

D.R. NO. 96-6

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

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,

Public Employer/Petitioner,

-and-

AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS,

Docket No. CU-95-25

Employee Organization,

-and-

HOSPITAL PROFESSIONALS AND ALLIED
EMPLOYEES, LOCAL 5094,

Employee Organization.

SYNOPSIS

The Director of Representation dismisses an amended Clarification of Unit Petition filed by the University of Medicine and Dentistry of New Jersey seeking to remove librarians from the negotiations unit represented by the AAUP. UMDNJ sought to place the excluded non-supervisory librarians in a negotiations unit of non-supervisory professional employees represented by the HPAE and to place the excluded supervisory librarians in a unit of non-nursing supervisors represented by CWA. UMDNJ argued that there is no community of interest between the librarians and other members of their unit because the librarians' salary schedule and other terms of employment are different. UMDNJ asserted that the AAUP has not responsibly represented the librarians because it adopted the salary schedule and other articles from the HPAE agreement. UMDNJ also alledged that, with the subsequent creation of the HPAE and CWA negotiations unit, circumstances have changed, making the placement of librarians into these units more appropriate.

The Director finds that the burden of negotiating a separate salary structure for a subcategory of employees within broader unit does not demonstrate a lack of community of interest with other unit members. Further, the Director finds that UMDNJ cannot use the argument that the AAUP has failed to represent its unit members to support its clarification request. Finally, the Director finds that UMDNJ's assertion that six of the librarians are supervisors is unsubstantiated.

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Appearances:

For the Public Employer/Petitioner,
Howard Pripas, attorney

For the Employee Organization/AAUP,
Sterns & Weinroth, attorneys
(Mark D. Schorr, of counsel)

For the Employee Organization/HPAE,
John DiNicola, Staff Representative

DECISION

On October 28, 1994, the University of Medicine and Dentistry of New Jersey filed a Clarification of Unit Petition and an amendment, seeking to exclude approximately 16 librarians from a bargaining unit represented by the UMDNJ Council of AAUP and to place them in an existing unit of non-supervisory professionals represented by the Hospital Professionals and Allied Employees, Local 5094 (HPAE).

AAUP and HPAE oppose the petition. HPAE argues that it would be inappropriate to include the librarians in its unit because some librarians supervise HPAE unit members. Thereafter, on January 17, 1995, UMDNJ amended its petition to request that approximately five supervisory librarians be placed in a recently certified unit of non-nursing supervisory employees represented by the CWA, Local 1031. AAUP objects to the petition as amended, as do HPAE and CWA.

On October 19, 1995, I notified the parties that I intended to dismiss UMDNJ's petition. I afforded them an opportunity to respond with additional information and supporting documentation. UMDNJ and AAUP submitted statements and affidavits. Based upon the administrative investigation into the facts surrounding the petition, these facts appear. See N.J.A.C. 19:11-2.2.

Pursuant to an Agreement for Consent Election between AAUP and UMDNJ, the AAUP was certified as the majority representative for librarians on July 15, 1991. They were included in the existing unit of all research and teaching faculty at the schools of medicine, dentistry and nursing. In March 1994, UMDNJ and AAUP negotiated an agreement for the combined unit of faculty and librarians. The parties are presently negotiating a successor agreement.

On February 7, 1992, HPAE was certified as the majority representative for all non-supervisory professional employees employed by UMDNJ. HPAE and UMDNJ completed negotiations for their first agreement in August 1993. On April 29, 1994, CWA was

certified as the majority representative of non-nursing supervisors. UMDNJ and CWA are presently negotiating their first agreement.

UMDNJ argues that the librarians must be removed from the AAUP negotiations unit because there is no community of interest between the librarians and the faculty. It states that the librarians' salary and other terms of employment are different than the faculty; therefore, it is forced to negotiate over the librarians' terms separately. UMDNJ contends that having to negotiate specific terms for the librarians impedes the establishment of good labor relations with the AAUP.

UMDNJ maintains that the librarians are not being reasonably represented by the AAUP. UMDNJ submitted a certification from its Associate Vice President for Academic Administration, stating that librarians are paid on a step range salary structure similar to the negotiated salary range for members of the HPAA bargaining unit. UMDNJ asserts that the salary structure as well as articles concerning seniority and holiday, vacation and other leave time were simply adopted by AAUP from the HPAA agreement.

Secondly, UMDNJ argues that circumstances have changed. With the creation of the HPAA and the CWA negotiations units, the librarians can now be included in units with other professional employees with whom they have a greater community of interest. UMDNJ contends that librarians would have been placed in the HPAA and CWA units but for the fact that these units did not exist when

the AAUP petitioned to represent librarians. Therefore, it urges that non-supervisory librarians be included in the HPAE unit and the supervisory librarians be placed in the CWA unit.

UMDNJ argues that State of N.J. and Professional Ass'n of N.J. Dept. of Education, P.E.R.C. No. 68, NJPER Supp. 273 (1968 1972), rev'd NJPER Supp.2d 14 (197 App. Div. 1973), rev'd 64 N.J. 231 (1974), supports its contention that the librarians should be put into the same unit with other non-faculty professional employees. In Professional Ass'n, the Supreme Court upheld the Commission's dismissal of a representation petition seeking certification of a separate bargaining unit of registered nurses. The Commission found that the unit was too narrow. Petitioner sought a unit comprised of a single profession. The Commission determined that the most appropriate unit should be a broad-based State-wide unit, encompassing all employees who share a broadly defined occupational objective or description -- in State Prof. Assn., that was a unit of all professionals. Here, however, UMDNJ is not seeking to create a broad-based professional unit. Rather, it is seeking to narrow the composition of an existing broad-based professional unit solely on the basis of how salaries are structured in the parties collective negotiations agreement.

In Clearview Reg. Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (1977), the Director stated:

Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or to diminish the scope of the negotiations unit... 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. 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.

Clearview at p. 251. (Emphasis added)

The Commission looks to the parties' intent regarding unit placement of a disputed title and to the parties' conduct regarding that title. Absent a change in circumstances or a substantial change in job duties, merely alleging that there is a lack of community of interest is not sufficient to alter a title's unit placement. Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶10028 1980), D.R. No. 80-6, 5 NJPER 422 (¶10221 1979); Township of Warren, D.R. No. 82-10, 7 NJPER 529 (¶12233 1981). In subsequent decisions, these criteria were applied to clarification petitions filed by employers. Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986); Passaic City Bd. of Ed., D.R. No. 88-21, 14 NJPER 37 (¶19014 1987). See also, Borough of Paramus, 21 NJPER 25 (¶26015 1994).

When the parties signed the Agreement for Consent Election in 1991, they signified their intent to create a combined unit of librarians and faculty and effectively stipulated that the combined unit was the appropriate unit. Belleville Bd. of Ed., supra.

Further, the parties have a demonstrably productive history of negotiations -- they have negotiated one agreement

covering the combined unit and are presently negotiating a successor agreement. UMDNJ's complaint that it is burdensome to negotiate a separate salary structure for a sub-category of employees within the broader unit does not demonstrate a lack a community of interest with other unit members. Township of Warren, supra; Passaic City Bd. of Ed., supra.

Assertions that the majority representative has not responsibly represented its unit members cannot be raised by an employer and therefore, cannot be used to support an employer's clarification request. Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61, NJPER Supp. 248 (¶61 1971). Moreover, the creation of other negotiations units is not the kind of changed circumstance envisioned in Clearview.^{1/}

UMDNJ's request that the librarians be added to the existing HPAE unit is, essentially, a request to change the librarians' majority representative. A question concerning the representation of a group of employees can only be raised by the filing of a representation petition. Clearview, supra. I note that neither HPAE nor CWA wish to represent the librarians. It is the Commission's policy not to force employees into a unit represented by an organization that has not indicated a desire to represent

^{1/} C.f. Borough of Park Ridge, D.R. No. 86-6, 12 NJPER 37 (¶17014 1985), where a departmental reorganization was a sufficient change in circumstances to justify the exclusion of a title from a white collar unit and its inclusion into a unit of blue collar employees with whom the title in question had a greater community of interest.

them. Camden Bd. of Ed., E.D. No. 76-32 (1976) aff'd P.E.R.C. No. 76-50, 2 NJPER 228 (1976).

UMDNJ's petition is inappropriate and I dismiss that portion of the clarification petition which seeks to add the non-supervisory librarians to the HPAE unit.

In its amendment, UMDNJ also alleged that approximately five librarians are supervisory and should be placed in the CWA supervisory unit. N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-6(d) prohibits supervisors with the power to hire, discharge, discipline, or effectively recommend the same to be members of the same negotiations unit as non-supervisory employees.^{2/} Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30 (1970).

However, when the librarians were added to the unit, the parties agreed that certain titles were excluded from the unit because they were identified as supervisors. UMDNJ now seeks to remove additional positions.

UMDNJ submitted certifications from its Director of Labor Relations and Associate Vice President for Academic Administration.

^{2/} N.J.S.A. 34:13A-5.3 provides that "...nor except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same have the right to be represented in collective negotiations by an employee organization that admits non supervisory personnel to membership."

N.J.S.A. 34:13A-6(d) states that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors...."

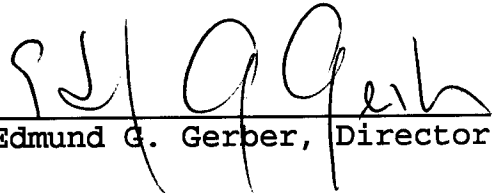
They identified six librarians as supervisors within the meaning of the Act.^{3/} However, UMDNJ has not submitted information or other documentation as to the specific duties performed by these employees.

A determination of supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend these actions. UMDNJ has to present facts in support of its assertion. Absent a factual proffer indicating that these librarians regularly exercise the supervisory powers claimed, I find that the six librarians are not supervisors and are appropriately included in the AAUP negotiations unit.

Somerset Cty. Guidance Ctr., D.R. No. 77-4, 2 NJPER 358 (1976).

Accordingly, I dismiss the petition as amended.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: December 19, 1995
Trenton, New Jersey

^{3/} Valentine Allen, Librarian I, and Ela Sosnowska, Librarian III at the George F. Smith Library; Kerry O'Rourke, Librarian I, and Robert Gessner, Librarian II, at the Robert Wood Johnson Library; Catherine Weglerz, Librarian II at the Stratford Library; and Ezna Etter, Librarian I, in the media library.