

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION

Public Employer

and

CU-16

HAMILTON TOWNSHIP EDUCATION ASSOCIATION

Petitioner

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of the negotiating unit for certain employees of the Hamilton Township Board of Education, a hearing was held on November 12, 1970 before Hearing Officer Jeffrey B. Tener at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter on March 25, 1971, the Hearing Officer issued his Report and Recommendation. No exceptions have been filed to that report. The Executive Director has considered the record and the Hearing Officer's Report and Recommendations, and on the basis of the facts in this case finds:

1. Hamilton Township Board of Education is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Hamilton Township Education Association is an employee representative within the meaning of the Act.
3. The parties disagree regarding the unit placement of coaches, nurses, extra duty personnel and department chairmen, and have reserved that question for disposition by this agency.
4. In the absence of exceptions, the undersigned adopts the Hearing Officer's findings and recommendations pro forma.
5. The collective negotiating unit is clarified to include coaches, nurses and extra duty personnel. Since there is no question of what organization represents the existing unit, no election is directed.


Maurice J. Nelligan
Executive Director

DATED: June 16, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION
Public Employer

and

HAMILTON TOWNSHIP EDUCATION ASSOCIATION 1/
Petitioner

Docket No. CU-16

APPEARANCES:

For the Public Employer

Henry F. Gill, Esquire

For the Petitioner

Cassel R. Ruhlman, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on January 5, 1970 by the Hamilton Township Education Association requesting a clarification of unit. Pursuant to a Notice of Hearing and four subsequent Orders Rescheduling Hearing, a hearing was held before the undersigned Hearing Officer on November 12, 1970, in Trenton, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. No briefs were submitted. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Hamilton Township Board of Education is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Hamilton Township Education Association is an Employee Representative within the meaning of the Act.
3. The Public Employer disagrees that certain employees, described below, should be in the negotiating unit. There is, therefore, a question concerning the composition of the unit.

The Hamilton Township Education Association, hereinafter the HTEA or the Association, has been recognized by the Hamilton Township Board of Education, hereinafter the Board, as the exclusive representative for collective negotiations for all full-time classroom teachers including resource specialists, librarians, permanent substitutes, speech correctionists, home instruction teachers, teachers of special classes, consultants, reading specialists, guidance counselors, half-time kindergarten teachers, and social workers. 2/

1/ As amended at hearing.

2/ Joint Exhibit 1 - Agreement, 1970-1971, Hamilton Township Education Association and Hamilton Township Board of Education, Pp. 1 and 2.

The Association seeks to include coaches, extra duty personnel, department chairmen, and nurses in the unit. The parties stipulated that the unit placement of these four job titles has been in dispute since the fall of 1968. At that time, the parties agreed to submit the matter to PERC for clarification. (Tr 13) The parties were unable to resolve the dispute on the basis of some earlier decisions of the Commission so the matter was set for hearing.

DEPARTMENT CHAIRMEN

The Board contends that while it is aware that there are department chairmen, the position is one that is designated at the level of the particular school and not at the level of the Board.

The record indicates that the functions and responsibilities of department chairmen vary greatly from school to school. Some department chairmen get a reduced teaching load (Tr 19) and others do not. (Tr 31) In some cases, department chairmen were designated by the building principal (Tr 29) and in other cases they volunteered. (Tr 27) There is no system-wide job description for department chairmen although the duties of department chairmen are described in the Faculty Handbook in at least one of the high schools. (Exhibits P-1 and P-2) Department chairmen are not paid extra. (Tr 23 and 31) They do not have any attributes of a supervisor within the meaning of Chapter 303, PL 1968. (Tr 27, 34 and 35)

The Association contends that they should be included in the unit because they have a community of interest with other unit employees. (Tr 14) The Board does not want to include department chairmen in the unit because the position is not one that the Board designates. The Board contrasts their position with that of consultants who serve on a system-wide basis, who are designated by the Board, who receive a 5% differential and work two extra weeks, and who are included in the recognized unit.

The undersigned finds that the title "Department Chairman" is not one that requires specific mention in the recognition clause of the contract. The position is not one which, in the view of the undersigned, calls for particular mention under the present circumstances any more than would, for example, study hall monitors. As presently constituted--and this is especially true in the case of volunteers - being a department chairman is a part of their regular employment for those who are department chairmen. As teachers, department chairmen are in the recognized unit. Being a department chairman is simply part of their job. The situation, of course, may change. If the position of "department chairman" were put on a more uniform, standardized basis, then one might anticipate that the Association would attempt to negotiate specifically on behalf of department chairmen. Under these circumstances, the Board might well agree to recognize department chairmen and to negotiate their terms and conditions of employment. If the Board declined,

the Association could file another petition with the Commission requesting the addition of department chairmen to the unit.

NURSES, COACHES, EXTRA DUTY PERSONNEL

We turn now to the other three categories. Shortly after the passage of the New Jersey Employer-Employee Relations Act in September, 1968, the Board and the Association attempted to reach agreement on the scope of the unit. Agreement was not reached so a petition, Docket No. R-88 was filed with the Commission by the Association June 16, 1969. With this petition were submitted so-called "Statements of Interest" indicating, apparently, that majorities of the nurses, coaches, and extra duty personnel each desired to be represented by the HTEA. (See Petitioner's Exhibits 5, 6, and 7)

The Board declined to recognize nurses, coaches, and extra-duty personnel as part of the unit because they had in the past dealt with each group separately. According to the Business Administrator, who spoke on the record but who was not a sworn witness, for at least ten years the Board and the various groups had engaged in "discussions". He described it as follows:

As I had indicated, it was in a give and take situation. It was, in a sense, a request by a group, a determination by the Board, and certainly there was often cross discussions. However, I don't think that we had the kind of application or relationship as takes place now under Public Law 303. (Tr 74)

The results of these discussions did not assume a written form which each party signed. (Tr 75)

The Association contends that each of the three groups shares a community of interest with unit employees. Extra duty personnel are teachers who have additional assignments which, according to Joint Exhibit 2 which describes extra duty assignments, "...must necessarily be done in whole or in greater part outside regular school hours by teachers whose special training, ability, or experience gives them this assignment over and above their normal teaching load. In these cases, additional pay is indicated." (Emphasis in original) Coaches are also required to be certificated members of a school faculty employed on a full-time basis. They are not and cannot be individuals whose only interest is in coaching.

As teachers, extra duty personnel and coaches are represented by the HTEA. The Board wants to maintain a distinction between these individuals as teachers on the one hand and as either extra duty personnel or coaches on the other hand. The Association wants to represent them in both capacities. The "Statement of Interest", referred to above, indicates that the individuals in question desire to be represented in both capacities by the HTEA. The existence of a community of interest of extra duty personnel as teachers and coaches as teachers is obvious and has not been questioned by the Public Employer. As teachers, they have been recognized as being represented by the HTEA. There was no testimony to indicate that any conflict of interest exists

or could exist between teachers as coaches or as extra duty personnel and as teachers. The Board did not contend that such a conflict - either actual or potential - existed.

There are in existence agreements between the Board and committees representing both the extra duty personnel (Joint Exhibit 3) and the coaches. (Exhibit E-1) The agreement between the Board and the Extra Duty Personnel Committee covered the period between September 1, 1969 and June 30, 1970. The Extra Duty Personnel did not desire to negotiate for the 1970-1971 school year. (Tr 15) The agreement between the Board and the Coaches' Committee was a four year agreement covering the period from September 1, 1969 until June 30, 1973.

The Chief Negotiator of the HTEA, in discussing the contract between the Board and the coaches, testified that the agreement was entered into under protest when the coaches were told that they could not be included in the HTEA unit. (Tr 49) The contract does not indicate that it was signed under protest. However, the parties did stipulate that these positions were in dispute and that the Association would file a petition with PERC in an effort to resolve the matter. The original petition, R-88, was filed before the agreement between the Board and the Coaches Committee was signed. (Tr 57)

The parties stipulated that if, at the time these issues are finally resolved, there are any contracts in force covering these employees as coaches or extra duty personnel, that such contracts would be incorporated into the agreement between the Board and the HTEA. (Tr 67)

Based on the foregoing, the undersigned finds that teachers who are coaches and extra duty personnel should be represented as coaches and extra duty personnel by the HTEA and that the unit should be clarified to reflect this status.

The last group to be considered is nurses. As was the case with the other categories, the HTEA sought to have them included in the unit right after the passage of the Act. The Board declined to include them because they had been dealt with separately in the past.

There is a two-page agreement between the Board and the Nurses' Committee for the period July 1, 1970 to June 30, 1971. (Exhibit E-2) This document provides, inter alia, that "fringe benefits granted to nurses shall be those granted to all other employee groups." ^{3/} As was the case with the coaches and the extra duty personnel, the parties stipulated that if the nurses were to become part of the recognized unit, then any agreement between the Board and the nurses would be incorporated into the Board - HTEA contract. (Tr 67)

The record indicates that nurses do have a community of interest with employees in the HTEA unit. A stipulation as to the duties and employment conditions reveals that the duties of nurses are intimately


^{3/} Article VII, Agreement Between the Board of Education of the Township of Hamilton and the Hamilton Township Public School Nurses.

related to the educational and teaching function of classroom teachers, that the hours, calendar, facilities, tenure, pensions, sick leave benefits, etc. are the same as those of teachers, that nurses and classroom teachers are both responsible to the principals in the schools in which they work, and that nurses are required to be certificated by the State Board of Examiners as are classroom teachers. (Tr 62-64) The parties also stipulated that the Board pays 25% of family health insurance coverage to nurses in 1970-'71, that this same benefit was offered to the classroom teachers represented by the HTEA but declined by them in favor of a higher salary guide and that prior to 1970-'71, insurance benefits received by nurses and teachers were identical. (Tr 65-66) A clear majority of nurses desires to be represented by the HTEA as evidenced by Petitioners Exhibit 7.

In light of the above and in the absence of any testimony or contention that there is any conflict of interest between nurses and teachers, the undersigned finds that nurses should be included in the unit represented by the HTEA.

RECOMMENDATIONS

The Hearing Officer recommends that the unit be clarified to include nurses, coaches, and extra duty personnel. Department Chairmen should not be included in the unit because the position is not one which is recognized by the Board. If the position of department chairmen were to be adopted by the Board, then the parties could seek clarification with respect to the position if they were unable to reach an agreement on their unit placement. At this time, such a request is premature.



Jeffrey B. Tener
Hearing Officer

DATED March 25, 1971
 Trenton, New Jersey