

D.R. NO. 98-1

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

In the Matter of

PASSAIC COUNTY BOARD OF SOCIAL  
SERVICES,

Public Employer,

-and-

PROFESSIONAL WORKERS ASSOCIATION,

Docket No. CU-97-27

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition for Clarification of Unit filed by the Professional Workers Association. The PWA sought to add employees in the titles of social worker, social worker specialist and income maintenance specialist to a unit of employees it represents at the Passaic County Board of Social Services. The PWA based its petition on the assertion that its unit is a unit of professional employees and that it learned in January 1997 that the petitioned-for titles were classified as professional by the New Jersey Department of Personnel.

The Director finds that the PWA failed to show that the titles it alleges are professional fall within its unit definition or are appropriately excluded from a unit of Board employees represented by CWA. The Director also finds that PWA's discovery in 1997 that the petitioned-for titles were classified as professional does not constitute sufficient changed circumstances to support its petition.

D.R. NO. 98-1

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

In the Matter of

PASSAIC COUNTY BOARD OF SOCIAL  
SERVICES,

Public Employer,

-and-

PROFESSIONAL WORKERS ASSOCIATION,

Docket No. CU-97-27

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,

Intervenor.

Appearances:

For the Public Employer,  
Kenneth A. Kovalcik, attorney

For the Petitioner,  
David A. Tykulsker & Associates, attorneys  
(David A. Tykulsker, of counsel)

For the Intervenor,  
Weissman & Mintz, attorneys  
(Judi Chartier, of counsel)

DECISION

On February 7, 1997 the Professional Workers Association filed a Clarification of Unit Petition with the Public Employment Relations Commission seeking to add employees in the titles of Social Worker, Social Work Specialist and Income Maintenance Specialist to a unit of employees it represents at the Passaic County Board of Social Services. The Communications Workers of

America has intervened in this matter.<sup>1/</sup> It represents a unit of non-supervisory employees of the Board which includes the petitioned-for titles. The parties submitted position statements and supporting materials by May 12, 1997. An administrative investigation has been conducted and the following facts appear.

For over 20 years, the Board recognized the Employees of the Passaic County Welfare Association ("EPCWA") as the majority representative of a mixed unit of professional, para-professional, non-professional, security and maintenance employees. The recognition clause of the agreement between the EPCWA and the Board covers "...all employees of the employer except managerial and confidential employees as specified herein." The three petitioned-for titles are included in appendix A of the expired agreement, which lists titles and their salary ranges.

In 1995, the PWA was formed to represent certain titles that were included in the EPCWA unit. In March 1995, with the consent of the EPCWA, the Board granted recognition to the PWA as representative of those titles.

---

<sup>1/</sup> N.J.A.C. 19:11-2.7(a) permits an employee organization to intervene in a clarification of unit proceeding provided it submits a current or recently expired agreement with the public employer covering any of the employees involved. CWA was certified as the majority representative of a unit including the petitioned-for titles on May 9, 1996. It has not reached an agreement with the Board, but has submitted the expired agreement between the predecessor majority representative, the Employees of Passaic County Welfare Association and the Passaic County Board of Social Services. That agreement covers the petitioned-for titles.

The PWA and the Board are parties to an agreement that runs from January 1996 through December 1999. The recognition clause of the PWA agreement neither describes the unit generically nor contains any exclusions. The recognition clause of that agreement lists the PWA as the majority representative of a unit consisting of the following titles:

- Administrative Analyst
- Assistant Administrative Supervisor
- Assistant Chief Investigator
- Assistant Training Supervisor
- Chief of Administrative Services
- Chief Clerk
- Chief Investigator
- Child Support Coordinator
- Child Support Supervisor
- Data Processing Coordinator
- Field Office Manager
- Income Maintenance Supervisor
- Medical Social Service Assistant
- Paralegal Specialist
- Principal Account Clerk
- Principal Clerk
- Principal Clerk Stenographer
- Principal Clerk Typist
- Principal Data Entry Machine Operator
- Principal Telephone Operator
- Senior Investigator
- Social Work Supervisor
- Supervising Account Clerk
- Supervising Clerk
- Supervising Clerk Typist
- Supervising Telephone Operator
- Supervisor of Accounts
- Supervisor of Data Entry
- Supervisor of Property and Resources
- Systems Analyst
- Training Technician

In February 1996, CWA filed a petition with the Commission seeking to represent employees in what remained of the EPCWA unit. CWA was certified on May 9, 1996 as the majority representative of a

unit of all non-supervisory employees employed by the Passaic County Board of Social Services. The CWA unit excludes all supervisors within the meaning of the Act, managerial executives, confidential employees, employees represented in other bargaining units, clerical staff assigned to the personnel department or training department and confidential investigators.

The PWA bases its petition for clarification of unit on the assertion that it learned in January 1997 that the petitioned-for titles are classified in the Department of Personnel's professional series. The PWA contends that the unit it represents is a unit of professional employees, that the unit represented by CWA is a unit of non-professional employees and that the inclusion of the three petitioned-for "professional" titles in the CWA unit was a mutual mistake of the Board, the PWA and CWA's predecessor, the EPCWA.

The PWA asserts that in January, 1995, a majority of the professional employees formed the PWA as a labor organization for the purpose of representing professional employees of the Board. The PWA contends that it, the EPCWA and the Board mutually agreed to divide the mixed unit into a professional unit represented by the PWA and a non-professional and para-professional unit which would continue to be represented by the EPCWA. At the time of the split, it argues that all parties believed that the three petitioned-for titles were not classified as professional by the Department of Personnel.

In December 1996, the Board began to devise a layoff plan for certain titles. The Department of Personnel met with the PWA, the CWA and the Board to discuss bumping rights in January 1997. At that time, the Department of Personnel informed the parties that the petitioned-for titles were considered to be in its professional series. The PWA asserts that if the parties had known that these titles were classified as professional by the Department of Personnel, that they would have been placed in the PWA unit in 1995.

The Board also asserts that when the EPCWA and the PWA split in 1995, the division was based upon a distinction between professional versus non-professional and para-professional titles. The Board states that the unit CWA now represents "was identical to that previously represented by the EPCWA." The Board contends that the division between the PWA and the EPCWA was never between supervisory and non-supervisory titles, but was between professional and non-professional and para-professional titles.

The Board further asserts that some titles in the PWA unit exercise supervisory responsibility regularly, others occasionally and that some are not supervisors at all. The Board contends that the income maintenance specialists assert occasional supervisory responsibilities and the social work specialists do not perform any supervisory functions. It does not take a position on the supervisory status of social workers, but asserts that they share a community of interest with the titles represented by the PWA.

The CWA contends that the PWA lacks standing to file this petition. It states that if the Board's assertion that the social workers and social work specialists are non-supervisory is true, then their inclusion in the PWA unit would render that unit an illegally mixed unit because it includes employees who supervise them - namely social work supervisors. It asserts that inclusion of the income maintenance specialist title would also render the PWA unit illegal because the unit includes the supervisory title of income maintenance supervisor.

#### ANALYSIS

The PWA's requested unit clarification cannot be granted. A unit clarification petition is inappropriate for use in these circumstances.

A unit clarification petition may be used to identify titles or positions as being within the broad definition of the unit certified by this Commission or as contained in parties' contractual recognition clause. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

In Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983), we found that for titles to be clarified into a unit, they must be identified as being within the scope of the existing unit; it is insufficient that a title may share a community of interest with the existing unit. See also, State of New Jersey, Dept. of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 (1985), in which the Commission found that, notwithstanding the fact

that "temporary" employees perform unit work, they are not unit employees as defined by the parties' recognition clause.

The PWA admits that a predecessor unit represented by the EPCWA was a mixed unit of professional, para-professional, and non-professional employees. The PWA asserts that when its unit was formed in 1995, it was formed as a professional unit and the CWA unit remained as a unit of non-professional and para-professional employees. The PWA now seeks to clarify its unit to include the three titles. It alleges it only recently became aware that they were classified as professional. However, this assertion is not supported by the history of its unit, the predecessor unit represented by the EPCWA, or by the certification language of the unit represented by CWA. The contractual recognition clause of the EPCWA, CWA's predecessor, covers all employees of the Board except for confidentials and managerials. Professionals were therefore, represented in the EPCWA unit. When the EPCWA and the PWA split in 1995, the division was on the basis of titles. Neither unit is specified as professional or non-professional. The recognition clause of the PWA unit contains no generic language; rather, it simply lists represented titles.

When CWA and the EPCWA entered into an Agreement for Consent Election in 1996, both agreed that the existing unit consisted of all non-supervisory employees, and did not exclude professionals. CWA's certification is for a generic unit of non-supervisory employees. Significantly, the exclusionary language



does not exclude professional employees. Even the Board asserts that the unit now represented by CWA is identical to the unit represented by the EPCWA. It is clear that both the EPCWA unit and the CWA unit contained professional employees.

The PWA's unsupported assertion that the intent of the parties in 1995 was to divide the units into professional and non-professional units is insufficient to grant its petition in the face of the history of both units and the clear language of CWA's certification.

I find that the Board's assertion that the PWA unit is a professional group is equally unsupported. It does not appear that the titles in the PWA unit are all professional. The unit includes titles such as Chief Clerk, Principal Clerk, Principal Clerk Stenographer, Principal Clerk Typist and Supervising Telephone Operator, which may be supervisory, but do not appear to be professional in nature. Additionally, the Board characterizes the PWA unit as a unit in which all of the titles do not exercise supervisory responsibility. Such a unit would be an illegally mixed unit under N.J.S.A. 34:13A-5.3. However, I do not consider its arguments regarding supervisory status since the PWA did not raise this issue in its petition. At best, the Board's assertion that some titles represented by the PWA are non-supervisory may raise questions regarding the composition of the PWA unit that could potentially be addressed in another clarification of unit filing. In any event, I will not clarify the PWA unit to include a mixture

Of supervisors and non-supervisors in contravention of N.J.S.A.  
34:13A-5.3 and 6.<sup>2/</sup>

Finally, I address the PWA's claim that its discovery in 1997 that the petitioned-for titles were professional constitutes sufficient grounds for its petition.

A unit clarification petition cannot ordinarily be used to expand a unit to add titles or positions which existed before the unit formed and were not contemplated as part of the unit when it was formed, except where there is a change in circumstances giving rise to the dispute. Clearview. The PWA's assertion of its new awareness that the petitioned-for titles were classified as professionals in 1997 does not constitute sufficient changed circumstances.

In Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980), we dismissed a petition because the majority representative had failed to "...exercise due diligence in searching out employees who are within the definitional scope of the collective negotiations unit." Due diligence requires that a union identify existing titles that are within the definitional scope of the unit prior to the signing of a second collective agreement with the public employer. Accord, Barnegat Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983); Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984).

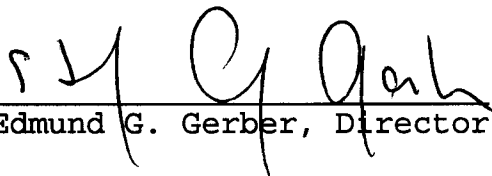
---

<sup>2/</sup> These sections of the Act prohibit mixed units of supervisors and non-supervisors except in special circumstances not present here.

The PWA had the opportunity to address the status of these titles at the time it entered into the 1995 agreement to split its unit from the EPCWA. Its assertion that all of the parties believed that the PWA unit was professional does not justify its failure to reduce that assertion to writing at the time of the split or in the recognition clause of the subsequent contract. Similarly, its "discovery" that the petitioned-for titles were considered professional by the Department of Personnel in 1997 does not excuse the PWA from seeking out and pursuing appropriate titles within the life of its first agreement - in this case, the 1995 recognition agreement, which was prior to the 1996-1999 agreement between the PWA and the Board.

The PWA has failed to show that the titles it alleges are professional fall within its unit definition, or are appropriately excluded from the CWA unit I certified in 1996. Accordingly, I dismiss this petition.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: July 7, 1997  
Trenton, New Jersey