

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

In the Matter of

BOARD OF EDUCATION OF HAMILTON  
TOWNSHIP,

Public Employer,

-and-

DOCKET NO. RO-80-77

HAMILTON TOWNSHIP EDUCATION  
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among supplemental teachers to ascertain whether they wish to be represented by the Association in a unit with regular teaching personnel. The Director observes, consistent with Commission policy, that a broad-based functional unit of professional personnel is the most appropriate unit. Although the supplemental teachers are currently represented in a separate negotiations unit, the existing unit is not the most appropriate unit for their representation. Supplemental teachers provide services directly related to the instruction of the regular classroom student and share a community of interest with the teaching personnel represented by the Association.

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Appearances:

For the Public Employer  
Aron, Till & Salsberg, Esqs.  
(Lester Aron, of Counsel)

For the Petitioner  
Harry Donnelly, Representative

DECISION AND DIRECTION OF ELECTION

On October 15, 1979, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission (the "Commission") by the Hamilton Township Education Association (the "Association"). The Association is the exclusive representative of certificated full time classroom teachers employed by the Board of Education of Hamilton Township (the "Board"). The Association seeks to add "supplemental teachers" to the teachers

unit. The supplemental teachers are currently represented by the Association in a separate unit.

The undersigned has caused an administrative investigation to be conducted into the matters involved in the Petition in order to determine the facts.

Based upon the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material disputed factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Board of Education of Hamilton Township is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees involved in the Petition and is subject to the provisions of the Act.

3. The Hamilton Township Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

4. The Association is seeking to add supplemental teachers, whom it represents in a separate unit, to the teachers unit also represented by the Association. The Board employs

approximately 25 supplemental teachers. The teachers unit contains approximately 800 teachers.

5. Other than the teachers unit and the supplemental teachers unit, the Board negotiates with employees in seven other collective negotiations units: (1) secretaries, in a unit represented by an affiliate of the New Jersey Education Association ("NJEA"); (2) cafeteria/custodial employees, in a unit represented by an affiliate of the NJEA; (3) instructional/noninstructional aides, in a unit affiliated with the NJEA; (4) bus drivers, in a unit represented by a local organization; (5) LDTC/psychologists, in a unit represented locally; and (6) administrators, in two administrator units -- one certificated and one noninstructional -- represented locally.

6. The supplemental teachers are certificated teachers and work with handicapped children as part of the child study team. Their hours vary depending upon the number of students involved and the severity of their handicap, but supplemental teachers generally are regularly employed. Supplemental teachers are located throughout the school system but primarily in the elementary schools.

The supplemental teachers are not evaluated by the evaluator of regular teachers, but are evaluated by a learning disability teaching consultant. Supplemental teachers are paid on an hourly basis, and do not receive health insurance benefits, pension benefits, or personal days. Finally, supplemental

teachers do not start or end the school year at the same time as regular teachers.

7. The Association argues that despite certain differences, the supplemental instructors perform a teaching function similar to regular teachers, they work in the same or similar locations, and they interact with regular teachers. For these reasons, the Association believes that supplemental teachers share a community of interest with regular teachers, and the Association is, therefore, prepared to consent to the conduct of a secret ballot election in this matter.

8. The Board argues that because of the differences between supplemental teachers and regular teachers, as set forth above, the existing separate unit of supplemental teachers is the most appropriate unit. The Board, therefore, declines to consent to a secret ballot election and requests a hearing on the community of interest issues.

9. Accordingly, a Petition for Certification of Public Employee Representative has been filed, a dispute exists and the matter is properly before the undersigned for determination.

The Commission has considered the issue of appropriate unit composition on several occasions and has found, with approval of the New Jersey Supreme Court, <sup>1/</sup> that the broad-based functional unit is generally the most appropriate unit for representation. In

1/ See State v. Professional Assn. N.J. Department of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (1972).

two recent representation matters, the undersigned found that part-time psychiatrists and full time special investigators shared a community of interest with teachers and could be added to the overall teachers unit. See In re Newark Board of Education, D.R. No. 80-1, 5 NJPER 314 (¶ 10170 1979); and In re Newark Board of Education, D.R. No. 79-33, 5 NJPER 182 (¶ 10099 1979). The part-time nature of the supplemental teachers' employment does not detract from their community of interest with full time professional teaching staff. See In re Fair Lawn Board of Education, D.R. No. 78-22, 3 NJPER 389 (1977) wherein support teachers, whose employment relationship was similar to the supplemental teachers' employment herein, were accreted to a unit of regular teaching personnel, and In re Middletown Township Board of Education, E.D. No. 76-17, 2 NJPER 20 (1976) in which part-time supplemental teachers employed pursuant to the Beadleston Program, N.J.S.A. 18A:46-1, were identified as included within the unit defined as including all professional employees.

Given the Commission's preference for the avoidance of fragmentation and for the establishment of broad-based functional units, it appears to the undersigned that the existing unit of supplemental teachers, although appropriate, is not the most appropriate unit. After giving due regard to all relevant statutory factors, the undersigned finds that supplemental teachers are most appropriately included in the unit of full time personnel. They are engaged in providing specialized and individualized instruction

to regular classroom students, a function which is immediately related and necessarily adjunct to the education functions performed by the full time classroom teachers. See In re West Milford Board of Education, P.E.R.C. No. 56 (1971), and Fair Lawn, supra.

On January 21, 1980, the undersigned advised the parties of the results of the investigation and evaluated the relevant issues above. The undersigned stated an intent to direct the conduct of a secret ballot election on the basis of the facts and the issues presented in this matter. The parties were provided an additional opportunity to present evidence as well as statements of position relating to the instant Petition, and were advised that in the absence of the presentation of evidence raising substantial and material disputed factual issues concerning this matter which would warrant the convening of an evidentiary hearing, the undersigned would direct an election.

No further evidentiary proffer or statement has been provided to the undersigned. Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all certificated full time classroom teachers under contract, employed by the Board, including: Coaches, Curriculum Consultants,

Department Head - Senior High School, Extra-Duty Pay Personnel, Guidance Counselors, Half-time Kindergarten Teachers, Home Instruction Teachers, Librarians/Media Specialists, Nurses, Reading Specialists, Resource Specialists - Elementary, Social Workers, Speech Correctionists, Teachers of Special Classes, Teacher Unassigned, Work Experience Coordinators, and Summer Employment Staff; and Supplemental Teachers; but excluding: Managerial Executives, Confidential Employees, and Police and Craft Employees.

Pursuant to N.J.A.C. 19:11-2.6, the undersigned directs that an election be conducted among the supplemental teachers described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the supplemental teachers set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. 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 Public Employer is directed to file with the undersigned and with the Association an election eligibility list consisting of an alphabetical listing



of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Hamilton Township Education Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: February 15, 1980  
Trenton, New Jersey