

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

:

LAKE FOREST EDUCATION ASSOCIATION, :

Petitioner :

:

v. :

: Rep. Pet. No. 91-03-060

:

BOARD OF EDUCATION OF THE LAKE :

FOREST SCHOOL DISTRICT, :

Respondent :

:

The Board of Education of the Lake Forest School District (hereinafter "District") is a public employer within the meaning of section 4002 (1) of the Public School Employment Relations Act, 14 Del. C. Chapter 40 (as amended 1990, hereinafter "Act"). Except for the recess aides, who are currently unrepresented, the Lake Forest Education Association (hereinafter "Association") is the exclusive bargaining representative of the public employer's professional and classified employees involved in this matter within the meaning of 14 Del. C. section 4002 (1).

On March 1, 1991, the Association filed a representation petition seeking to combine the bargaining unit of classified

employees, consisting of secretaries, clerks, custodians and aides, with the bargaining unit of certificated teachers and other non-administrative professional employees. On March 7, 1991, the District advised the Public Employment Relations Board (hereinafter "Board" or "PERB") of its opposition to the petition.

A hearing was held before the Public Employment Relations Board for the purpose of receiving evidence concerning the appropriateness of the combined unit sought by the Petitioner. [1]

STATUTORY AUTHORITY

The criteria to be considered when determining an appropriate bargaining unit are set forth Section 4010, Bargaining Unit Determination, paragraph (d) which provides, in relevant part:

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors

[1] No procedural defenses were raised by the Respondent at any stage of these proceedings.

as the Board may deem appropriate. [2]

ISSUE

Whether the combined bargaining unit proposed by the Petitioner constitutes an appropriate unit, as required by section 4010 (d), of the Act.

PRINCIPAL POSITIONS OF THE PARTIES

The Association argues that when the statutory criteria of section 4010 (d) are applied to the facts of this matter, the proposed bargaining unit of professional and classified (non-professional) employees qualifies as an appropriate unit. In support of its position, the Association relies primarily upon the following factors: (1) the evaluation process; (2) various written communications from the administration to all staff; (3) the broad-based application of certain policies and provisions of the District's Personnel Handbook; (4) common benefits; (5) common scheduling; (6) a common chain of command; (7) a similar working environment; (8) the common objective of all employees; (9) the related duties and responsibilities of teachers and aides; (10) the similarity of in-service meeting requirements; and, (11) broad-based membership on various district committees. The Association also argues that both the professional and classified bargaining units are currently represented by the same exclusive representative, subject to the same Association by-laws and constitution, governed by an executive

[2] The statutory criteria are also set forth in the Rules and Regulations of the Board, at Section 3.4(6).

committee of representatives from each group and have labor contracts with the District which are negotiated concurrently by essentially the same bargaining committee and have common expiration dates. Lastly, the Association argues that it is the desire of the employees that they be combined into one unit.

The District, on the other hand, argues that significant differences exist between the professional staff and the classified employees in the following areas: job duties and responsibilities; skills; working conditions; job qualifications; work schedules; method of payment; in-service participation; performance evaluation; and termination procedures. The District also contends that the two groups of employees have different interests and agendas. The professional unit has a long history including several negotiated contracts while the classified unit has a limited history of two years and one negotiated contract. For these reasons the District believes that combining the two units would unnecessarily strain and complicate the collective bargaining process thereby jeopardizing the amicable and productive relationship which the parties currently share.

OPINION

The Public Employment Relations Board has not previously been requested to apply the statutory factors in determining an appropriate bargaining unit of public school employees. In this regard, the issue presented here is one of first impression.

When the current Title 14 was first enacted in 1982, its coverage was limited to certificated professional employees of the state's public school districts. In July, 1990, Title 14 was amended

to, among other things which are not relevant here, extend its jurisdiction to those school support personnel who elect coverage under the Act. The bargaining unit of classssified employees of the Lake Forest School District properly exercised the option to remove itself from the jurisdiction of Title 19, chapter 13, administered by the Governor's Council of the Department of Labor, and under which it was originally certified in 1989, and to be governed by the provisions of Title 14, chapter 40, administered by the Public Employment Relations Board. 14 Del. C. section 4002 (m). It is, therefore, the provisions of Title 14, chapter 40, which are controlling in this matter.

Section 4010 (d) of chapter 40 requires that all bargaining units for which there is a certified representative be designated as appropriate by the PERB based upon the criteria enumerated, therein. Consistent with decisions by the National Labor Relations Board and the policy of most other state labor relations agencies, the Delaware statute does not require that the unit designated by the PERB as appropriate be the only appropriate unit. Therefore, a petition to redefine, modify or combine an existing unit or units does not concern the relative appropriateness of the existing unit.

The record in this matter consists of the testimony of various witnesses, eleven (11) exhibits offered by the Association and copies of the District's Job Description and Evaluation Instruments Manuals requested by the Hearing Officer at the close of the hearing. [3]

Testfying for the Association were Ms. Vicky Boyd, teacher; Ms.

[3] The accuracy or reliability of Job Description and Evaluation Instruments Manuals is not challenged by the Association.

Phyllis Masten, secretary; Ms. Jane Everline, clerical assistant (aide) ; Mr. Dennis Hopkins, custodian; and, Ms. Linda James, DSEA UniServ Director, servicing the Lake Forest local association.

Ms. Boyd has been employed by the District for approximately fifteen (15) years as a science teacher. During her employment she has served as Treasurer and President of the Association. Ms. Boyd's testimony may be summarized, as follows: (1) in the capacity of science teacher at the Lake Forest High School she reports to the building Principal; (2) her performance is evaluated by an Assistant Principal who reports to the Principal; (3) various administrative communications and numerous policies concerning subjects such as the Drug-Free Workplace Policy (Assoc. Exhibits 1 & 6), the Delayed Opening, School Cancellation, Early Closing Procedures (Assoc. Exhibit 2), Hazard Communication (Assoc. Exhibit 3), Adult Meal Tickets (Assoc. Exhibit 4) and the 1990-91 In-service Schedule and School Calendar (Assoc. Exhibits 5 & 7) are distributed to all employees; (4) her understanding of the relationship of aides to teachers; (5) that teachers are, for the most part, employed on a ten (10) month basis; (6) the District's benefit plans are essentially the same for both professional and classified employees; and, (7) various District committees including the District Liaison Committee, the Policy Analysis Committee and the Planning Committee are comprised of representatives from both the professional and classified employees.

During the cross-examination of Ms. Boyd it was established that teachers are evaluated according to the Delaware Performance Appraisal System which is required by the State Board of Education and applies exclusively to teachers. Ms. Boyd acknowledged that some

distinctions exist between the professional and classified staffs regarding in-service participation (Assoc. Ex. 5) and the reporting of procedures (Assoc. Ex. 2). Ms. Boyd characterized the collective bargaining environment existing between the Association and the District as cooperative.

In addition to describing their individual responsibilities and duties in the capacity of secretary, aide and custodian, the direct testimony of Association witnesses Phyllis Masten, Jane Everline and Dennis Hopkins, respectively, was essentially the same as the testimony of Ms. Boyd and consistent, therewith.

During cross-examination Ms. Masten acknowledged that the Drug-Free Workplace Policy (Assoc. Ex. 1), general administrative memos (Assoc. Ex. 5), and the Hazard Communication Policy (Assoc. Ex. 3) pertain to subjects that logically apply to all employees, regardless of classification. Neither Ms. Everline nor Mr. Hopkins were cross-examined by counsel for the District.

Ms. Linda James has held the position of UniServ Director with the Delaware State Education Association for approximately fifteen (15) months. For this reason she was not personally involved in the negotiation of either collective bargaining agreement currently in effect between the Association and the District. Ms. James testified that the Lake Forest Education Association is the exclusive representative of both units and responsible for negotiating both labor contracts. (Association Exhibits 9 & 10, respectively) Ms. James' comparison of the two contracts was also offered into evidence for the purpose of indentifying those Articles which were either identical or, in her judgement, substantially similar. (Association Exhibit 11) Ms.

James testified that the constitution and by-laws of the Lake Forest Education Association pertain equally to each of the two existing bargaining units.

During cross-examination, Ms. James testified that her analysis of the two contracts was intended only to identify contractual provisions which are either identical or substantially similar, not to highlight articles that are different; therefore, articles not included in her analysis are acknowledged as being different, to some degree.

Ms. James testified that although the recess aides are not included within the educational support (classified) bargaining unit, per se, they are paid the same negotiated wage rate as are the playground and cafeteria aides. According to Ms. James, the recess aides were excluded from the unit because at the time the unit was originally certified in 1989, there was a question of whether they were eligible for inclusion because they are part-time employees.

Superintendent, Dr. James VanSciver, was the sole witness appearing on behalf of the District. Dr. Van Sciver testified that the District's opposition to combining the bargaining units of professional and classified employees is based primarily upon the District's belief that significant differences exist between the professional and classified employees with respect to their duties, skills, qualifications, method of payment, work schedules and some areas of benefits, such as holidays and vacation. Dr. VanSciver expressed the District's concern that combining the two groups would create the potential for internal conflict and disruption of the positive and cooperative relationship which he believes currently exists between the District and the two units, individually.

Dr. VanSciver testified that the reason for the common expiration date of the two contracts was to accommodate article XXVI, which involves changes in the negotiated rates of pay, with the least amount of disruption. According to Dr. VanSciver, administrative memos and District policies not only apply to all staff, wherever possible, but also on a more limited basis when only a particular group or groups of employees is affected. According to Dr. VanSciver's testimony, attendance requirements at in-service programs vary because the subjects currently offered include primarily topics such as higher order thinking and assertive discipline which are of little relevance or interest to the great majority of the classified staff. Dr. VanSciver, that the District is considering offering additional programs of interest to non-professional employees. Dr. VanSciver also testified that representatives from all employee groups (teachers, secretaries, aides and custodians) are included on various district-wide committees to assure the opportunity for input from each concerning subjects of mutual concern before District policy is finalized.

The Job Description Manual provides a thorough and comprehensive analysis of every position within the District. The manual is divided into the following eight (8) categories of employees: (1) Administrators; (2) Paraprofessionals; (3) Ancillary Services Personnel; (4) Buildings and Grounds Personnel; (5) Extra Duty Personnel; (6) Food Services Personnel; (7) Secretarial Personnel; and, (8) Teachers. Each job description is divided into nine (9) sections: (1) a brief descriptive statement; (2) the immediate supervisor; (3) the authority of each position; (4) the prerequisite qualifications,

both professional and personal; (5) general responsibilities; (6) specific duties/evaluative criteria; (7) salary and terms of employment; (8) benefits; and, (9) evaluation procedures.

The Evaluation Instruments Manual contains the procedures and forms used when evaluating the performance of District employees. It is organized according to the same eight employee classifications as is the Job Description Manual.

Considered together, the testimony of the various witnesses and the relevant job descriptions, particularly those sections entitled Professional Requirements and General Responsibilities and Specific Duties/Evaluative Criteria establish the existence of significantly different duties, skills and qualifications required of professional versus classified employees. It is not surprising, therefore, that a wide range of skills and qualifications are necessary to effectively perform the various duties and responsibilities. For example, teachers and other professional employees are required to hold a degree from an accredited four year college or university and to be otherwise certified, according to criteria established by the State Board of Education. Aides, secretarial/ clerical and custodial employees are required to possess either a high school diploma or a Graduation Equivalency Diploma and to demonstrate an acceptable level of functional proficiency, as determined by locally developed standards and/or pre-employment testing.

Except for certain classifications of aides, the primary responsibility of the classified employees is to provide various non-instructional support functions for the hands-on educational effort. Although the classroom aides are directly involved in the

instructional process their role, for the most part, is one of assistance at the direction and discretion of the professional employee to whom they are assigned.

The numerous reporting relationships in the Lake Forest School District further document the divergent responsibilities, duties and skills required of the professional and classified employees. According to both individual testimony and the Job Description Manual, aides report directly to the building principal, regardless of their specific assignment. Teachers, for the most part, also report directly to the building principal. Some specialists, such as the Crisis Counselor, School Counselor, Interpreter/Tutor and the School Nurse also report directly to the building Principal. The majority of other professional specialists report directly to superiors within their area of functional expertise. Custodial and maintenance employees report to supervisors within their area of their functional responsibility while secretarial and clerical employees report primarily within the area or department in which they are employed. The mere fact that the reporting structure for many employees at a particular school merge with the Principal and ultimately, for all employees with the Board of Education through the District Superintendent, does not establish a common supervisory structure for those employees.

Different performance appraisal systems also evidence the varied duties and skills required of the professional versus the classified employees. For professional employees who are required to possess state certification, the evaluation procedure required by the State Board of Education is a great deal more sophisticated than the evaluation process for the classified employees. The latter is a procedure

developed at the District level consisting of a General Expectations checklist applicable to all classified employees, a Specific Duties checklist tailored to each specific job and a comments and signature section for both the evaluator and the evaluatee.

According to the organization chart, each school is under the direct supervision of a building Principal who reports to the District Superintendent. This structure recognizes and permits a degree of discretion and flexibility in administering to the needs of the students and/or staff at the various locations. The environment and conditions for maximizing the learning experience of high school students are not necessarily the same for elementary school students. For example, hours of work, early dismissal procedures, the need to monitor outside activities, the nature and extent of extra-curricular activities, the specific ancillary services required and the organizational structure will, oftentimes, vary from one location to another.

While it is to be expected that some communications from the administration will, by necessity, be directed to all staff, it is equally probable that other communications will often be directed to a singular group of employees, such as teachers, custodians, secretarial/clerical types, or to the staff at individual buildings based upon the employees' need to know.

Other differences exist between the two groups. In the area of job security, the protection of tenure, common to the field of education, is extended by state law exclusively to teachers and other professional employees. Unlike professional employees, clerical/secretarial employees, aides and custodians are initially

evaluated during a sixty (60) day probationary period. Except as may otherwise be provided by the respective collective bargaining agreements, the reasons for termination of professionals employees versus classified employees are different, as are their respective rights of appeal. The basis of payment and term of employment also differ. Professional employees are salaried and the great majority are employed on a ten (10) month basis. The classified employees are paid an hourly rate and, except for the school aides, work a twelve (12) month schedule.

Despite these differences, identifiable similarities also exist in the working conditions of both the professional and the classified employees. Traditional benefits are essentially the same. The obvious effect of broad-based representation on the specified District Committees is to standardize certain working conditions. Numerous other areas of similarity are readily identifiable in the Personnel Handbook and the collective bargaining agreements. (Association Exhibits No. 8, 9 and 10, respectively)

Section 4010 (d) of the Act requires that the Board consider the recommendations of the parties which, in this matter, differ. There is no basis for concluding that the petition filed by the Association is not supported by a majority of employees affected, as the District argues. The Association is the exclusive bargaining representative of all of the employees involved. Notices were duly posted and the opportunity for comment, for or against the petition, was available to any concerned employee. While the District has no right to involve itself in the internal affairs of the Association, its concern that a combined unit has the potential to negatively impact the positive and

cooperative relationship currently existing between the District and the individual bargaining units, is not totally without merit. Inextricably entwined with a combined unit of professional and classified employees, is the increased complexity of the collective bargaining process and, thereby, the underlying relationship, itself. The composition of a bargaining unit can affect the range of subjects which the Association can meaningfully bargain for its members, the extent and frequency of internal conflict and the probability of effectively resolving such conflict, should it occur, and the ultimate success and acceptance by the rank and file membership of the results of the collective bargaining process. Under the current structure, employees of each bargaining unit vote independantly upon whether or not to ratify or reject tentative agreements reached on their behalf by the bargaining committee. The priority issues or agenda of one unit has no direct bearing on the ability or willingness of the other unit to ratify an agreement which it considers acceptable, based upon its own priorities and interests.

The history and extent of employee organization in the Lake Forest School District is somewhat mixed. The professional unit, which has existed prior to the creation of this Board in 1983, has negotiated numerous collective bargaining agreements. In contrast, the support unit of classified employees, certified in 1989, is currently in the second year of its first negotiated agreement. Yet, the two contracts are strikingly similar in many provisions governing the overall working conditions. The agreements also have common expiration dates and are negotiated during the course of the same negotiations by approximately the same bargaining committee.

The statute requires that the Board consider the effect of overfragmentation on the efficient administration of government, in this case the Lake Forest School District. The PERB accepts as valid the interpretation of other jurisdictions that the phrase "efficient administration of government" requires the designation of as few a number of appropriate bargaining units as possible balanced by the opportunity for the employees to exercise their rights under the statute. To do so minimizes the time, expenditure and possible disruption to the education process. Overfragmentation is not a problem here because the professional and classified units are the only two bargaining units in the District. Nor are we faced with a small number of employees who may be disadvantaged if required to bargain on their own.

In summary, the record establishes that although differences exist between the working conditions of the professional and classified employees, so too are there significant similarities. The recommendations of the parties differ and provide little meaningful assistance in resolving this matter. A similar conclusion is reached concerning the mixed history and extent of employee organization. The bargaining units differ in their length of existence and involvement in the collective bargaining process; yet, similarities exist between portions of the two collective bargaining agreements. Overfragmentation is not a factor.

Many factors impact the determination of an appropriate bargaining unit and none alone is determinative. Of particular importance when grouping employees together into an appropriate bargaining unit is that they share similar responsibilities, duties and

skills. These factors are entitled to even greater weight when the issue involves the intermingling of professional and non-professional employees in one bargaining unit. It is these considerations which are critically lacking when comparing the professional and classified employees whom the Association seeks to combine into one bargaining unit.

DECISION

For the reasons set forth above, it is determined that the petitioned for unit of professional and classified employees of the Lake Forest School District does not constitute an appropriate unit, as required by section 4010(d), of the Act. The Association's petition is, therefore, denied.

Further, in order to be certified as the exclusive representative of the recess aides, the Association must first comply with the requirements of section 4011, Determination and Certification of Exclusive Representative, of the Act.

Charles D. Long, Jr.

Charles D. Long, Jr.

Executive Director

July 2, 1991

(date)

Deborah L. Murray Sheppard

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Principal Assistant