

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

In the Matter of

UNION COUNTY WELFARE BOARD,

Petitioner,

-and-

Docket No. CU-77-57

LOCAL 1080, COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Public Employee Representative.

SYNOPSIS

The Director of Representation dismisses a Clarification of Unit Petition filed by the employer seeking the exclusion of certain titles from the employee representative's collective negotiations unit. The employer asserted that the responsibility and duties of certain personnel as a result of extensive educational requirements and training requirements, were so different from other personnel as to lead to a bargaining process which is not compatible. The Director notes that the employee representative has represented the unit for approximately eight years and that the Commission has approved the appropriateness of broad-based units of welfare board employees. The employer did not provide to the Commission any evidentiary proffer in support of its assertions. In view of the absence of any evidentiary proffer tending to establish appropriate grounds for removal of personnel from the negotiations unit, as established in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 247 (1977), the employer's clarification of unit petition was prima facie inappropriate.

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Appearances:

For the Union County Welfare Board
Weiner, Mirabelli & Glennon
(Mr. Dominic A. Mirabelli, of Counsel)

For Local 1080, CWA, AFL-CIO
Kapelsohn, Lerner, Reitman & Maisel
(Mr. Jesse H. Strauss, of Counsel)

DECISION

On March 14, 1977 a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the Union County Welfare Board (the "Board"). The Board seeks the removal of employees in the titles of Income Maintenance Specialist, Income Maintenance Technician, Investigator, Social Worker, and Social Worker Specialist from an all inclusive negotiations unit consisting of professional, technical, and clerical employees of the Board represented by Local 1080, Communications Workers of America, AFL-CIO ("Local 1080").

The undersigned has caused an investigation to be conducted into the matters and allegations set forth in the instant Petition in order to determine the facts. All parties have been advised of their obligations pursuant to N.J.A.C. 19:11-2.6 and have been afforded the opportunity

thereunder to present documentary and other evidence as well as statements of position relating to the Petition. On the basis of the investigation herein the undersigned finds as follows:

1. The Union County Welfare Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. Local 1080, Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

3. In a statement attached to the Clarification of Unit Petition setting forth the reasons for the Petition, the Board states: "The reason for this division is that the responsibility and duties of these people, as a result of extensive educational requirements and training requirements, are so different as to lead to a bargaining process which is not compatible." Local 1080 objects to the removal of the above-described personnel from the negotiations unit. Accordingly, a dispute exists as to unit definition, and a petition for clarification of unit having been filed there exists a question concerning the composition of a unit and the matter is appropriately before the undersigned for determination.

4. Local 1080 is the exclusive negotiations representative for the above-described unit of employees and has been the representative of the unit for approximately eight years. During this time the parties have negotiated and executed several collective negotiations agreements with respect to this unit.

5. In a recent decision, In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), the undersigned

discussed the purpose of a clarification of unit petition and its appropriate utilization. Generally, a clarification of unit petition is not an appropriate vehicle to re-define the scope of an established collective negotiations unit. Rather, and only with certain narrow exceptions, the purpose of a clarification of unit proceeding is to resolve any confusion or disputes concerning unit definition and the identification of personnel within the unit. More specifically, as stated in Clearview,

"The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification, or as set forth in the parties recognition agreement. Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or to diminish the scope of the negotiations unit for reasons other than the above. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition and the matter relates primarily to identification. In such cases, for example, the Commission might be asked to determine whether a "road foreman" is a blue collar employee included within the general classification of "blue collar employees" or whether a foreman is a "supervisor," and thereby excluded under the exclusionary terms of a recognition or certification.

Occasionally a change in circumstances has occurred which alters an employee's job functions and may result in the inclusion of such function within the intent of the unit description. Alternatively, a new title may have been created by the employer entailing job functions similar to functions already covered by the unit and therefore warranting inclusion in the unit. In a similar vein, the employer may have created a new operation or opened a new facility, and then staffed the operation or facility with employees who function similarly to currently represented employees. In these circumstances, a clarification of unit proceeding is appropriate.

In other situations, a clarification of unit may result in persons being removed from the unit. This is so because the statutory framework of the Act renders certain negotiations relationships improper. Persons identified as managerial executives and confidential employees are not employees under the Act. In addition, the Act provides that, unless certain exceptions are present, supervisors cannot be in units with non-supervisors; nor may police be in units with non-police employees.

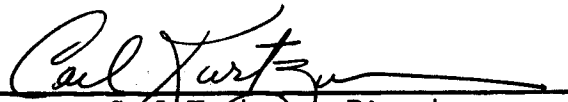
The Act, moreover, inherently embodies restrictions on the inclusion of personnel with conflicts of interests with other personnel. [Footnote Reference Omitted] Therefore, clarification of unit petitions are appropriately utilized to seek the exclusion of classifications which may have been included in an existing unit contrary to statutory provisions."

6. On August 25, 1977 the undersigned advised all parties of the result of the investigation into the Petition to date. The parties were advised that no evidence had been proffered by the Board to indicate that the clarification of unit sought is based upon changed circumstances or duties, the creation of new titles, or any violation of the statutory restrictions on the composition of collective negotiations units. The parties were also advised that in a previous Commission decision, In re Bergen County Welfare Board, P.E.R.C. No. 59 (1971), the Commission had approved the appropriateness of broad based units of welfare board employees. In addition, the Board was specifically advised that it had not set forth information sufficient to warrant re-examination of the composition of the existing unit and that the Commission's investigation had not revealed any such information. Accordingly, in view of the standards set forth in the Clearview decision and in view of the lack of evidentiary proffer in support of the Board's initial reasons requesting clarification, the undersigned advised that it appeared that the clarification sought by the Board was prima facie inappropriate. The parties were afforded an additional period of time to provide, pursuant to N.J.A.C. 19:11-2.6, substantial and material factual issues to warrant a clarification of unit proceeding. In the absence thereof the parties were advised that the undersigned would thereafter dismiss the instant Petition pursuant to N.J.A.C. 19:11-2.3. To date, neither the Board nor Local 1080 has submitted such documentary

evidence or statements of position. Accordingly, the undersigned finds on the basis of the investigation herein that the clarification of unit petition filed by the Board is not prima facie appropriate insofar as no evidentiary proffer has been made to support the Board's initial statement that the employees sought to be removed are "incompatible" with other employees in the unit.

7. Accordingly, the instant Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: October 26, 1977
Trenton, New Jersey

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SYNOPSIS

The Director of Representation dismisses a Clarification of Unit Petition filed by the employer seeking the exclusion of certain titles from the employee representative's collective negotiations unit. The employer asserted that the responsibility and duties of certain personnel as a result of extensive educational requirements and training requirements, were so different from other personnel as to lead to a bargaining process which is not compatible. The Director notes that the employee representative has represented the unit for approximately eight years and that the Commission has approved the appropriateness of broad-based units of welfare board employees. The employer did not provide to the Commission any evidentiary proffer in support of its assertions. In view of the absence of any evidentiary proffer tending to establish appropriate grounds for removal of personnel from the negotiations unit, as established in In re Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 247 (1977), the employer's clarification of unit petition was prima facie inappropriate.

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DECISION

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thereunder to present documentary and other evidence as well as statements of position relating to the Petition. On the basis of the investigation herein the undersigned finds as follows:

1. The Union County Welfare Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of the employees involved herein, and is subject to the provisions of the Act.

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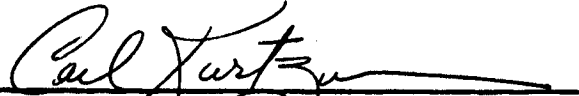
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evidence or statements of position. Accordingly, the undersigned finds on the basis of the investigation herein that the clarification of unit petition filed by the Board is not prima facie appropriate insofar as no evidentiary proffer has been made to support the Board's initial statement that the employees sought to be removed are "incompatible" with other employees in the unit.

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