professional and non-professional staff and are paid \$9.00 per hour. Aides have no supervisory authority over any other Board employee. Aides are supervised by the director of special services and report to building principals and, if assigned to a professional staff member, to that staff member.

Aides work pre-determined, regular schedules in Board buildings. They are assigned by the director of special services. The Board's payroll records reflect that all employees holding an aide title, or variant, work one of three sessions or combination of sessions: morning, afternoon and/or full day.^{2/} The Board provided the aides' payroll records for January and February 2000. For the January period, the Board identified aides as having one of two positions, "aides" and "lunch." Many employees are listed as holding both positions. For the February period, the Board

^{2/} Historically, the special education aides have worked either a "full-day" session of five hours or more, or a "half-day" session of three hours in the morning or in the afternoon.

identifies the employees as holding one or more of several positions, "aide", "lunch", "hall monitor", or a specific assignment to a professional or non-professional staff member or department.

Aides assigned as hall monitors or clerical assistants work only morning or afternoon sessions, and lunch aides work only during lunch periods. Most aides were listed more than once, indicating multiple assignments. For example in January, Patricia Battista was listed twice, once for her position assigned as an "aide" having worked 67.25 hours and paid \$9.00 per hour, and once for her position assigned "lunch" and paid for one hour in that capacity.

Some aides, however, were only assigned to the lunch position and only worked during the lunch period. It appears that each month, approximately ten aides were assigned solely to the lunch period. During the four-week January and February payroll periods, "lunch aides" worked and were paid for between 20 and 41 hours of service. Aides assigned to work the lunch period in addition to other assignments, may work fewer than twenty hours as a lunch aide.

Based on the foregoing, it appears that the Board's current scheduling practice and varying use of position names and duty assignments is consistent with its prior practice. Full-time aides, regardless of their specific position or duty assignment, work 5.75 hours per day, five days per week -- 28.75 hours weekly. Part-time aides, regardless of their specific position or duty assignment, work either the morning or afternoon sessions, three hours per

session, five days per week -- 15 hours weekly. Aides assigned solely to lunch duty work at least 20 hours in a four-week period, thus averaging five hours weekly.

The aides have never been represented for collective negotiations. The Board presently negotiates over terms and conditions of employment with employees represented by five negotiations units. The Kearny School Administrators and Supervisors Association has represented principals and vice principals for approximately twenty years. The Kearny Department Chairpersons Association has represented approximately 13 department chairs for over five years. The Kearny Education Association has represented approximately 398 certificated teaching staff members for over twenty years. The Kearny Education Office Professional Association has represented approximately 20 secretaries for over three years. The Kearny School Employees Association has represented 85 custodians for over thirty years. The Board's substitute teachers are not currently represented. The only other employees of the Board are those holding statutorily exempt titles and positions.

ANALYSIS

The issue in this matter is whether the proposed unit of full-time aides is appropriate under the circumstances here. I find that it is not.

The Commission is charged with the responsibility of determining the appropriate unit for negotiations. N.J.S.A. 34:13A-6(d). N.J.S.A. 34:13A-5.3 requires that negotiations units

be defined "with due regard for the community of interest among the employees concerned." However, in making unit determinations, we must consider the general statutory intent of promoting stable and harmonious employer-employee relations. The Commission has long favored negotiations units structured along broad-based, functional lines and has been reluctant to approve units organized along narrow lines such as those structured along occupational, departmental or geographic lines. In State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd NJPER Supp.2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231 (1974) (Professional Ass'n), the Supreme Court endorsed the Commission's broad-based unit approach and directed that a balance be struck between the rights of public employees to negotiate collectively and the public employer's rights not to be burdened with undue proliferation of negotiations units. Thus, the desires of the employees and the parties, while relevant, are not paramount. We consider the totality of circumstances of the particular case, including the structure and history of existing units and the extent of organization of the employer's employees. Bordentown Reg. Bd. of Ed. and Bordentown Reg. Ed. Ass'n, P.E.R.C. No. 84-126, 10 NJPER 276 (¶15136 1984), aff'd 11 NJPER 337 (¶16122 App. Div. 1985); Willingboro Bd. of Ed., D.R. No. 97-7, 23 NJPER 142 (¶23069 1997); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-124, 10 NJPER 272 (¶15134 1984); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

The Commission has been reluctant to approve small units, organized by a single title or department, where the employer objects to such a proposed unit. This is so because these splinter units may lead to multiple, fragmented units, creating the potential for competing demands, whipsawing and continuous negotiations, which as the Supreme Court observed, is not in the public interest. See Professional Ass'n at NJPER Supp. 275; Tp. of Teaneck, P.E.R.C. No. 88-20, 13 NJPER 721 (¶18270 1987) (unit of police captains denied; captains belong with other superior officer ranks); Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986) (proposed separate unit of school psychologists denied); State of New Jersey (Paterson Univ.), D.R. No. 99-12, 25 NJPER 148 (¶30067 1999) (unit of musicians at one of the eight state colleges rejected); Warren Cty., D.R. No. 95-14, 21 NJPER 43 (¶26026 1994) (proposed unit of 15 dispatchers inappropriate); Montclair Bd. of Ed., D.R. No. 92-38, 18 NJPER 375 (¶23166 1992) (proposed unit of five unrepresented titles denied); Hudson Cty., D.R. No. 92-5; 17 NJPER 526 (¶22259 1991) (employees at a single county facility belong in a unit with other unrepresented professional employees); Jersey City, D.R. No. 84-6, 9 NJPER 556 (¶14231 1983) (unit of sanitary inspectors rejected in favor of unrepresented broad-based professional unit); Camden Cty., D.R. No. 88-3, 13 NJPER 663 (¶18251 1987) (petitioned-for supervisors belong with existing supervisors unit).

In an educational setting, there is no one "most appropriate" unit that fits all circumstances. The Commission

observed in Piscataway Tp. Bd. of Ed., that "many different types of school district unit structures are appropriate for certification: some containing teachers alone, some containing one or more groups of supportive staff alone, and some containing a mixture of teachers and one or more groups of supportive staff." Id. at 274 (citations omitted). See also Trenton Community Charter School, D.R. No. 2000-10, 26 NJPER 187 (¶31076 2000) (employer's insistence that the professional unit be expanded to include non-professionals is rejected).

In this case, the Association proposes to limit the negotiations unit to only full-time aides. The Board suggests that all of its aides share a community of interest and that the proposed unit should be rejected as too narrow.

The Act does not restrict its coverage to full-time public employees; regular part-time public employees are entitled to all the rights guaranteed by the Act to public employees. Since 1971, we have consistently found that full and regularly employed part-time employees sharing the same community of interest should be represented together. West Milford Tp. Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971) (part-time building aides and office personnel may be included in a unit with full-time teachers, nurses and instructional aides subject to a professional option election); Clearview Reg. Dist. Bd. of Ed., E.D. No. 76-24, 2 NJPER 63 (1976) (part-time bus drivers working less than 18 hours per week were included in unit with full-time bus drivers); State of N.J.

College of Med. & Dentistry, D.R. No. 77-17, 3 NJPER 178, n. 8 (1977) (no compelling reason to deviate from the Commission's normal policy of including regular part-time personnel in a unit together with regular full-time personnel once community of interest found); Spring Lake Heights Bd. of Ed., D.R. No. 79-21, 5 NJPER 100 (¶10055 1979) (regular part-time nonprofessional school employees share a community of interest with other full-time school employees); Lawrence Tp. Bd. of Ed., D.R. No. 82-49, 8 NJPER 278 (¶13125 1982) (board's part-time educational aides were not casual employees; they otherwise performed the same functions as full-time aides, and, therefore, were properly included in combined unit with full-time aides).

Absent a history of representation limited to full-time employees only, we will not approve a unit which excludes regularly employed part-time employees. Monmouth Cty. Voc. Reg. Bd. of Ed., D.R. No. 79-31, 5 NJPER 179 (¶10097 1979). In Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997), we found that the appropriate unit must include regular part-time employees together with full-time employees. Moreover, part-time status alone is insufficient to destroy a finding of community of interest and force a separate negotiations unit for part-time employees. Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982) (substitute bus drivers working 1/6 of the hours worked by regular bus drivers were found eligible to vote in unit of full and part-time bus drivers); Lawrence Tp. Bd. of Ed.; Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

It appears that the part-time aides in Kearny share a community of interest with the full-time aides. They have similar job duties and compensation rates. They all report to the same principals and special services director. They all work in Board buildings and assist appointed professional and non-professional employees in performing ministerial, clerical and other support duties in furtherance of the education of the students. The fact that certain aides are eligible for health benefits while others are not, does not destroy the community of interest among employees performing the same work. It appears that the aides' common interests outweigh any differences in the number of hours they work or the benefits they receive.

Further, part-time aides appear to be sufficiently regularly employed. Full-time aides work 28.75 hours per week. Part-time aides average 15 hours per week and lunch aides average 5 hours per week. Lunch aides and other part-time aides, therefore, work the requisite 1/6 of the hours of regular full-time aides.

The Association contends that part-time aides outnumber full-time aides and, therefore, should not be allowed to subvert the full-time aides' representational rights. The Association argues that the collective negotiations unit should be structured on the basis of the extent of their organization. This argument has been rejected in Professional Ass'n, where the New Jersey Supreme Court rejected the petitioner's bid to represent a unit limited to State nurses. The Court found that the proposed unit was impermissibly

narrow and did not serve the public interest, notwithstanding that employee interest was then limited to that one employee category. Applying the Court's balancing test to this matter, I find that the rights of the full-time aides to be represented is outweighed by the employer's right to be free from unit proliferation and the scale tips in favor of a broader based unit than sought in the petition.

To find otherwise would be to suggest that the remaining aides -- the 85 aides employed on a part-time basis -- could also be a separately organizable negotiations unit, potentially leading to fragmentation. The Association argues that because the Board currently negotiates with five units, merely allowing one more unit would not significantly contribute to unit fragmentation. However, this is not the issue. Fragmentation here results from potentially allowing two units of aides to exist side-by-side. Separate representation of full and part-time aides may lead to different and competing terms and conditions of employment among employees having the same basic job functions and other indicia of community of interest and merely distinguished by hours of work. Hypothetically, an aide working one fewer hour per payroll period than "full-time" would then be classified as part-time, and yet such part-time aide, excluded from the proposed unit, might receive a higher rate of compensation.

Additionally, a unit restricted to full-time aides leaves the employer open to the possibility of a transfer of unit work

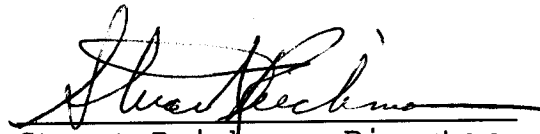
claim whenever it assigns full-time aides' unit work to part-time aides, who would be outside the unit.^{3/}

Accordingly, there appears to be no basis to exclude the Board's part-time aides, even those only assigned to lunch duty and working two hours a day, from inclusion in a unit with full-time aides. Based upon all of the foregoing, we find that the unit as proposed is not appropriate. As noted above, more than one possible unit structure might be considered appropriate in an educational setting. Piscataway. At this juncture, however, we need not limit the Association's organizing abilities by reaching a conclusion on the acceptability of some alternative unit configuration.^{4/}

CONCLUSION

The petition is dismissed.^{5/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: December 29, 2000
Trenton, New Jersey

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- ^{3/} An employer's unilateral transfer of unit work to employees outside the negotiations unit may be a violation of N.J.S.A. 34:13A-5.4a(5). See Bergen Cty. Sheriff, P.E.R.C. No. 92-17, 17 NJPER 412 (122197 1991).
- ^{4/} If after a reasonable period, no employee organization seeks to represent a broad-based unit including all aides, the Association may seek to re-petition for only the full-time aides. See Camden Bd. of Ed.
- ^{5/} N.J.A.C. 19:11-2.6(b)2.