

D.R. NO. 2025-001

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

In the Matter of

PITTSGROVE TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2024-013

PITTSGROVE TRANSPORTATION
ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation issues a Certification of Representative on the basis of a card check to the petitioner, Pittsgrove Transportation Association/NJEA, for a unit of all regularly employed bus drivers, transportation aides, and bus mechanics, including substitute bus drivers and substitute transportation aides. The Director found that the Pittsgrove Township Board of Education provided inadequate reasons to support the categorical exclusion of the substitute bus drivers and transportation aides from the petitioned-for unit.

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Petitioner.

Appearances:

For the Public Employer,
Capehart Scatchard, attorneys
(Sanmathi Dev, of counsel)

For the Petitioner,
Selikoff & Cohen, PA, attorneys
(Keith Waldman, of counsel; Hop Wechsler, on the brief)

DECISION

On October 11, 2023, November 21, 2023, and January 16, 2024, the Pittsgrove Transportation Association/NJEA (Association) filed a representation petition, an amended petition, and a second amended petition, respectively. In the second amended petition, the Association seeks to represent all full-time and part-time bus drivers, transportation aides, and bus mechanics employed by the Pittsgrove Township Board of Education (Board). The second amended petition, which seeks certification by card check, was accompanied by authorization

cards signed by a majority of employees in the petitioned-for unit. At the time of filing, bus drivers, transportation aides, and bus mechanics were represented by the Pittsgrove Township Transportation Association (PTTA),^{1/} which disclaimed interest in the negotiations unit.

On October 24, 2023, a telephone conference was held seeking an agreement by the parties for a Stipulation of Appropriate Unit. The Board did not attend the conference, but the assigned Commission staff agent communicated with the Board's attorney on October 25, 2023 and provided the Stipulation to the Board that same day. The Board declined to execute the Stipulation, asserting that substitute bus drivers and substitute transportation aides do not belong in the petitioned-for unit because (1) they have never been in the unit; (2) the representation petition did not seek to represent these employees; and (3) they are casual employees, who may be excluded from the unit under the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq. The parties were then requested to submit legal briefs, with factual assertions by way of certification, regarding why substitute bus drivers and

^{1/} Despite having similar names, the incumbent employee organization, Pittsgrove Township Transportation Association, is not to be confused with the petitioner, Pittsgrove Transportation Association.

transportation aides should be included or excluded from the petitioned-for unit.

On December 6, 2023 and December 22, 2023, the Board and the Association submitted their initial legal briefs, respectively. The legal issue in dispute in both parties' briefs was limited to whether substitute bus drivers and transportation aides should be included or excluded from the negotiations unit.

After the parties submitted their initial briefs, another telephone conference was held on February 2, 2024 to establish a schedule for additional briefing. At the February 2nd conference, the parties agreed that the only issue in dispute is whether substitute bus drivers and substitute transportation aides should be included or excluded from the negotiations unit. The parties subsequently submitted two additional briefs each in support of their respective positions.

We conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. Our review of the parties' submissions does not present substantial and material factual issues requiring an evidentiary hearing. N.J.A.C. 19:11-2.6(f). I find the following facts.

The Board is a public employer within the meaning of the Act. The Board and the PTTA are parties to a collective negotiations agreement (CNA), which extends from July 1, 2021 through June 30, 2024. The recognition clause of the parties'

CNA defines the collective negotiations unit as “[a]ll contracted bus drivers, full and part-time, all contracted transportation aides, full and part-time, and bus mechanics.”

On October 3, 2023 the Co-Presidents of the PTTA, Dawn Hoban and Rose Pierce, jointly certified (1) the PTTA was aware of the Association’s representation petition; (2) the PTTA does not oppose and will not intervene in the Association’s petition; (3) the PTTA disclaims all further interest in representing employees in the negotiations unit after the Association is certified; and (4) the PTTA will dissolve and cease to exist once a Certification of Representative is issued to the Association.

On October 11, 2023, the Association filed its initial representation petition. The petitioned-for unit was described as follows:

The Pittsgrove Transportation Association/NJEA seeks to create a new unit consisting of all employees currently represented by the Pittsgrove Township Transportation Association (see attached recognition clause), which is disclaiming interest in representing these employees accordingly.

On November 21, 2023, the Association filed an amended representation petition. The petitioned-for unit was described as follows:

All bus drivers, full- and part-time, all transportation aides, full- and part-time, and all bus mechanics currently represented by the Pittsgrove Township Transportation Association, which is disclaiming interest in representing these employees.

On January 16, 2024, the Association filed a second amended representation petition. The petitioned-for unit was described as follows:

All bus drivers, full- and part-time, all transportation aides, full- and part-time, and all bus mechanics.

On February 14, 2024, Business Administrator/Board Secretary Darren Harris certified that there were four substitute bus drivers and five substitute transportation aides working for the Board. The substitute bus drivers and transportation aides are employed on a per diem, as-needed basis to cover the shifts of permanent bus drivers and transportation aides who are absent from work on any given day.

For the 90-day period between November 1, 2023 and January 31, 2024, the average weekly hours for each substitute bus driver were as follows:

P.M.	0.9 hours per week
L.H.	5.1 hours per week
P.Z.	0.0 hours per week
T.P.	5.3 hours per week.

For the 90-day period between November 1, 2023 and January 31, 2024, the average weekly hours for each substitute transportation aide were as follows:

J.S.	0.0 hours per week
D.C.	18.0 hours per week
H.C.	7.6 hours per week
P.F.	2.4 hours per week
A.M.	0.2 hours per week.

ANALYSIS

The Board first contends that substitute bus drivers and substitute transportation aides do not belong in the petitioned-for unit because they have historically been excluded from the unit. The Association, however, maintains that the substitutes are already in the unit because the 2018 enactment of the Workplace Democracy Enhancement Act (WDEA), N.J.S.A. 34:13A-5.11, et seq., automatically added substitutes to the existing unit via N.J.S.A. 34:13A-5.15(b). Because this matter can be resolved without needing to decide whether the substitute bus drivers and transportation aides are already included in the existing unit, I decline to make such a determination. However, even assuming, arguendo, that the substitutes are not currently included in the existing negotiations unit, the Association may nevertheless add the substitute positions to the unit by filing a representation petition. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Washington Tp. Bd. of Ed., D.R. No. 2016-8, 43 NJPER 13 (¶4 2016). Accordingly, even if the substitutes had previously been excluded from the negotiations unit, that reason alone is insufficient to keep excluding them from the unit.

The Board next argues that substitute bus drivers and transportation aides should be excluded from the negotiations unit because the Association did not intend to represent these employees when it filed the initial representation petition. The

initial petition described the unit as "all employees currently represented by the Pittsgrove Township Transportation Association (see attached recognition clause)." Because the recognition clause of the CNA defines the collective negotiations unit as all "contracted" bus drivers and transportation aides, and substitutes are not contracted, the Board maintains that the Association did not request to represent substitute bus drivers and transportation aides. Although the Association changed the unit description in the second amended petition, the Board argues in its February 14, 2024 letter brief that "[t]he PTA cannot now change its tune when the intent from inception is to represent employees currently represented by the PTTA."

In Morrisview Nursing Home, D.R. No. 88-23, 14 NJPER 88, (¶19031 1988), the Director of Representation noted:

While the rules do not include specific provisions for amendments, Commission policy provides that "once a valid question concerning representation has been raised concerning employees, the Petitioner may later seek to propose a different unit structure limited to some or all of the petitioned-for employees." County of Atlantic, D.R. No. 81-19, 7 NJPER 39 (¶12018 1980), Holmdel Tp. Bd. of Ed., D.R. No. 80-29, 6 NJPER 120 (¶11065 1979). Where a request to amend a representation petition covers a different unit structure than that already petitioned-for, that petition must be filed within the open period in order to be timely filed pursuant to N.J.A.C. 19:11-2.6. Atlantic County. However, where an amendment merely clarifies the initial petition, it is not treated as a new petition, County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

Here, the Association's initial representation petition was

timely filed on October 11, 2023. See N.J.A.C. 19:11-2.8(c). From the time of the initial telephone conference on October 24, 2023, the Association expressed to the assigned Commission staff agent that it sought to represent the substitute bus drivers and transportation aides employed by the Board. However, the Board objected to the inclusion of substitutes in the unit, in part, because it maintained that the unit description in the initial petition omitted the substitute bus drivers and transportation aides. Although the Association subsequently amended the petition twice, I find that the purpose of the amendments was to clarify the initial petition in response to the Board's objection. As such, the second amended petition is treated as an amendment that relates back to the original petition and may be processed even though filed outside of the open period. See Little Egg Harbor Tp., D.R. No. 2013-10, 40 NJPER 10 (¶5 2013) (citing Morrisview, 14 NJPER 88).

Lastly, the Board argues that substitute bus drivers and substitute transportation aides do not belong in the petitioned-for unit because they are casual employees. In its March 4, 2024 letter brief, the Board specifically argues that "substitute bus drivers and substitute aides must be considered casual employees because their hours vary and are unpredictable in any given 90-day period." The Board further requests in its brief that "the Commission must review the hours of the substitutes and recognize

that they meet the definition of a casual employee.”

Prior to the enactment of the WDEA in 2018, there was no statutory definition in our Act of what constituted a casual employee. Instead, the Commission adopted a standard for deciding casual employee status, determining that employees who worked fewer than one-sixth (1/6) of full-time hours were generally considered casual employees who were not qualified for representational rights under our Act. See Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982); Bridgewater-Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 444 (¶4201 1978). Further, in City of Bridgeton, D.R. No. 2016-2, 42 NJPER 197 (¶54 2015), the Director of Representation noted that “[w]e have previously recognized that public employees who are offered work on an as-needed basis - regardless of whether that employee is labeled as ‘substitute,’ ‘per diem,’ or ‘temporary’ - may be entitled to representational rights under our Act.” Accordingly, part-time employees who worked at least one-sixth (1/6) of full-time hours were generally eligible for inclusion in a negotiations unit prior to the WDEA, even if the employees were employed on a per diem or substitute basis. See id. (per diem EMTs who worked at least 1/6 of the hours worked by full-time EMTs were eligible for inclusion in the existing negotiations unit); Lakewood Bd. of Ed., P.E.R.C. No. 87-166, 13 NJPER 603 (¶18227 1987) (substitute bus drivers who worked at least 1/6 the

average hours of regular drivers were appropriate to be added to existing negotiations unit).

With the enactment of the WDEA in 2018, casual employment is now defined by statute. See N.J.S.A. 34:13A-5.15(b). The WDEA defines casual employees as "employees who work an average of fewer than four hours per week over a period of 90 calendar days." Id. Although City of Bridgeton and Lakewood Bd. of Ed., were decided using the pre-WDEA standard for casual employment, both cases stand for the proposition that employees have representational rights under our Act as long as they work at least the requisite number of hours, regardless if the employees are labeled "substitute," "per diem," or "temporary." Accordingly, the substitute employees have representational rights as long as they work an average of four hours per week over a period of 90 calendar days. See N.J.S.A. 34:13A-5.15(b); City of Bridgeton, 42 NJPER 197; Lakewood Bd. of Ed., 13 NJPER 603.

Although the Board contends in its brief that all substitutes should be excluded from the unit because they meet the definition of casual employees, the Board's own certification contradicts this position. Business Administrator/Board Secretary Darren Harris certified that two of the substitute bus drivers and two of the substitute transportation aides had worked more than four hours per week on average during the preceding 90-

day period. Specifically, substitute bus drivers L.H. and T.P. worked an average of 5.1 and 5.3 hours per week, respectively, over the previous 90 days. In addition, substitute transportation aides D.C. and H.C. worked an average of 18.0 hours and 7.6 hours per week, respectively, over the previous 90 days. As such, these four employees were not casual employees. See N.J.S.A. 34:13A-5.15(b).

This notwithstanding, the Board seeks the categorical exclusion of all substitute bus drivers and transportation aides from the unit without citing to any legal authority in support of its position. Although some of the substitutes may meet the definition of a casual employee and may be excluded from the negotiations unit on this basis, substitute bus drivers and transportation aides who work at least four hours per week on average over a 90-day period are not casual employees and may be included in the unit because they are entitled to representational rights under our Act. See id.; Lakewood Bd. of Ed., 13 NJPER 603.

Accordingly, I find that the following unit is appropriate:

Included: All regularly employed bus drivers, transportation aides, and bus mechanics employed by the Pittsgrove Township Board of Education.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees, per diem substitutes who work an average of fewer than

four hours per week over a period of 90 calendar days; and all other employees of the Pittsgrove Township Board of Education.

ORDER

I certify the petitioner as the exclusive representative of the unit described above, based upon their authorization cards.^{2/}

/s/Ryan M. Ottavio
Ryan M. Ottavio
Director of Representation

DATED: July 24, 2024
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 5, 2024.

^{2/} The formal certification is attached.

**STATE OF NEW JERSEY
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Public Employer,	>	
	>	
-and-	>	DOCKET NO. RO-2024-013
	>	
PITTSGROVE TRANSPORTATION ASSOCIATION/ NJEA ,	>	
Petitioner.	>	
	>	

**CERTIFICATION OF REPRESENTATIVE
BASED UPON AUTHORIZATION CARDS**

In accordance with the New Jersey Employer-Employee Relations Act, as amended, and the Rules of the Public Employment Relations Commission, we have conducted an investigation into the Petition for Certification filed by the above-named Petitioner. The Petitioner has demonstrated by card check that a majority of the unit employees described below have designated the Petitioner as their exclusive representative for purposes of collective negotiations, and, no other employee organization has expressed a valid interest in representing these employees.

Accordingly, **IT IS HEREBY CERTIFIED** that

PITTSGROVE TRANSPORTATION ASSOCIATION/NJEA

is now the exclusive representative of all the employees included below for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed bus drivers, transportation aides, and bus mechanics employed by the Pittsgrove Board of Education.

Excluded: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, police, casual employees, per diem substitutes who work an average of fewer than four hours per week over a period of 90 calendar days; and all other employees of the Pittsgrove Township Board of Education.

DATED: July 24, 2024

Trenton, New Jersey

/s/ Ryan M. Ottavio

Director of Representation

Attachment:

Certification of Representative dated: [July 24, 2024](#)

In the Matter of

PITTSGROVE TOWNSHIP BOARD OF EDUCATION

-and-

PITTSGROVE TRANSPORTATION ASSOCIATION/NJEA

Docket No. RO-2024-013

Service on the following:

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