

D.R. NO. 88-8

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

In the Matter of

MATAWAN-ABERDEEN REGIONAL SCHOOL  
DISTRICT BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-87-66

MATAWAN REGIONAL TEACHERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the Athletic Trainer into the unit of teachers employed by the Matawan-Aberdeen Regional School District Board of Education. The Director finds that as a certificated professional employee, the Athletic Trainer shares a community of interest with the unit; inclusion of the Athletic Trainer does not create a potential conflict of interest and if not included, the Athletic Trainer may not be eligible for inclusion in any unit.

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Appearances:

For the Public Employer  
De Maio and De Maio, Esqs.  
(Vincent C. De Maio, of counsel)

For the Petitioner  
Oxford, Cohen, Blunda, Friedman, Levine & Brooks, Esqs.  
(Mark J. Blunda, of counsel)

DECISION

On May 5, 1987, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Matawan Regional Teachers Association ("Association"). The Association seeks to include the newly created position of athletic trainer in a unit of certified personnel employed by the Matawan-Aberdeen Regional School District Board of Education ("Board").

On July 24, 1987, we advised the parties by letter that we were inclined to include the athletic trainer position in the existing unit of certified personnel. The parties were invited to

submit additional documentation and position statements in accordance with N.J.A.C. 19:11-2.6.

The Board submitted a response maintaining that the athletic trainer position is not within the scope of the unit because it includes only personnel certified by the Department of Education and the Board of Medical Examiners certifies the athletic trainer. The Board also asserts that the athletic trainer does not share a community of interest with the unit because the position's work day, work week and work year are different from that of teachers.

We have conducted an administrative investigation in this matter. (N.J.A.C. 19:11-2.6) It reveals the following:

1. The Matawan-Aberdeen Regional School 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. The Matawan Regional Teachers Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the majority representative of a negotiations unit comprised of all certified personnel employed by the Board including: classroom teachers, nurses, librarians, guidance counselors, department chairpersons, social workers, learning disability specialists, resource teachers and remedial teachers. Excluded from the unit are: administrators, supervisors, clericals, custodians and substitutes. Further, the TV production coordinator and the purchasing supervisor are not in the unit.

Section B of the parties' recognition clause includes the following language:

Unless otherwise indicated, the term "teachers", when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined...

The Association also represents secretaries, clerks, bus drivers and custodians. A unit of supervisors and administrators is represented by the Matawan Regional Administrators' Association.

3. On November 24, 1986, the Board created the position of athletic trainer, but did not fund the position for the remainder of the 1986-87 school year. On January 5, 1987 the Board posted the position for the 1987-88 school year. On January 20, 1987 the Association requested negotiations over the position. On February 3, 1987 the Board asserted the position was not in the unit. This petition ensued.

4. According to the job description, the athletic trainer must have a bachelor's degree, certification as an athletic trainer by the National Trainers' Association and other appropriate agencies, experience as a trainer or coach, or such alternatives to these qualifications as the Board may find appropriate and acceptable.

5. The athletic trainer's responsibilities include:

Assist in the treatment of injured students, at the direction of a physician....

Administer first aid to injured athletes,...and in the absence of a physician, determine whether or not a student may continue playing.

Supervise the training room....

Work cooperatively with the coaches in setting up and carrying out a program of conditioning for athletes.

Counsel and advise athletes and coaches on matters pertaining to conditioning and training, such as diet, rest, rehabilitation.

Work until the conclusion of practice and treatments are finished during all seasons.

Attend all...athletic contests...whenever possible...at the discretion of the Director of Athletics and/or Principal.

Attend pre-school training camps/practice sessions as necessary.

Provide instructional in-service programs to all interested members of the staff....

Schedule the seasonal team physicals with the school physician.

Perform such other duties and responsibilities as designated by the Principal and/or Director of Athletics.

According to the job description, the athletic trainer will report to the athletic director and the high school principal. The Board asserts the athletic director will evaluate the athletic trainer. The Board's Policy on Professional Personnel provides that professional personnel will be evaluated by certificated administrative personnel authorized by the Board to perform such evaluations. The Athletic Director does not evaluate coaches. Principals evaluate the athletic director and coaches.

6. The TV production coordinator was initially an employee of the local cable company working in the school district. When the

TV production coordinator was initially employed by the Board, the position reported to the Superintendent. The TV production coordinator is not assigned to teach students. To the extent that students use the TV production equipment in connection with their classes, the TV production coordinator has some contact with them. The purchasing supervisor is responsible to the Business Administrator and is part of the central office administration team. That individual does not work directly with students.

Based upon the above facts and review of the parties' submissions, including the Board's response to our letter, we conclude that the athletic trainer position should be included in the Association's unit.

N.J.S.A. 34:13A-5.3 requires the Commission to define the appropriate negotiations unit "with due regard for the community of interest among the employees concerned." In Caldwell-West Caldwell, D.R. No. 87-21. D.U.P. 87-12, 13 NJPER 213 (¶18090 1987), we noted,

Community of interest is, of course, a term of art encompassing a multitude of factors and the importance of any one factor in a particular case depends upon how it interrelates with other factors. In the final analysis, the Commission must weigh the facts of each case, the concerns of the employer, the employees and the public interest in order to decide what unit structure will promote the statutory goals of labor stability and peace.

School district employees generally have a common employer, work in the same buildings and have similar goals and purposes and thus share a community of interest. Mullica Tp. Board of Education, D.R. No. 82-45, 8 NJPER 297 (¶13087 1982).

In Caldwell-West Caldwell Bd. of Ed., we included the athletic trainer in a unit of certificated personnel including teachers, nurses, psychologists, librarians and social workers. There, the athletic trainer was required to work Saturdays and during the summer. The trainer advised student athletes in physical training programs and provided them with therapy.

There is no dispute that the athletic trainer position will share a common employer and work in the same facilities with employees in the teachers' unit. The athletic trainer's position will also train the same group of students as the teachers and his or her work day will revolve around the students' school day. While teachers' hours revolve around the hours students spend in the classroom, the athletic trainer's hours, like coaches, will revolve around the hours students spend in school athletic activities outside the school day. An athletic trainer is also required to work closely with the athletic director and coaches.

The athletic trainer position does not teach classes, but is required to counsel student athletes, supervise the training room for student athletes, administer first aid to student athletes, and attend as many practices and athletic contests as possible. Nurses, librarians, guidance counselors and social workers do not teach classes, but nonetheless have significant student contact. Those positions are in the unit.

An athletic trainer is a professional employee and has interests similar to those of the members of the professional unit.

The duties of a professional employee must be predominantly intellectual in character, involve the consistent exercise of discretion and judgment and require knowledge of an advanced nature. Jersey City Medical Center, D.R. No. 80-9, 5 NJPER 456 (¶10230 1979), N.J.A.C. 19:10-1.1. The athletic trainer's position requires a bachelor's degree and provides a variety of tasks requiring discretion and judgment in advising, supervising and treating student athletes. As a professional, the athletic trainer should be included in the teachers' unit which consists of all professional employees except the administrators and supervisors.

While the athletic trainer position requires certification from the State Board of Medical Examiners, rather than the Department of Education, certification allows one to work in educational institutions. The Athletic Training Practice Act defines an athletic trainer as one "who practices athletic training as an employee of a school, college, university or a professional team." N.J.S.A. 45:9-37.36.(c). The Association's unit includes all certificated personnel, not only personnel with teaching certifications.<sup>1/</sup> Nurses, librarians, guidance counselors and

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<sup>1/</sup> The Board analogizes the athletic trainer to the TV production coordinator. The TV production coordinator is not in the unit and does not teach classes. There is no evidence, however, that the TV production coordinator is a certificated employee. Thus, the analogy fails. The Board also notes that the purchasing coordinator is excluded. That position, however, is part of the central office administrative staff and does not have any student contact. Additionally, there is no evidence that the purchasing coordinator is a certificated employee.




social workers are included in the unit. While they are certificated employees, they are not required to have a teaching certification. Therefore, we believe that the origin of the athletic trainer position's certification is insignificant compared to the working conditions and interests shared by the athletic trainer and the employees in the teachers' unit.

The Board asserts that including the athletic trainer in a unit with the athletic director creates a potential conflict of interest because the athletic director is authorized to evaluate the athletic trainer. The athletic trainer's job description provides that the athletic trainer will report to the athletic director and the high school principal. However, under the Board's policy, professional personnel will be evaluated only by appropriately certificated administrators who are authorized by the Board to evaluate professional personnel. Department chairpersons do not perform evaluations and the athletic director does not evaluate professional employees. Even assuming arguendo that the athletic director would evaluate the athletic trainer, we are unwilling to assume, at this juncture, that the degree of conflict generated would be sufficient to warrant removal of the evaluator from the nonsupervisory negotiations unit. See Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). Further, there are no facts before us to indicate that the athletic director is a supervisor within the meaning of N.J.S.A. 34:13A-5.3. See Tp. of Cherry Hill, P.E.R.C. No. 30 (1970).

Finally, if the athletic trainer position is not included in this unit, it may be ineligible for inclusion in any unit. The other units in the district are composed of secretaries, clerks, custodians, bus drivers, administrators and supervisors. Because it is a professional, non-supervisory position, the athletic trainer would not be appropriately included in any of these units. Therefore, excluding the athletic trainer position from this unit would be inconsistent with section 5.3 of the Act which provides, inter alia, that public employees shall have the right to form and join an employee organization and be represented in an appropriate collective negotiations unit.

Accordingly, we find the athletic trainer position shares a community of interest with the existing unit of certified personnel. Therefore, we clarify the existing unit of certified personnel to include the athletic director, effective immediately. See Clearview Regional Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1978).

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: September 11, 1987  
Trenton, New Jersey