

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

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-81-203

TEAMSTERS UNION LOCAL NO. 11,

Petitioner.

SYNOPSIS

The Director of Representation determines that certain part-time substitute bus drivers employed by the Board of Education were not eligible to vote in a representation election because they were not employed a sufficient number of hours to gain representation rights. The Director finds under the particular circumstances, that these bus drivers could not have worked at least one-sixth of the average number of hours worked by regular bus drivers. The Director issues an appropriate Certification of Representative for Local No. 11 since the remaining challenged ballots would not be sufficient to affect the results of the election.

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Petitioner.

Appearances:

For the Public Employer
Green & Dzwilewski, attorneys
(Allan P. Dzwilewski of counsel)

For the Petitioner
Schneider, Cohen, Solomon & DiMarizio, attorneys
(Bruce D. Leder of counsel)

DECISION

On March 20, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Union Local No. 11 (the "Teamsters"), seeking to represent a unit of all full time and part time bus drivers employed by the Mt. Olive Board of Education (the "Board"). Pursuant to an Agreement for Consent Election entered into by the parties on April 9, 1981, a secret ballot election was conducted among bus drivers on April 28, 1981. The Tally of Ballots indicates that 24 valid ballots were cast for Local 11, and 20 valid ballots were cast

against representation by any employee representative. Five challenged ballots were challenged by the Teamsters. The five challenged ballots are sufficient in number to affect the results of the election and are the subject of this determination.

Pursuant to N.J.A.C. 19:11-9.2(k), ^{1/} a hearing was held before Hearing Officer Michael Berman, on June 18, 1981, in Newark, New Jersey. The parties agreed to have the issues decided on the basis of joint stipulations of fact and exhibits, and post-hearing briefs and response briefs which were duly submitted. The record closed August 3, 1981.

The Hearing Examiner thereafter issued his Report and Recommendations on August 21, 1981, a copy of which is attached hereto and made a part hereof. The Hearing Officer concluded that only one of the five challenged voters was an eligible voter.

On September 1, 1981, the Board filed exceptions to certain of the Hearing Officer's findings and conclusions. The Teamsters filed a reply to these exceptions on September 14, 1981.

1/ N.J.A.C. 19:11-9.2(k) provides:

If challenged ballots are sufficient in number to affect the results of an election, the director of representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots has been completed, or where appropriate, the hearing process has been completed, the director of representation shall render an administrative determination which shall resolve the challenges and contain appropriate administrative direction.

The undersigned has carefully considered the entire record herein including the Hearing Officer's Report and Recommendations, the transcript, the exhibits, the Board's exceptions and the Teamsters' reply and finds and determines as follows:

1. The Mt. Olive 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.

2. Teamsters Union Local No. 11, International Brotherhood of Teamsters is an employee representative within the meaning of the Act and is subject to its provisions.

3. On March 20, 1981, the Teamsters filed a Petition for Certification of Public Employee Representative with the Commission seeking an election for the purpose of representing a collective negotiations unit of all full time and part time bus drivers employed by the Board.

4. At the election, on August 28, 1981, the Teamsters challenged the voting eligibility of five substitute bus drivers on the basis of their primary employment in other fields: Three voters are full time police officers of Mt. Olive Township (Brown, Byrne, and Dunster); one voter is a full time firefighter (Auriemma); and one voter is a full time teacher in the Mt. Olive School District (Roethke). Specifically as to the police officers, the Teamsters assert that the nature of the police officers' full time employment places those employees in a position of divided loyalty and raises a potential for conflict of interest with

other bus drivers. In reply to the Board's argument that the primary employment of these individuals as police officers does not prohibit their inclusion in a unit of bus drivers, the Teamsters cite a statutory prohibition to the membership of police in employee organizations which also admit nonpolice employees to membership. ^{2/} Additionally, the Teamsters argue that all five challenged voters are casual employees and, therefore, do not share a community of interest with the other regularly employed bus drivers.

5. The Board's position is that all the challenged voters are eligible unit employees because they are part time employees who share a sufficient community of interest with the other unit employees in that they are paid under the same salary guide, are subject to the same qualifications for overtime pay and assignment, are subject to the eligibility conditions for medical insurance, seniority credit, most driving assignments, longevity and pension, and licensure. The Board argues that any differences in employment which exist do not negate the community of interest between the substitutes and the regular bus drivers. The Board contends that the challenged voters are permanent substitutes and have the requisite regularity and continuity of employment to qualify as public employees within the meaning of the Act. The Board argues that any employment in addition to that of bus driver for the Mt. Olive School District does not

^{2/} N.J.S.A. 34:13A-5.3 provides: " ... except where established practice, prior agreement, or special circumstances dictate to the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership."

disqualify the challenged voters from inclusion in the bus drivers unit even where that outside employment is as a police officer.

6. The Hearing Officer found the following: (a) the Teamsters' could assert an additional basis for the challenges (i.e., casual status) other than the basis stated at the election (i.e., other employment); (b) the criteria set forth in In re Bridgewater-Raritan Bd. of Ed., D.R. No. 79-12, 4 NJPER 444, (¶ 4201 1978), involving the employee status of substitute teachers, were applicable to this case (In Bridgewater-Raritan, the minimum time worked by per diem substitutes to establish eligibility was 30 days out of a possible 180 days, i.e. one-sixth of the total work year). Thus, applying the Bridgewater-Raritan standard, the Hearing Officer determined that a threshold base of 75 hours of employment per year, exclusive of certain "overtime" assignments, was the minimum needed to establish part time employee status. On this basis, the Hearing Officer determined that one challenged voter (the teacher) would be excluded from the unit and the four others (one firefighter and three police officers) could potentially be includable in the unit; (c) the fact that the substitute bus drivers were engaged in primary employment in other fields would not necessarily be a basis to exclude them from the bus drivers' unit so long as their primary employment was not in a police status. In the instant matter he recommended that three of the four challenged voters who were otherwise eligible for unit inclusion were police officers, and should be excluded because of the statutory prohibition relating to the membership of police in

organizations which admit nonpolice to membership, supra, n.2. ^{3/}

Accordingly, the Hearing Officer recommended that the sole eligible voter among the five challenged substitute bus drivers was Auriemma, who was employed the requisite number of hours and whose primary employment was that of a Township firefighter.

7. The Board excepts to the Hearing Officer's report, with the exception of his presentation of the procedural history, stipulations of facts, joint exhibits, and the conclusion that the firefighter is an eligible voter. The Board asserts that N.J.A.C. 19:11-9.2, which requires that the observer challenging voter eligibility state the reason for the challenge, should be further construed to limit the presentation of additional reasons for the challenges after the election. Otherwise, the Board says, a party would have an unfair opportunity to unilaterally increase the number of challenges, raise new challenges and generally broaden the scope of the issues. Additionally, the Board asserts that the appropriate test for part time employment should be based upon the number of days worked, rather than the hours of employment. Further, the Board argues that Bridgewater-Raritan does not stand for a rigid application of a one-sixth of the school year standard. The Board also objects to the Hearing Officer's conclusion that the three police officers' votes are void because the statutory prohibition of mixed units of police/nonpolice employees applies to an employee's secondary employment as well as primary employment.

^{3/} The Hearing Officer reasoned that placing "bus drivers/police officers" in the same collective negotiations unit with bus drivers would create a conflict of interest because at some point, the individual would be required to select one duty over the other.

It urges that the Hearing Officer erred in characterizing these same three persons as "bus driver/police officer," since the Board maintains no such titled position. Lastly, the Board asserts that the "division of loyalty" analysis presented by the Hearing Officer is purely speculative and inapplicable herein.

8. In response to the Board's exceptions the Teamsters submitted a letter brief in support of the Hearing Officer's Report and Recommendations.

In considering the issues herein, the undersigned shall first address the Teamsters' claim that the substitute drivers' employment status is casual in nature. As noted above, the Board opposes consideration of the issue of casual employment since the Teamsters did not assert this basis as a ground for challenge at the election. For the reasons that follow, the undersigned determines that consideration of this challenge issue is not foreclosed, notwithstanding the fact that the Teamsters' challenge was originally based upon other grounds.

N.J.A.C. 19:11-9.2(e) is a procedural rule governing the assertion of challenges by observers at an election, and the method of balloting concerning challenged votes. In order to insure the isolation of ballots of voters whose eligibility is questioned, the Commission requires that a challenge to voting eligibility be asserted before the vote is cast. This procedure prevents the intermingling of questionable ballots with valid ballots and thus protects the integrity of the election process and the finality of the election result. The integrity of the election process is further served by the requirement that a

reason be given for the challenge. By so providing, the Commission guards against arbitrary conduct and abuse of its procedures.

If challenged votes are determinative of the results of the election, as they are here, then a challenge investigation is conducted in accordance with N.J.A.C. 19:11-9.2(k), and a hearing may be conducted, if necessary, pursuant to N.J.A.C. 19:11-6.1 et seq. The purpose of the challenge investigation is to rule upon the question of voting eligibility. At this time, all the parties are entitled to marshal their arguments for or against eligibility. The investigation is designed to provide each party with the knowledge of the other's position and a full opportunity to respond is provided. Accordingly, there is no surprise or unfairness to any party in their ability to present the Commission with all facts relevant to the determination of voting eligibility.

Turning to the merits of the Teamsters' challenge, the undersigned has previously observed that employees who serve on an occasional and sporadic basis, as opposed to employees who serve on a regular basis, are casual employees who may not achieve representational rights under the Act. In Bridgewater-Raritan, supra, the undersigned stated:

The definition of 'employees' contained in the Act suggests no basis for the exclusion of less than full-time employees. The Commission, relying on precedents in both the public and private sectors, has distinguished between regularly employed part-time employees and casual employees who perform or serve on an occasional or sporadic basis. Employees in the former group have been granted representation rights while the latter group has been denied these rights on the basis that their contact with the employer is too

tenuous to constitute a continuing employer-employee relationship. In distinguishing between these two groups the Commission has considered whether the employees have a fair degree of regularity and continuity of employment.

The undersigned noted that the measure of regularity and continuity would be derived from the approach developed in In re Rutgers University, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd and modified P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd App. Div. Docket No. A-165276 (1977), certif. den. 76 N.J. 234 (1978), but that the actual determination as to casual status would require that the Rutgers approach be adapted to the requirements of the employment relationship at issue.

The instant setting is similar to that of Bridgewater-Raritan, which involved substitute teachers, and therefore it was proper for the Hearing Officer to utilize Bridgewater-Raritan as a guide in his recommendation. In Bridgewater-Raritan the undersigned determined that 30 days of service during one school year constitutes significant service demonstrating regularity of employment for a per diem teaching substitute. This conclusion was premised upon the employment of teaching substitutes on a per diem basis, and their employment for 30 days corresponds to one-sixth of the average teaching year, i.e., 180 days.

Since the employment of the substitute bus drivers herein is on an hourly basis the Hearing Officer appropriately adapted the Bridgewater-Raritan analysis by comparing the number of hours worked, rather than the number of days worked.

However, the Hearing Officer compared the substitutes' hours to the number of hours worked by the least employed regular bus driver, whereas the more appropriate measure is a comparison of the substitutes' hours to the average number of hours worked by regular bus drivers. The data contained in the instant record is insufficient to extrapolate the average hours of employment for regular drivers. Nevertheless, the data indicates that this figure can be no lower than 1,056 hours of employment per year.^{4/} Accordingly, a substitute driver whose employment is less than 176 hours per year (i.e., one-sixth of 1,056) cannot be found to have a sufficient regularity of employment to qualify for representational rights under the Act.

In the instant matter, only two of the challenged employees worked in excess of 176 hours; Auriemma (442 hours), and Dunster (199.5 hours). Roethke (121.75 hours),^{5/} Brown (138 hours) and Bryne (132 hours) worked less than 176 hours, and without question, their employment is casual.

^{4/} The information made available to the Commission in the parties' factual stipulations indicates that the district employed 48 regular drivers in the 1980-81 school year. All but two of these drivers qualified for hospitalization benefits by working at least a 30 hour week. Therefore, the total number of hours worked by 46 drivers was at least 49,680 hours. The other two drivers worked 540 and 450 hours, respectively; in sum, the least number of hours worked by all regular bus drivers is 50,670. Accordingly, from the information contained in the record, it appears that the average number of hours worked by a regular bus driver in 1980-81 is not less than 1,056 hours.

^{5/} The Board urges that Roethke's employment should be annualized since she worked solely between October 20 and June 5. Even if the undersigned were to agree with the propriety of annualizing Roethke's employment, her annualized hours would still be less than 176 hours.

Based upon the above, the undersigned finds that the ballots of Roethke, Brown and Byrne are void. Accordingly, a revised tally of the ballots indicates that 24 valid ballots have been cast for the Teamsters, 20 valid ballots have been cast against the participating employee representative, and 2 ballots remain in challenge status. The remaining 2 challenged ballots are not determinative of the results of the election and need not be resolved at this time. A majority of the valid ballots plus remaining challenged ballots has been cast for the Teamsters, and a Certification of Representative, which is attached hereto and made a part hereof, is hereby issued. ^{6/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 22, 1981
Trenton, New Jersey

^{6/} The undersigned need not rule upon the question of eligibility based upon outside employment. If the parties are unable to resolve unit placement questions, the undersigned notes the availability of the Commission's clarification of unit procedure which may be invoked by either party to resolve such dispute.



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
Mt. Olive Board of Education,
Public Employer,
-and-
Teamsters Local 11, IBT,
Employee Organization.

DOCKET NO. RO-81-203

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the undersigned in accordance with the New Jersey Employer-Employee Relations Act, as amended, and Chapter 11 of the Commission's Rules and Regulations; and it appearing from the Tally of Ballots that an exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefore;

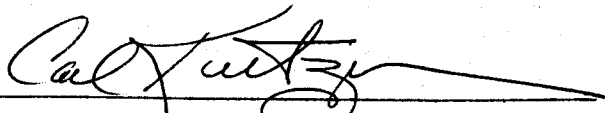
Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

Local 11 (IBT)

has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the said representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

UNIT: All full-time and part-time bus drivers employed by the Mt. Olive Board of Education excluding all other employees, police, professionals, confidential employees, managerial executives, craft workers, and supervisors within the meaning of the Act.

DATED: Trenton, New Jersey
October 22, 1981


Carl Kurtzman, Director
of Representation

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

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. R0-81-203

TEAMSTERS UNION LOCAL NO. 11,

Petitioner.

SYNOPSIS

A Hearing Officer, considering the challenge to the eligibility of five voters in a Commission conducted election for a unit of school bus drivers, recommends the challenge to one voter be overruled and the challenge to the eligibility of the other four voters be sustained and their ballots be voided. Three individuals were challenged as being casual employees and as being police officers within the meaning of the Act. The Hearing Officer found the individuals not to be casual employees but recommends that as their primary occupation is being a police officer, their membership in a unit with non-police officers raises a substantial potential for a conflict of interest between them and other bus drivers. The Hearing Officer recommends that they be permitted to form a negotiating unit consisting of bus drivers/police officers to be represented by a representative of their own choosing. The Hearing Officer finds no such potential for conflict existing between the other two employees in question, one a firefighter and the other a teacher. However, he recommends that the vote of the teacher be voided as the number of hours worked by the individual on normal bus runs does not provide the requisite community of interest between that individual and other unit members. Inasmuch as the vote of the one eligible individual is not determinative to the results of the election, the Hearing Officer recommends that it continue to be impounded and the secrecy of the voter be maintained.

A Hearing Officer's Report and Recommendation 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 EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. R0-81-203

TEAMSTERS UNION LOCAL NO. 11,

Petitioner.

Appearances:

For the Public Employer, Green and Dzwilewski, Esqs.
(Allan P. Dzwilewski, Esq.)

For the Petitioner, Schneider, Cohen, Solomon & DiMarzio
(Bruce D. Leder, Esq.)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On March 20, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Teamsters Union Local No. 11 (the "Teamsters") seeking to represent a unit of all full-and part-time bus drivers employed by the Mt. Olive Board of Education (the "Board").

The parties entered into an Agreement for Consent Election and on April 9, 1981, the election was held. The tabulation of ballots cast, as indicated on the Tally of Ballots, shows that 24 votes were cast for Teamsters Union Local No. 11, 20 votes were cast against the parti-cipating employee representative, and there were five(5) challenged ballots. Therefore, challenges are sufficient in number to affect the results of the election.

Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on June 18, 1981, at which time all parties waived their right to examine witnesses, present evidence and argue orally and agreed to the following stipulations and joint submissions for consideration by the Hearing Officer. Post-hearing briefs and responding statements and briefs were submitted by the parties.

STIPULATIONS OF FACT AND JOINT EXHIBITS

- 1) The Mt. Olive Board of Education is a public employer within the meaning of the New Jersey Employer/Employee Relations Act, is subject to its provisions, and is the employer of the employees who are the subject of the instant matter.
- 2) Teamsters Union Local No. 11, IBT is an employee organization within the meaning of the Act and is subject to its provisions.
- 3) On or about March 26, 1981, the Teamsters filed with the New Jersey Public Employment Relations Commission, a Petition for Certification of Public Employee Representative seeking to represent a unit of all full- and part-time bus drivers employed by the Board.
- 4) On April 9, 1981, the parties entered into an Agreement for Consent Election to be conducted by the Commission in the petitioned-for unit.
- 5) On April 28, 1981, an election was held pursuant to the Agreement for Consent Election. The Tally of Ballots resulting from the election shows 24 votes were cast for Local 11, 20 votes were cast against the participating organization and five votes were challenged. Therefore, challenges are sufficient in number to affect the results of the election.

6) The eligibility of five voters was challenged by the Teamsters; no challenges were asserted by the Board. The challenged voters and the reason for the challenges are: (a) Larry Auriemma, full-time fire-fighter; (b) Charles Brown, full-time police officer; (c) Terry Byrne, full-time police officer; (d) Ronald Dunster, full-time police officer; Steven Roethke, full-time teacher.

7) Exhibit J-1. Excelsior list including starting date of all employees. Used in the election as the list of eligible voters.

8) Exhibit J-2. "To all drivers from transportation officers, Re: School Cancellation and Early Closing List." A list of who calls whom in the event of a school closing. It includes the substitute driver.

9) Exhibit J-3. Compilation of hours worked by Lawrence Auriemma for the period September, 1980 through May, 1981.

10) Exhibit J-4. Compilation of hours worked by Terry Byrne for the period September, 1980 through April, 1981.

11) Exhibit J-5. Compilation of hours worked by Charles Brown for the period September, 1980 through June, 1981.

12) Exhibit J-6. Compilation of hours worked by Steven Roethke for the period October, 1980 through June, 1981.

13) Exhibit J-7. Compilation of hours worked by Ronald Dunster for the period September, 1980 through May, 1981.

14) Exhibit J-8. Summary of hours worked by Dunster, Brown, Byrne and Auriemma during the 1979-1980 and 1980-1981 school years. Also included are the hours worked by Alberta Beirs and Elaine Walters who had been substitute drivers and were placed in regular runs during the 1980-1981 school year. They have the shortest runs in the district. The hours are shown for informational purposes.

15) Exhibit J-9. Offer of Employment to Linda Trajcik. Used as sample of offer of employment to regularly scheduled driver for the next school year.

16) Exhibit J-10. Offer of Employment to Charles Brown. Used as sample of offer of employment to substitute driver for the next school year. Letter states substitute bus letter on its face.

17) Exhibit J-11. Driver Information Sheet. The top half requests historical information about the driver, the lower section asks for availability for runs. The Sheet is given out at a meeting conducted by the Board for the regular drivers when they receive the computer sheets listing their stops.

18) The aforementioned computer sheets are handed out in early September or upon assignment. It lists the stops, student names and the route to be followed.

19) Exhibit J-12. Routing Sheet. This is completed by the regular drivers and turned into the supervisor and is given to the substitute driver to follow in the absence of the regularly scheduled driver.

20) Exhibit J-13. Bus condition report. Completed by whomever drives the bus on any particular day, regardless of status, on the condition of the bus.

21) Exhibit J-14. Time Report. Regular drivers list the hours worked beyond their normal work hours. Substitute drivers list all hours worked during the day.

22) Regular drivers are paid a fixed rate for their runs. Substitute drivers are paid based on the number of hours the runs actually take as reported on their Time Report (Exhibit J-14).

23) There are several types of driving assignments performed within the district.

A. Regularly assigned runs transporting students to and from school. These are referred to as the A.M. and P.M. runs and are normally assigned at the beginning of the year to regular drivers.

B. Regularly assigned shuttle runs within the district transporting students among the buildings of the Board. Substitute drivers are not allowed to drive these runs.

C. Special shuttle runs within the district. These runs are occasioned by unforeseen circumstances and are not assigned to substitute drivers unless they are already working that day. These assignments are reported on the Driver Time Sheet.

D. Special runs such as sporting events and field trips, intrastate and interstate. These runs are assigned by the transportation supervisor. A degree of consideration is given to seniority within the district. All time spent on this class of run is reportable on the Time Sheets.

E. Late Runs. These are regularly assigned runs and are reported on the Time Sheets for informational purposes only.

24) Types of assignments (A), (B) and (E) above are normal driving assignments and are paid on an annual basis; (C) and (D) above are paid on an hourly basis. They are called overtime but, in fact, are paid at straight time unless an employee exceeds a 40 hour work week.

25) Exhibit J-15. Salary Guide for the 1980-1981 school year. Regularly scheduled drivers are paid on the 15th and 30th of the month. Substitute drivers are paid once a month. Regularly scheduled drivers who have worked extra hours turn in their time sheets once

a month and are paid in the next month having the amount due evenly split between the two pay checks.

26) There is a seniority list posted in the Supervisor's office.

27) Employees receive benefits. They are:

a. Employees who work minimum number of hours as set by the insurance carrier, are covered by medical insurance. None of the five challenged voters receive coverage because the number of the hours worked is below the established minimum. Two regularly scheduled drivers also fail to meet the minimum number of hours.

b. Exhibit J-16. Personal Time. Regularly scheduled drivers are entitled to five personal days which they may used as outlined in Exhibit J-16.

c. Sick days are allotted to all regularly scheduled drivers.

d. There is a grievance procedure available to regularly scheduled drivers.

e. Longevity pay is given to all drivers based upon the number of years worked in the district. The schedule calls for \$50 after five years, \$100 after ten years, and \$150 after 15 years.

f. The Board reimburses all drivers the required \$25 state testing fee after six months of continuous service within the school district.

g. An annual physical examination is required after five years of employment. The Board will pay for the examination if performed by the school doctor.

h. All drivers must be licensed by the State. Exhibit J-17 (New Drivers) from Sue Morin, Supervisor, to Mr. Stephens, Superintendent, contains a list of seven individuals who passed their motor

vehicle test and are available for substituting. On the list are Steven Roethke (challenged voter) as well as Elaine Walters and Alberta Beirs who were placed in regulars after having worked as substitutes.

i. All regularly scheduled drivers are enrolled in the state pension system. Substitute drivers are also enrolled.

j. All bus drivers have an opportunity to earn extra pay taking buses through motor vehicle inspection and bus washing. The driver of the bus is normally the first person offered the opportunity for the extra pay assignments. Should that person refuse or not be available, the offer is made to all other drivers. Substitute drivers have received extra pay for performing both duties.

28) Exhibit J-18. Mt. Olive Township Schools Transportation Agreement for the school year 1974-1975. The most recent contract between an employee organization and the Board, it consist of five pages and contains a recognition clause, grievance procedure, sick leave, personal time and insurance provisions, rates of remuneration, longevity, medical examination section and a signature page.

29) Exhibit J-19. Mt. Olive Township Board of Education Administrative Rules and Regulation for Transportation Department. It consists of a discharge and discipline provision, division of work, leave of absence, seniority, loss of seniority, management bus inspection, medical examination and responsibility of bus drivers. Exhibits J-18 and J-19 together comprise the terms and conditions of employment of all bus drivers. There have been changes, specifically in rates of pay, but on most other items the terms and conditions of employment are as stated in J-18 and J-19.

30) Regularly assigned bus drivers work between two and one-half and eight hours per day.

31) Regularly assigned drivers may, at their option, take their buses home at night.

32) Substitutes who replace a regular driver do not always do the A.M. and P.M. route of the absent driver. The substitute may well be driving elsewhere in the district.

33) Steven Roethke is a full-time teacher employed by the Board. He drives only athletic trips and does no other substitute driving. He does not coach any of the athletic teams.

34) Larry Auriemma is a full-time firefighter employed by the Town of Belleville. He works all types of substitute runs. He submits his work schedules to the transportation supervisor on a monthly basis so that she can determine his availability to work as a substitute driver.

35) Terry Byrne, Charles Brown and Ronald Dunster are full-time police officers employed by the Township of Mt. Olive and are commissioned in accordance with the laws of the State of New Jersey. Pursuant to Ordinance of the Township, regulating the Police Department, all three have received approval from the Chief of Police to work as substitute drivers for the Board. They have been ordered not to be armed while driving the bus. Although subject to callback at any time, there is no evidence that they have ever left their duty as a bus driver to report back to duty as a police officer. As with Mr. Auriemma, the three individuals must submit their work schedules to the transportation supervisor so that their availability to work as a substitute driver is known.

Terry Byrne is a police officer who works rotating shifts. Charles Brown is a lieutenant and is in charge of the traffic and canine division. He works either the 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. shift. He is required to be on call 24 hours per day and carries a paging device at all times. Ronald Dunster is a detective and usually works 8:00 a.m. to 4:00 p.m. or 3:00 p.m. to 11:00 p.m. weekdays. He is required to carry a paging device on a rotating basis with two other detectives. There is no evidence that any of the individuals has performed a police function while working as a bus driver and no identification indicating that they are also police officers is worn while these individuals drive a bus.

While serving as substitutes, all three have performed all the types of runs which are performed by regular drivers including special event trips. These special events trips include traveling to such places as New York City, Great Gorge, Great Adventure and the Meadowlands. Regular bus drivers also perform these long trips.

36) There appears to be no difference in the method of initial hiring between substitute bus drivers and regularly assigned bus drivers. In the Spring of each year, the Board forwards to the drivers a letter offering reemployment for the following school year (Exhibit J-9 or J-10). There have been no offers of reemployment tendered to any bus driver for the 1981-1982 school year.

37) At the time of the election, the five challenged voters were the only non-regularly assigned bus drivers employed by the Board of Education.

38) Exhibit J-20. Mt. Olive Code establishing a Police Department and setting by ordinance the rules and regulations governing the operation of that Department.

DISCUSSION - GENERAL

The observer for the Teamsters challenged the eligibility of the five voters in question because of the nature of their other employment. The challenges were subsequently amended to include a challenge based upon the allegation that the number of hours worked by the five makes their relationship with the other drivers so casual as to negate any community of interest which may otherwise exist. The employer objects to the amendment of the initial challenges. The undersigned will permit the amendment. He notes that the Teamster's observer at the election site was a unit member and was probably instructed to challenge the five individuals when they presented themselves to vote. He is not convinced that the failure of the observer to state the issue of casualness at the time of the challenge negates the validity of the issue now before him for his consideration and determination. Moreover, the nature of the processing before the undersigned is investigatory and not adversarial in nature. The hearing officer is obligated to make a determination on all issues before him and clearly, this is one of the issues presented. Therefore, he permits this aspect of the Teamster's Challenge to remain before him for consideration. Accordingly, the issues are: 1) casualness and, 2) nature of other employment.

COMMUNITY OF INTEREST - CASUAL EMPLOYEES

The Commission has consistently found various classes of employees to be public employees within the meaning of the Act and subject to its coverage. In In re Bridgewater Raritan Board of Education, D.R. 79-12, 4 NJPER 444 (¶4201 1978), substitute teachers who worked at least 30 days during the prior year and expressed a willingness to do so for the following year were considered to be public employees within the meaning of the Act and eligible voters; In Rutgers University v Rutgers University College Teachers Association, E.D. No. 76-35, 2 NJPER 176 (1976) aff'd and modified P.E.R.C. No.76-49, 2 NJPER 229 (1976), D.R. No. 77-5, 3 NJPER 17 (1976) (dismissed election objection), aff'd App. Div. Docket No. A-165276 (1977), Cert. denied 76 N.J. 243 (1978), coadjunct faculty who worked one semester during the prior year and who expressed a willingness to teach during the next year were also found to be public employees within the meaning of the Act; In re Ocean County, D.R. 79-25, 5 NJPER 128 (¶ 10076 1979) special project employees employed under a CETA grant as well as other CETA employees were determined to be public employees within the meaning of the Act. However, the undersigned recognizes that there must be certain limitations placed upon a minimal number of hours worked and unit membership. At some point in time the relationship becomes so minimal as to be non-existent. It is at that point that the requisite community of interest between the individual and the unit is missing.

The undersigned is guided by the criterion established in Bridgewater-Raritan, supra. In that case the Director of Representation set the criterion as 30 days worked of 180 days possible or 1/6. To equitably apply that standard to this matter, the undersigned

sought to design a means which would permit a comparison of like numbers. Inasmuch as other drivers' normal work load consists of the usual runs plus runs for which they receive additional compensation such as athletic runs, bus washing and inspection trips, the undersigned decided that a fair comparison can only be made by equalizing the number of hours worked by the regular driver with the least number of hours per day and the hours worked by the five challenged voters less those hours spent on overtime assignments, i.e., athletic runs, bus washing and inspection trips. ^{1/}

During the current year, Mrs. Elaine Walters worked 2 1/2 hours per day or 450 hours, ^{2/} 1/6 of which is 75 hours. Therefore, the undersigned determines 75 hours to be the threshold to finding the requisite community of interest. The records show:

<u>Name</u>	<u>Hrs. Worked on Sched. Runs</u>	<u>Hrs Worked on Special Runs</u>	<u>Total Hrs. Worked</u>
Auriemma ^{3/}	411	31	442
Brown ^{4/}	110 1/2	27 1/2	138
Byrne ^{5/}	119 1/2	12 1/2	132
Dunster ^{6/}	141 1/2	58	199 1/2
Roethke ^{7/}	0	121 3/4	121 3/4

^{1/} The undersigned considered utilizing the number of days actually worked on normally scheduled runs as the criterion. This was rejected as it would not allow for an equitable comparison. It should be noted, however, that the result of such a comparison would be the same.

^{2/} J-8.

^{3/} J-3.

^{4/} J-5.

^{5/} J-4.

^{6/} J-7.

^{7/} J-6.

Based on the foregoing discussion, the undersigned concludes that Auriemma, Brown, Byrne, and Dunster share the requisite community of interest with the other drivers and that Roethke is a casual employee and that his vote should be voided.

NATURE OF OTHER EMPLOYMENT

The five challenged voters have other positions which are recognized as their primary occupations. To repeat:

<u>Name</u>	<u>Occupation</u>
Larry Auriemma	Firefighter
Charles Brown	Police Officer
Terry Byrne	Police Officer
Ronald Dunster	Police Officer
Steven Roethke	Teacher

The undersigned finds clear and definitive the language of the [Executive] Director in In re Clearview Board of Education. ^{8/} He said "[T]here is no basis for excluding from an otherwise appropriate unit public employees who are also employed by public or private employers." The fact that these individuals have other employment in no way diminishes their right to be represented in a collective negotiations unit in their second job. In a matter involving a teachers aide who was also a van driver, the Director wrote "[H]er other employment activities would not compel her exclusion from representation therein in the bus driver's unit." ^{9/} If all five were public employees whose job function was not specifically excluded for coverage or special conditions imposed, the undersigned would find that, on the issue of outside employment, the five challenged ballots should be counted. However, that is not the case for three

^{8/} E.D. No. 76-24, 2 NJPER 63.

^{9/} In re Evesham Township Board of Education, D.R. No. 79-36, 5 NJPER 253 (¶ 10143 1979).

of the employees concerned. They are policeman within the meaning of the Act.^{10/} The question is: "Should an individual whose primary occupation is being a policeman be permitted to join an organization which admits nonpolice while he is working a second job which is clearly nonpolice in nature?" ^{11/}

In Board of Education of West Orange v Wilton, 57 N.J. 404, the Court reviewed cases in the private sector concerning the issue of community of interest versus conflict of interest. It wrote

In the private sector, the cases regard unity of interest, common control, dependent operation, sameness in character of work and unity of labor relations as pointing to common interest. They regard similarity of obligation to the employer as a factor; likewise similarity of working conditions; they consider the possible disruptive effect on employer-employee relations if the employees involved are admitted to one unit. They decide whether the group involved will operate cohesively as a unit; whether the unit probably be effective in the public quest of industrial peace. Community of interest has been regarded as identity of interest. An important consideration is whether an employee sought to be included in a unit is one from whom other employees may need protection; whether his inclusion will involve a potential conflict of interest. (footnotes excluded) (emphasis added.) ^{12/}

The undersigned is convinced that to place bus drivers/police officers and bus drivers in the same negotiating unit creates the potential of placing the bus drivers/police officers in the untenable position of having to pick one duty over the other. It is not

^{10/} Stipulation No. 35.

^{11/} N.J.S.A. 34:13A-5.3 "...except where established practice, prior agreement, or special circumstances dictate to the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership." (emphasis added.) c.f. County of Gloucester v P.E.R.C., 107 N.J. Super 150, affd 55 N.J. 333.

^{12/} At pp. 420-421.

impossible to envision the bus drivers exercising legal rights which would require control and monitoring by the local police department of which the three employees herein challenged are members. This division of loyalty creates the "possible disruptive effect on employer-employee relation" which the Court sought to prevent and which the hearing officer must avoid.


However, this is not to be construed to mean that the employees cannot or should not be permitted to enjoy the rights and protection guaranteed by the Act. Those rights are made available to them should they so choose through a unit consisting solely of bus drivers/police officers and represented by any employee organization of their choosing.

Therefore, the undersigned finds that on the issue of other employment the votes of Larry Auriemma (firefighter) and Steven Roethke (teacher) be counted and the votes of the three police officers, Charles Brown, Terry Bryne and Ronald Dunster, be voided.

CONCLUDING RECOMMENDATION

For the reasons stated above, it is the recommendation of the hearing officer that Larry Auriemma be considered an eligible voter and that Brown, Byrne, Dunster and Roethke be considered ineligible voters. However, inasmuch as the vote of Auriemma is not determinative to the results of the election, it should not be counted. The Certification of Representative should issue to Teamsters Local Union No. 11.

Respectively Submitted,


Michael Berman, Hearing Officer

DATED: August 21, 1981
Trenton, New Jersey