

E.D. NO. 76-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. CU-171

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

In the absence of exceptions, the Executive Director adopts the recommendation of the Hearing Officer that the existing unit of professional employees of the Board be clarified to include supplemental teachers. The parties submitted an agreed statement of facts and waived an evidentiary hearing in this matter.

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DECISION

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") January 16, 1975 by the Middletown Township Education Association ("Association") seeking a clarification regarding the composition of a unit of employees employed by the Middletown Township Board of Education ("Board"). The Association is currently recognized as the exclusive and sole representative for collective negotiations for all professional employees of the Board with the exception of administrators, psychologists and supervisors. The Association contends that the title in dispute, "supplemental teacher," belongs within the recognized unit.

Pursuant to Rule Section 19:14A-3.4 (Stipulation of Facts), the parties submitted an agreed statement of facts to Hearing Officer Michael Berman and waived their right to an evidentiary hearing. On November 14, 1975, the Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof. No exceptions have been filed by either party.

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

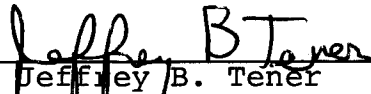
1. The Middletown Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

2. The Middletown Township Education Association is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

3. The Board disagrees with the Association that "supplemental teachers" should be included in the existing recognized negotiating unit. The parties mutually agree that the matter in question should be resolved by the Commission.

4. Based upon the stipulated facts, and in the absence of exceptions, the undersigned adopts the conclusions of the Hearing Officer regarding supplemental teachers. Accordingly, the unit is hereby clarified to include supplemental teachers.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
January 22, 1976

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Petitioner.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission by the Middletown Township Education Association, (hereinafter the "Association") requesting clarification of unit of employees employed by the Middletown Township Board of Education (hereinafter the "Board") on January 16, 1975. The parties have agreed to waive their rights to an evidentiary hearing and submission of briefs and have elected for the Hearing Officer to proceed under the provisions of Article 19:14-3.4 (Stipulation of Facts) of the Rules and Regulations.

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

1. The Middletown 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 Middletown Township Education Association is an employee representative within the meaning of the Act and is subject to the provisions of the Act.
3. The Public Employer disagrees with the Employee Representative that the title "supplemental teachers" should be included in the recognized negotiating unit. Therefore, there is an appropriate question concerning the composition of the recognized negotiating unit before the Hearing Officer for Report and Recommendations to the Executive Director.

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

1. The Middletown 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 Middletown Township Education Association is an employee representative within the meaning of the Act and is subject to the provisions of the Act.
3. The Public Employer disagrees with the Employee Representative that the title "supplemental teachers" should be included in the recognized negotiating unit. Therefore, there is an appropriate question concerning the composition of the recognized negotiating unit before the Hearing Officer for Report and Recommendations to the Executive Director.

BACKGROUND

The Middletown Township Education Association, an affiliate of the New Jersey Education Association and the National Education Association, is recognized as the sole and exclusive bargaining representative for contractually specified individuals employed by the public employer. The current contractual recognition clause provides for representation of "all professional employees of the Board with the exception of administrators, psychologists and supervisors pursuant to Chapter 303, Public Laws of 1968."

The Middletown Township Board of Education employed 23 supplementary teachers during the 1974-75 school year and 17 during the 1975-76 school year. The students receiving help have been identified and classified as needing assistance under the criteria established by the Beadleston Program (N.J.S.A. 18A:46-1 et seq.). The learning disabilities teaching consultant writes a prescription or program for the children which the supplemental teacher carries out. The assistance may be provided simultaneously with regular classroom instruction, in a separate room designed for supplemental help, or through home instruction.

The Association, in its petition filed January 16, 1975, sought to include supplemental teachers within the collective negotiating unit. On April 30, 1975 the Hearing Officer recommended that the parties, through their representatives, meet and submit stipulations of fact. Such a meeting was held between John Molloy, New Jersey Education Association field representative, for the Association, and Peter Kalac for the Board. All data were prepared by Paul W. Bennett, School Business Administrator and reviewed by an Association representative. On July 7, 1975, a set of stipulations were submitted. Additional stipulations were elicited at a meeting of the representatives conducted by the assigned Hearing Officer on September 10, 1975 and a subsequent letter was submitted by the parties on October 3, 1975. The parties agree that

the Hearing Officer is in possession of all relevant material needed to render a decision.

MAIN ISSUES

1. Are the supplemental teachers 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 Board asserts that the supplementary teachers are casual employees and fall outside the protections and rights granted to public employees by the New Jersey Employer-Employee Relations Act. It contends that the supplemental teachers are restricted solely to special students. The Board further contends that the supplemental teachers do not share a community of interest with classroom teachers.

POSITION OF THE EMPLOYEE REPRESENTATIVE

The Employee Representative asserts that the supplemental teachers should be included within the existing professional unit. It also maintains that the supplemental teachers share a community of interest with the classroom teachers represented by the Association. Finally, it asserts that they are performing duties of bargaining unit members and are qualified and certified teachers.

DISCUSSION OF THE ISSUES -

Are 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/

It follows from the definition that not all persons on the payrolls of public employers are public employees within the meaning of the Act. However, other than the statutory exceptions, there is no provision for other exclusions. 2/

It has not been claimed by the Board that the petitioned for employees are elected officials, members of boards or commissions, managerial executives or confidential employees. Finding that they are not statutorially excluded and that the Middletown Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, the Executive Director finds these individuals to be public employees. 3/

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

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

2/ 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), affirmed, 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 continued "we fail to see how either state could enact laws involving and regulating the bi-state agency unless both states agree thereto." at 165-166. Reversing P.E.R.C. 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.

3/ 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

concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute." ^{4/} 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." ^{5/}

The Commission has faced the questions of appropriate units in prior cases. Several of the salient criteria established are: 1) similarity of employer; 2) work site; 3) lines of supervision; 4) commonality of aims, goals and purposes; 5) level of interaction and interdependence; 6) salary and fringe benefits; 7) presence or absence of actual or potential conflict. ^{6/}

Supplemental teachers have been employed by the Middletown Township Board of Education for over ten years. In the school year 1974-75, 22 supplemental teachers had been in the school system under five years and two had over five years of service while for the current school year, 15 have under five years of service and two over five years. During the past school year, 19 supplemental teachers work ten or more hours per week more than 50% of the time and 78% of the work weeks were of ten hours or more. ^{7/}

Supplemental teachers are directly responsible to the building principal of the school in which they are assigned. This is the same line of supervision under which the classroom teachers work. The supplemental teachers are also under the direction of the Learning Disabilities Teacher Consultants and the Director of Special Services, who prepare the prescriptions the students

^{4/} N.J.S.A. 34:13A-5.3

^{5/} State v. Professional Association of New Jersey, Department of Education, 64 N.J. 231

^{6/} 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).

^{7/} Joint submission - July 7, 1975, September 10, 1975 and October 3, 1975

require. ^{8/} They are hired in much the same fashion as are the classroom teachers. Unlike classroom teachers, they are interviewed by the Director of Special Services but like classroom teachers, their names are recommended to the Board and hired by it. ^{9/} Supplemental instruction may be given in the classroom, in a different room within the same building, or in the student's home if home instruction is indicated. The decision as to where instruction is given is normally based upon the physical layout of the school and the needs of the child. The supplemental teachers share the non-teaching facilities with classroom teachers. Among the facilities shared are the faculty room and the lunch room. ^{10/}

The supplemental teachers are paid \$7.00 per hour for contact hours worked on a one to one basis and \$8.00 per hour for contact hours worked with more than one student. They receive none of the fringe benefits which classroom teachers enjoy as a result of their employment. However, they receive their pay on the same day and in the same method as do classroom teachers. ^{11/}

The education of children is a highly integrated process where all members of the school district's staff work toward the betterment of the students. At the nucleus of this team are the teachers and core for the special children are the classroom teachers and the supplemental teachers. Together they seek to assist the child to reach the highest level of development of which he is capable. This unity of purpose may not be equalled in any other sphere of employment. All the supplemental teachers are certificated by the State Department 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


^{8/} Joint Submission - October 3, 1975
^{9/} Joint Submission - September 10, 1975 and October 3, 1975
^{10/} Joint Submission - October 3, 1975
^{11/} Joint Submission - September 10, 1975

in determining the appropriate unit. ^{12/} However, the parties have stipulated that this question does not exist in this situation, and therefore, there is no need for discussion on this point. ^{13/}

Recommendation

For the reasons cited above, the undersigned finds that the unit be clarified to include supplemental teachers.

RESPECTFULLY SUBMITTED


Michael B. Berman
Hearing Officer

Dated: Trenton, New Jersey
November 14, 1975

^{12/} For a complete discussion of the issue of conflict of interest, see Board of Education of West Orange v. Wilton, 57 N.J. 404-425 (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, No. A-2345-70 (App. Div.), June 15, 1972, Certif. denied, 62 N.J. 70 (1972)

^{13/} Joint Submission - September 10, 1975