

D.R. NO. 89-18

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

In the Matter of

MORRIS BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-89-52

THE EDUCATION ASSOCIATION
OF MORRIS,

Petitioner.

SYNOPSIS

The Director orders that a mail ballot election be conducted among permanent substitute teachers employed by the Morris Board of Education. Over the Board's objections, the Director determined that these employees have the requisite regularity and continuity of employment to vote on whether they wish to be included in an existing professional/nonprofessional unit.

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Appearances:

For the Public Employer
Wiley, Malehorn & Sirota, Esqs.
(Frederick J. Sirota, of counsel)

For the Petitioner
Bucceri & Pincus, Esqs.
(Gregory T. Syrek, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 14, 1988, The Education Association of Morris ("Association") filed a Petition for Certification of Public Employee Representative seeking certification as the exclusive bargaining representative of seven "permanent substitute" teachers employed by the Morris School District Board of Education ("Board"). The petition, accompanied by an adequate showing of interest, seeks to add the substitutes to a unit of part-time and full-time certified personnel, custodial, maintenance, security, food service, transportation and clerical employees, secretaries, aides, television technicians, athletic trainers and computer technician/stage managers. Permanent substitute teachers are currently unrepresented.

On November 13, 1988, a Commission staff agent conducted an investigatory conference with the parties. The Board refused to consent to a secret ballot election. On November 22, 1988, it submitted a letter asserting that the petitioned-for employees "...are substitutes [and their 'permanent' designation] does not alter [their] status at all but simply, in exchange for a higher per diem rate, implicitly hopes for and desires a greater degree of availability than from those listed on the general substitute list." It alleges that they do not have the "requisite continuity and regularity of employment" to be eligible for inclusion in the unit. It also alleged that unlike "career track" personnel, permanent substitutes are neither salaried nor assigned regularly to particular positions. They receive no benefits. Accordingly, the Board argues they do not share the "identity of interest" with unit employees.

On January 19, 1989, we issued a letter stating that we believed the petitioned-for unit was appropriate and we were inclined to order an election among the permanent substitutes teachers. We provided the parties an opportunity to respond to our letter. The Board responded and contended that the permanent substitutes cannot be tenured and they are "assigned on an as-needed basis from position to position."

Our administrative investigation reveals that the Board operates nine schools and employs about 400 teachers, 72 custodial/maintenance employees, 70 secretaries/clerks, 50 classroom aides, 46 cafeteria aides, 22 bus drivers and 19 cafeteria and playground aides in the existing unit. The current agreement runs

from July 1, 1987 through June 30, 1989. Permanent substitutes work in all schools and report each day to either the school(s) where they are needed or to the administrative office, where they are assigned to a school. The Board acknowledges that they are paid a higher wage than per diem substitutes to promote their availability. Per diem substitutes are employed on an as-needed basis.

Permanent substitutes share the day-to-day responsibilities of teachers, including all teaching and duty assignments. Their dates of hire range from April 1987 to November 1988. Six of the seven permanent substitutes were employed in the 1987-88 term and are employed this term.

Continuity of employment measures the degree of stability in the employment relation. "It runs to the relative 'permanency' of the employment and the degree of stability within the unit." State of New Jersey and CNJSCL, NJSFT, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987). In City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶13247 1982), we found that although part-time crossing guards were laid off and rehired each year, their employment relationship was continuous because they occupied permanent, on-going positions and a sufficient number returned each year. The Board has created permanent positions for some substitutes, compared to the temporary employment relationship it has with its per diem substitutes. See, for example, Bridgewater-Raritan Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978).

Regularity of employment measures how frequently an employee works. Part-time employees in permanent positions who work

at least 1/6 the number of hours worked by full-time employees have been deemed to be regularly employed and therefore eligible to be included in a collective negotiations unit. Borough of Seaside Park, P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980); Ocean Cty. College, D.R. No. 83-4, 8 NJPER 476 (¶13722 1982). No facts suggest that permanent substitutes are less than full-time employees.

We believe that the petitioned-for unit is appropriate. In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984), the Commission found:

When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and professional school district employees has arisen, the Commission since 1969 has consistently found, ...that teachers and supportive staff have a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment and that this community of interest generally warrants giving teachers and supportive staff the opportunity to choose a unified representative in a single unit if they so desire...In the Commission's judgment, affording teachers and supportive staff such an opportunity promotes labor stability since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. (Citations omitted, emphasis in original.) Piscataway, at p. 274. See Ridgefield Bd. of Ed., D.R. No. 85-65, 11 NJPER 464 (¶16166 1985).

The permanent substitutes share with other unit members central authority controlling their working conditions, common facilities and work environment. This unit already combines professional and nonprofessional employees, and we accordingly reject the notion that

these substitutes must be on a "career track" to be eligible for inclusion.

We believe that the permanent substitutes should be given the opportunity to vote on whether they wish to be represented by the petitioner. Accordingly, we direct that an election be conducted in the following collective negotiations unit:

Included: All permanent substitute teachers employed by the Morris School District Board of Education to be added to the existing unit of all full and part-time certified personnel, custodial, maintenance, security, food service, transportation and clerical employees, secretaries, aides and television technicians.

Excluded: Superintendent of Schools, Deputy Superintendents of Schools, Assistant Superintendents of Schools, Directors, Principals, Vice-Principals, Assistant Principals, Board Secretary, School Business Administrator, Supervisor of Maintenance, Supervisor of Custodians, Supervisor of Transportation, Supervisor of Food Service, Pool Manager, Data Processing Manager, Cook Managers, Building Custodial Foremen, Secretary to the Superintendent, Secretary to the Assistant Superintendent of Administration and Supervision, Secretary to the Assistant Superintendent of Business/Board Secretary, Secretary to the Administrative Assistant for Personnel Services, Assistant Board Secretary, Payroll/Benefits Supervisor, Accounting Services Supervisor, Business Services Supervisor, probationary employees, employees not receiving a contract, including summer employees, and other employees responsible for the supervision and/or evaluation of personnel.

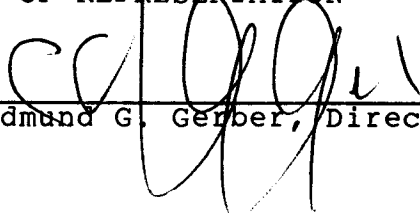
We further direct that the election be conducted by mail ballot among the employees in the petitioned-for unit, pursuant to N.J.A.C. 19:11-2.6(b)(3). The election shall be conducted no later than thirty (30) days from the date of this decision. Those

eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, and including those in the military service. Ineligible to vote are employees who resigned, or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the Board is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 17, 1989
Trenton, New Jersey