

D.R. NO. 2002-8

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

In the Matter of

MORRIS COUNTY VOCATIONAL SCHOOLS  
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2001-30

MORRIS COUNTY VOCATIONAL TECHNICAL  
EDUCATION ASSOCIATION,

Employee Organization.

**SYNOPSIS**

The Director of Representation grants the Association's petition for clarification of unit which seeks to add the public relations specialist to its unit. The Director finds that the clarification of unit petition is appropriate to resolve the unit placement of a new title. Additionally, he finds that the public relations specialist shares a community of interest with the Association's broad-based unit of educational employees. While the Director recognizes that community of interest alone is insufficient to clarify an existing unit to include the disputed title, he finds that like other unit positions -- grants specialist and tech prep program specialist -- the public relations specialist is a non-certificated staff position which supports central administration and other Board functions, reports to the superintendent and spends time working both at school facilities and other locations. The Director orders the public relations specialist added to the Association's unit effective immediately.

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Appearances:

For the Public Employer  
Mills & Mills, attorneys  
(John M. Mills, III, of counsel)

For the Employee Organization  
Oxford Cohen, attorneys  
(Gail Oxford Kanef, of counsel)

**DECISION**

On April 30, 2001, the Morris County Vocational Technical Education Association (Association) filed a Petition for Clarification of Unit with the Public Employment Relations Commission (Commission). The Association seeks to clarify its collective negotiations unit of professional and support staff employees employed by the Morris County Vocational Schools Board of Education (Board) to include the position of public relations specialist (PRS). The Board opposes the petition, asserting that the title lacks a community of interest with other unit members.

The Association disagrees. It contends that a community of interest exists between the PRS and the employees in its broad-based unit. Moreover, it asserts that some of the public relations duties now performed by the employee serving in the PRS position were previously performed by unit guidance counselors and teachers who taught specific programs.

We have conducted an administrative investigation of this matter in accordance with N.J.A.C. 19:11-2.2 and 2.6. The parties provided the PRS job description, a brief history of the position and the negotiations history surrounding the PRS title at an investigatory conference on September 12, 2001. On October 18, 2001, the Board submitted additional material essentially reiterating its opposition to the petition and reemphasizing facts submitted at the conference.

On February 15, 2002 I advised the parties that I intended to add the public relations specialist title to the Association's unit. The parties were given an opportunity to contest our factual and legal determinations. Neither party responded.

I find that there are no substantial and material factual issues in dispute which require a formal hearing. N.J.A.C. 19:11-2.6(b) and (d). Accordingly, the disposition of the petition is properly based on our administrative investigation which has found the following facts.

**FINDINGS OF FACT**

The Association represents a broad based unit of professional and non-professional employees including teachers, guidance counselors, school nurses, custodial/maintenance employees, C.I.E. job placement instructors, secretarial/clerical employees, job coaches, articulation specialists, grant specialists, I.T.V. personnel and work-based learning persons. The unit excludes confidential employees, managerial executives, supervisors, instructional aide/substitutes and all other Board employees.

The Association has a current collective negotiations agreement with the Board covering unit employees for the period July 1, 2000 through June 30, 2003. The agreement's recognition clause neither includes nor excludes the PRS title specifically.

The prior collective negotiations agreement was effective from July 1, 1997 through June 30, 2000. This agreement was reached in June 1998. In August 1998, the Board created the PRS position. During negotiations for the 2000-2003 agreement, the Association sought to include the PRS position in the unit. The parties discussed the issue but failed to agree on the placement of the PRS title in the Association's unit. By letter dated April 2, 2001, counsel for the Association wrote to the Board:

I am writing pursuant to our conversation of March 29, 2001 in which we both agreed that the Morris County Vocational Technical Education Association will sign the Collective Bargaining Agreement between the parties and that the Collective Bargaining Agreement will be put into effect as soon as possible. It is understood that by so signing the Association has not waived the right to claim through the Public Employment

Relations Commission that the Public Relations position should be made part of the Collective Bargaining Unit.

The PRS title was created as a ten-month position.

Although the guidance department had a limited responsibility in the past for student recruitment, the Board recognized that enrollment had declined. It created the PRS position to increase enrollment through more extensive media coverage -- television, radio, newspapers and direct mailings -- and to have a greater presence in the community and local schools. As a result, the PRS position performs much broader functions than previously performed by the guidance department.

According to the official job description, the position is responsible for the initiation and coordination of district public relations activities and recruitment for the day-school program. Mary Rose D'Arci was hired into the PRS title and has held the position since its creation.

The vocational school consists of one campus with four instructional buildings and one storage building. Each of the four instructional buildings houses administration, support staff, faculty and students. D'Arci works in Building 1. She reports to the superintendent as does the grant specialist and articulation specialist, although the latter two positions are currently vacant.

D'Arci works Monday through Friday from 8:00 a.m. to 4:00 p.m., but her schedule varies depending on outside commitments such as presentations to high schools or other organizations. The job requires a forty-hour week, but D'Arci works additional hours as

needed. Although the position is for ten months from September through June, there are some activities, such as the Morris County Fair, held in the summer which D'Arci attends and is given compensatory time to be used during the school year.

Like several other unit positions such as secretary/clerk, articulation specialist and grant specialist, the PRS position does not require a teaching certificate. The Association compares the PRS duties to other unit positions which are non-teaching but are not clerical either. It points to the grant specialist who is responsible for writing grant proposals and the articulation specialist who develops and maintains agreements between the Morris County Vocational School and various colleges.

#### ANALYSIS

I find that the issue of unit placement is properly raised in this unit clarification petition. This dispute arose when the Board created the new title public relations specialist. A unit clarification petition is appropriate to resolve the unit placement of a new title. Clearview Reg. Bd. of Ed., D.R. 78-2, 3 NJPER 248 (1977). However, the employee representative must seek the unit clarification of the disputed title before executing a successor contract unless the parties have specifically preserved the issue. See Union Cty. Reg. H.S. Dist. #1, D.R. No. 83-22, 9 NJPER 228 (¶14106 1983) (unit clarification granted even though successor contract was signed, since parties preserved dispute). Compare, Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984)

(union waived its right to seek unit clarification of recently-created titles by signing a successor contract).

Here, the parties agree that the Association's April 2, 2001 letter preserved its right to seek clarification of the new PRS title. The Association then promptly filed this petition. Therefore, the clarification of unit petition is procedurally appropriate.

The Board contends that there is no community of interest between the PRS and the Association's unit members, in particular custodial and secretarial employees, because the PRS has no set work hours and may work in excess of forty hours a week.

The Commission has long approved broad-based units of education employees -- combined units of certificated employees and support staff, as well as separate units of non-professional employees -- finding a community of interest among virtually all non-supervisory employees in an educational setting. 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 at 274, the Commission found:

...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....

Employees' disparate work hours are not sufficient to overcome a finding of community of interest. It is often the case in school districts that teaching staff and support staff do not share identical hours. Clerks may work later in the day; custodians may work on more than one shift. In fact, teachers also do not work a traditional, "fixed" workday, since they are responsible for a myriad of activities -- preparing assignments, grading papers, developing lesson plans, and other non-teaching responsibilities -- that extend their workday beyond their actual class time. Moreover, I recently rejected a proposed unit which sought to divide the workforce on the basis of hours worked. Kearny Bd. of Ed., D.R. No. 2001-4, 27 NJPER 68 (¶32030 2000).

Here, the PRS is regularly employed. The fact that she does not work a fixed workweek or that she may work more than 40 hours weekly does not defeat a finding of community of interest with the Association's broad-based unit.

Finding community of interest is not enough to clarify an existing unit to include the disputed title, however. In Clearview, we described the appropriate test for deciding unit clarification issues. There, we said,

"CU" 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..... Disputes may arise during contractual negotiations or during the administration of the parties' agreement. In such cases, the Commission provides a clarification of unit procedure by which questions concerning the composition of a unit may be resolved. See N.J.A.C. 19:11-1.5.

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.  
(Emphasis added).

The titles to be clarified as included in the unit must be identified as being within the scope of the existing unit.

Irvington Housing Auth., D.R. No. 98-15, 24 NJPER 244 (¶29116 1998);  
Barneгат Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983).

Here, the parties' contractual unit is defined broadly: the Association represents certificated employees and support staff. We have previously clarified this unit to include non-teaching, non-certificated staff positions, specifically the grants specialist and the tech prep program planner. Morris Cty. Voc-Tech Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992).<sup>1/</sup> Among the factors we considered in finding that the tech prep program planner title is appropriately included in the unit was that the position is a certificated staff position. While the grants specialist position is non-certificated, it, like the tech prep program planner position, is also a staff position which supports central administration and other Board functions as opposed to line positions which deliver educational services. Further, the grants

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<sup>1/</sup> Although the Director added these titles to the unit, the recognition clause in neither the 1997-2000 nor the most recent agreement contains the tech prep program planner title.

specialist reports to the superintendent and the tech prep program planner reports to the assistant superintendent. Both positions are based at the Board's central offices but spend time away from the central facility. We found specifically:

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. [Id. at 485.]

Like the grants specialist, the PRS title is a non-certificated staff position which supports central administration and other Board functions, reports to the superintendent and spends time working both at school facilities and at other locations. It appears that, like the titles added to the unit in D.R. No. 93-4, the public relations specialist appropriately fits within the definition of this broad-based unit.

Based upon all the above, I find that the public relations specialist position is appropriate for inclusion in the Association's unit. Our decision to add her to the Association's unit does not automatically entitle her to any salary, benefits or work hours reflected in the Association's existing collective agreement. Rather, the placement of the title in the unit will require the Board and the Association to negotiate over her terms and conditions of employment. See W. Essex Bd. of Ed., D.R. No.

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99-13, 25 NJPER 196 (¶30091 1999); Sussex Cty., D.R. No. 92-25,  
NJPER 212 (¶23095 1992); Union Cty. Reg. H.S. Dist. #1, D.R. No.  
83-22, 9 NJPER 228 (¶14105 1983).

ORDER

The public relations specialist is added to the  
Association's unit effective immediately.<sup>2/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

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Susan Wood Osborn  
Acting Director

DATED: March 1, 2002  
Trenton, New Jersey

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<sup>2/</sup> See Clearview.