

NAUSET REGIONAL SCHOOL DISTRICT¹ AND NAUSET EDUCATION ASSOCIATION, MTA,
MCR-2707 (11/30/78). Decision in Appeal of Hearing Officer's Decision.

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Commissioners participating:

James S. Cooper, Chairman
Garry J. Wooters, Commissioner
Joan G. Dolan, Commissioner

Appearances:

James A. Toomey, Esq.	- Representing the Nauset Regional School District and School Union No. 54
Gerald E. Dlouhy	- Representing the Nauset Education Association/MTA

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On June 20, 1978 Hearing Officer Judith A. Wong issued her decision in this matter. The Nauset Regional School District and School Union No. 54 sought reconsideration, which was denied, and filed a timely notice of appeal. The Hearing Officer submitted her statement of the case and the Nauset Regional School District and School Union 54 filed a supplementary statement and shortly thereafter filed an additional letter correcting its supplementary statement. Based upon the Hearing Officer's statement of the case and the supplementary filings we render the following decision.

Findings of Fact

The Hearing Officer's opinion is set forth in full at 5 MLC 1074. Certain of her findings of fact were challenged by the Nauset Regional School District and School Union 54. Given the unusually complicated nature of the case we set forth our findings of fact in their entirety.

¹The petition names Nauset Regional School District and School Union No. 54 as the employer. School Union 54 is comprised of the towns of Brewster, Orleans, Eastham, and Wellfleet. Notice of hearing in this matter was sent to, among others, Dr. Nick Muto, Superintendent of Schools for all of these school systems.

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The towns of Brewster, Orleans, Eastham, and Wellfleet each have five-member school committees. Each school committee operates an elementary school in which there is one clerical employee.

The four towns have joined together to form the Nauset Regional School District (hereinafter "Regional District"). The Regional District operates a middle school, a high school, and a clinical training center. It is governed by a nine-member school committee (hereinafter "Regional Committee") comprised of one member from each town school committee and five members elected at large by the four towns.

The four town school committees have formed a superintendency union, School Union No. 54, in order to hire jointly a superintendent of schools. The School Union No. 54 Joint School Committee (hereinafter "Joint Committee") is comprised of three members from each school committee of each town, for a total of twelve members. The Joint Committee meets annually to appoint a superintendent of schools. The Regional Committee has appointed the same person to be Superintendent for the District. Working under the Superintendent is an Assistant Superintendent, a Business Manager, and a Director of Special Needs and Federal Projects. These employees serve all school committees, but the record is unclear as to the manner in which they are appointed or by what combination of school committees they are employed.

The Superintendent, Assistant Superintendent, Business Manager, and Director of Special Needs and Federal Projects work out of a central office. There is a central office clerical staff of fewer than ten people to assist them. These employees are hired as follows. When a vacancy occurs the Assistant Superintendent (among whose responsibilities are personnel matters) posts a notice of vacancy in area schools and advertises it in the media. He makes his selection of a candidate with or without input from other central office administrators. He then makes a formal recommendation to hire the candidate to the Regional Committee and the four town school committees. Each of the five school committees must approve the appointment. If one school committee objects, the candidate may be offered a part-time position commensurate with the number of school committees in favor of the appointment, e.g., a 4/5ths appointment. (Candidates are unlikely to accept employment under such circumstances.) Once hired by all five school committees, the employee will work in the central office and every two weeks receive five paychecks, one from the Regional Committee and one each from the four town school committees.

Each town school committee hires and pays for the single clerical employee in its own elementary school. When there is a vacancy in an elementary school, its principal provides data to the Assistant Superintendent in the central office, who prepares a notice of vacancy to publicize the position. The Assistant Superintendent receives the applications and may screen them. He then forwards them to the principal, who recommends whom to hire. The Assistant Superintendent then presents the recommendation to the town school committee for action. Neither the Regional Committee nor the Joint Committee nor any other town school committees have any input into this procedure.

The Regional Committee hires and pays for fewer than ten clerical employees to work at the middle school, the high school, and the clinical training

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center. The hiring process for these employees is similar to that used for the elementary school secretaries in that the Assistant Superintendent performs a central function. Final authority resides in the Regional Committee. Neither the Joint Committee nor the town school committees have any input into this procedure.

All of the clerical employees in the elementary schools, regional buildings, and central office work under the ultimate supervision of the Superintendent's office. Similarly, all of the paperwork relating to the employment of clericals is handled in the central office, and job descriptions for the various positions are developed through procedures established by the Superintendent. All of the clerical employees appear to be covered by the same set of personnel regulations. Finally, termination of unsatisfactory employees would be handled through the Superintendent's office.

The school committees of Orleans, Brewster, Wellfleet, Eastham, and the Regional School District have voluntarily jointly bargained with the Nauset Education Association in a bargaining unit of all teachers in all schools, including elementary schools. There is also an overall unit of teacher aides and paraprofessionals. There is a unit of custodians employed by the Regional School District. None of the other school custodians have organized.

Opinion

The hearing officer found the Regional Committee and the Joint Committee to be so inextricably intertwined as to constitute a single employer. She directed an election in an overall bargaining unit composed of the fifteen to twenty clerical employees working in the central office and regional school buildings. The Regional Committee and Joint Committee have appealed the inclusion of the Regional employees in the unit, contending that the hearing officer's decision rests on erroneous findings of fact and conclusions of law. The committees' position is that the central office clericals are employed jointly by the Regional and the Joint Committee; in contrast, the Regional clericals are employed solely by the Regional Committee. The committees argue that multi-employer bargaining may not be compelled in this case.

The hearing officer excluded from the overall unit the four clericals employed in the elementary school of Brewster, Orleans, Eastham, and Wellfleet. Her theory was that the four town school committees were so independent with regard to the single clerical each employed that inclusion of these four individuals in an overall bargaining unit would be inappropriate. The Regional Committee and the Joint Committee agree with the hearing officer and have not appealed the exclusion of the elementary school clericals.

We substantially concur with the committees' objections to the hearing officer's findings of fact, as reflected in our findings above. We disagree, however, with both the hearing officer's and the committees' conclusions. We hold that the appropriate bargaining unit is a single unit composed of all clerical employees working in the towns' elementary schools, the regional school buildings, and the central office.

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There are four configurations of employers historically recognized under the National Labor Relations Act, 29 U.S.C. section 151 et seq., and to a lesser extent, under G.L. c.150E. First, and most common, is the solitary employer, such as a town or a school committee. Second is the multi-employer, where individual employers join together to bargain a single contract with a union which represents the employees of all of the participating employers. Third is the joint employer, where distinct entities exercise common control over employees. Fourth is the "single" employer, where facially distinct entities actually constitute a single entity by virtue of common ownership and management. The various entities in the present case share characteristics with all of these configurations, but do not fit neatly into any one mold. However, the characteristics considered by the National Labor Relations Board (Board) in establishing bargaining units which cut across employer lines are helpful in deciding the present case. These factors lead us to establish a system-wide bargaining unit for clerical employees.

The various school committees in many respects resemble the participating employers in multi-employer bargaining, particularly as they have voluntarily joined together to bargain with teachers in a system-wide unit. Pure multi-employer units are formed consensually and may be withdrawn from at the behest of any of the participants so long as notice of a change is timely given. Evening News Ass'n, 154 NLRB 1494, 60 LRRM 1149 (1965). Prior to 1952, the Board held that once a multi-employer unit was established for some employees, other employees could be organized only on a multi-employer basis. See, e.g., Columbia Pictures Corp., 84 NLRB 647, 24 LRRM 1291 (1949). In 1952, the Board changed this rule, fearing that it stifled organizational efforts. Beginning with Joseph E. Seagram & Sons, 101 NLRB 101, 32 LRRM 1022 (1952), the Board permitted unions to seek to represent employees of a solitary employer despite a history of multi-employer bargaining. See, e.g., Continental Baking Co., 109 NLRB 33, 34 LRRM 1298 (1954). Where, as here, the union seeks the multi-employer unit, the principles upon which Seagram was grounded are not applicable. Thus, Board doctrine concerning multi-employer bargaining argues in favor of establishing a system-wide unit in the present case.

The various school committees act as a joint employer in some respects. The school committees admit that the town school committees acting through the Joint Committee and the District School Committee are a joint employer of the central office clerical employees. Under the school committees' theory of the case, they will in any event (assuming the employees vote for union representation) have to bargain jointly with respect to at least some employees. The question becomes whether there is justification for requiring the joint bargaining for all employees. We think that there is. All of the school committees appoint the same Superintendent, Assistant Superintendent, Business Manager and Director of Special Needs. This central staff, particularly the Assistant Superintendent, handles labor relations matters for the school committees, and appears to do so without distinction between one school or another, or one town or another. The Superintendent and his staff are responsible to the various school committees, but the record does not reveal the quantum of direction each may provide. It may be that the various school committees set the general labor relations policy which the Superintendent then carries out. More likely, the Superintendent both establishes and executes the policy; such is presumably the case with the Joint Committee,



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which meets only once a year. Either explanation leads to the conclusion that the school committees are akin to the single employer configuration, particularly when one considers that the committees resemble corporations with interlocking directorates. In finding a "single" employer, the Board looks for characteristics such as shared management, shared facilities, similar services, interchangeable employees, common ownership, and shared labor relations policy. See American District Telegraph Co., 128 NLRB 345, 46 LRRM 1315 (1960); U.S. Mattress Corp., 135 NLRB 1150, 49 LRRM 1668 (1962); Liebmann Breweries Inc. of New Jersey, 142 NLRB 121, 52 LRRM 1527 (1963). While the school committees do not have all of the characteristics of a single employer, the analogy is largely appropriate.

The various school committees have evinced an intention to deal with their employees in a system-wide manner. They already do so with respect to teachers and aides. They also do so with unorganized employees through the Superintendent and his staff at the central office. The clerical employees throughout this system share a community of interest as much as employees ever do in a far-flung system; specifically, they have common duties, work rules, and ultimate supervision. Bargaining on a system-wide basis will be more efficient for the school committees. Under their proposed unit structure there will have to be joint bargaining for one unit and separate bargaining for other units; with a system-wide unit there will be only one round of bargaining. Finally, a system-wide unit will best safeguard the rights of this small number of employees to effective representation.

WHEREFORE, based upon the foregoing, we conclude as follows:

1. The Nauset Regional School District, School Union No. 54, and the towns of Brewster, Orleans, Eastham, and Wellfleet are public employers within the meaning of G.L. c.150E, s. 1, and are represented for the purpose of dealing with their school employees by their respective school committees.
2. The Nauset Education Association/MTA is an employee organization within the meaning of G.L. c.150E, s. 1.
3. A question concerning representation within the meaning of G.L. c.150E, s. 4 has arisen concerning certain employees of the Nauset Regional School District, School Union No. 54, and the towns of Brewster, Orleans, Eastham, and Wellfleet.
4. The appropriate unit for the purposes of collective bargaining consists of all clerical employees in the central administrative office, Nauset Regional High School, Nauset Regional Middle School, the clinical training center, and the elementary schools of Brewster, Orleans, Eastham and Wellfleet, including but not limited to secretary, clerk-typist, billing clerk, computer operator, and back-up payroll clerk, excluding managerial and confidential employees and all other employees of the Nauset Regional School District, School Union No. 54, and the towns of Brewster, Orleans, Eastham and Wellfleet.

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5. An election shall be held for the purpose of determining whether or not the majority of employees in the above-described unit wish to be represented by the Nauset Education Association or by no employee organization.
6. The list of eligible voters shall consist of all those persons within the described unit whose names appear on the payroll on November 30, 1978 and who have not since quit or been discharged for cause.

Direction of Election

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws, IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the aforesaid employees at such time and place and under such conditions that shall be contained in the notice of election issued by the Commission and served on all parties and posted on the premises of the employer together with copies of the specimen ballot.

In order to assure that all eligible voters shall have the opportunity to be informed of the issues and to exercise their statutory rights to vote, all parties to this election shall have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER DIRECTED that three (3) copies of an election eligibility list, containing the names and address of all the eligible voters must be filed by the Superintendent with the Executive Secretary of the Commission, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, Boston, Massachusetts 02202 no later than fourteen (14) days from the date of this Decision.

The Executive Secretary shall make the list available to all the parties to the election. Since failure to make timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing hereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

JAMES S. COOPER, CHAIRMAN
GARRY J. WOOTERS, COMMISSIONER
JOAN G. DOLAN, COMMISSIONER

