

D.R. NO. 88-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

PASSAIC CITY BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-87-64

PASSAIC ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

Employee Representative.

Synopsis

The Director of Representation clarifies a negotiations unit of administrators, directors and supervisors represented by the Passaic Administrators and Supervisors Association ("PASA") to exclude the titles Food Service Manager, Purchasing Agent, Coordinator of Building Services and Assistant to the Coordinator of Building Services because they were never included in the PASA unit and the Board, pursuant to Wayne Bd. of Ed., waived its right to clarify the existing unit to include these titles.

However, the Director clarified the unit to include the title Field Supervisor for Food Services because the title was created subsequent to the start of negotiations for the present collective bargaining agreement and the petitioner may bring a clarification petition seeking to clarify an existing unit to include a newly created title. Clearview Bd. of Ed. and Wayne Bd. of Ed.

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Appearances:

For the Public Employer-Petitioner
Matthew J. Michaelis, Esq.

For the Employee Representative
Robert M. Schwartz, Esq.

DECISION

On May 5, 1987, the Board of Education of the City of Passaic ("Board") filed a petition for clarification of unit with the Public Employment Relations Commission ("Commission") seeking to clarify its collective negotiations unit comprised of full-time administrators, directors and supervisors employed by the County of Passaic ("County"). The Passaic Administrators and Supervisors Association ("PASA") objects to the proposed unit clarification.

On May 29, 1987, a staff agent conducted an administrative investigation in this matter to determine the facts. N.J.A.C. 19:11-2.2. To date, the following facts appear:

The Board of Education of the City of Passaic is the public employer of the disputed employees and PASA is the exclusive majority representative of a collective negotiations unit comprised of full-time administrators, directors and supervisors.

The present collective negotiations agreement between the Board of Education of the City of Passaic and the Passaic Administrators and Supervisors Association covers the period from September 1985 through August 31, 1988. The recognition clause in that agreement refers to the contractual unit as follows:

"The Passaic Board of Education recognizes the Passaic Administrative and Supervisory Association as the exclusive representative for purposes of collective negotiations with the Board concerning the terms and conditions of employment for all full-time administrators, directors, and supervisors employed by the Board for the term of the agreement, excepting therefrom those position titles listed below:

1. Superintendent of Schools
2. Assistant Superintendent of Schools
3. Administrative Assistant to the Superintendent
4. Secretary Business Administrator
5. Supervisor of Building Services
6. Purchasing Agent and Assistant Secretary."

Through its unit clarification petition, the Board seeks to expand the size of the bargaining unit by adding five titles. Specifically, the Board seeks to add to the extant unit the following titles: Coordinator of Building Services, Assistant Coordinator of Building Services, Purchasing Agent, Food Services Manager and Field Supervisor for Food Services.

In response to the petition filed by the Board, PASA objected to the inclusion of these titles in its unit, claiming that

these employees are not certified by the New Jersey State Department of Education and there is no past practice indicating that non-certified employees are included in the instant unit. The PASA unit is comprised of certified personnel. PASA indicated that there is presently one non-certified title included in the existing unit. However, the inclusion of this title pre-dates the adoption of PASA's constitution, which specifies that only certified personnel may join PASA. The membership clause in the PASA constitution states as follows:

Article III, Section 1: Membership:

All full-time or part-time persons holding valid certifications as school principals, school administrators or school supervisors (issued by the New Jersey State Department of Education) who are employed by the Passaic Board of Education and are actively engaged in an administrative or supervisory capacity in the Passaic public schools, shall be eligible for membership...."

Article III, Section 3: Qualifications:

Any person joining the Association shall agree to subscribe to the provisions of the constitution and by-laws."

The five titles which the Board seeks to have placed in the PASA unit are as follows: a) Food Service Manager -- this title has existed for over ten years; it existed prior to the current contract term and the negotiations leading up to the contract; (b) Purchasing Agent -- this title is specifically excluded from the recognition clause of the current contract between PASA and the Board. The Purchasing Agent title has existed since 1969; (c) Coordinator of Building Services -- this title has existed since 1969; (d)

Assistant to the Coordinator of Building Services -- this title has also existed since 1969; and (e) Field Supervisor for Food Services -- this title was created in August 1986.^{1/}

The contract covers the period from September 1, 1985 through August 31, 1988. During negotiations for the present agreement, the Board never sought to include this title within the unit.

ANALYSIS

In Clearview Reg. Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (1977), the Director of Representation set forth the circumstances under which a unit clarification petition is appropriate. The Director stated:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected.... Occasionally, a change in circumstances has occurred, a new title may have been created...[or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate.... Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above. 3 NJPER at 251.

In Wayne Bd/Ed, P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980), the Commission held that a clarification of unit petition is

^{1/} The title Field Supervisor for Food Services is a new position, the creation of which was recommended by the Department of Education because of the number of cafeterias and food service facilities that the Board of Education operates within the school system in Passaic.

not appropriate where a Petitioner seeks to clarify a unit to include titles which existed at the time the unit was formed or where the majority representative had otherwise slept on its rights with regard to a particular title -- that is, if a majority representative had allowed a title to remain outside its unit for a substantial period of time (at least one full contract term) then we may determine that it has waived its right to clarify the unit to include such a disputed title.

In the instant matter, the Board does not allege, and the facts do not demonstrate, that any significant change in circumstances has occurred which would warrant a clarification of the PASA unit to include employees who have historically been excluded therefrom -- specifically, the titles of Coordinator of Building Services, Assistant Coordinator of Building Services, Purchasing Agent and Food Services Manager. However, the Board has proffered evidence which indicates that the position of Field Supervisor for Food Services is a newly created position.

The Field Supervisor for Food Services position was created in August 1986, after collective negotiations had begun between PASA and the Board for the September 1985 through August 1988 contract period. Given these circumstances, it does not appear that the Board has waived its right to bring a unit clarification petition with regard to this title.

The remaining four titles (Food Service Manager, Purchasing Agent, Coordinator of Building Services, and Assistant to

Coordinator of Building Services) have never been included in the PASA unit. The titles sought to be included in the PASA unit existed during the period covered by the parties' last two collective negotiations agreements. Accordingly, it appears that the Board has waived its right to clarify the PASA unit to include these titles. Rather, under the circumstances of this case, the clarification of unit petition raises a question concerning representation which may not appropriately be addressed in a clarification of unit proceeding. See Wayne Bd/Ed, supra.

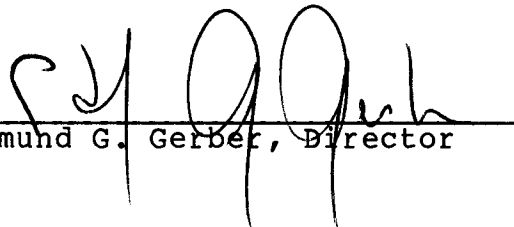
Based upon the investigation in this matter and the foregoing discussion, we are inclined to conclude that Passaic Board of Education has waived its right to bring a unit clarification petition regarding the titles of a) Assistant to the Coordinator of Building Services; b) Coordinator of Building Services; c) Food Service Manager; and d) Purchasing Agent/Assistant Secretary.

However, it does not appear that the Board has waived its ability to clarify the unit with regard to the Field Supervisor for Food Services title, because that title was created in August 1986, subsequent to the start of negotiations for the parties' present agreement. A petitioner does not waive the ability to bring a unit clarification petition seeking to clarify an existing unit to include a newly created title when, as here, that title was created subsequent to the onset of contract negotiations for the existing collective negotiations agreement. See Clearview Bd/Ed and Wayne Bd/Ed, supra.

The extant unit is described in the contract recognition clause as "all full-time administrators, directors and supervisors employed by the Board..." The Field Supervisor for Food Services appears to be a supervisory position. There is nothing in the contract recognition clause which limits this unit to professional personnel only, notwithstanding the Association's constitution, which limits membership to professional personnel only. An employee organization's internal constitution and by-laws cannot be a controlling factor in our unit determinations. The unit is comprised of administrative and supervisory employees. In this regard, we note that there is already one non-certificated employee included in this unit. Finally, we note that the Commission has adopted a clear policy of finding broad-based units to be appropriate negotiations unit structures and has rejected the claims of particular occupations or departmental groupings for separate status. See State of New Jersey v. Prof. Assn. of NJ Dept. of Ed., 64 N.J. 231 (1974).

Accordingly, based upon the entire record in this matter, the PASA unit is clarified to include the title of Field Supervisor for Food Services.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: November 18, 1987
Trenton, New Jersey