

D.R. NO. 88-16

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

In the Matter of

RIDGEWOOD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-88-4

RIDGEWOOD ASSOCIATION OF
EDUCATIONAL SECRETARIES,

Employee Representative-Petitioner.

Synopsis

The Director of Representation declines to clarify the clerical unit represented by the Ridgewood Association of Educational Secretaries to include the titles Senior Programmer/Systems Analyst, Systems Supervisor and Junior Programmer. The Junior Programmer is a professional title and is more properly included within the Board's professional unit. The Senior Programmer/Systems Analyst and the Systems Supervisor are titles that were created approximately ten years ago and in January 1984, respectively. Accordingly, the Association has waived its right to bring a unit clarification petition with regard to these two titles. Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984).

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Appearances:

For the Public Employer
Sills, Beck, Cummis, Zuckerman, Radin,
Tischman & Epstein, Esqs.
(Lester Aron, of counsel)

For the Petitioner
New Jersey Education Association
(John Biondi, UniServ Rep.)

DECISION

On July 27, 1987, the Ridgewood Association of Educational Secretaries, NEA/NJEA/BCEA ("Association"), filed a petition for clarification of unit (Docket No. CU-88-4) with the Public Employment Relations Commission ("Commission"). The petition seeks to include the positions Senior Programmer/Systems Analyst, Systems Supervisor and Junior Programmer in the collective negotiations unit represented by the Association. The Ridgewood Board of Education ("Board") objects to the proposed clarification.

An administrative investigation was conducted into this matter in accordance with N.J.A.C. 19:11-2.2(a). Based upon this investigation, we make the following findings:

The Ridgewood Board of Education is the public employer of the disputed employees and the Ridgewood Association of Educational Secretaries is the exclusive majority representative of a collective negotiations unit comprised of secretarial and clerical titles ranging from Class I (Head Payroll Accountant) to Class VI (general secretarial positions), as defined in the parties' most recent collective negotiations agreement.^{1/}

The most recent agreement between the Board and the Association covered the period from July 1, 1985 through June 30, 1987. There is no current agreement in effect and the parties are presently at impasse in their negotiations for a new agreement.

The Board objects to the inclusion of these titles in the Association's unit, claiming that these titles are professional titles which lack a sufficient community of interest with the other titles in the unit. The Board further asserts that the negotiations unit historically has excluded these titles since the creation of each of the titles. In support of its argument that the petitioned-for titles are professional, the Board asserts that both

^{1/} The three titles contained in the Association's petition are not now, and never have been, included in the secretarial unit. The title in the secretarial unit bearing the greatest similarity to the three titles petitioned for is a Class III Title: Senior Data Processing Assistant.

programmer titles require the capability to analyze and draft programs in R.P.G. II and in Fortran. The Systems Supervisor must have the ability to perform these programming functions in at least R.P.G. II. The Senior Programmer/Systems Analyst spends 75% of her time developing, designing and creating information systems for the school district. The Junior Programmer spends 85% of her time in such tasks and the Systems Supervisor spends 40% of her time similarly engaged. The Board asserts that none of the titles currently in the Association's secretarial unit, including the Senior Data Processing Assistant, are required to perform such tasks. Additionally, the Board asserts that the above responsibilities require educational qualifications and training different from the requirements for secretarial and bookkeeper applicants who are represented by the Association in this unit.

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), sets forth the circumstances under which a unit clarification petition is appropriate:

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 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) we may determine that it has waived its right to clarify the unit to include such a disputed title.

Subsequent Commission cases have addressed unit clarification petitions filed by a majority representative seeking to include or exclude a particular title from a unit, or by a public employer seeking to remove a title(s) from a unit. See Bergen Pines County Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980) (A union must exercise due diligence in searching out employees who are within the definitional scope of its collective negotiations unit. The execution of a second collective negotiations agreement precluded the union from later seeking to add employees to unit through a clarification petition); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984) (The union's petition to clarify the unit to include titles created prior to execution of existing agreement dismissed). In Belleville Board of Education, D.R. No. 86-23, 12 NJPER 482 (¶17184 1986), we found an employer-filed clarification petition -- seeking to redefine the unit based on an

alleged lack of community of interest among unit titles -- to be inappropriate where the petition was filed one month after the Commission had certified an appropriate unit, in the absence of a change in circumstances.

Finally, in Warren Township, D.R. No. 82-10, 7 NJPER 529 (¶12233 1981), we found the union's clarification petition inappropriate where the disputed title existed at the time the unit was originally certified and there was no evidence of mutual intent to include it in the unit.

Here, the facts indicate that the Senior Programmer/Systems Analyst title was created approximately ten years ago. The Systems Supervisor title was created in January 1984, and the Junior Programmer title was created in April 1986. Neither party alleges any significant change in circumstances which would warrant a clarification of the Association's unit to include the two titles which have historically been excluded therefrom -- specifically, the titles of Senior Programmer/Systems Analyst and Systems Supervisor. Given these circumstances, the Association has waived its right to bring a unit clarification petition with regard to these two titles because they have existed for ten years and three-and-one-half years, respectively. Rutgers University, supra. However, the Association has not waived the ability to clarify its unit with respect to the proposed inclusion of the title Junior Programmer, which was created in April 1986, during the pendency of the parties' most recent (1985-87) contract.

The Board also asserts that the Senior Programmer/Systems Analyst, Systems Supervisor and Junior Programmer are professional employees which are not appropriate for inclusion in the secretarial unit. Rather, the Board argues that these titles are more appropriately placed within the existing professional unit.

N.J.A.C. 19:10-1.1 states:

"Professional Employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.


In City of Jersey City, H.O. No. 83-8, 9 NJPER 191 (¶14089 1983), affm'd D.R. No. 84-6, 9 NJPER 556 (¶14231 1983), a Hearing Officer defined professional employees to be those requiring special training and having duties that are extensive and diversified in that they have a wide range of authority which can be exercised without obtaining prior approval from superiors. Here, although the Junior Programmer does not have this kind of broad authority, the title does require significant and extensive training in areas that other clerical unit members do not require in order to be fully

conversant in developing, designing and creating information systems for the district. It thus appears that the Junior Programmer is a professional employee and is more properly included within the Board's professional unit.^{2/}

On November 10, 1987, we wrote to the parties indicating our intention to decline to clarify the clerical unit represented by the Ridgewood Association of Educational Secretaries to include the titles Senior Programmer/Systems Analyst, Systems Supervisor and Junior Programmer. We afforded the parties an additional opportunity to submit documentary materials, affidavits or other evidentiary material and letter brief in support of their positions. No additional material was filed within the time required.

Accordingly, based upon the entire record in this matter, I decline to clarify the clerical unit represented by the Ridgewood Association of Educational Secretaries to include the titles Senior Programmer/Systems Analyst, Systems Supervisor and Junior Programmer.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 2, 1987
Trenton, New Jersey

^{2/} Similar conclusions may be reached concerning the Senior Programmer/Systems Analyst and the Systems Supervisor. However, even in the absence of the professional/non-professional issue, it appears that the Association has waived its right to clarify its unit to include these two titles. Rutgers University, supra; Wayne Bd. of Ed., supra.