

D.R. NO. 99-13

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

In the Matter of

WEST ESSEX REGIONAL BOARD OF  
EDUCATION,

Public Employer,

-and-

Docket No. CU-99-24

WEST ESSEX EDUCATION ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director of Representation clarifies a unit of certificated school employees to include a newly created title, full-time athletic trainer, effective immediately. The Director finds that the petition was appropriate in accordance with the Commission's long-standing policy set-forth in Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1978). The Director concludes that as a professional employee holding an athletic trainer certification, the new title could be identified within the definition of the existing unit.

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Appearances:

For the Public Employer,  
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys  
(Allan D. Dzwilewski, of counsel)

For the Petitioner,  
Pamela S. Niles, NJEA Field Representative

DECISION

On December 14, 1998, the West Essex Education Association ("Association") filed a Petition for Clarification of Unit seeking to include a newly created title, full-time athletic trainer, in a unit of approximately 125 personnel employed by the West Essex Regional Board of Education ("Board"). The Association contends that its petition is appropriate because this was the first opportunity that it could seek inclusion of the newly created title.

The Board opposes inclusion of the title contending that the Association represents certificated employees but that the athletic trainer is a non-certificated title. Additionally, the Board asserts that a clarification of unit petition is

inappropriate; rather, the Association is required to file a representation petition during the appropriate window period in order to add the athletic trainer title to the negotiations unit.

On February 10, 1999, we conducted an investigatory conference in accordance with N.J.A.C. 19:11-2.6. On March 18, 1999, I sent a letter to the parties setting forth the facts as they appeared and indicated that I was inclined to find that a Petition for Unit Clarification is appropriate to resolve this dispute and that the athletic trainer title should be included in the existing unit of certificated personnel represented by the Association. I provided the parties with an opportunity to file a response. Neither party responded. Therefore, based upon the investigation, I find the following facts.

The Association and Board executed a collective negotiations agreement on September 15, 1997, for the period 1997 to 2000. The recognition clause of the agreement provides that the Association is the majority representative of a negotiations unit comprised of teachers, nurses, counselors, librarians, child study team, part-time teachers and special education associates. Excluded from the unit are supervisory and executive personnel, office, clerical, maintenance and operating employees, such as but not limited to principals, assistant principals, administrative assistants, supervisors, coordinators, directors and aides.

The Association is affiliated with the New Jersey Education Association which also represents separate units of secretaries,

custodians and maintenance employees employed by the Board. Administrative personnel are represented by the West Essex Administrative Association.

From 1974 or 1975 to 1998, the athletic trainer was a part-time, extracurricular position held by a physical education teacher. The Association negotiated stipends for the position. The job description detailing qualifications, performance responsibilities and hiring criteria for the part-time position provided as follows:

- I. TITLE: Athletic Trainer
- II. REPORTS TO: Director of Athletics
- III. QUALIFICATIONS:

The West Essex Board of Education recognizes the complementary role that extracurricular athletics play in students' education and development. This role necessitates that the Board choose the best person for coaching positions. In order to do so, the Board will use the following qualifications for its decision:

1. Candidate must have N.A.T.A. Certification or New Jersey Athletic Trainer License.
2. Candidate must have approved C.P.R. Certification.
3. Previous athletic training experience preferred.
4. Candidate must be able to make the appropriate time commitment to insure proper supervision of coverage of athletic events and practice before, during and after practice.
5. Demonstrate the ability to maintain discipline and order with students of appropriate age levels.
6. Demonstrate the ability to establish a positive relationship with students.

7. Candidate should be in good health and be physically able to cover practices and games.
8. Candidate must have a basic understanding of first aid and safety procedures.
9. Candidate must have a basic understanding of adolescent psychology as it relates to sports, i.e. positive/negative reinforcement, motivation, etc.
10. Demonstrate philosophy that the purpose of extracurricular sports is for the physical, emotional and social development of students.
11. Candidate must be willing to cooperate with administration, teachers and coaches and support all school policies and regulations.
12. Candidate must display characteristics, attitude and demeanor that project a good image and a positive role model for athletes.
13. Candidate must have basic knowledge of principles of athletic training.
14. Candidate must have ability to assist team physician in carrying out school related policies as they relate to sports medicine programs.
15. Such alternatives to the above qualifications as the Board may find appropriate and acceptable.

IV. PERFORMANCE RESPONSIBILITIES:

An athletic trainer at West Essex will assume those responsibilities delegated to him by the school or team physician or athletic director and will specifically:

1. Comply with all school, conference, N.J.S.I.A.A. and National Federation rules as they apply to sports medicine.
2. Follow the system and procedures for sports medicine as directed by school of team physician and athletic director.
3. Apply all preventive and corrective taping under direction of Team Physician.
4. Supervise all rehabilitation of injured athletes including use of modalities under direction of school or team physician.

5. Supervise all activities in training room and maintain inventory of athletic training supplies.
6. Fit athletes with protective equipment under direction and supervision of school or team physician.
7. Carry out student relationships with a firm hand and be fair at all times.
8. Maintain working relationship with team physician and coaches.
9. Prescribe a program for prevention of injuries.
10. Provide proper care for injured athletes.
11. Assist school nurse with insurance claims.
12. Candidate must be able to use modalities as they relate to rehabilitation of athlete.
13. Participate in public relations activities as directed.
14. Take pride in representing and be loyal to West Essex on and off the field.

V. HIRING DECISIONS FOR ATHLETIC TRAINERS SHALL BE MADE AS FOLLOWS:

1. In-district certified persons who meet all the above written qualifications may be hired.
2. In the event no in-district certified person applies, or an in-district applicant fails to meet the written qualifications, the Board may hire an out-of-district certified person who meets the written qualifications.
3. In the event there is no qualified and certified applicant, after advertising the position, the Board will direct the chief school administrator to seek permission to hire a person holding a county substitute certificate.

Based on the foregoing, the part-time athletic trainer was required to have various certifications as an athletic trainer, experience as a trainer and/or such alternatives to those qualifications as the Board may find appropriate and acceptable. According to the job description, the part-time athletic trainer

reported to the athletic director. Evaluations of the athletic trainer's performance were conducted by the athletic director.

On July 13, 1998, the Board adopted a resolution creating a full-time athletic trainer title for the 1998-1999 school year. In the resolution, the Board appointed Alison Matrange<sup>1/</sup> to a ten-month position at the annual salary of \$26,000<sup>2/</sup> with full benefits.

The resolution also designated the director of athletics as her supervisor but did not specifically incorporate the part-time job description. The Board and the Association, however, acknowledged that Matrange's job duties were the same as those outlined in the part-time job description.

Upon her appointment, Matrange was directed to provide the Board with copies of her certificates and transcripts.<sup>3/</sup> Matrange is certified by the New Jersey State Board of Medical Examiners.<sup>4/</sup> Additionally, Matrange held a certification from the National Athletic Trainers' Association.

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<sup>1/</sup> Matrange's resume indicates that she holds a masters degree in Arts and Teaching, Biology, from Montclair State University, and received a bachelor of science degree from Rutgers University. She is a member of the National Athletic Trainers' Association and the Eastern Athletic Trainers Association. She has held various student athletic trainer positions since 1994.

<sup>2/</sup> The Board subsequently adopted a resolution increasing her salary to \$37,000 effective October 1, 1998.

<sup>3/</sup> Interim Superintendent Donald Merachnik's letter dated July 6, 1998.

<sup>4/</sup> Matrange's registration was for the period April 25, 1997 through January 31, 1999.

The Board and Matrango executed a Contract for Professional Employment on October 2, 1998.<sup>5/</sup> In addition to setting forth her salary, it requires that Matrango hold "...an appropriate professional certificate issued in New Jersey...."

On September 8, 1998, Association President Sue Leonard requested that the Board recognize the full-time athletic trainer title as part of the negotiations unit. On September 10, 1998, Merachnik advised Leonard that the Board's negotiations committee wanted to deal with the matter as they discussed other unsettled issues with the Association. He asked the committee chairman, Juan Davison, to contact Leonard so that all unsettled issues might be resolved.

On November 6, 1998, Leonard again requested that the Board recognize the Association as the representative and negotiations agent for the athletic trainer title. On November 10, 1998, Davison wrote back to Leonard advising that "the Board does not recognize W.E.E.A. as the negotiations representative for the athletic trainer because the person holding that position is not a member of the teaching staff and not covered under the recognition clause of the CBA." This petition ensued.

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<sup>5/</sup> It appears that Matrango and the Board executed a contract during the summer of 1998 after the Board's resolution appointing her to the position, but then re-executed the agreement when the Board increased her salary in October, 1998.



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As to the appropriateness of the Association's petition, the Commission's longstanding policy regarding clarification of unit petitions was set forth in Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1978). 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. Additionally, 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. [Id. emphasis added.]

In this case, the Board argues that the newly created title, athletic trainer, is not contemplated within the scope of the unit as set forth in the parties' recognition clause. However, I find that the Association has not waived its right to seek unit clarification. The full-time position is newly created and the Association promptly sought its inclusion in the unit. A unit clarification petition is, therefore, procedurally appropriate.

As to whether the title should be included in the unit, the facts of this case are virtually identical to those presented in a prior unit clarification case, Matawan-Aberdeen Bd of Ed., D.R. 88-8, 13 NJPER 743 (¶18280 1987). There, the Director of Representation found that a newly created title, athletic trainer, should be included in the teacher's negotiations unit and, therefore, clarified the unit to include the title.

In Matawan-Aberdeen, athletic trainers were found to be professional employees and were found to have interests similar to those of other members of the professional unit. Here, there is no dispute among the parties that the athletic trainer is a professional employee.

The fact that athletic trainers hold a different certification from teachers was also discussed in Matawan-Aberdeen:

While the athletic trainer position requires certification from the State Board of Medical Examiners, rather than the Department of Education, certification allows one to work in educational institutions. The Athletic Training Practice Act defines an athletic trainer as one "who practices athletic training as an employee of a school, college, university or a professional team." N.J.S.A. 45:9-37.36.(c). The Association's unit includes all certificated personnel, not only personnel with teaching certifications. Nurses, librarians, guidance counselors and social workers are included in the unit. While they are certificated employees, they are not required to have a teaching certification. Therefore, we believe that the origin of the athletic trainer position's certification is insignificant compared to the working conditions and interests shared by the athletic trainer and the employees in the teachers' unit.

[Id. at p. 745; see also Caldwell-West Caldwell, D.R. No. 87-21, D.U.P. 87-12, 13 NJPER 213 (¶18090 1987) (athletic trainer included in a unit of certificated personnel including teachers, nurses, psychologists, librarians and social workers)].

Here, the newly created full-time athletic trainer performs the same duties as the previous part-time athletic trainer. The Association negotiated the part-time athletic trainer's stipend. Although the athletic trainer does not teach classes, she is required to counsel student athletes, supervise the training room, administer first aid, and attend as many practices and athletic contests as possible. Nurses, librarians, and counselors do not routinely teach classes, but nonetheless have significant student contact. Those professional titles are included in the unit.

For all of the foregoing reasons, I find that the athletic trainer title should be included in the existing unit of certificated personnel represented by the Association. Therefore, I clarify the existing unit of certificated personnel to include the athletic trainer title effective immediately. Clearview.<sup>6/</sup>

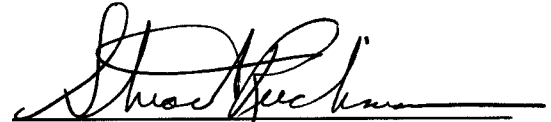
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<sup>6/</sup> Inclusion in the unit does not mean that the athletic trainer is automatically covered by all of the terms of the parties' existing agreement. Rather, the title's inclusion in the unit requires the parties to negotiate over matters of salary and other terms and conditions of employment. Sussex Cty., D.R. No. 92-25, NJPER 212 (¶23095 1992); Union Cty. Req. H.S. Dst. #1, D.R. No. 83-22, 9 NJPER 228 (¶14105 1983).

ORDER

The athletic trainer title is included in the existing unit of certificated personnel represented by the Association, effective immediately.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Stuart Reichman, Director

DATED: April 9, 1999  
Trenton, New Jersey