

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

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Public Employer,

-and-

LONG BRANCH FEDERATION
OF TEACHERS, NJSFT, AFT, AFL-CIO,

DOCKET NO. CU-83-55

Petitioner,

-and-

LONG BRANCH SCHOOL EMPLOYEES
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation finds that the School District's Audio Visual Technican may be placed in a unit of aides represented by the Federation. The Audio Visual Technican's functions and responsibilities include maintenance of audio-visual equipment and assisting the classroom teacher in utilizing audio visual equipment. Thus, the Audio Visual Technician exercises a role which may be likened to the role performed by aide employees. The clarification of unit petition was filed by the Federation several months after its certification as majority representative.

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Appearances:

For the Public Employer
Kenney & McMannus, attorneys
(Malachi J. Kenney of counsel)

For the Petitioner
Fougeres Ferrier, NJFST Staff Representative

For the Intervenor
John A. Molloy, UniServ Representative, NJEA

DECISION

On February 24, 1983, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Long Branch Federation of Teachers, NJSFT, AFT, AFL-CIO ("Federation") seeking the placement of the title

Audio-Visual Technician ("A-V Technician") in its negotiations unit which is comprised of attendance officers, classroom aides (para-professionals), cafeteria/playground aides, and bus aides employed by the Long Branch Board of Education ("Board"). The title in question is currently not placed in any negotiations unit of Board employees.

The Long Branch School Employees Association ("Association") is the majority representative of a unit comprised of the Board's certificated professional staff, secretarial/clerical staff, custodial and maintenance employees, and corridor aides. On March 18, 1983, the Association submitted a request to intervene in the Petition. On May 10, 1983, the undersigned granted limited intervention status to the Association.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations concerning the Petition. Pursuant thereto, an informal investigatory conference was convened by a Commission staff agent. The Federation attended the conference and provided certain factual material; neither the Board nor the Association attended the conference.

Based upon the administrative investigation, the undersigned finds and determines as follows:

1. The disposition of this matter is 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. The Long Branch Board of Education 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 employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. The Long Branch Federation of Teachers, NJSFT, AFT, AFL-CIO and the Long Branch School Employees Association are employee representatives within the meaning of the Act and are subject to its provisions. The Federation is currently the exclusive representative in a unit consisting of all attendance officers, classroom aides (para-professionals), cafeteria/playground aides, and bus aides, having been certified as the exclusive representative by the Commission on November 29, 1982. The Association is currently the exclusive representative in a unit comprised of all certificated staff, secretarial/ clerical staff, custodial and maintenance employees, and corridor aides and was certified as the exclusive representative on June 19, 1978. ^{1/}

4. The Federation seeks the placement of the A-V Technician title in its collective negotiations unit. The Federation argues that the nature of the position can be likened to that of the classroom aide title, which is included in its unit.

^{1/} The 1978 certification reflected the addition of secretarial/ clerical and custodial/maintenance employees into the Association's teachers unit. Prior thereto the secretarial/clerical employees and the custodial/maintenance employees were represented within separate respective negotiations units.

5. The Association opposes the Petition, arguing that the unit represented by the Association is the more appropriate unit to include the disputed title. The Association has not presented a positional statement in support of its claim; however, it has orally represented to the assigned Commission staff agent that its claim is predicated upon the similarity of the A-V Technician's job responsibilities to those of maintenance employees, who are included in the Association's unit.

6. The Board initially took the position that the A-V Technician title could be likened to the maintenance employee positions. However, in its most recent submission, the Board indicates that the Board's primary concern is the placement of the A-V Technician title in the appropriate unit. The Board has stated a willingness to provide information, but it further states that it does not intend to participate actively in consideration of the merits of this matter and will abide by the Commission's determination as to unit placement.

7. The administrative investigation reveals that the A-V Technician is responsible for the repair and maintenance of all the School District's audio-visual equipment. He not only makes repairs, but also instructs the teachers on how to operate audio-visual equipment. This instruction may take place at any time during the school day upon a teacher's request. At times the individual is called upon to operate the equipment for the benefit of the students. Further, the A-V Technician prepares all of the

instructional materials used by the teachers (transparencies, slides, tapes, etc.).

The job requirements for the A-V Technician position are: (1) high school graduate; (2) successful completion of an audio-visual electronics program at a technical school or equivalent; (3) minimum of one year experience in the repair and maintenance of audio-visual hardware; and (4) such alternatives to the foregoing requirements as the Board finds appropriate and acceptable. This position requires ongoing education and the Board has, on occasion, sent the A-V Technician to seminars to aid him in acquiring new skills in this field.

8. The Federation argues that the responsibilities of the A-V Technician do not resemble those of the maintenance employees, but rather those of the classroom aides who work alongside the teachers in the classroom. The A-V Technician's supervisor is the Director of Communications, Library and Media Services, while the maintenance employees have a separate line of supervision. The A-V Technician's job requires advanced skills and education as well as a continuing commitment to the acquisition of new skills. After six years of working for the Board, the A-V Technician receives more than \$15,000 while a maintenance person receives \$10,120 after an equal number of years, and receives \$15,305 after 16 years. The A-V Technician also gets one hour for lunch as compared to 1/2 hour for the maintenance employees.

9. Since the Association's 1978 certification, the Board and the Association have negotiated at least two contracts. The Federation argues that at no time until the filing of the instant Petition has the Association attempted to represent the A-V Technician title which has been in existence since 1975.

10. The issue placed in dispute by the parties requires the undersigned to determine whether the title of A-V Technician can be identified as within the scope of the Federation's unit of aides and appropriately may be placed in its negotiations unit.

Preliminarily, the undersigned observes that there is no basis to support the placement of the A-V Technician title, which is concededly an unrepresented title, in the Association unit by way of unit clarification.

In In re Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980), it was determined that a clarification of unit petition would be an inappropriate vehicle to achieve the representation of titles which were in existence at the time the negotiations unit was formed, and in the absence of any mutual intent to include those titles. Such a petition is also inappropriate where the petitioner, has for a considerable period of time "slept" on its rights concerning the disputed title. Thus, the undersigned has found that an employee organization which has "slept" on its rights to assert a representational interest in employee titles is precluded from utilizing a clarification of unit petition to achieve their inclusion in the existing collective negotiations unit. See

In re State of New Jersey, D.R. NO. 80-8, 5 NJPER 454 (¶ 10229 1979), aff'd P.E.R.C. No. 89-65, 5 NJPER 538 (¶ 10277 1979); and In re Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶ 11034 1980).

It appears to the undersigned from the facts submitted that the Association has "slept" on any rights it may have had to assert a claim that the A-V Technician title should be placed in its negotiations unit on the basis of a clarification unit petition. ^{2/} The vehicle, if any, available to the Association to accomplish the Association's representation of the A-V Technician title is through the filing of a Petition for Certification of Public Employee Representative with an appropriate showing of interest.

Moreover, it appears to the undersigned that the aides' unit is the appropriate unit for the representation of the A-V Technician title inasmuch as the Federation's likening of the A-V Technician role and the classroom aide role is an apposite comparison. Essentially, the job function of the A-V Technician consists of assisting the classroom teacher in the preparation and presentation of student instructional material. There further appears to be a basis for unit clarification in accordance with the precepts of the State of New Jersey and Bergen Pines matters, supra.

^{2/} Similarly, the Association could not achieve a unit clarification determination by intervening in the Federation's petition. As an intervenor, the Association can only argue that the A-V Technician title should not be placed in the Aides' unit because it had already been placed in the Association's unit or that the sole unit in which the title could properly be represented would be its unit. N.J.A.C. 19:11-2.8(e).

The representation of this particular title was apparently overlooked in the formation of the aides' unit and the Federation has promptly filed to cure this deficiency.

On June 24, 1983, the parties were reminded of their obligations under N.J.A.C. 19:11-2.6, to present documentary or other evidence as well as statements of position related to the instant Petition and were afforded an additional opportunity to proffer any supplementary evidence or statements of position. The undersigned advised the parties that in the absence of disputed material factual issues, he would thereafter issue a decision on the basis of the facts presented to date. There being no further proffers from the parties, the undersigned determines that the A-V Technician be included in the Federation's negotiations unit effectively immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: July 14, 1983
Trenton, New Jersey