

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

LAKE FOREST EDUCATION ASSOCIATION,	:	
DSEA/NEA,	:	
	:	REPRESENTATION PETITION
AND	:	
	:	<u>No. 02-02-341</u>
LAKE FOREST SCHOOL DISTRICT.	:	

RE: Maintenance Employees

APPEARANCES

For Lake Forest Education Assn., Jeffrey M. Taschner, Esq.
For Lake Forest School District, William Garey, Personnel Director, LFSD

BACKGROUND

The Lake Forest School District (“District”) is a public school employer within the meaning of section 4002(n) of the Public School Employment Relations Act (“PSERA”), 14 Del.C. Chapter 40 (1982, 1989).

The Lake Forest Education Association, DSEA, NEA, (“LFEA”) is a labor organization within the meaning of 14 Del.C. §4002(m). It is the exclusive bargaining representative of District employees in the bargaining unit defined by DOL Case 184.

This unit was certified by Secretary of Labor on August 22, 1998:

INCLUDE: All Secretaries, Clerks, Custodians and Aides.

EXCLUDE: Secretary to the Superintendent, Secretary to Personnel Office, Secretary to Assistant for Administrative Services, Secretary to Assistant for Instructional Services, Chief Custodian, Recess Aides (Playground Aides), All Others.

The Lake Forest School District and the Lake Forest Education Association are parties to

a current collective bargaining agreement with a term of July 1, 1999 through June 30, 2002.

On February 8, 2002, LFEA filed a petition for bargaining unit clarification with the Public Employment Relations Board (“PERB”), requesting:

We request clarification of the custodial portion of the ESP [educational support personnel] Bargaining Unit (Case #185, Certified 10/5/88). Specifically, we wish to establish that the maintenance employees are included in this unit..

The District responded by letter dated February 21, 2002:

Two things are relevant from the District’s perspective. Foremost, maintenance employees by job description do not perform custodial work. Rather, they repair and maintain mechanical devices. This includes but is not limited to trade related tasks such as electrical, plumbing, and HVAC systems. Often times this has them working in conjunction with outside maintenance contractors on routine work orders and/or building renovations.

Additionally, DOL Case 184 specifically states “All Others” will be excluded from the unit. If the “All Others” was listed under the included group, the LFEA/DSEA position would be valid in our opinion.

Specifically, we believe that since maintenance employees are not listed in the included group and “All Others” are listed in the excluded group it is already established that the maintenance employees are excluded from this bargaining unit. (*emphasis in original letter*)

A hearing was held on April 9, 2002, at which time the parties were afforded full opportunity to present evidence and argument in support of their respective positions. The record closed with the receipt of oral argument that afternoon. This decision results from the record thus created by the parties.

ISSUE

Are maintenance positions included within the bargaining unit of educational support employees defined by DOL Case 184 and currently represented for purposes of collective bargaining by Lake Forest Education Association, DSEA/NEA?

POSITIONS OF THE PARTIES

Association:

Maintenance positions were included in the bargaining unit at the time it was certified in 1988 and there has been no action by either the District or LFEA to remove or exclude these positions from the unit. The District agreed with the inclusion of these positions when it provided the names of maintenance employees as eligible voters to the Department of Labor in preparation for that election. The records indicate that maintenance employees did, in fact, vote in the initial representation election.

Further, the District did withhold fair share fees from maintenance employees for the 2000-2001 school year. By its actions, the District has historically evidenced its understanding that maintenance employees are included within the existing bargaining unit. There is nothing in the record to support a conclusion that maintenance positions are not included in the bargaining unit.

District:

There is a clear differentiation between custodial and maintenance positions. Custodial positions include housekeepers and groundskeepers responsible for a single

building or work site, and reporting to a single supervisor at that location. Maintenance employees work district-wide in all buildings and offices. They are responsible for maintaining the District's buildings and often work with outside contractors to accomplish this. Maintenance employees are more craft-oriented, and receive an additional stipend in recognition of their expertise.

The bargaining unit definition in DOL Case 184 is clear on its face. It does not list maintenance positions as "included" positions, nor as specifically "excluded" positions. All other positions which are not specifically identified are, however, excluded. Consequently, maintenance positions are not included within the bargaining unit.

DISCUSSION

The documentary evidence in this case includes records from the 1988 Department of Labor ("DOL") representation election in which LFEA was certified as the exclusive representative of the bargaining unit. The record includes a September 14, 1988, letter from the District' Superintendent to the Administrator of DOL Labor Law Enforcement Section which purports to include "an alphabetical listing of the names and classifications of all eligible voters on the payroll in the last pay period immediately preceding the submission of the information." Attached to the letter is series of lists of employees' names and home addresses, each of which includes a general "position-type" in the heading. The last page of the attachment is headed "Custodial Staff." This list does not include the specific job title of each employee listed. Association Exhibit 2.

The "Custodial Staff" list includes the names of William DeLong, Richard Farley and Samuel Krouse. Also on the record is an e-mail dated March 25, 2002, from the

District's Personnel Secretary, Ricky Woikoski to the DSEA UniServ Representative who supports LFEA, documenting the employment history of each of these individuals with the District. Association Exhibit 7. It is uncontested that at the time of the 1988 representation election, Mr. DeLong held the position of Maintenance Helper, Mr. Farley was a Maintenance Worker, and Mr. Krouse also held a Maintenance position. Association Exhibit 4, the voter sign-in sheets from the representation election documents that each of these individuals did, in fact, cast ballots in the election.

District Exhibit 1 corroborates that Mr. Farley was offered a position in August, 1987, as a "maintenance worker with electrical experience." Association Exhibit 7 establishes his initial date of hire as August 17, 1987, a position which he continues to hold at least as of January, 2002.

Based on this evidence, there is no doubt that "maintenance" positions were considered as part of the custodial staff at the time this unit was certified by the Department of Labor. Exact wording of bargaining unit definitions can be tricky, as time and personnel administering that language change. The history in this case, however, leaves no doubt that both the District, LFEA and the Department of Labor all understood custodial staff as an inclusive term which included employees holding and performing maintenance functions.

No evidence was introduced, nor did the parties dispute, that neither party has moved to modify the original certification of this unit since 1988. Consequently, the original certification remains in effect and maintenance employees clearly have been and continue to be part of the bargaining unit.

The District presented evidence establishing that there are, in fact, differences between custodial and maintenance positions. The statute does not require that all

bargaining unit positions perform the same function but rather that all positions share a community of interest. There can be no question in this case that the term “custodians” was not limited to positions which fit neatly into a strict definition of positions which involved housekeeping and groundskeeping, as the District argued.

Finally, clear documentation was entered into the record that the two employees in question both had fair share fees withheld from their salaries in the 2000-2001 academic year. Association Exhibit 8. There is, quite simply, no doubt that the maintenance employees of the Lake Forest School District hold bargaining unit positions.

DECISION

WHEREFORE, based on the evidence presented in support of this petition, it is determined that maintenance employees of the Lake Forest School District are and have been since the certification of the bargaining unit in 1988 included in the unit. Pursuant to 14 Del.C. §4019, if employees holding bargaining unit positions chose not to become members of LFEA, they shall be required to pay a fair share fee to the exclusive representative, if the parties’ collective bargaining agreement so provides. The District is obligated, upon receipt of the names of nonmembers from LFEA, to deduct the fair share fee from the wages of the nonmember and to transmit those monies to the exclusive bargaining representative.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard _____
DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Delaware Public Employment Relations Bd.

DATED: 9 May 2002

