

E. D. No. 76-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION, RANCOCAS
VALLEY REGIONAL HIGH SCHOOL,

Public Employer,

- and -

Docket No. RO-967

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

In agreement with the Hearing Officer, and in the absence of exceptions to the Hearing Officer's Report, the Executive Director dismisses a representation petition for the reasons stated by the Hearing Officer. The petitioner sought a unit of professional employees employed by a local board of education in its evening high school program. The Hearing Officer found that the evening school employees are public employees within the meaning of the Act, but that the most appropriate unit would be a unit of both day school and evening school professional employees.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION, RANCOCAS
VALLEY REGIONAL HIGH SCHOOL, 1/

Public Employer,

- and -

Docket No. RO-967

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL EDUCATION ASSOCIATION,

Petitioner.

Appearances:

For the public employer, Dietz, Allen,
Radcliffe, Sweeney & Cabot, Esqs. (Mr.
Bayard Allen, of Counsel)

For the petitioner, Goldberg, Simon &
Selikoff, Esqs. (Mr. Joel S. Selikoff,
of Counsel)

DECISION

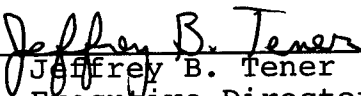
On March 9, 1976 Hearing Officer Michael B. Berman issued his Report and Recommendations in this representation proceeding, and on March 10, 1976 issued an Addendum thereto. The Report with Addendum (H.O. No. 76-12, published at 2 NJPER 68) is attached hereto and made a part hereof. Neither party has filed exceptions to the Report. See N.J.A.C. 19:14A-4.1(e) and (f).

1/ The petition refers to the public employer as "Rancocas Valley Regional High School". The undersigned has amended the caption on his own motion in the interests of accuracy.

The undersigned has considered the entire record herein as specified in N.J.A.C. 19:14A-4.1(c), and noting in particular the absence of exceptions to the Hearing Officer's Report,^{2/} has decided to adopt the Hearing Officer's findings, conclusions, and recommendations substantially for the reasons stated in his Report.

The Hearing Officer's recommendation that the petition should be dismissed because the unit petitioned for is not the most appropriate unit in the circumstances presented herein, is clearly consistent with the Supreme Court's rationale in In re State of New Jersey and Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974). The undersigned would simply add that, also consistent with the Court's rationale, such a determination at this time is not to be construed as barring a different determination in the future under different circumstances. Id. at 253.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
May 27, 1976

^{2/} N.J.A.C. 19:14A-5.2(b) provides that "Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived."

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANCOCAS VALLEY REGIONAL
HIGH SCHOOL,

Public Employer,

-and-

Docket No. RO-967

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL TEACHERS ASSOCIATION,

Petitioner.

ADDENDUM TO HEARING OFFICER'S REPORT AND RECOMMENDATION

The undersigned has received a letter from the Rancocas Valley Regional High School Teachers' Association, in the above-captioned matter, dated March 9, 1976 and received in the Commission's Offices in Trenton on March 10, 1976. The letter is signed by Ernest Hilbert as President of the Association. The letter sets forth the position of the Association "we do not wish to have the Evening High School Teachers' Association included in our bargaining unit." The undersigned takes cognizance of the Associations' wishes but holds them not to be controlling. Therefore, the recommendations of the undersigned in the Hearing Officer's Report and Recommendation remain unchanged.

Respectfully submitted,



Michael B. Berman
Hearing Officer

Dated: Trenton, New Jersey
March 10, 1976

STATE OF NEW JERSEY

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANCOCAS VALLEY REGIONAL
HIGH SCHOOL,

Public Employer,

-and-

Docket No. RO-967

RANCOCAS VALLEY REGIONAL EVENING
HIGH SCHOOL TEACHERS ASSOCIATION,

Petitioner.

HEARING OFFICER'S REPORT AND RECOMMENDATION

A petition was filed with the Public Employment Relations Commission by the Rancocas Valley Regional Evening High School Teachers Association, (hereinafter the "Association") which sought to be certified as the exclusive representative for purposes of collective negotiations for all teachers, librarians and guidance counsellors employed by the Rancocas Valley Regional High School (hereinafter the "Public Employer"). The parties have agreed to waive their right to an evidentiary hearing and submission of briefs and have elected for the Hearing Officer to proceed under the provisions of Section 19:14-3.4 (Stipulation of Facts) of the Rules and Regulations.

Based on the facts as stipulated, the Hearing Officer finds:

1. The Rancocas Valley Regional High School is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Rancocas Valley Regional Evening High School Teachers Association is an employee representative within the meaning of the Act and is subject to the provisions of the Act.

3. The Public Employer seeks dismissal of the instant petition on the basis that the unit sought by the Petitioner is not an appropriate unit for the purposes of collective negotiations.

Therefore, as the apposite 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.

BACKGROUND

In a petition filed January 17, 1975, the Rancocas Valley Regional Evening High School Teachers Association, consisting of all teachers, librarians, and guidance counsellors employed by the Rancocas Valley Regional Evening High School, sought certification as the exclusive representative for the purposes of collective negotiations. The petition was faulty as filed and was perfected on January 28, 1975. The Public Employer resists the petition.

The undersigned met with representatives of the Public Employer July 10, 1975 at which time the Board tentatively agreed to permit the evening school personnel to be represented by the day school Association. This was confirmed by a letter from Robert L. Jennings, Chairman, Personnel Committee of the Board of Education to the undersigned. A letter from James R. George, New Jersey Education Association UniServ Field Representative, dated June 12, 1975 also agreed to a merging of the Day School and Evening School Employees' Associations. The Evening School Association reconsidered its position, and in a letter from Eugene J. Grogan, President of the Evening Association to George A. Suleta, New Jersey Education Association UniServ Field Representative, stated that "We have decided to be our own bargaining agent." The Evening School association retained Joel S. Selikoff, Esquire, as counsel, effective as October 15, 1975. The Public Employer is represented by Bayard Allen, Esquire.

The undersigned recommended that a joint set of stipulations be submitted by the parties. This has not proven to be feasible. However, the Statements of Facts submitted by the respective parties are similar and there are no major disputes in the facts of this matter. The differences are in detail rather than substance. The parties agree that the undersigned is in possession of all relevant material needed to render a decision and have waived their right to submit briefs in this matter.

There exists a recognized unit of professional employees known as the "Teachers' Association of Rancocas Valley Regional High School" which represents daytime employees of the Public Employer. This employee organization has not sought to intervene in the instant matter.

MAIN ISSUES

1. Are the employees concerned public employees within the meaning of the New Jersey Employer-Employee Relations Act and entitled to its guarantees and protections?
2. If they are found to be public employees, what is the most appropriate unit to represent them for the purpose of collective negotiations?

POSITION OF THE PUBLIC EMPLOYER

The Public Employer asserts that the individuals involved are temporary employees whose continued employment depends upon the number of students who register for the particular course which they teach. In the alternative, the Public Employer asserts that the evening school is an extra-curricular activity, similar to coaching and summer school and, as such, the employees should be included in the daytime unit.

POSITION OF THE EMPLOYEE REPRESENTATIVE

The Employee Representative asserts that petitioned for unit is appropriate and that the employees contained therein are public employees within the meaning of the Act. It also asserts that the unit should be a separate entity, distinct and apart from the unit which represents the professionals working in the day school.

DISCUSSION OF THE ISSUESAre These Individuals Public Employees?

The New Jersey Employer-Employee Relations Act defines a public employee as

Any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees.^{1/}

One must look at this definition and note that it was the intent of the Legislature to define "Public Employee" broadly. The Legislature looked at the National Labor Relations Act, adopted the body of it as its own and added the above cited sentence.^{2/} The Legislature does not act in a vacuum and its intent is very clear. It sought to extend the coverage of the Act to all public employees with only four classes exempted; i.e., elected officials, members of board and

^{1/} N.J.S.A. 34:13A-3(d).

^{2/} The language of the Labor Management Relations Act, 1947 (Taft-Hartley) is "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service or any family or person at his home, or any individual by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act as amended from time to time, or by any other person who is not an employer as herein defined."

commissions, managerial executives and confidential employees.^{3/} In as much as the employees petitioned for are not one of the four exempt classes, the Hearing Officer finds them to be public employees within the meaning of the Act.^{4/}

What is the Most Appropriate Unit for These Individuals?

The language of the Act mandates the Commission to define negotiating units "with due regard for the community of interest among the employees concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute."^{5/} In the event of a dispute, the New Jersey Supreme Court has directed the Commission to find "the most appropriate unit" and "the unit it deemed best."^{6/}

The Commission has faced the question of appropriate unit in prior cases. Several of the salient criteria established are: 1) Commonality of work site; 2) lines of supervision; 3) similarity of aims, goals and purposes;

^{3/} Employees of bi-state agencies are outside the purview of the Act. In Delaware River and Bay Authority, et al. v. Public Employment Relations Commission, et al., 112 N.J. Super. 160 (App. Div. 1970), aff'd., 58 N.J. 388 (1971), the Appellate Court said "If PERC is to have jurisdiction over plaintiff and its employees, such power must be expressly given to it by the Legislatures of New Jersey and Delaware, and not inferred by the courts," at 165. Continuing, the court said "we fail to see how either state could enact laws involving and regulating the bi-state agency unless both states agree thereto." at 165-66. Reversing PERC. 15. Also see, Palisades Interstate Park Commission, P.E.R.C. No. 60 (September 14, 1971) and Port Authority Transit Corporation, P.E.R.C. No. 62 (October 22, 1971). In both cases the Commission dismissed the petitions for lack of jurisdiction.

^{4/} For additional discussion of the question of the definition of "public employee" see State of New Jersey, E.D. No. 67 (March 26, 1975). The Executive Director stated in that case that "on the basis of the record herein, it cannot be determined that part-time employees, per se, are excluded from the coverage of the Act." at 25.

^{5/} N.J.S.A. 34:13A-5.3

^{6/} State v. Professional Association of New Jersey, Department of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (May 23, 1972).

4) level of interaction and interdependence; 5) salary and fringe benefits; 6) similarity in training, skills and levels of education; 7) presence or absence of potential conflict.^{7/}

Under the mandate of finding the "most appropriate unit," the undersigned holds that the "best" unit is one of all professional employees employed by the Rancocas Valley Regional High School and recommends that the unit be so constituted. The undersigned opines that the court's mandate is so unequivocal that any other finding would be violative of the court's order. The court said in the Professional Association case.

Since, as already indicated, more than one proposed unit may well have the attributes of appropriateness, and it is essential for the functioning of the statutory scheme that a designation of a single unit be arrived at in a contested case, as her, the Commission had no choice but to determine the unit it deemed best and accordingly to designate either a unit proposed by one of the parties or to specify one of its own conception, as guided by the evidence, its expertise and the statutory criteria.^{8/}
(Emphasis added)

All the professional employees concerned work in the same school building, the Rancocas Valley Regional High School, and for the same public employer, the Rancocas Valley Regional High School Board of Education. They all work under the supervision of the superintendent of schools although the principal of the day school and the Director of Adult and Continuing Education are different individuals. It is recognized that the two groups of employees receive different wages and fringe benefits but, more significantly, the source of funds to pay for the wages is the same. While there is little or no inter-

^{7/} Several apposite cases are: Monmouth County Board of Chosen Freeholders E.D. No. 11 (July 29, 1970); Board of Education of the Township of West Milford in the County of Passaic, P.E.R.C. No. 56 (July 8, 1971); Jefferson Township Board of Education, P.E.R.C. No. 61 (October 22, 1971); State of New Jersey, E.D. No. 67 (March 26, 1975).

^{8/} at 257.

action between the two groups, the stipulations submitted by the parties reveal that at least 55% of the unit petitioned for, are employed by the day school and are included in that unit.^{9/}

The Evening High School and the Day School are accredited by the New Jersey Department of Education to grant standard New Jersey High School Diplomas. The professional employees of both schools are certificated, holding certificates issued by the Commissioner of Education. They perform the same functions with different groups of students. There is clearly a similarity of aims, goals and purposes as well as a similarity of training, skills, and levels of education.

The presence of a real or substantial potential for a conflict between members of an otherwise appropriate unit, has been found to be a proper issue in determining the appropriate unit.^{10/} Neither party has advanced this argument and the Statements of Fact submitted are silent on this point; therefore, it appears to the undersigned that no real or potential conflict exists between the day school and night school teachers.

RECOMMENDATION

The undersigned respectfully recommends that within the context of the circumstances of this case and based on the submitted Statements of Fact, the unit petitioned for is inappropriate and recommends its dismissal. The

^{9/} The Board asserts that the unit has sixteen members of which nine work in the day school or a 56% overlap. The Association asserts the unit has twenty-one members of which twelve work in the day school or a 57% overlap.

^{10/} For a complete discussion of the issue of conflict of interest, see Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), Elizabeth Fire Officers Association v. City of Elizabeth, 114 N.J. Super 33 (App. Div. 1971), and International Association of Fire Fighters, Local 788 v. Public Employment Relations Commission, Docket No. A-2345-70 (App. Div. June 15, 1972), Certif. den., 62 N.J. 70 (1972) (aff'g P.E.R.C. No. 52, February 25, 1971 and P.E.R.C. No. 55, June 16, 1971).

undersigned further recommends that the most appropriate unit is "all professional employees employed by the Board of Education, Rancocas Valley Regional High School."

Michael B. Berman

Michael B. Berman
Hearing Officer

Dated: Trenton, New Jersey
March 9, 1976