

D.R. NO. 2004-6

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

In the Matter of

BURLINGTON COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-2002-26

BURLINGTON COUNTY COLLEGE FACULTY ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition filed by the Burlington County College Faculty Association seeking to include two titles in a unit of teaching faculty, counselors, librarians, lecturers, and clinicians at Burlington County College. As to the titles of counseling specialist and library information specialist, the Director finds that these titles were created several years before the execution of the parties' most recent collective agreement, therefore, the clarification of unit petition is untimely.

The Director finds that as the title of academic advisor performs similar duties and has similar educational and experience requirements as the unit title of counselor, and the petition was filed during the contract period in which the title was created, the Association's petition concerning that title is appropriate and timely. The Director orders the academic advisor title added to the unit effective immediately.

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Appearances:

For the Public Employer,
Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel)

For the Petitioner,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,
attorneys
(Paul L. Kleinbaum, of counsel)

DECISION

On January 23, 2002, the Burlington County College Faculty Association (Association) filed a Clarification of Unit Petition with the Public Employment Relations Commission. The Association seeks to add the titles of academic advisor and library information specialist (including resource technician-library and reference information specialist) to its existing unit of full-time teaching faculty, student counselors and librarians holding the rank of instructor, assistant professor, associate professor or professor, and lecturers and clinicians employed by Burlington County College (College). The Association claims that the

petitioned-for titles are new titles or retitled positions which were formerly in the unit; thus they are now appropriate for inclusion in the unit through the instant petition. By letter of March 14, 2002, the Association further clarified its petition, explaining that its petition also sought to add the counseling specialist title to the existing unit.

The College opposes the petition. It asserts that none of the petitioned-for titles hold academic rank or teach as required under Article I, paragraph A of the parties' agreement; thus they are not appropriate for inclusion in the unit.

The College further asserts that the petition is untimely as to the library information specialist and the counseling specialist. Specifically, the College claims the library information specialist title was created in 1995 and the counseling specialist title was created in 1993; thus, the Association has waived its right to include them in the unit through a clarification of unit petition. The College also notes that the library information specialist title may be supervisory, as the title intermittently substitutes for the library director and supervises support staff.

The Association disputes the College's assertion that one must hold an academic rank or teach for unit eligibility under the agreement. The Association notes that under Article I, Paragraph B, there are positions included within the unit that do

not hold academic rank (lecturers and clinicians) or teach (clinicians). The Association further asserts that the College cannot legitimately exclude positions from the unit by creating positions which do not hold academic rank; otherwise, the bargaining unit would become eroded and would eventually be eliminated.

Further, as to the timeliness issue, the Association claims that it was not advised of the creation of the library information specialist and counseling specialist titles until September 1999, after the execution of its latest collective agreement; thus its petition is appropriate. Finally, the Association asserts that the petitioned-for titles share a community of interest with the current unit titles and thus the unit should be clarified to include them.

We conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2 and 2.6. By letter dated August 7, 2003, I advised the parties that I was inclined to dismiss the petition as to the counseling specialist and library information specialist, and to order the academic advisor title included in the unit. I invited the parties to submit additional materials and argument for my consideration by August 18, 2003. On August 18, 2003, the Association filed a response.

The administrative investigation reveals that there are no substantial material factual issues in dispute which would

warrant convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and

2.6. Based upon the investigation, I find the following:

FINDINGS OF FACT

The Association and the College are parties to a collective negotiations agreement for the period July 1, 1994 through June 30, 1999 and an extension agreement for the period July 1, 1999 through June 30, 2003. The extension agreement, which was executed in February 1998, provides that it is limited to the changes stated therein and that all other provisions of the collective agreement remain in full force and effect.

The Recognition Clause, Article I, Paragraph A, of the collective agreement, specifically states:

The College hereby recognizes the Burlington County College Faculty Association as the exclusive bargaining representative as defined in Public Laws of 1968, Chapter 303, and as amended by Public Laws of 1974, Chapter 123, for all full-time teaching faculty, student counselors and librarians holding the academic rank of Instructor, Assistant Professor, Associate Professor or Professor.

Paragraph B of the Recognition Clause, as modified by the extension agreement, in pertinent part provides:

1. The Board further recognizes the Burlington County College Faculty Association as the exclusive bargaining representative for all Lecturers and Clinicians. The title may be given to individuals employed by the College to perform duties similar to those performed by faculty, counselor, and librarian staff.

The academic advisor title was created in June 1999. Upon comparing job descriptions, the duties and requirements of the

academic advisor position and the unit position of counselor are very similar. For example, both positions are required to counsel students in various areas and both are required to facilitate group workshops and counseling. Further, the duties of both titles involve assisting students in assessing appropriate career and educational planning information and/or resources. Moreover, the duties of both titles include consulting with instructional and administrative staff on issues and concerns that impact student life and the learning environment. Finally, both have similar educational requirements, including the requirement of a master's degree and a supervised internship. While the two current academic advisors do not hold academic rank or teach, the Association points out that counselors, who are in the unit, have not been assigned teaching responsibilities for at least eight years. However, unlike counselors, the academic advisors are paid through special projects funds and are not "nationally certified counselors."

The library information specialist title was created in April 1993 and was revised on March 5 and September 8, 1999. The employees in the position do not hold academic rank or teach. The job description for the title is similar to that of the unit title librarian. Both require a master's degree from an American Library Association accredited program and both require experience working in a library setting. Further, both perform

library-related duties. According to the College, the library information specialist title supervises support staff and substitutes for the library director in her absence. The Association, however, claims that the assistant director, not the library information specialist, fills in for the director in her absence and further notes that a library information specialist substitutes for the librarian when needed.

The counseling specialist title was created in 1993 and is funded through a special projects grant. The position does not teach or hold academic rank and is similar to the unit title of counselor. Both titles are involved in advising and counseling students and both require a Master's Degree in counseling.

Other than the Association's assertion that these positions should be included in the unit for the same reasons as the library information specialist, the parties provided no specific factual information concerning the creation or duties of the resource technician-library or reference information specialist.

ANALYSIS

A clarification of unit petition is used to resolve a question concerning the scope of a certified or recognized negotiations unit or a unit described in a contractual recognition clause. It is appropriately filed where the majority representative has identified and petitioned-for personnel in newly-created titles during the contract period in which the new

title is established, and prior to the execution of the next successor agreement. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370 (¶30160 1999); Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); See also, Morris Cty. Voc. Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992); Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987); Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); County of Bergen (Bergen Pines Hospital), D.R. No. 80-20, 6 NJPER 61 (¶11034 1980); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977).

Here, the counseling specialist title was created in 1993 and the library information specialist was created in 1995, several years before the execution of the parties' most recent collective agreement signed in 1998. Thus, I find that the Association's clarification of unit petition as to these two titles is not appropriate. Clearview. It makes no difference if the Association did not learn of these titles until 1999, as the burden rests with the Association to search out potential unit members. Rutgers; Bergen Pines.

The Association disputes that the College ever raised a timeliness defense as to the counseling specialist and library information specialist, and that it is therefore inappropriate for the counseling specialist and library information specialist positions to be excluded on that basis. The Commission must determine the timeliness and appropriateness of a clarification

of unit petition as a threshold procedural issue, regardless of whether a party raises timeliness as a defense. See generally, New Jersey Transit. N.J.S.A. 34:13A-6 charges this Commission with deciding the appropriate negotiations unit as well as effectuating the rights of public employees to choose their majority representative. When employees have been excluded from the negotiations unit for too long, any effort to provide such employees with union representation through unit inclusion necessarily raises a question concerning representation which must be presented as a representation petition. Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶1028 1980); Clearview.

The Association further asserts that since the library information specialist title was revised on September 8, 1999, after the execution of the most recent collective agreement, it had not waived its right to seek inclusion of these titles through a clarification of unit petition. Under Clearview, a clarification of unit petition may be appropriate where there has been a change in circumstances arising after the contract was executed. An altered job description may constitute changed circumstances. See Milltown Bd. of Ed., D.R. No. 2001-7, 27 NJPER 157 (¶32054 2001). However, the Association raises no facts illustrating how the September 8, 1999 revisions constituted a change in circumstances justifying the inclusion of

the Library Information Specialist title in the Association's unit.

Under Clearview and Bergen Pines, the Association has waived its right to add the counseling specialist and the library information specialist to its unit through the instant petition. Thus, the petition is dismissed with respect to those titles.^{1/} The Association may seek to add these titles to its unit through a timely representation petition.

Moreover, the parties provided insufficient specific factual information concerning the creation or duties of the resource technician-library and reference information specialist, which the Association asserts are related to the library information specialist title. Therefore, I dismiss the petition as to those titles.

However, I find that the academic advisor title is appropriate for inclusion in the unit. The title shares a community of interest with the titles currently in the unit. Indeed, the title performs similar duties and has similar educational and experience requirements as the unit title of counselor. I do not find that under the recognition clause, the title must be excluded based upon its lack of academic rank or

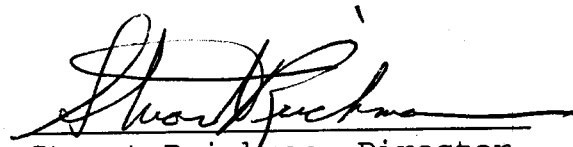
^{1/} In light of my finding that under Clearview, the petition is not appropriate as to the library information specialist title, I decline to address the College's arguments regarding the supervisory/managerial status of that title.

teaching responsibilities. Under Paragraph B of the clause, the titles of lecturer and clinician are included in the unit and these titles also do not teach or hold academic rank. Further, I do not find that the source of funding for the title, i.e. special project grants, precludes it from being eligible for inclusion in the unit. Township of Cranford, D.R. No. 86-26, 12 NJPER 566 (¶17214 1986). Moreover, the title was created in June 1999 and thus the Association's petition is appropriate and timely under Clearview and Bergen Pines, as the petition was filed during the contract period in which the title was created and prior to the execution of a successor agreement. Accordingly, The academic advisor title is hereby added to the Association's unit, effective immediately. Clearview.

ORDER

As to the academic advisor position, the unit clarification petition is granted. As to the counseling specialist and library information specialist, and its derivative titles, the unit clarification petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: October 30, 2003
Trenton, New Jersey