

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP OF
WEST MILFORD IN THE COUNTY OF PASSAIC

Public Employer

and

Docket No. RO-80

WEST MILFORD EDUCATION ASSOCIATION, INC.

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing dated April 7, 1970, concerning representation of certain employees of the Board of Education of the Township of West Milford, a hearing was held before Hearing Officer Jeffrey B. Tener on April 24, 1970 in Newark, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. A Memorandum in support of position was subsequently filed by the Public Employer. Thereafter on November 16, 1970, the Hearing Officer issued his Report and Recommendations (attached hereto). Exceptions were timely filed by the West Milford Board of Education. Petitioner filed a reply to these exceptions. The Commission has considered the record, the Hearing Officer's Report and Recommendations, the memorandum, exceptions and the reply and on the basis of the facts in this case finds:

1. The Board of Education of the Township of West Milford in the County of Passaic is a public employer within the meaning of the Act.

2. The West Milford Education Association is an employee representative within the meaning of the Act.

3. The West Milford Education Association seeks to add the categories office personnel and building aides to the previously recognized unit consisting of teachers, nurses, and instructional aides. The Employer declines to recognize the Association as the exclusive representative of these two additional classifications; thus, a question concerning representation exists and the matter is appropriately before the Commission for decision.

The Hearing Officer found the unit petitioned for appropriate, but excluded, as confidential employees, the secretary and assistant secretary to the Superintendent and the secretary to the Business Administrator-Board Secretary.

In its first exception, the Employer contends that since office personnel and building aides are permitted to be only "associate" members of the Association and, as such, do not have the right to vote or hold office, this is not the type of representation provided for in Chapter 303, and thus the Association is disqualified as a representative of these employees.

The Commission finds no disqualification of the Association because of its different classes of membership. Section 7 of the Act provides that:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

In considering the constitutional challenge to the Act's provision requiring the majority representative to be the exclusive representative (Lullo v. I.A.F.F, Local 1066, 55 N.J. 409 (1970)), the Supreme Court of New Jersey emphasized the nature and extent of the duty of representation:

The benefits and advantages of the collective agreement are open to every employee in the unit whether or not he is a member of the representative organization chosen by the majority of his fellow workers. He can be certain also that in negotiating with the employer the representative is obliged to be conscious of the statutory obligation to serve and protect the interests of all the employees, majority and minority, equally and without hostility or discrimination. And he can rest secure in the knowledge that so long as the union or other organization assumes to act as the statutory representative, it cannot lawfully refuse to perform or neglect to perform fully and in complete good faith the duty, which is inseparable from the power of exclusive representation, to represent the entire membership of the employees in the unit. [1/]

The foregoing clearly establishes the statutory responsibility of an employee organization to represent fairly not only its active and associate members, but even non-members who may be included in the unit. The Employer argues in effect that the Association's restriction of certain categories of employees to less than full membership and the attendant denial to them of the right to vote and hold office necessarily precludes the possibility of their fair representation as contemplated by the law. We do not agree. The duty to represent obviously transcends the presence or absence of organization membership and presents a broader question. If one elects not to be a member, in any form, that fact does not relieve an organization of its duty. The measure of fair representation

1/ It is evident from the text that the Court is referring to unit "membership", not organization "membership".

is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances. A qualified form of membership may or may not become an ingredient in the kind of representation given. It may become an element of proof to a claim of inadequate representation once the opportunity to represent has been established and allegedly been abused. And in terms of internal administration, it may require the organization to be unusually perceptive and sensitive to the needs of those holding restricted memberships in order to insure that the organization meets its statutory obligation. But standing alone, this restriction on membership cannot at this time be said to constitute, necessarily, an impediment to fair representation prior to the Association's opportunity to demonstrate its compliance with the statutory obligation, notwithstanding this restriction. In short, the restriction does not, per se, limit its capacity to comply. Were it otherwise, there would be no possibility of fair representation for those who elect to be non-members. The Commission finds therefore no disqualification of the Association.

The Employer's second exception reiterates its contention made at the hearing that the employees in question are confidential employees and thus should be excluded from the existing unit. The Commission agrees with the Hearing Officer that the secretary and assistant secretary to the Superintendent and the secretary to the Business Administrator-Board Secretary are confidential employees. These three secretaries work for and with those at a management level who share with the Board responsibility for personnel and labor relations policies, and by virtue of that relationship these three secretaries have, in the course of their normal duties, access to and knowledge of such policy information.

With respect to the remaining individuals in question, the record does not establish that they either work for such management type officials or that they routinely have access to or knowledge of such policy information. It may be that the lowest level clerk would, as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collection function should disqualify one from the possibility of representation. Mere knowledge of raw information acquired in this process would not ordinarily tend to compromise management's right to confidentiality in matters of policy affecting negotiations or contract administration. Nor is there any discernable reason why this same clerk would, because of her function, owe a greater measure of allegiance to the Employer or conversely why her performance would conflict with the interests of those in the existing unit to whom the data might relate but not yet affect as a policy matter. The Commission finds therefore that, except for the three titles noted above, the employees in question are not confidential employees and that their representation in the existing unit would not create a significant conflict of interest within that unit.

The Employer also excepts to the failure to find a confidential relationship between the office personnel and the building aides. For the reasons discussed immediately above, we find no merit to this exception.

The Employer finally excepts to the finding that a community of interest exists between those in the recognized unit and the office personnel - building aides. Based on the facts found and recited by the Hearing Officer and the record as a whole, the Commission concludes that such a community of interest does exist. Granting the existence of disparity in job qualifications and in certain working conditions and benefits, we nevertheless find that the aides and office personnel perform functions immediately related or necessarily adjunct to the education functions performed by members of the existing unit. Beyond that the office personnel share in common with teachers substantially the same benefits, a similar number of hours of work and calendar, tenure and transfer "rights". While this substantial likeness does not apply to aides, the fact remains that much of the work they do would, but for their existence, be done by teachers. It is the part time feature of their employment which gives rise to the disparity of certain conditions and benefits; this same feature is what makes feasible the relief of teachers from certain duties they formerly performed.

The Commission finds, therefore, that building aides and office personnel (excluding confidential employees) may properly be included in the existing unit of teachers, nurses and instructional aides, subject to two conditions to be met in the election directed herein. For purposes of this election two voting groups are established:

Voting Group I

All building aides and office clerical employees of the employer, excluding professional, craft and confidential employees, managerial executives, supervisors and all other employees.

Voting Group II

All teachers, nurses and instructional aides of the employer, excluding office clerical, craft, and confidential employees, managerial executives, supervisors and all other employees.

DIRECTION OF ELECTION

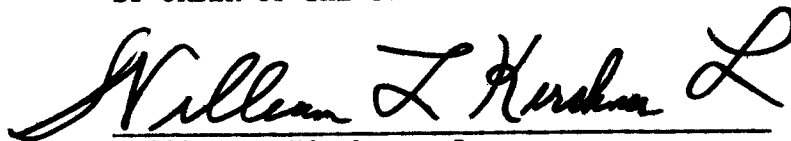
A secret ballot election shall be conducted among the eligible employees in the two groups described above. Those eligible to vote are employees in the groups above who were employed during the payroll period to be designated, 2/ including employees who did not work during that period because they were ill, on vacation, temporarily laid off or on military leave. 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. Those in Group I shall vote on the question of whether or not they wish to be represented for purposes of collective negotiations by the West Milford Education Association. If a majority of those voting vote for that proposition, they shall have thereby indicated their desire to be included in the existing unit (i.e. Group II). That inclusion, however, is

2/ The Executive Director will establish the payroll period for eligibility after investigation identifies the last payroll, preceeding the date below, on which all or substantially all the affected employees appear.

subject to the requirements of the Act that professional employees be permitted the opportunity to vote on the question of inclusion with non-professionals. Therefore, those in Group II shall vote on the question of whether or not they wish to be included with non-professional employees for purposes of collective negotiations. If a majority of those voting in each group vote affirmatively on the respective questions, a single certification shall issue combining the classifications in Groups I and II in one unit. If Group I votes for representation, but Group II votes against inclusion, a separate certification of representative shall issue covering Group I.

The election will not be conducted during the current summer recess but shall be conducted within 30 days after the beginning of the 1971-1972 school year.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: July 8, 1971
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. RO-80

WEST MILFORD EDUCATION ASSOCIATION, INC.

Petitioner

Appearances

Board of Education of the Township of West Milford
in the County of Passaic
By Louis Wallisch, Esq.

West Milford Education Association, Inc.
By Frank Scangarella, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition for certification of employee representative was filed with the Public Employment Relations Commission by the West Milford Education Association, Inc, hereinafter W.M.E.A., on February 26, 1970. Pursuant to a Notice of Representation Hearing dated April 7, 1970, a hearing in this matter was held before the undersigned Hearing Officer on April 24, 1970 in Newark, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Board of Education of the Township of West Milford in the County of Passaic is a public employer within the meaning of the Act and is

1/ Amended at hearing.

subject to the provisions of the Act.

2. The West Milford Education Association is an employee representative within the meaning of the Act.
3. The WMEA requested recognition in a unit consisting of teachers, nurses, instructional aides, secretaries, building aides and library aides, 2/ but the Board declined to recognize the office personnel and building aides in a unit with teachers, nurses, and instructional aides.

Accordingly, there is a question concerning representation regarding the office personnel and building aides and the question is appropriately before the Hearing Officer for Report and Recommendations.

BACKGROUND AND POSITIONS OF PARTIES

The WMEA was recognized by the Board as the exclusive representative for teachers, nurses, and instructional aides. The WMEA desires to include office personnel and building aides within the unit.

The Board took the position that such a unit would be inappropriate because the office personnel and building aides do not share a community of interest with employees in the recognized unit and, furthermore, that there is a conflict of interest between these two groups because of the confidential relationship which exists between the administration on the one hand and the office personnel and building aides on the other. The Board contended that a combined unit would be detrimental to the functioning of the school system. Finally, the Board maintained that there had "...been no election, official request, or other proper official action taken by the secretaries or the building aides to indicate their, or either of their desires, that the West Milford Education Association be designated as their, or either of their bargaining agent." (Tr. 13)

2/ At the hearing, it was agreed that the term "building aides" includes "library aide." Therefore, we shall refer to "building aides" in future references with the understanding that that term includes "library aides."

ISSUES

1. Confidential employees. The Executive Director, in Plainfield Board of Education and Plainfield Association of Educational Secretaries,

E.D. No. 1 stated that:

It is axiomatic that those charged with the responsibility for negotiations or the formulation of labor relations policy may not be included in the same unit as those affected by such negotiations or such policy. To include both sides of the negotiating table in one unit would be the clearest conflict of interest and would effectively interfere with the purpose of this Act which provides for good faith negotiations. Similarly, secretarial employees who act in a confidential capacity to a member of management's team who is involved in the formulation of labor relations policy and who is privy to information concerning such matters would have the same conflict of interest.

(Emphasis supplied) 3/

Therefore, the first issue is whether or not the employees in question or any of them are confidential employees who should be excluded from the unit.

2. Community of interest. The Act provides that "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." (Section 7) Therefore, the second question is whether or not the employees in dispute -- assuming not all of them are found to be confidential employees -- have a community with employees in the recognized unit.

3. Professional inclusion. The Act states that:

...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes...(2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit... (Section 8(d))

3/ In the Matter of Plainfield Board of Education and Plainfield Association of Educational Secretaries, E.D. No.1, Pp. 2 and 3.

Accordingly, if the employees in question or any of them are not found to be confidential employees and if the non-confidential employees are found to have a community of interest with employees in the recognized unit, the teachers -- if they are professional employees -- must vote to be included in a unit with such nonprofessional employees.

CONFIDENTIAL EMPLOYEES

There are 19 office personnel positions and 16 building aide positions in this school district. The breakdown of office personnel is as follows: one secretary to the Superintendent, one assistant secretary to the Superintendent, one secretary to the Supervisor of Elementary Education, one secretary to the Supervisor of Secondary Education, one secretary to the Business Administrator-Board Secretary, one secretary to the Guidance Director, one secretary to the Child Study Team, six elementary school secretaries, one secondary school secretary, one secretary to the Vice Principal of the high school, one bookkeeper, one assistant bookkeeper, and one payroll clerk.

The Public Employer contended that each and every one of the 19 office personnel and the 16 building aides did work or had access to records, files and information of a confidential nature. It is true that these individuals might have access to information that should not be discussed, publicized, etc. This inheres in the job of a secretary. However, the relevant consideration is whether or not the individuals in question have access to confidential information having a direct bearing on collective negotiations and the labor relations function of the Public Employer.

The record fails to support a finding that the building aides and most of the office personnel are confidential employees in the relevant sense defined above. The building aides work in the various schools in the district. At least some of them spend a significant position of their time --- 1 3/4 hours in at least one case -- in the lunchroom monitoring children. (Tr. 81) Some building aides work in the library. (Tr. 22) They do work with the office secretaries and fill in for office personnel when school office secretaries are absent. During this time, they might type records, etc. as do the secretaries. (Tr. 143) They would have access to the same information that is available to the secretaries. This is information which, admittedly, is confidential but which was not shown to have a direct bearing on collective negotiations or labor relations policy. Accordingly, the undersigned does not find the building aides to be confidential employees.

Of the 19 office personnel, the Hearing Officer finds that three of these positions -- secretary to the Superintendent, assistant secretary to the Superintendent and the secretary to the Business Administrator-Board Secretary -- are confidential employees in the required sense. The occupants of the first two positions work in the office of the Superintendent. They are the only two secretaries who have access to the district-wide official personnel records. (Tr. 109) The occupants of these positions prepare data for the budget and prepare reports, data and information required for the Board Negotiating Committee and the Superintendent. (Tr. 111-113) This information relates to negotiations and labor relations and is used by the Board and the Superintendent for purposes of negotiations and labor relations.

The third employee found to be a "confidential" employee is the secretary to the Business Administrator-Board Secretary. Not only is the Business Administrator charged with the responsibility of collecting and preparing data to be used by the Board in negotiations with custodian and maintenance personnel who are not in the teachers unit but the Business Administrator is involved in the entire process of budget preparation which has a direct bearing on negotiations. The secretary of the Business Administrator, in the opinion of the undersigned, should be excluded from the unit because she works for the Business Administrator whose functions and whose relationship to the budgetary and bargaining process have been outlined above.

The record does not support a finding that the other office personnel are confidential employees in the germane sense. While it is contended that other office personnel and, for that matter, building aides, (Tr. 202) could be called upon at any time to fill in for one of the employees found to be confidential, the record does not support a finding that the type of interchange of employees is a common or frequent occurrence. The Superintendent testified that the job functions of the Supervisors of Elementary and Secondary Education include working with principals and teachers on the improvement of instruction and the professional improvement of the curriculum. (Tr. 195) The record reveals that the occupants of these positions are continually engaged in the recruitment of professional personnel whom they suggest for consideration to the Superintendent. (Tr. 115) In this connection, information of a confidential nature is procured and "available" to the secretaries of the supervisors but there is no indication in the record that this information is used at this level in making labor relations policy. There is nothing in the record to indicate specifically

that the occupants of these positions have any responsibilities in the area of labor relations policy or negotiations. Of course these employees -- like all employees -- do what they are told by the Superintendent but the record contains no indication that the Superintendent has utilized them in sphere of labor relations or negotiations.

The bookkeeper, assistant bookkeeper and payroll clerk report to the Business Administrator but there is no indication that these individuals have anything to do with labor relations policy. Of course they work with payroll data but this is only indirectly related to negotiations.

The other office personnel -- secretaries in the elementary schools and high school -- report to the building principals or, in the case of two of them, to the Guidance Director and the Psychologist. The secretaries to the principals work on and have access to personnel folders which are maintained for each teacher in a building. There is no specific indication that these secretaries have any direct role in labor relations. The mere fact that personnel folders might be used as a source of information by the Superintendent or the Board in developing, for example, a policy on transfers does not transform all who might have access to such personnel folders into confidential employees in the sense in which that term is being utilized herein. The record reveals virtually no connection between the Guidance Director and the Psychologist and the development of labor relations policy. Accordingly, secretaries to these individuals are not found to be confidential employees.

In summary, the undersigned has found three of the nineteen secretaries to be "confidential" employees who should be excluded from the unit because of the roles played by the individual to whom these three secretaries report in budget-making, negotiations, and labor relations

generally. The other office personnel and the building aides are not "confidential" employees in the opinion of the Hearing Officer.

COMMUNITY OF INTEREST

Having found all but three of the office personnel and none of the building aides to be "confidential" employees, the second issue is whether or not these employees share a sufficient community of interest with teachers in the recognized unit to be combined with teachers in an appropriate unit. Related to this is the contention of the Board that the WMEA, by its composition, would not give the office personnel and building aides the representation to which they are entitled.

Section 7 of the Act provides that :

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...

This language is clear. Public employees shall have the right to join any employee organization. It is not the prerogative of the public employer to select the employee organization nor to evaluate the effectiveness of representation.

In this case, the Certificate of Amendment to the Certificate of Incorporation of West Milford Education Association, Inc. provides for associate membership for certain non-professionals including building aides and office personnel. The President of the WMEA testified that associate members of the WMEA are entitled to all the benefits of the Association with the exception of voting and holding office. (Tr. 38) The record demonstrates that the office personnel and building aides were fully apprized of their rights and limitations as associate members of WMEA at a meeting which was well attended by both groups - 9 of the building aides

and 16 of the office personnel. Furthermore, assuming that an election is directed among office personnel and/or building aides, they would have an opportunity to vote against the WMEA as their negotiating agent. Therefore, it is found that the WMEA may represent office personnel and building aides assuming an appropriate unit is found and the employees vote for such representation.

We now reach the question of community of interest. The building aides and office personnel are employed by the same employer as are the teachers and other members of the recognized unit. All the building aides and many of the office personnel work in the same building as do the teachers. The building aides and most of the office personnel, like the teachers, report to and are responsible to the building principals. All employees of the district including teachers, building aides, and office personnel are employed in the interests of and work toward quality public education. Toward this end, building aides and office personnel work with each other, pupils, teachers, principals, and other administrators. The functions of all employees in the district are completely integrated and complementary. Furthermore, aside from the three employees found to be "confidential", the undersigned detects no conflict of interest between building aides and office personnel on the one hand and teachers and other members of the presently recognized unit on the other. The main argument of the employer in support of the contention that there is a conflict of interest is that office personnel and building aides have access to and deal with confidential information. This contention has been treated above.

This is not to deny that there are differences between building aides, office personnel, and teachers. Building aides are part-time hourly paid employees who do not receive tenure. They receive no personal days

nor insurance. (Tr. 80) Office personnel and teachers, while they share many benefits such as hospitalization, vacations, sick leaves and personal leave, are in a different pension system. (Tr. 135 and 136) However, in the opinion of the undersigned, these differences do not constitute a conflict of interest nor do they detract from a community of interest. While the collective negotiations interests having to do with terms and conditions of employment of building aides and office personnel may be different from the interests of teachers, these interests are in no way inconsistent except to the very limited and in any event unavoidable extent that a number of individuals or groups are competing for the same limited dollars of the public employer.

Based upon the above, the Hearing Officer finds that building aides and office personnel do have a community of interest sufficient to constitute an appropriate unit with the teachers.

PROFESSIONAL INCLUSION


The final question concerns the above quoted statutory provision that professionals vote for inclusion if they are to be included in a unit with nonprofessional employees.

The parties stipulated that teachers are professional employees and that office personnel and building aides are nonprofessional employees. (Tr. 205) Accordingly, the undersigned finds that the professional employees i.e. teachers and nurses, must be given an opportunity to vote for inclusion in or exclusion from a unit of nonprofessional employees.

RECOMMENDATIONS

It is recommended that the secretary and the assistant secretary to the Superintendent and the secretary to the Business Administrator-Board Secretary be excluded from the unit as confidential employees. Furthermore, having found that building aides and office personnel -- excluding the

three positions specified above -- do have a community of interest with employees in the recognized unit, it is recommended that building aides and office personnel vote on whether or not they wish to be included in the currently recognized unit. If a majority of valid ballots is cast against representation, they will be taken to have indicated a desire to remain unrepresented. If a majority of valid ballots is cast for representation, they will be taken to have indicated the desire to be included in the existing unit currently represented by the W.M.E.A. The professional nurses and teachers in the recognized unit should vote on the question of whether or not they wish to be included with nonprofessional employees. These ballots should be counted only if a majority of valid ballots cast by eligible office personnel and building aides indicate a desire to be included in the recognized unit. The combined unit of professional and nonprofessional employees should be certified only if a majority of the professional employees casting valid ballots votes for inclusion in a combined unit and if a majority of valid ballots cast by eligible office personnel and building aides indicates a desire to be represented by the W.M.E.A. This election should be conducted in accordance with the Rules and Regulations of the Public Employment Relations Commission.



Jeffrey B. Tener
Hearing Officer

DATED: November 16, 1970
Trenton, New Jersey