

D.R. NO. 93-4

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

In the Matter of

MORRIS COUNTY VOCATIONAL-TECHNICAL
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-92-26

MORRIS COUNTY VOCATIONAL-TECHNICAL
EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit represented by the Morris County Vocational Technical Education Association to include the titles of tech prep program planner and grants specialist. The Director finds that the Association's petition is timely, since it was filed during the contract period in which the new titles were created and prior to the execution of the next succeeding contract. Further, the Director finds that the titles at issue share a community of interest with the others in the unit and that no conflict of interest exists which would preclude placing the grants specialist in the unit.

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Appearances:

For the Public Employer
Green & Dzwilewski, attorneys
(Allan P. Dzwilewski, of counsel)

For the Petitioner
Balk, Oxfeld, Mandell & Cohen, attorneys
(Randi Doner, of counsel)

DECISION

On December 3, 1991, the Morris County Vocational Technical Education Association filed a Petition for Clarification of Unit with the Public Employment Relations Commission to clarify its existing broad-based unit of professional and non-professional employees employed by the Morris County Vocational-Technical Board of Education to include the positions of tech prep program planner and grants specialist. The Board opposes the petition and requests its dismissal. It claims that the petition is inappropriate because: 1) the proposed titles are excluded from the recognition clause in the parties' collective negotiations agreement; 2) there

is a contract bar which precludes the processing of this petition; 3) both titles existed prior to the parties' present collective negotiations agreement; and 4) no showing of interest has been alleged or provided. Further, the Board asserts that a potential conflict of interest may arise between the grants specialist and other members of the unit.

The Association claims that a community of interest exists between the disputed titles and the employees in the unit. It also disputes the Board's claim that the recognition clause excludes the grants specialist and the tech prep program planner from the unit.

We have conducted an administrative investigation into the issues raised by this petition. N.J.A.C. 19:11-2.6. The following facts appear.

The titles of grants specialist and tech prep program planner had been part-time positions but became full-time positions in September 1991. At that time, the parties were in negotiations for a successor to their agreement that had expired June 30, 1991. This petition was filed on December 3, 1991. The parties signed a memorandum of agreement on April 6, 1992 and the agreement was ratified April 9, 1992. That agreement expires on June 30, 1993.

The recognition clause of the agreement includes the titles of teacher, guidance counselor, school nurse, custodial/maintenance, media specialist, learning disabilities teacher consultant, C.I.E. job placement instructor and secretarial/clerical employees. It excludes confidential employees, managerial executives, supervisors, instructional aide/substitute and all other Board employees.

The tech prep program planner position requires a supervisory certificate, while the grants specialist position is a non-degree position. Although they are based at the Board's central offices, both positions spend time away from the central facility. Both are "staff positions" which support central administration and other Board functions, rather than "line positions" which deliver educational services. The tech prep program planner and the grants specialist presently have their own individual employment contracts.

The tech prep program planner reports to the assistant superintendent/principal. According to the job description, the tech prep program planner is responsible for developing a tech prep program articulation agreement between the Board and the County College of Morris and for establishing and chairing a tech prep planning and advisory team. The tech prep program planner also oversees revision of the animal technology curriculum; develops criteria and strategies for student recruitment and selection; works with counselors and staff to develop plans for effective employment placement possibilities and direct transfer into County College programs; develops and presents training programs for school personnel and produces an informational recruitment brochure; is responsible for following and completing all aspects of the evaluation plan of tech prep grants and for monitoring spending to ensure budgetary line items are properly used and documented.

The grants specialist reports to the superintendent. The grants specialist is responsible for researching, developing and

writing grant applications and coordinating the monitoring of funded grants, as directed, in accordance with Federal and State guidelines; works with project staff, teachers, and support staff to develop workable, operational and evaluative plans for all grant funded programs; and writes evaluation reports for grant compliance and program evaluation. The Board contends that if problems arise concerning the staffing of a grant, the grants specialist plays a significant monitoring and/or intervention role which may impact on the employment status of an Association member. Also, the grants specialist is a member of the Superintendent's Cabinet where personnel, negotiations, and other sensitive issues are, or can be, discussed. The grants specialist position is funded from the grant and thus is not permanently funded. The Board claims its funding is likely to be completed upon the expiration of the grant.

ANALYSIS

The petition is timely filed. A clarification of unit petition is appropriately filed where the majority representative has identified and petitioned-for personnel in newly created titles during the contract period in which the new title was established and prior to the execution of the next succeeding contract. Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980); cf., Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979). Here, the disputed positions were changed from part-time to full-time in

September 1991. The parties were then negotiating a successor to their collective negotiations agreement which had expired on June 30, 1991 and were abiding by the terms of the expired agreement. The Association filed this petition on December 3, 1991, after the parties could not resolve the negotiations unit status of these positions. The parties ratified a new collective negotiations agreement on April 9, 1992. Accordingly, the petition was filed during the contract period in which the new titles were created and prior to the execution of the next succeeding contract.

Commission policy favors broad-based, employer-wide negotiations units rather than small units of separate occupational groupings. Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations..." that result from negotiating with numerous smaller units. State of N.J. and Prof. Assn. of N.J. Bd. of Ed., 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68. The Commission has long held that broad-based units of education employees -- both units of all school support staff employees and units combining support staff and professional staff -- are appropriate. West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp 218 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

In Piscataway, the Commission found:

When a dispute concerning the propriety of including one or more groups of supportive staff with teachers and professional school district employees has arisen, the Commission since 1969

has consistently found,...that teachers and supportive staff have a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment and that this community of interest generally warrants giving teachers and supportive staff the opportunity to choose a unified representative in a single unit if they so desire. See West Milford Bd. of Ed., P.E.R.C. No. 56 (1971). In the Commission's judgment, affording teachers and supportive staff such an opportunity promotes labor stability since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. State of New Jersey and Professional Assn of N.J. Dept. of Ed., 64 N.J. 231 (1974). (Emphasis in original.) Piscataway, at p. 274.

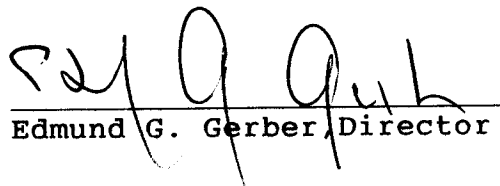
The tech prep program planner and the grants specialist share a community of interest with the members of the extant unit. The unit is a broad-based one, containing both professional and non-professional employees. The tech prep program planner and the grants specialist have the same employer as the individuals in the unit and share the common goal of advancing the students' education and opportunities. Piscataway. Therefore, I find that a community of interest exists between the disputed titles and the members of the extant unit.

Moreover, I find that no conflict of interest has been demonstrated which would preclude placing the grants specialist in the unit. See Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). The development of evaluative plans for all grant-funded programs would not necessarily create a conflict of interest sufficient to exclude the evaluator from the unit. Westfield Bd. of

Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987); Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1986). While the Board asserts in general terms that the inclusion of the grants specialist in the unit generates a conflict of interest which warrants the exclusion of the position from the unit, the record does not support the Board's claim. The record does not specifically indicate how the grant specialist's role might create a situation where his or her loyalties may be divided. Wilton. Thus, there is no basis in the record to conclude that the inclusion of the grants specialist in the unit would create an impermissible conflict of interest under Wilton.

Accordingly, I find that the extant unit should be clarified to include the tech prep program planner and the grants specialist, effective immediately, as they are newly-created, full-time positions.^{1/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 21, 1992
Trenton, New Jersey

^{1/} The fact that the recognition clause does not specifically include the titles does not preclude clarifying the unit to include them; the clause does not specifically exclude them. See Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Contrast State of New Jersey, P.E.R.C. No. 89-136, 15 NJPER 420 (¶20174 1989).