

D.R. NO. 2004-11

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

In the Matter of

CITY OF ENGLEWOOD,

Public Employer,

-and-

Docket No. CU-2004-5

RWDSU LOCAL 108 PUBLIC  
EMPLOYEE DIVISION,

Petitioner.

**SYNOPSIS**

The Director of Representation clarifies a historic unit of secretarial and clerical employees to include a newly created financial analyst title. The new title was virtually identical to an existing data entry clerk title which had long been included in the unit.

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Appearances:

For the Public Employer,  
William F. Rupp, attorney

For the Petitioner,  
Oxford Cohen, attorneys  
(Nancy Iris Oxford, of counsel)

**DECISION**

On August 11, 2003, RWDSU, Local 108, AFL-CIO filed a Petition for Clarification of Unit seeking to include a newly created title, financial analyst, in its clerical and secretarial unit. The City opposes inclusion of the financial analyst title in RWDSU'S unit. It contends the title is not included in the unit pursuant to the parties' current collective negotiations agreement.

On July 21 and August 11, 2003, RWDSU filed an unfair practice charge (docket number CO-2004-026) and amendment claiming that the City violated N.J.S.A. 34:13A-5.4a(2) and (5)

when it: (1) created the financial analyst title with the same job responsibilities as an existing unit title, data entry clerk, but refused to recognize its inclusion in RWDSU's unit; and, (2) threatened to remove the data entry clerk title from the unit if RWDSU pursued the financial analyst title's inclusion. That charge has been held in abeyance pending resolution of this matter.

We have conducted an investigation in accordance with N.J.A.C. 19:11-2.2 and 2.6. An investigatory conference was conducted on October 21, 2003. The parties submitted position statements, additional information and supporting documents by December 2, 2003. There are no substantial, material facts in dispute which would warrant convening an evidentiary hearing. Accordingly, the disposition of this matter is properly based upon the administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. Based upon our investigation, we make the following:

#### **FINDINGS OF FACT**

RWDSU and the City executed a collective negotiations agreement on February 4, 2003 for the period 1999-2004. The recognition clause of the agreement provides that RWDSU is the majority representative for, ". . . those employees in the unit that was involved in the Public Employment Relations Commission, Docket No. RO-139, Certification of Representative dated February 24, 1971 as follows: 'All classified employees presently covered

under a collective bargaining agreement; employees of the Health Department, Library, Uniformed Police and Firemen, and professionals, craft employees, supervisors, within the meaning of the Act, and managerial executives.'"

The certification referred to in the recognition clause provides the following:

All classified employees in the various departments employed by the City of Englewood excluding confidential, temporary and part-time employees, employees presently covered under a collective bargaining agreement; employees of the Health Department, Library, uniformed police and firemen and professionals, craft employees, supervisors within the meaning of the Act, and managerial executives.

Neither the certification nor the recognition clause identify specific titles; however, the current collective agreement includes a salary guide with salary grade levels and job titles; it includes the data entry clerk title.

The data entry clerk and financial analyst clerk job descriptions are identical and provide, in pertinent part, the following:

Under immediate supervision of the Tax Collector prepares data from source documents for entry into computer system in accordance with appropriate procedures and documentation; performs related work as required.

The data entry clerk and financial analyst are required to have the same education, experience and licenses as well as the

same knowledge, skills and abilities. Both report to the tax collector.

No facts were submitted establishing when the data entry clerk title was created, however there is no dispute that it is currently included in the unit. The financial analyst title was created during the spring of 2003.

#### ANALYSIS

Clarification of unit petitions are appropriate:

. . . 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. Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or to diminish the scope of the negotiations unit for reasons other than the above. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition and the matter relates primarily to identification.

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1978).

As to the appropriateness of RWDSU's petition, the Commission's longstanding policy regarding clarification of unit petitions was set forth in Clearview Reg. Bd. of Ed. In that case, the Director of Representation found, inter alia, that where the clarification determination involves a newly created job title, created after the execution of the parties' most

recent contract, a clarification of unit petition is appropriate and a determination to include the title will ordinarily be effective immediately. Id. at 251.

I find that the RWDSU has not waived its right to seek unit clarification. The title was newly created in the spring of 2003 and RWDSU promptly sought its inclusion in the unit. The unit clarification petition is, therefore, procedurally appropriate.

To be clarified as included in the unit, the titles 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). The City argues that the newly created title, financial analyst, is not contemplated within the scope of the unit as set forth in the parties' recognition clause. Here, the parties' contractual unit is defined broadly: RWDSU represents clerical and secretarial employees. The financial analyst title clearly falls within that ambit since its job description is identical to a long standing unit title: data entry clerk. Both titles perform the same duties; there is no functional difference between the jobs. RWDSU has negotiated the data entry clerk's terms and conditions of employment.

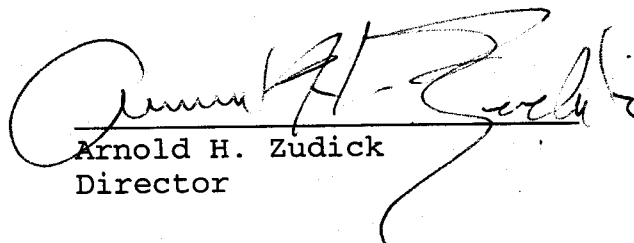
For the foregoing reasons, I find that the financial analyst title should be included in the existing unit of clerical and secretarial personnel represented by RWDSU. Therefore, I clarify

the existing unit to include the financial analyst title effective immediately.

**ORDER**

The RWDSU unit in the City of Englewood is clarified to include the financial analyst title.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director

DATED: February 26, 2004  
Trenton, New Jersey