

E.D. 76-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLEARVIEW REGIONAL DISTRICT BOARD
OF EDUCATION,

Public Employer,

-and-

COUNCIL 71, AMERICAN FEDERATION OF
STATE, COUNTY, AND MUNICIPAL
EMPLOYEES, AFL-CIO,

Petitioner,

Docket No. RO-76-14

-and-

INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES, AFL-CIO,
Intervenor.

SYNOPSIS

The Executive Director directs an election in a unit of all regular school bus drivers, rejecting the claim of the public employer that any bus driver who is scheduled to work less than 18 hours per week is a substitute as opposed to a regular bus driver. Also rejected is the public employer's argument that bus drivers employed in that district but who also are employed as bus drivers in another district should be excluded from the unit.

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INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES, AFL-CIO,
Intervenor.

For the Public Employer, William J. McGinnis, Jr. and
Angelo J. Galli (Labor Consultants for the Board
of Education).

For the Petitioner, Christopher E. Beckwith (Staff
Representative for Council 71).

For the Intervenor, John D. McKee (General Representative
for the I.B.P.A.T.)

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Clearview Regional District Board of Education, a hearing was held before Commission Hearing Officer Don Horowitz on December 1, 1975, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. A brief was filed by the Public Employer. Thereafter, on January 29, 1976, the Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof. No exceptions were filed

to the Hearing Officer's Report and Recommendations. The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and, on the basis of the facts in this case, finds:

1. The Clearview Regional District Board of Education (hereinafter "Board") is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and subject to its provisions.

2. Council 71, American Federation of State, County, and Municipal Employees, AFL-CIO (hereinafter "Petitioner") and the International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter "Intervenor") are employee organizations within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative was filed by the Petitioner on August 7, 1975. By letter dated September 19, 1975, the undersigned granted a motion to intervene in this matter filed by the Intervenor. The Public Employer has declined to consent to an election in the unit sought by Petitioner and Intervenor, contending that the unit is inappropriate. Therefore, there is a question concerning representation of public employees and the matter is properly before the undersigned for decision.

4. The Hearing Officer identified three major issues in this matter. First, did Petitioner's failure to comply in every detail, with the terms of N.J.A.C. 19:11-1.2(a) mandate the dismissal of the instant petition? Second, are bus drivers

who are scheduled to drive less than eighteen hours per week regular school bus drivers and thus includable in the petitioned for unit? Third, should bus drivers employed by the Board, who are also employed as school bus drivers for other public employers, be excluded from the petitioned for unit solely because of their dual public employee status?

The undersigned agrees with the findings and recommendations of the Hearing Officer concerning these issues, essentially for the reasons cited by him in his detailed report.

Treating the issues seriatum, the undersigned agrees that any minor technical defects in the petition and petitioner's apparent failure to demand recognition prior to the filing of the petition, should not be a bar to further processing of the instant matter. Minor technical and procedural defects, in the absence of any showing or even claim of harm or prejudice, will not delay resort to the Act's provisions.

The second issue relates to the Board's assertion that those employees scheduled to drive less than eighteen hours per week are substitute as opposed to regularly employed bus drivers and thus should be excluded from the proposed unit. The undersigned is in agreement with the Hearing Officer that the "regularity of employment" test is appropriate in resolving this issue. In the instant matter, part-time employees do substantially similar work to that done by those employees the Board considers to be full-time employees and share a community of interest with respect to virtually all other terms and conditions

of employment. The undersigned is unable to find any difference between the employees scheduled to drive less than eighteen hours per week and those who drive more than eighteen hours, other than the difference in the number of hours per week worked. The only other prerequisite to their inclusion in a unit with the other regularly employed, so-called full time employees, is that the pattern of their employment demonstrate a fair degree of regularity and frequency. This pattern of employment is to be distinguished from that of casual employees who perform an occasional job for a temporary purpose, who are hired for a special or limited engagement, etc.

Third, the undersigned agrees with the finding of the Hearing Officer that there is no basis for excluding from an otherwise appropriate unit public employees who are also employed by other public or private employers.

The undersigned defers any decision as to the inclusion of the Bus Transportation Coordinator in the proposed unit, as the record is inadequate as to allow a decision on the "supervisory" status of this employee. That employee may vote subject to challenge in the election directed herein. Further, the Board's request to challenge the validity of the showing of interest filed with the petition is denied, the undersigned being satisfied that the showings are adequate. See N.J.A.C. 19:11-1.7.

5. Based upon the above findings, the undersigned shall direct that a secret ballot election be conducted among the employees in a unit composed of "All regular school bus drivers

employed by the Clearview Regional District Board of Education, but excluding all other employees, substitute bus drivers, confidential employees, policemen, managerial executives, craft employees, professional employees, and supervisors within the meaning of the Act."

6. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.


Pursuant to Rule Section 19:11-2.7 the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties

to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by Council 71, American Federation of State, County, and Municipal Employees, AFL-CIO, the International Brotherhood of Painters and Allied Trades, AFL-CIO, or by neither.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
March 8, 1976

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNCIL 71, AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,
Petitioner,

-and-

CLEARVIEW REGIONAL DISTRICT BOARD
OF EDUCATION, Public Employer,

DOCKET NO. RO-76-14

-and-

INTERNATIONAL BROTHERHOOD OF
PAINTERS AND ALLIED TRADES,
Intervenor.

A P P E A R A N C E S

CHRISTOPHER E. BECKWITH,
Staff Representative for Council 71.

WILLIAM J. MCGINNIS, JR., Labor Consultant
and

ANGELO J. GALLI, Labor Consultant
For the Board of Education.

JOHN D. MCKEE, General Representative
For the I.B.P.A.T.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition accompanied by an adequate showing of interest was filed with the Public Employment Relations Commission on August 7, 1975, by Council 71 of the American Federation of State, County, and Municipal Employees, (A.F.S.C.M.E.) AFL-CIO, (hereinafter "Petitioner") which sought to be certified as the exclusive representative for purposes of collective negotiations for all school bus drivers employed by the Clearview Regional District Board of Education (hereinafter "Public Employer").

The Executive Director, by letter dated September 19, 1975, granted a motion to intervene in Docket No. RO-76-14, made by the International Brotherhood of Painters and Allied Trades, AFL-CIO (hereinafter "Intervenor").

Pursuant to a Notice of Hearing, a hearing was held on December 1, 1975, in Trenton, New Jersey at which all parties were given an opportunity to examine witnesses, to present evidence, and to argue orally. A brief was subsequently submitted by the Public Employer. Upon the entire record, the exhibits, and the brief in this instant proceeding, the Hearing Officer finds:

1. The Clearview Regional District Board of Education is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.
2. Council 71, American Federation of State, County, and Municipal Employees, AFL-CIO and the International Brotherhood of Painters and Allied Trades, AFL-CIO are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act and are subject to its provisions.
3. The Public Employer seeks dismissal of the instant petition on the grounds that the Petitioner made certain errors in filling out the petition^{1/} and that such errors rendered the petition fatally defective.

In addition, the Public Employer requests a finding that only drivers who are scheduled to work 18 hours per week during at least 30 calendar weeks per year for the Public Employer are "regular" school bus drivers and are includable in the petitioned for unit. The Public Employer also urges a finding that drivers employed by the Public Employer, who also are employed as "regular" school bus drivers for other public employers are employees of such other public employers and should not be included in a bargaining unit of Clearview Regional District employees.

Therefore, as the parties do not consent to a secret ballot election in a stipulated appropriate unit, and the question is unresolved as to the disposition of the instant petition, a question concerning the representation of public employees exists and the matter is properly before the Commission.

^{1/} The Commission's rule governing the contents of petitions for certification of employee representative is set forth at N.J.A.C. 19:11-1.2:

" 19:11-1.2 Contents for petition for certification

- (a) A petition for certification of public employee representative shall, when filed by a public employee, group of public employees, any individual, employee organization or public employer, contain the following:
 - (1) Name, address, telephone number of the public employer and the person to contact including his title, if known;
 - (2) A description of the collective negotiating unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

3. Date of the request for recognition as majority representative and date such request was declined by the public employer or a statement that no reply has been received;
4. Names, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner;
5. Names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;
6. Any other relevant facts;
7. Names and affiliation, if any, of the petitioner and its address and telephone number;
8. The signature of the petitioner's representative, including his title and telephone number; and
9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in Section 1.1 (Definitions) of Chapter 10 of this Subtitle of not less than 30 per cent of the employees in the unit alleged to be appropriate. A typewritten alphabetical list of such designations also shall be submitted to the Executive Director.

BACKGROUND

The Public Employer operates a Junior-Senior High School district in Gloucester County. The students attending the schools come from various sending districts in the area which operate elementary school systems. Among these districts are the Mantua Township Board of Education and the Harrison Township School District.

As the area in question is essentially rural, there is a need for a degree of cooperation between the districts relative to the transportation of students to the schools.

During the course of the administrative investigation commenced pursuant to N.J.A.C. 19:11-1.8 in connection with the instant petition, inquiries were made of officials of the Mantua and Harrison districts concerning transportation arrangements with the Public Employer; it appearing that some drivers transporting students to the Public Employer's facilities also had employment relationships with the Mantua or Harrison districts. ^{2/}

The Administrative Principal of the Harrison Township School advised the Commission that each of its school bus drivers made one "run" per day transporting students to the Clearview Regional High School. The Commission was advised that the Harrison Township District receives payment each June from the Public Employer to cover the runs made by Harrison School bus drivers which involved students attending Clearview Regional High School. The Harrison Township drivers receive their salaries directly from the Harrison Township District; at hourly rates set by the Harrison Township District and work under rules and regulations set by the Harrison Township School District.

^{2/} Representatives of the Mantua and Harrison districts were invited to attend an informal conference held November 13, 1975, and were also sent copies of the Notice of Hearing issued prior to the hearing held December 1, 1975.

None of the parties to the instant proceeding have taken the position that these employees are employees of the Public Employer for purposes of inclusion in the petitioned for unit.

The Mantua Township District furnished information which indicated that several persons employed as school bus driver by the Public Employer also perform similar services for the Mantua district on either a regular daily or substitute (subject to call for regular drivers' absences) basis. Drivers who perform services for both Clearview and Mantua receive compensation separately from each district.

ISSUES- Procedural

Does the Petitioner's failure to comply with the terms of N.J.A.C. 19:11-1.2(a)(3) mandate the dismissal of the instant petition?

ISSUES - Substantive

The parties stipulated during the course of the hearing, that the following are the sole substantive issues in dispute:

- "A. Whether school bus drivers employed by the Clearview Regional District Board of Education who are scheduled to drive less than 18 hours per week are regular school bus driver and thus includable in the petitioned for unit, or are substitute bus drivers and thus not eligible for inclusion in the petitioned for unit;
- B. Whether school bus drivers employed by the Clearview Regional District Board of Education, who are also employed as school bus drivers for other Public Employers, should be excluded from the petitioned for unit, solely because of their dual Public Employee status.^{3/}"

ISSUES -PROCEDURAL - DISCUSSION

The Public Employer moved, at the evidentiary hearing, that the Petition (Commission Exhibit 1) should be dismissed because the Petitioner made two errors in filling out the petition.

The Petitioner failed to indicate the date on which a demand, if any, for recognition as majority representative was made on the Public Employer and the date such demand was declined or that no response was received. In addition the Petitioner mistakenly

^{3/} Transcript at page 11

^{4/} N.J.A.C. 19:11-1.2(a)(3)

inserted a number on the second line in Box 7A of the Petition, which is to be completed only for Clarification of Unit Petitions, to indicate a proposed numerical change in previously certified or recognized bargaining units.^{5/}

The Commission's sole previous ruling to date on an objection to the contents of a petition for certification of employee representative determined that the petitioner therein's failure to disclose the existence of an incumbent employee organization on the petition form was not a bar to the processing of the petition.^{6/}

The National Labor Relations Board, however, has often considered the consequences of the failure to make a recognition demand and has consistently ruled that the absence of such demand is not a bar to the processing of representation petitions.^{7/}

See, for example Advance Pattern Co. 23 LRRM 1022 80 NLRB 29 (petition) need not show that recognition demand was made and refused); Gray Drug Stores 197 NLRB No. 105, 80 LRRM 1149 (Failure to make recognition demand will not result in petition's dismissal); WTAR Radio - TV Corp. 168 NLRB No. 133, 67 LRRM 1062 (filing of petition itself a sufficient recognition demand); Edwin E. Swalley d/b/a Swalley Printing Co. 50 LRRM 1116 (Filing of petition and refusal at hearing to recognize is sufficient recognition demand).

At the hearing in the instant case the Public Employer was asked by the Hearing Officer what its position be regarding a demand for recognition by either the Petitioner or the Intervenor. The response was that recognition would not be granted.^{8/}

5/ N.J.A.C. 19:11-1.5

6/ Township of Franklin PERC No. 64 December 3, 1971

7/ The similarity of language and construction of the statutes between the New Jersey Employer-Employee Relations Act and the National Labor Relations Act indicate an intention on the part of the Legislature to use the experience and adjudications of the private sector as a guide in the administration of this Act. Lullo v. International Association of Fire Firefighters, 55 N.J. 409 (1970).

8/ Transcript of p. 54

It seems clear that the Petitioner's failure to properly complete Section 8a of the petition should not stand as a bar to the processing of the instant case.

As was said by the U.S. Court of Appeals in NLRB v. Superior Cable Corp. 246 F2d 539, 40 LRRM 2402 (C.A.4, 1957)

"...(W)e think that it would be a senseless technicality to hold that the representation proceeding should have been dismissed and the parties required to initiate a new proceeding where the demand and refusal of recognition had been established at the hearing itself..."^{9/}

The Public Employer's second procedural ground for moving the petition be dismissed was that the Petitioner had completed a line of Section 7a of the petition which is only to be completed where the petition requests a clarification of a previously recognized or certified bargaining unit.

In argument at the hearing, the Public Employer took the position that the above defect made the Petition on its face both an RO (Employee Organization representation petition) and a CU (Clarification of Unit) petition and therefore inappropriate, since neither the Petitioner nor the Intervenor was the certified or recognized majority representative of the employees in the petitioned for unit.^{10/}

As the Public Employer, at all times, since the filing of the instant petition, was fully aware that there existed no recognized or certified representative in the petitioned for unit (thus barring any clarification of unit proceeding) the undersigned cannot see how the defect was in any way prejudicial to the Public Employer.^{11/}

There has never been any doubt that the instant case is a Representation proceeding. A glance at the docket number on all documents and correspondence related to the instant proceeding should be sufficient to erase any doubts.

^{9/} 40 LRRM at 2402

^{10/} Transcript at p.4

^{11/} At the hearing, the Petitioner's representative indicated that the Section of the Petition in question was filled out because he thought it related to the Showing of Interest (N.J.A.C. 19:11-1.2(a)(9)) submitted when the petition was filed (Transcript at p.16). He also moved to amend the Petition to cure the defect in Section 7a (Transcript at 53).

The exaltation of form over substance in the absence of any showing of harm or prejudice, should not be used to impede the rights of Public Employees to organize and negotiate collectively.

Accordingly, the undersigned finds that the defects in the instant Petition do not prevent the further processing of the instant case. ^{12/}

Substantive Issues - Stipulations

In addition to the stipulation setting forth the substantive issues in dispute (supra at page 4) the parties, during the course of the hearing, agreed to the following stipulations:

- "1. The parties agree that the appropriate unit should be defined as follows: Included all regular school bus drivers employed by the Clearview Regional District Board of Education; excluded all other employees including substitute bus drivers, confidential employees, policemen, managerial executives, craft employees, professional employees and supervisory employees within the meaning of the Employer-Employee Relations Act."
- "2. The parties agree that school bus drivers employed by the Clearview Regional District Board of Education who are scheduled to drive at least 18 hours weekly are regular school bus drivers and are thus includable in the petitioned for unit. The parties are not in agreement as to the status of school bus drivers employed by the Clearview Regional School District who are scheduled to drive less than 18 hours per week, and the parties will present evidence relating to their respective contentions regarding these employees."^{13/}
- "1. The parties stipulate that school bus drivers employed by the Clearview Regional District Board of Education who are scheduled to work five days a week, but who may not work at least 18 hours per week, are Public Employees within the meaning of the Act."^{14/}

Substantive Issues - Regularity of Employment Discussion

Although the parties were able to agree on a definition as to an appropriate unit for collective negotiations, the Public Employer would not consent to an election because of a dispute as to what is meant by a "regular" bus driver, as opposed to a "substitute"

^{12/} The Public Employer's procedural objections were overruled at the hearing (Transcript at p.17) The ruling is reiterated here.

^{13/} Transcript at p. 9-10

^{14/} Transcript at p. 55

^{15/}
bus driver.

The Public Employer takes the position that school bus drivers who are scheduled to drive at least 18 hours per week for the Public Employer, during at least 30 calendar weeks per year are "regular" school bus drivers. Any driver not meeting the above standard is, according to the Public Employer, a "substitute" bus driver and therefore excluded from the stipulated unit for collective negotiations.

Both the Petitioner and the Intervenor take the position that drivers who normally work five days per week for the Public Employer are "regular" school bus drivers and includable in the stipulated unit. They would define "substitute" driver as those employees of the Public Employer who are called to work on infrequent occasions when a regularly scheduled driver cannot work due to illness or some other reason. They argue that the 18-hour per week, 30-week per year standard proposed by the Public Employer is an arbitrary figure; the Petitioner maintaining that all regularly employed bus drivers, full or part-time share a community of interest; the Intervenor arguing that employment five days per week (school days) would be a more appropriate standard for includability.

The Public Employer presented no evidence tending to show why or how the 18-hour demarcation has an affect on community of interest.

The uncontradicted testimony of Regina Williams, a Clearview bus driver, shows that while she has averaged 20.8 hours per week worked since September, 1975, she is only scheduled to work 13 hours each week.^{16/} The additional hours result from extra assignments such as field trips, taking teams to athletic events and additional maintenance.

^{15/} It should be noted that the Commission does not consider itself bound by parties' stipulations concerning unit definition. However, the stipulated unit in the instant case has in the past been approved as appropriate. See for example Buena Regional School District E.D. No. 76-16, 1 NJPER 68 (1975)

^{16/} Transcript at p. 44

She testified she is notified of these extra assignments at the beginning of each work week.^{17/}

Mrs. Williams also testified without contradiction that her 13 hour per week (5 days) schedule (which translates into four "runs" or trips per day) is the standard minimum for all regularly scheduled drivers employed by the Public Employer.^{18/}

The Commission in Board of Education of the Township of West Milford PERC No. 56 (1971) found that part-time building aides, who were paid on an hourly basis shared a sufficient community of interest with teachers, nurses and instructional aides to merit inclusion in a single unit.

In the instant case, the undersigned is unable to find any difference between the employees who meet the Public Employer's proposed standard for includability and those who do not meet the standard except for difference in the number of hours per week worked.

Mrs. Williams testified that persons driving school buses for the Public Employer;

1. must possess a New Jersey bus driver's license;
2. are paid on an hourly basis;
3. are members of the Public Employees Retirement System;
4. are subject to rules governing bus operation and maintenance set by the Public Employer;
5. report to the Bus Transportation Coordinator for assignments and problems;
- and 6. are also governed by rules set by the State Department of Education.^{19/}

In addition, it goes without saying that the employees in the stipulated unit all perform the same or similar work and operate the same or similar equipment.

In the private sector, the National Labor Relations Board found appropriate a unit composed of both full and part time taxi drivers, relying on a list of common terms and

^{17/} Id.

^{18/} Id. at 49, 52

^{19/} Transcript at p. 40-42, 46, 50

conditions of employment similar to the one just recited.^{20/}

Decisions involving public employees in one of our bordering jurisdictions, Pennsylvania, have also found a community of interest to exist among regularly employed school bus drivers, irrespective of whether they were considered full or part-time.

In Abington School District 1 PPER 118 (1971) the Pennsylvania Labor Relations Board found appropriate a unit of both full and regular part-time school bus drivers where the regular part-time employees in question worked 12 $\frac{1}{2}$ hours per week. However, the PLRB noted:

"This Act makes no distinction based on the number of hours worked."

"Act 195 contemplates that all public employees, except those specifically excluded therein, are to have the benefit and protection of the Act with the right of the employee to be represented by a bargaining agent of his own choosing within the bounds of the Act." 1PPER at 119

In another Pennsylvania case involving the question of whether certain part-time school bus drivers were casual employees, the PLRB noted:

"We have followed the rule of including in any unit all regular part-time employees who do similar work. The only requirement is that of a regularity of employment which must exist with a fair degree of frequency as distinguished from casual employees who perform an occasional job for a temporary purpose or who are hired as a matter of special engagement." Radnor Township School District 6 PPER 30, 31 (1975)

The "regularity of employment" test adopted by the PLRB seems a logical yardstick to apply to questions of unit determination under our Act where, as here, employees share a community of interest with respect to all other terms and conditions of employment.

As applied to the instant case, the undersigned finds that school bus drivers who are scheduled to work each school day during a given week certainly fit the definition of

- 20/ JAT Transportation Corp 46 LRRM 1405, 128 NLRB No. 95 (1960) The list relied upon by the Board contained
- | | |
|---|---|
| 1. similar terms and conditions of employment | 5. same supervision |
| 2. same type of work | 6. same rate of pay |
| 3. use similar equipment | 7. same license |
| 4. drive in same area | 8. subject to New York City Hack Bureau regulations |

"regular school bus drivers" as set forth in the stipulated appropriate unit.^{22/}

Substantive Issues - Work for other Public Employers - Discussion

The second issue in dispute is whether certain of the school bus drivers employed by the public employer should be excluded from the stipulated appropriate unit because they are also employed on a regular basis as bus drivers for other public employers.

At the hearing, the above issue was raised essentially by way of argument; the only factual testimony came forth in Mrs. Williams answers to questions about how she is paid by Mantua Township Board of Education when she works for that district as a substitute driver.^{23/}

However, the aforementioned administrative investigation established that certain of the Public Employer's bus drivers also work on a regular basis as bus drivers for other public employers in the area.

The public employer argues simply that persons employed as bus drivers on a regular basis by other Public Employers are employees of those districts and should not be in the unit sought by the instant petition.

The Petitioner argues that employment by any other Board or employer in itself is not a bar to inclusion in the unit as long as the persons in question are employees of the Public Employer.

The Intervenor did not make any arguments on the record regarding this issue.

Again, nothing other than the above arguments were presented which would tend to show how holding a job with another employer (public or private) would affect an otherwise shared community of interest among the regular school bus drivers of the Public Employer.

^{22/} Since testimony in the instant case showed that aside from substitutes, all drivers are scheduled to work each school day this finding should resolve the unit includability question regarding the Public Employer's bus drivers. Should the situation change, however, the concepts of "casual" as opposed to "regular" employment are sufficiently definite to permit a common sense, good faith application of the phrase "regularity of employment." Part-time employment five days a week should not be viewed as a minimum.

^{23/} Transcript at 45. The Public Employer conceded that Mrs. Williams was eligible for inclusion in the stipulated appropriate unit. Transcript at 22.

The instant issue has been addressed by the Pennsylvania Labor Relations Board in Wallingford-Swarthmore School District 2 PPER 167 (1972).

There the Public Employer contended that employees who performed both maintenance work and bus driving for the district should not be included in a proposed unit which would include part-time bus drivers.

The PIRB's resolution of the issue was as follows:

"At heart, the issue appeared to be that maintenance and ground employees who also work as bus drivers should be considered only as maintenance and ground employees and never as bus drivers. The fact remains, however, that bus driving is inherently and traditionally part-time work. It appears to make little or no difference whether a particular driver maintained other employment with the District or some outside third party employer. The reductio ad absurdum of the employer's position would be that any bus driver who held any other employment would not be an appropriate member of a bus driver's unit. The inevitable, logical thrust of the argument would have the necessary effect of denying part-time employees of any type the right to organize and bargain collectively."

It is therefore concluded that the fact that an employe holds additional outside or other work position, whether with the instant employer or any other employer, would not and should not be a bar to inclusion in a proposed unit of District bus drivers. In the absence of proof that certain of the present drivers worked only such a slight time as drivers as to deprive them of any community of interest with all other "part-time" employes, it is concluded that all persons on the payroll list and as above described should be included in the proposed unit." 2PPER at 169

Although the employees in question in the instant case perform their secondary jobs for the Mantua Township Board of Education, and not the Public Employer, the undersigned^{24/} is of the opinion that the PIRB's reasoning in Wallingford-Swarthmore applies just as forcefully in the instant case.

The undersigned therefore finds that employment by other private or public employers does not bar the inclusion of employees of the Public Employer in the stipulated appropriate unit.

Other Issues

Although not part of the stipulation concerning the substantive issues in dispute (supra. at 4) the status of Margaret Leeds, the Bus Transportation Coordinator of the Public

^{24/} As mentioned supra. at p.3 Harrison Township bus drivers who drive Clearview students are subject to terms and conditions of employment set solely by Harrison. No. one in the instant case has urged that the Harrison bus drivers are also employees of the Public Employer.

Employer was alluded to, both in argument and testimony at the hearing.^{25/}

As the stipulated appropriate unit lists supervisors as excluded personnel, the undersigned finds that Mrs. Leeds status may be raised by way of a challenged ballot in a representation election conducted by the Commission.

The Public Employer in its post-hearing brief indicated it had intended to present arguments relating to the adequacy of Petitioner's showing of interest filed with the Petition.

A recitation of Rule 19:11-1.7 of the Commission's Rules is sufficient to dispose of this contention:

"19:11-1.7 Validity of showing of interest

The showing of interest submitted pursuant to Secs. 1.2 (Contents of petition to certification) and 1.3 (Contents of petition for decertification) of this Chapter shall not be furnished to any of the parties. The Executive Director shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before a hearing officer." (emphasis added)

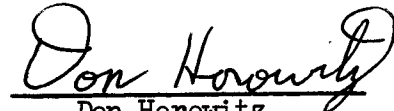
Recommendations

Based upon the above findings it is hereby recommended that an election be directed among the employees in a unit composed of all regular school bus drivers employed by the Clearview Regional District Board of Education but excluding all other employees, substitute bus drivers, confidential employees, police, managerial executives, craft employees, professional employees, and supervisory employees within the meaning of the Act. The election is to determine whether these aforementioned employees wish to be represented for the purpose of collective negotiations by Council 71, American Federation of State, County and Municipal Employees, AFL-CIO or International Brotherhood of Painters and Allied Trades or

^{25/} The Public Employer's position is unclear. While listing Bus Transportation Coordinator as a supervisory title, the Public Employer included her name on proposed eligibility lists at the hearing and in its brief. The Intervenor argues that she is a supervisor. The Petitioner took no position.

neither. The election should be conducted in accordance with the Rules and Regulations of the Commission.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Don Horowitz". The signature is written in dark ink and is positioned above a horizontal line.

Don Horowitz
Hearing Officer

DATED: January 29, 1976
Trenton, New Jersey