

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF REPRESENTATION PROCEEDINGS

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Public Employer,

-and-

DOCKET NO. CU-83-59

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 52, AFL-CIO,

Petitioner.

SYNOPSIS

The Administrator of Representation Proceedings dismisses a Petition for Clarification of Unit which sought to add certain titles to the existing collective negotiations unit. The Administrator finds that the employee organization, by its failure to identify and to petition for the newly created titles prior to executing a successor contract with Rutgers, may not now seek to add the titles to its unit through a clarification of unit proceeding.

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Appearances:

For the Public Employer
Carpenter, Bennett & Morrissey, attorneys
(Edward Ryan of counsel)

For the Petitioner
Rothbard, Harris & Oxfeld, attorneys
(Sanford R. Oxfeld of counsel)

DECISION

On March 14, 1983, the American Federation of State, County and municipal Employees, Local 1762, Council 52, AFL-CIO ("AFSCME") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking a clarification of its clerical, office, laboratory and technical employee unit ("COLTS" unit) as including employees in the following titles: College Store Manager, Senior Accounting Assistant, Budget Assistant, 4-H Coordinator Equine Activities, Assistant

Supervisor Cashier, Supervisor Student Accounts, Client Representative Accounts, Coordinator Field Interviews, Housing Assistant, Membership Coordinator, Assistant to Supervisor Employment and Training, Assistant to Food Buyer, Communications Coordinator/Off-Campus Housing, Coordinator of Board Plans, Equipment Inventory Control Assistant, Office Manager, Payroll Specialists, Box Office Coordinator, Switchboard Operations employed by Rutgers, the State University ("University").

Subsequently, the parties advised the assigned staff agent that an agreement had been reached as to inclusion or exclusion of employees in the following titles: Coordinator 4-H Equine Activities, Coordinator Field Interviews, Membership Coordinator, Box Office Coordinator, Client Representative Accounts, Communications Coordinator/Off-Campus Housing. Therefore, those titles are no longer in dispute herein. Additionally, the University has advised, and AFSCME does not dispute, that the title Budget Assistant does not exist.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations raised in the petition in order to determine the facts. On the basis of the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter if properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more

appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. Rutgers, the State University is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the disputed employees herein, and is subject to the provisions of the Act.

3. The American Federation of State, County and Municipal Employees, Local 1761, Council 52, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions. AFSCME is the certified exclusive representative of the collective negotiations unit of all clerical, office, laboratory and technical employees employed by the University, having been certified by this Commission on November 11, 1971.

4. The most recent collective negotiations agreement between the parties covered the period July 1, 1981 through June 30, 1983, and was executed by the parties on or about June 1, 1982. The agreement contains an appendix that specifically lists the titles included in the negotiations unit. None of the disputed titles are listed therein.

5. AFSCME filed its Petition for Clarification of Unit seeking to add the above unrepresented employees (approximately 40) to the unit on March 14, 1983. At the informal conference

conducted by the assigned Commission staff agent, AFSCME advanced the position that there is a community of interest between the employees in the petitioned-for titles and the employees in the existing negotiations unit, and that AFSCME was never advised in a timely manner by the University that the titles in question had been created.

6. The University maintains that all the petitioned-for titles have been in existence for a long time prior to the filing of the instant petition and have traditionally been excluded from the negotiations unit. The University claims that AFSCME's prior failure to assert a representation claim is a waiver of such a claim at this time. Additionally, the University contends that the employees in certain of the disputed titles either are supervisors within the meaning of the Act or are "administrative" employees.

In In re Clearview Reg. H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), it was noted that a Petition for Clarification of Unit may not normally be used to enlarge the scope of an existing unit to include previously unrepresented employees. The Commission's clarification of unit procedure is for the purpose of identifying unit employees whom the parties have intended to be encompassed by the unit definition. Community of interest considerations, alone, are not a sufficient basis to enlarge the scope of a negotiations unit through unit clarification. See also In re Barnegat Tp. Bd. of Ed., D.R. 84-15, 10 NJPER 54 (¶ 15029 1983).

In re Cty. of Bergen (Bergen Pines Hospital), D.R. No. 80-20, 6 NJPER 61 (¶ 11034 1980), further instructs that in those circumstances where clarification of unit procedures are appropriate to add employees to a unit, the Petition must be filed promptly, or a principle of waiver may apply. As an example, at footnote 9, the Director of Representation noted that accretion petitions -- those involving clarification sought with respect to personnel employed in new operations -- must be filed during the contractual period in effect at the time the new operation arose and prior to the execution of a successor agreement. It would appear to the undersigned that if a majority representative has the responsibility to file a Petition for Clarification of Unit during the contractual period in which a new operation has arisen, by the same force of reasoning the majority representative would have the responsibility to identify and to petition for personnel in newly created titles during the contractual period in which the new title was established and prior to the execution of the next succeeding contract.

Bergen Pines also addresses AFSCME's argument that Rutgers never advised it that the titles in question existed. Bergen Pines holds that the burden of searching out potential unit employees rests with the majority representative. AFSCME has not asserted any facts under which it is arguable that the burden has shifted to Rutgers. Accordingly, it appears to the undersigned that the Petition for Clarification of Unit filed herein should be dismissed with respect to titles created prior to the execution

date of the contract in force at the time of the filing of the
Petition, i.e., June 1, 1982:

<u>TITLE</u>	<u>DATE</u>
College Store Manager (Sweetshop Manager)	August 1979
Senior Accounting Assistant	November 1973
Assistant Supervisor Cashier	December 1981
Supervisor Student Accounts (Asst. Supv. Student Accounts)	December 1981
Housing Assistant	December 1977
Assistant to Supervisor Employment and Training	October 1980
Assistant to Food Buyer	October 1974
Coordinator of Board Plans	August 1977
Equipment Control Assistant	May 1978
Office Manager (Office Manager/Registrar)	January 1980
Payroll Specialist	July 1976
Switchboard Operations Supervisor	March 1978

Allowing for such disposition, and in consideration of the
parties' mutual disposition of additional titles, the undersigned finds
that no further disputed titles are in question under the Petition.
The instant Petition is hereby dismissed.

BY ORDER OF THE ADMINISTRATOR
OF REPRESENTATION PROCEEDINGS


Joel G. Scharff, Administrator

DATED: April 19, 1984
Trenton, New Jersey