

D.R. NO. 95-31

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Public Employer,

-and-

Docket No. CU-95-43

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies an Association negotiations unit to immediately add the newly-created positions of computer associate and computer assistant. The Director finds that the new positions perform duties similar in function to existing unit positions. Additionally, they share a community of interest with the combined unit of professional and secretarial staff. The new positions do not share more of a community of interest with the unrepresented aides employed by the Board.

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Appearances:

For the Public Employer
Kalac, Newman, Lavender & Campbell, attorneys
(Howard M. Newman, of counsel)

For the Petitioner
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Kenneth I. Nowak, of counsel)

DECISION

On January 27, 1995, the Middletown Township Education Association ("Association") filed a Petition for Clarification of Unit seeking to include the positions of computer associate and computer assistant in their existing combined professional and secretarial unit.^{1/} The Association asserts that the duties of these positions are similar in function to the existing unit positions of computer programmer/analyst and the audio-visual specialist. The Board opposes adding the disputed positions to the

^{1/} No other union has indicated interest in representing these employees.

Association unit, contending that their duties are similar in function to the unrepresented aides employed by the Board.

We have conducted an administrative investigation into the issues raised by the petition. There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The Board has three separate negotiations units. The Middletown Township Administrators and Supervisors Association represents approximately 40 supervisors, assistant principals, and principals. Teamsters Local 11 represents 115 custodians, maintenance workers and groundskeepers and the Association represents approximately 925 employees in a combined unit of 850 professional staff and 75 secretarial and clerical support staff.

Several groups of Board employees are unrepresented in addition to the aides.^{2/} The unrepresented computer associate and the computer assistant are new full-time positions created by the Board in November 1994. The Board on November 29, 1994, approved the hiring of Robert Martine filling the title of computer associate and the promotion of Eileen Smythe from secretary to the position of computer assistant. The duties of these newly-created positions may have been previously performed on a part-time basis by aides. The positions were created to increase the Board's commitment to the operation of its computer labs.

^{2/} These employees include 19 administrators, seven part-time security guards, one substitute caller responsible for assigning substitute teachers when necessary, one attendance officer who handles truancies and student absences.

Approximately 240 aides are employed on a part-time basis by the Board. They are paid an hourly wage and do not receive benefits. Aides responsibilities involve direct student contact. Special education aides are assigned to meet the needs of disabled students. Lunch aides monitor students during lunch periods in elementary schools. Basic skills aides assist basic skills teachers in the classroom and through performing clerical duties. The basic skills aides are under the direction of teachers. Aides track orders for computer software, maintain an inventory of the software in the lab and load computers with software for teachers to use. They vacuum the machines and advise teachers if machines are inoperable. None of the aides provide in-service or sample plans for teachers to use.

The Association is the majority representative for all professional and secretarial employees employed by the Board excluding administrators, supervisors, and confidential secretaries. The term of the contract covering this unit is from July 1, 1993 through June 30, 1996.

Sometime in the past, the Board created the position of computer programmer analyst/manager (or computer programmer/analyst). The position was included in the Association unit and appears as a classification VI on the secretarial employment classification guide in Article XXII B "Secretarial

Employment" in the contract.^{3/} For the 1994/95 school year, the position's annual salary ranges from \$19,426 to \$30,430 pursuant to a 15 step guide. The programmer analyst reports to the Director.

Under general supervision, this title: designs,^{4/} codes and tests computer programs and assists in the supervision of the Data Processing Department; acts in a support role to administrators and other program users to solve programming needs and computer problems; prepares training materials and trains computer operators and program users; and gathers data and designs systems for analysis and performs back-up procedures. This position is associated with non-academic computer programming for the central and business offices. There is no student contact involved with these job duties. The position requires a high school degree with experience in computer programming, preferably three years of experience with two years in a school district. The position is held by either a 10 month or 12 month employee and receives benefits as provided in the contract.

The position of audio-visual specialist is also included in the Association unit. It appears as a classification IV on the secretarial employment classification guide in Article XXII B

^{3/} Other titles in this same classification include administrative secretary, payroll supervisor, and purchasing agent.

^{4/} The duties of the computer programmer/analyst are described in a draft of a Board position description.

Secretarial Employment in the contract.^{5/} This employee is responsible for the efficient distribution, operation and maintenance of audio-visual equipment used in support of teaching activities. The employee schedules, delivers, sets up, operates, and maintains equipment for classrooms and special events. The employee edits tapes, orders and maintains inventory and instructs teachers and operators in the use of equipment. The job entails problem solving and independent judgment while performing assigned duties. This position is held by a 10 or 12 month employee and requires a high school degree and two years of experience, preferably six months of school district experience. This employee is paid an annual salary ranging from \$17,027 through \$29,475 according to the location on a 15 step guide. The employee receives benefits as negotiated in the contract.

The computer associate position, held by Robert Martine, was created in November 1994. A position job description approved on November 29, 1994 describes the purpose and duties of the title. The employee has the following duties: operates and maintains computer services and equipment in high schools, assists and trains teachers in the effective use of computers as a learning resource to support curriculum, assists in the training and effective use of computers for business operations, maintains a system for cataloging all software and ancillary materials and coordinates scheduling in

^{5/} Other titles in this classification include secretary II, records specialist and library specialist.

the labs, and assists teachers and staff in the selection and maintenance of software and other instructional materials.^{6/}

The position requires the successful completion of course work from a college or a technical school and strong experience with computers. The job is a 12 month job and the employee reports to the Computer/BSI Education Supervisor for Education instruction and the Assistant Superintendent for Administration and Operations for Business Operations. The salary for this position was established by his Supervisor Pat Marascio without use of a guide. The salary was calculated at 277 days by eight hours by \$15.00.^{7/} According to Marascio, Martine received more money as the computer associate than the computer assistant because he was a programmer with a certified four year degree. He also receives vacation, sick and personal leave days and is enrolled in the Public Employee Retirement System. He works an eight hour day. He receives medical benefits, but participates in a contributory plan.

The position of computer assistant, held by Eileen Smythe, was also created in November 1994. The computer assistant position was viewed as a secretarial promotional opportunity as listed on the

^{6/} Additionally, the job description asserts that the computer associate trains and supervises the computer assistant. However, the Board and the Association agree that there is no supervisory relationship between these two positions.

^{7/} This calculation was described in the affidavit submitted by Association President Diane Swaim describing her discussion with Marascio. The Board asserts that the salary is set at a higher rate of \$16.00 per hour.

November 29, 1994 Board agenda. The job description is identical to those listed in the associate position, except for the alleged supervisory duties.@ This employee has the following duties: maintains computer services and equipment in high schools, assists teachers in the effective use of computers as a learning resource to support the curriculum, catalogs all software and ancillary materials and coordinates scheduling in the labs and assists teachers and staff in selecting and maintaining software and other instructional materials.

The position requires successful experience with computers and the completion of related course work from a college or technical school. The job is a ten month position reporting to the Computer/BIS Education Supervisor for Educational Instruction and to the associate.^{8/} Smythe's salary was arbitrarily calculated by her supervisor Pat Marascio at 187 days by eight hours at \$10 per hour. It was not based on any guide. Smythe receives sick, vacation and personal leave days and is enrolled in the Public Employees Retirement System. Smythe works an eight hour day. She receives medical benefits, but she participates in a contributory plan.

In her affidavit, Association President Diane Swaim describes the duties of these employees as they discussed their work with her. Both employees assist teachers and other operators in

^{8/} Again, there is no supervisory relationship between the associate and the assistant.

using computers. Both conduct in-service training for teachers.^{9/} Both install software, perform routine repairs and maintenance and set up networks. Both provide support materials for teachers to use while their classes work on computers. Both troubleshoot if computer labs are experiencing problems. Smythe handles Mackintosh Labs in the 12 elementary and middle schools. Martine handles IBM/DOS Labs in the two high schools.

Analysis

A clarification of unit petition is used to resolve a question concerning the scope of a negotiations unit or a unit described in a contractual recognition clause. It 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 is established, and prior to the execution of the next successor agreement. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977); Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987); Morris Cty. Voc. Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992). Here, both disputed titles were created in November 1994. The Association's agreement runs from July 1, 1993 through June 30, 1996. The petition was filed during the contract period in which the new titles were created and

^{9/} Fliers describing computer workshops they conduct for teachers were submitted as evidence.

prior to the execution of the next successor contract. Accordingly, the petition is timely filed.

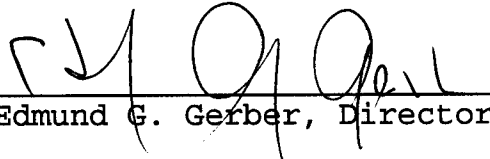
To determine whether titles are appropriately added to a unit and fall within the definitional scope of the unit, our focus is on the job duties performed. The computer associate and the computer assistant carry out support staff functions for the professional employees in the Association unit. Their direct contact is with the professional staff. Their duties are similar to those performed by the existing unit positions of computer programmer analyst/manager and the audio visual specialist. All four of these comparable positions maintain technical equipment. All of these positions maintain and catalog inventory. All of these employees directly train staff on how to operate the equipment and prepare training materials.

Additionally, the computer associate and the computer assistant enjoy terms and conditions of employment comparable to those in the Association unit. They enjoy vacation, sick and personal leave and work an eight hour day. They belong to the Public Employee Retirement System. They receive annual salaries and health benefits, although they contribute to their medical plan.

The computer associate and the computer assistant do not share a community of interest with the unrepresented aides. Significantly, the computer associate and computer assistant do not have direct student contact in the classroom like aides do. Additionally, their terms and conditions of employment differ because aides are part-time, are paid hourly and receive no benefits.

Accordingly, since the computer associate and the computer assistant perform functions similar to titles within the definitional scope of the existing Association negotiations unit and share a community of interest with the unit, these positions are appropriately added to the Association negotiations unit immediately. Clearview, Sussex Cty., D.R. No. 92-25, 18 NJPER 212 (¶23095 1992).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: June 23, 1995
Trenton, New Jersey