

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WAYNE BOARD OF EDUCATION,

Public Employer,

Docket No. CU-187

-and-

WAYNE EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

In a decision on request for review of a decision of the Director of Representation, the Commission considers a question of whether four disputed titles should be included in the unit represented by the Association. The Commission agreed that summer school teachers and substitute teachers could not be added to the unit represented by the Association because the parties had never agreed to include those titles in the unit and because the Association had not bargained on behalf of those employees. However, the Commission concludes that driver training instructors and bedside teachers should be included in the unit because they perform educationally related activities comparable to extra-curricular activities. These activities are an integral part of the education process and to exclude the employees in these titles would create a potential for disruptive fragmentation of units. The Commission decides that it will include titles in existing units where: (a) the extra, educationally related activity has been performed or is being performed by a regular classroom teacher or by statute or regulation is required to be performed by a certified teacher; (b) the extra, educationally related activity can be performed by a regular classroom teacher in addition to his/her regular classroom teaching assignment, and (c) the extra, educationally related activity is performed during the regular ten month school year, on regular school days, either during or after normal school hours.

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Appearances:

For the Public Employer, Greenwood, Weiss & Shain, Esqs.
(Mr. Stephen G. Weiss, of Counsel)

For the Petitioner, Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, of Counsel and Mr. Sheldon
H. Pincus, on the Brief)

DECISION ON REQUEST FOR REVIEW

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission by the Wayne Education Association seeking a determination in favor of the inclusion of six groups of employees in the existing collective negotiations unit of all contractual certificated personnel. The petitioner requested inclusion of 1) regular summer school teachers, 2) driver education teachers, 3) substitutes, 4) bedside teachers, 5) high school equivalency diploma teachers, and 6) supplemental teachers. Six days of hearing were held by the Commission's designated hearing officer. A post-hearing brief was filed by the petitioner; the Hearing Officer issued his Recommended Report and Decision, H.O. No. 79-5, a copy of which is attached to the decision of the Director of Representation, D.R. #80-6. He recommended that the unit be clarified as including summer school teachers,

driver training instructors, bedside teachers and certain substitute teachers because he concluded the parties had initially agreed to include these titles in the negotiations unit. He further recommended that the Association did not represent high school equivalency instructors nor supplementary teachers. The Public Employer filed exceptions to the Hearing Officer's Recommended Report and Decision disputing the inclusion of the four titles, arguing that the parties did not intend that these categories be included in the unit and further that the negotiations history between the parties established that the Association waived and abandoned its claim to represent these categories.

The Director of Representation issued his decision in this matter, D.R. No. 80-6, 5 NJPER 422 (¶10221 1979) on August 30, 1979. His review of the evidence, including the Hearing Officer's Recommended Report and Decision, the transcript and the exceptions, led him to accept in part and reject in part the Hearing Officer's Recommended Report and Decision.

Specifically, he agreed with the Hearing Officer that a question concerning representation of the supplemental teachers existed because the title was in existence when the Wayne Education Association unit was formed and that there was no evidence of a mutual intent on the part of the parties to include the title in the unit. No exceptions were filed to the Hearing Officer's recommendations as to supplemental teachers and the Director dismissed that portion of the clarification petition. He also agreed with the Hearing Officer that a question concerning representation existed regarding the high school equivalency instructors ("G.E.D.") based

on an examination of the record of the negotiations history between the parties. No exceptions were filed to the Hearing Officer's recommendations as to the G.E.D.s and he dismissed that portion of the petition.

The Director disagreed with the Hearing Officer, however, as to the inclusion of the substitute teachers, bedside teachers, driving training instructors and summer school teachers because he concluded the Association had waived its representational rights regarding these titles. He therefore dismissed the petition in its entirety.

The Association filed a request for review and supporting brief with the Commission on October 22, 1979 and the Commission granted the request pursuant to N.J.A.C. 19:11-8.1 et seq. A brief in opposition to the request for review was filed by the public employer on November 7, 1979.

Since no request for review was filed to the Director's decision regarding supplemental teachers or the high school equivalency instructors, that portion of the decision is the final administrative decision of the Commission pursuant to N.J.A.C. 19:11-7.4(a). The Association argues that the Director had no factual basis on which to overturn the Hearing Officer's recommendations as to the remaining four titles.

The parties have gone through a lengthy hearing and both the Hearing Officer and the Director of Representation have given the matter full consideration and issued lengthy and thorough decisions. We have carefully examined the entire record and find the following:

We affirm the decision of the Director for the reasons set forth in his decision regarding summer school teachers and the substitute teachers. We disagree with the Association that the Director had no factual basis on which to overturn the Hearing Officer's decision but rather, on review of the entire record, find the Director's modification of the Hearing Officer's recommendation was consistent with the authority granted him under N.J.A.C. 19:11-7.4(a).

We agree that the Association has waived its representational rights concerning the summer school teachers. We do not find that the Wayne Education Association's proposals made on behalf of summer school teachers rose to the level of collective negotiations nor that there was an ongoing dispute between the parties as to the claimed representational status of the summer school teachers by the Wayne Education Association.

We also agree with the Director that the Association has waived its representational rights concerning the substitute teachers. As the Director found, negotiations proposals of the Wayne Education Association over the years relating to substitutes concerned substitute coverage by regular Wayne teachers rather than proposals for terms and conditions of employment of substitute teachers.

Therefore, a question concerning representation exists with regard to summer school teachers and substitute teachers.^{1/}

1/ The Director has previously determined that per diem substitutes who meet a regularity and continuity of employment test are eligible for representation in a negotiations unit. See In re Bridgewater-Raritan Regional Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (14021 1978).

These titles cannot be included in the unit through a clarification of unit petition. Therefore, the portion of the petition relating to those positions is dismissed.

A careful examination of the entire record regarding the titles of driver training instructor and bedside teacher leads us to conclude that regular classroom teachers who are assigned as driver training instructors and bedside teachers, as these positions have been utilized by the Wayne Board of Education, are essentially performing extra, educationally related activities and, that for the purpose of representation and as qualified below, these positions should be treated in a manner comparable to others engaged in extracurricular activities.

We agree with the Director's decision in In re Long Branch Board of Education, D.R. No. 78-24 (1977) in which, after noting that athletic coaching activities are a fundamental part of the educational process, he clarified the teachers' unit to include teachers in their capacity as coaches. This decision relied upon and was consistent with In re Hamilton Township Board of Education, E.D. No. 30 (1971), wherein the Executive Director determined that, for purposes of collective negotiations, teachers who are also coaches should be included in the negotiations unit for all full-time classroom teachers.

Likewise, we concur with the Director's standard in the decision under review wherein he stated that, "Where the evidence indicates that the 'unit work' is exclusively performed by unit members, and where performance of the duty may be imposed upon

unit members as a matter of policy or law, the position associated with the work function is inherently part of the unit recognition." D.R. No. 80-6 at 17, note 6.

In In re Rutherford Board of Education, P.E.R.C. No. 77-22, 3 NJPER 37 (1976), the Commission, in rendering a scope of negotiations determination concerning extracurricular activities which included Year Book advisor, Student Council advisor, advisor to the visual aids department, stage crew director and certain athletic advisors, stated that, "The performance of such extracurricular duties is a part of the professional responsibilities of teachers. Boards of education must be able to insure that students are properly supervised and properly trained in the skills which are involved in the various extracurricular activities sponsored by the schools."

Inasmuch as certain extra, educationally related activities are integrally a part of the regular classroom students' educational process and the potential for disruptive fragmentation exists if we allow employees instructing or supervising such activities to gain separate representational status because of possible abandonment, we believe the Director's standard for clarification in extracurricular duties should be expanded to encompass those situations where: (a) the extra, educationally related activity has been performed or is being performed by a regular classroom teacher or by statute or regulation is required to be performed by a certificated teacher and (b)

the extra, educationally related activity can be performed by a regular classroom teacher in addition to his/her regular classroom teaching assignment and (c) the extra, educationally related activity is performed during the regular ten month school year, on regular school days, either during or after normal school hours.^{2/}

Accordingly, we find that the Wayne Education Association represents in its existing collective negotiations unit those driver training instructors and bedside teachers who meet the above standard. In addition to representing the regular classroom teachers who perform as driver training instructors and bedside teachers in accordance with that standard, the Wayne Education Association represents those part-time employees who meet a test of regularity of employment by virtue of their assignment to a regular course of instruction during the regular school year. Those who do not meet the test are casual employees. Non-regular classroom teachers who perform driver or bedside instruction solely on weekends are casual employees. This clarification is effective immediately.^{3/}

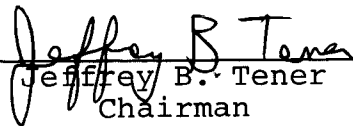
^{2/} This standard would provide for the inclusion of those [extra-curricular] personnel whose course of instruction or supervision begins during the regular school year and extends into the summer or begins in the summer and extends into the regular school year. Conversely, it would not include extracurricular personnel whose course of instruction or supervision is limited to those months outside the regular ten-month school year.

^{3/} It should be noted that the Act provides that proposed new rules and modifications of existing rules governing working conditions of these titles must be negotiated with the majority representative before they are established and that those titles which meet the standard described above and are clarified into the unit do not automatically gain any benefits of the existing contract that could not have been intended to cover these titles when they were negotiated.

For the foregoing reasons, we do not review the determination of the Director of Representation to dismiss the portion of the petition that applies to the supplemental teachers and the high school equivalency instructors. Furthermore, we adopt his determination and affirm his decision to dismiss the portion of the petition that pertains to the summer school teachers and substitute teachers.

However, based on all the facts and the reasons cited above, the unit is hereby clarified to include the driver training instructors and the bedside teachers in accordance with the standard described above.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed.

DATED: January 17, 1980
Trenton, New Jersey
ISSUED: January 18, 1980