

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MT. OLIVE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-81-203

TEAMSTERS UNION LOCAL NO. 11,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies a Request for Review filed by the Mt. Olive Board of Education ("Board"). The Board sought review of the Director of Representation's determination voiding the ballots of three substitute bus drivers in a representation election involving a unit of all full-time and part-time bus drivers. The Director found, and the Commission agrees, that the three substitute bus drivers were casual employees ineligible to vote in the petitioned-for unit.

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Appearances:

For the Public Employer, Green & Dzwilewski, Esqs.
(Allan P. Dzwilewski, of Counsel)

For the Petitioner, Schneider, Cohen, Solomon and
DiMarzio, Esqs.
(Bruce D. Leder, of Counsel)

DECISION ON REQUEST FOR REVIEW

The Mount Olive Board of Education ("Board") has requested review of the Director of Representation's certification of Teamsters Union Local No. 11 ("Local No. 11") as the majority representative in a unit of "[a]ll full-time and part-time bus drivers employed by the Board." In particular, the Board maintains that the Director erred in voiding the ballots of three substitute bus drivers. Because we agree with the Director that the substitute bus drivers in question worked too irregularly and infrequently to be entitled to unit eligibility, we deny the request for review.

On March 20, 1981, Local No. 11 filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Teamsters sought to represent a unit of full-time and part-time bus drivers employed by the Board.

On April 9, 1981, Local No. 11 and the Board entered into an Agreement for Consent Election in the petitioned-for unit. On April 15, 1981, the Director of Representation ("Director") approved the agreement and directed the Board to submit an eligibility list to the Commission and all other parties no later than 10 days prior to the election. See N.J.A.C. 19:11-9.6. The Board did not supply an eligibility list until the day before the election.

At the April 28, 1981 election, 24 voters cast valid ballots for Local No. 11 and 20 voters cast valid ballots against Local No. 11. Local No. 11 challenged the ballots of five voters because they allegedly held other full-time jobs and were neither full-time nor part-time bus drivers within the intendment of the petition.^{1/} In addition, Local No. 11 filed election objections pursuant to N.J.A.C. 19:11-9.2(h).

Because the five challenged ballots were determinative, the Director conducted an investigation and ordered a hearing.^{2/}

^{1/} Specifically, three were full-time police officers, one a full-time fire-fighter, and one a full-time teacher. After the election, Local No. 11 proffered an additional reason for challenging the ballots of these five voters: the allegedly casual nature of their employment and the lack of a community of interest with other regularly employed bus drivers. The supplemental reasons for the challenges would appear to be a logical extension of the original challenge and related to it. In any event, we approve of the Director's decision to consider Local No. 11's challenges including the supplemental reason.

^{2/} N.J.A.C. 19:11-9.2(k) provides:

If challenged ballots are sufficient in number to affect the results of an election, the director of representation shall investigate such challenges. All parties to the election shall present documentary and other evidence, as well as statements of position, relating to the challenged ballots. After the administrative processing of the challenged ballots has been completed, or where appropriate, the hearing process has been completed, the director of representation shall render an administrative determination which shall resolve the challenges and contain the appropriate administrative direction.

On June 18, 1981, Commission Hearing Officer Michael Berman afforded all parties the opportunity to examine witnesses, present evidence, and argue orally; the parties waived this right and instead submitted stipulations and joint exhibits. The parties also filed post-hearing briefs.

On August 21, 1981, the Hearing Officer issued his Report and Recommendations. H.O. No. 82-4, 7 NJPER 520 (¶12230 1981). He recommended that one ballot be voided because the voter did not work sufficient hours to be entitled to part-time employee status, that three ballots be voided because these voters worked as police officers and he construed the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") to prohibit the inclusion of these police officers in a unit of non-police officers, and that the remaining ballots be counted.

On September 2, 1981, the Board filed exceptions. Local No. 11 filed a letter brief in opposition. On October 22, 1981, the Director of Representation issued a decision dismissing the exceptions. D.R. No. 82-16, 7 NJPER ____ (¶_____ 1981). The Director voided the ballots of three of the substitute bus drivers who worked less than 1/6 of the average number of hours worked by the regular bus drivers. Because the remaining two challenged ballots were not determinative, he certified Local No. 11 as the majority representative in the following unit: "All full-time and part-time bus drivers employed by the Mt. Olive Board of Education excluding all other employees, police, professionals,

confidential employees, managerial executives, craft workers, and supervisors within the meaning of the Act."^{3/}

On November 5, 1981, the Board filed the instant Request for Review. The Board maintains that the Director erred in: (1) stressing the number of hours, rather than days, worked, (2) basing his calculations on the hours worked in the 1980-1981 school year rather than considering the 1979-1980 school year, and (3) using an average number of hours worked by regular bus drivers rather than using the regular employee with the lowest number of hours as a standard. The Board also contends that the Director should have resolved the issue of outside employment since it might arise in the future, and that the Director's decision might conflict with the Commission's policy against fragmentation should the excluded substitute drivers seek their own unit. Finally, the Board requested oral argument.^{4/} On November 12, 1981, Local No. 11 filed a response opposing the Request for Review.

^{3/} Because he voided the ballots on other grounds, the Director did not rule on the Hearing Officer's recommendation that full-time police officers should be ruled ineligible to be included in a unit of full-time and part-time bus drivers. Likewise, we need not and do not rule on this issue. However, we express serious doubts about the correctness of the Hearing Officer's analysis of the statutory proscription concerning the representation of police officers by employee organizations admitting non-police to membership. Assuming that the statutory proscription does not apply, there is no basis for excluding from an otherwise appropriate unit employees on the sole ground that they also work for another public employer as police officers. In re Clearview Reg. Dist. Bd. of Ed., E.D. No. 76-24, 2 NJPER 63 (1976).

The Director also did not directly rule on Local No. 11's objections. Inasmuch as a certification of representative has been issued, we will consider the objections as having been dismissed.
^{4/} We deny this request. The issues have been thoroughly litigated.

N.J.A.C. 19:11-8.2 sets forth the limited grounds for granting a Request for Review.

(a) The commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

1. That a substantial question of law is raised concerning the interpretation or administration of the act or these rules;

2. That the director of representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;

3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or

4. That there are compelling reasons for reconsideration of an important commission rule or policy.

None of the requisite grounds for review is present here.

We have previously differentiated "casual" employees from "regular" part-time or full-time employees. The former, in contrast to the latter, work on an occasional or sporadic basis; their contact with the employer is too tenuous and infrequent to warrant inclusion in the same unit with regular employees. In determining whether a particular individual has casual status, we focus on whether the employee has a fair degree of regularity and continuity of employment. See In re Rutgers, The State University, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd and modified, P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd App. Div. Docket No. A-1652-76 (1977), certif. den. 76 N.J. 234 (1978); In re Clearview Reg. Dist. Bd. of Ed., supra (in particular, as it relates to bus drivers). See also, In re Bridgewater-Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978).

In the instant case, the Director approximated the average number of hours (1056)^{5/} worked by the regular full-time and part-time bus drivers during the 1980-1981 school year and then concluded that substitute bus drivers who worked less than 1/6 this average number (176) were casual employees who were not qualified for representational rights under the Act. The Director adapted this yardstick from Bridgewater-Raritan Reg. Board of Education, supra, where per diem substitute teachers who worked fewer than 30 days out of a possible 180 days were held to be casual employees. While we recognize that mathematical formulae may not always govern questions of casual status, particularly given the unique nature of the work requirements of certain types of employees such as these school bus drivers, we are satisfied that the Director correctly determined that the three substitute bus drivers are not entitled to vote in the same unit as the regular full-time and part-time bus drivers.

All three employees in question have full-time jobs elsewhere. They are all substitute bus drivers. Unlike full-time or part-time bus drivers, they do not perform work on a regularly scheduled basis; instead, their hours vary according to such factors as the frequency of absenteeism among regular full-time and part-time bus drivers and their availability during these absences. The police officers who serve as substitute bus drivers

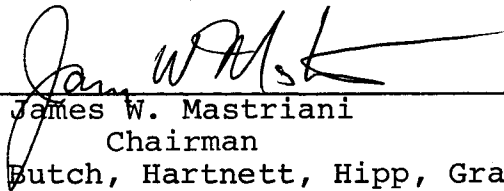
^{5/} As the Director observed, this figure is the lowest the average number of hours could be.

must submit their work schedules to the transportation supervisor; they are also on call for police work 24 hours a day and carry paging devices. The other substitute in question -- the full-time teacher -- only drives on after-school athletic trips. Unlike regularly scheduled bus drivers who are paid a fixed rate for their runs, substitute bus drivers are paid based on the number of hours their runs actually take. The number of hours these substitute drivers in question worked during the 1980-1981 school year (121.15, 132, and 138) is quite small compared to the average number of hours (1056) of the bus drivers working on a regular schedule. Finally, none of the three substitute bus drivers in question worked sufficient hours last year to qualify for medical insurance coverage. Under all these circumstances, we conclude that the three substitute bus drivers whose ballots were voided were casual employees not eligible to vote in this unit.^{6/}

ORDER

For the foregoing reasons, the Board's Request for Review is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Graves, and Suskin voted in favor of this decision. None opposed. Commissioner Newbaker abstained.

DATED: January 12, 1982
Trenton, New Jersey

ISSUED: January 13, 1982

^{6/} The Board correctly notes that some of the substitute bus drivers have worked in the district for many years; however, years of service by a substitute bus driver do not alone make the work he performs regular in nature. We must focus on the regularity and continuity of the work actually performed. We also approve the Director's yardstick for comparing the amount of work performed by substitute bus drivers and by regularly scheduled bus drivers.