

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

LAKE FOREST EDUCATION ASSOCIATION,	:	
DSEA/NEA,	:	
	:	Representation Petition
AND	:	
	:	<u>03-03-380</u>
LAKE FOREST SCHOOL DISTRICT.	:	

RE: BRAILLIST

Appearances

Vicky Boyd, DSEA UniServ Director
William R. Garey, Director of Personnel, LFSD

The Lake Forest School District (“District”) is a public school employer within the meaning of 14 Del.C. 4002(n).

The Lake Forest Education Association, DSEA/NEA (“LFEA”), is an employee organization within the meaning of 14 Del.C. §4002(h) and the exclusive bargaining representative of public school employees within the meaning of 14 Del.C. §4002(i). LFEA represents the bargaining unit certified by the Delaware Department of Labor in 1988, defined by DOL Case 184 to include:

- | | |
|-----------------|--|
| 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. |

In March, 2003, the LFEA filed a letter requesting clarification as to whether the “Brailist” position is part of the bargaining unit. The letter asserts the following “. . . facts as the Association sees them:”

1. The bargaining unit was established on October 5, 1988, as set forth in Case No. 184.
2. The bargaining unit includes “All Secretaries, Clerks, Custodians, and Aides” and excludes “Secretary to 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.”
3. The “Brailist” position originated in 08/30/95. The first Brailist, Linda Rust, was employed from 08/30/95 to 08/30/02 as a paraprofessional [although she was paid a small amount more than a para, namely 67% of a teacher’s salary]. Linda was a member of LFEA, with dues deducted for the years she was employed at the paraprofessional rate. In the fall of 2002, Susan Burgess replaced Linda Rust, but when the payroll office started to process her dues, Mr. Garey told them that she was not part of the bargaining unit. Since then, Ms. Burgess has left and Chris Malec was employed in that position. She was previously employed as a paraprofessional and was having agency fee deducted. Mr. Garey has again informed the payroll office not to make deductions from Ms. Malec’s pay for agency fee.
4. The Brailist transcribes school assignments to Braille and works with the visually impaired student[s].

The District responded to the Association’s letter petition, stating, “We would like to get an opinion without having hearings and filing petitions, if that is possible and permissible.” The District’s response included the following position statement:

Case No. 184 reveals that the bargaining unit includes “All Secretaries, Clerks, Custodians, and Aides” and excludes “Secretary to 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 first brailist, Linda Rust, did join LFEA and did pay dues. Even though she may have wanted to belong and LFEA may have welcomed her, she was not eligible under Case No. 184 as a brailist in my view. This was not challenged and possibly not known by the Personnel Office because membership and dues were completely voluntary at the time. It occurred before my tenure as personnel director, and I was unaware of the matter until Linda Rust resigned and a new brailist was hired.

It is hoped that the association’s members do not assume that any non-administrative employee is eligible if the employee and the association wish it so. The idea that “she works with students which makes her eligible”, which I have heard, should not automatically apply. The association and administration agree that the brailist transcribes school assignments to braille and works with visually impaired students.

Accordingly, we have other employee groups who work with students that are not covered by the collective bargaining unit. Administrators, bus drivers, recess aides and crossing guards are examples.

Lastly, the brailist has never been paid from any negotiated salary scale, a primary tenet of any collective bargaining unit I would think. The position is not addressed or mentioned in any negotiated contract or in Case No. 184, except by qualifying as "All Others."

Attached to the District's response were five documents including three letters related to the hiring of the initial Brailist and two resolutions by the Lake Forest School Board concerning computation of salary for this position (Amended Bd. Resolution 96-206; Bd. Resolution 01-368).

ISSUE

Does the existing bargaining unit of Lake Forest School District
Support staff include the "Brailist" position?

OPINION

By agreement of the parties, no hearing was held on this request for clarification and the petition was decided based upon the documents and letters submitted by the parties and the Department of Labor records in DOL Case 184.

The bargaining unit clarification process is designed to provide a process whereby employers and representatives of their employees can seek a determination as to whether specific positions fall within an existing bargaining unit definition, and/or whether specific positions are ineligible for representation under Delaware's public sector collective bargaining laws. Where parties are unable to agree as to whether a position is covered by an existing unit definition, PERB must examine both the history of the bargaining unit as well as the history of the individual position in reaching a conclusion. A clarification question specifically relates to the status of a position or classification, and is not determined based upon the desires of individual employees.

The Public School Employment Relations Act was amended in 1989 to extend its coverage beyond certificated public school employees to also include support staff. Prior to 1989, responsibility for representation functions involving public school support staff employees was exercised by the Department of Labor, under the predecessor Right of Public Employees to Organize, 19 Del.C. Chapter 13. The Public School Employment Relations Act provides at section 4010(f):

(f) Any bargaining unit designated as appropriate prior to the effective date of this chapter, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter.

When the law was amended in 1989, exclusive representatives of public school support staff units could opt to be covered by the Public School Employment Relations. When the representative notified PERB, the employer and the Department of Labor of its choice to exercise this option, the Department of Labor transferred to PERB all of the records concerning that bargaining unit.

A thorough review of the Department of Labor records in Case No. 184 reveals the general description in the original unit definition to “Include: All Secretaries, Clerks, Custodians, and Aides” was intended to be inclusive and descriptive. This descriptive definition was limited only by the very specific exclusions of the four specific Secretarial positions, the Chief Custodian, and Recess Aides. The hearing records and decisions issued by the Governor’s Council on Labor and the Secretary of Labor clearly indicate the named secretarial positions were excluded because they had confidential responsibilities relating to labor relations and that the Chief Custodian was excluded because that position had supervisory responsibility over all other custodial employees. The Association expressly excluded “Recess Aides” from the unit it was petitioning to represent.

The further exclusion of “All Others” is understood from review of the DOL records to mean all other types of positions which do not fit the general categories of “secretaries, clerks, custodians and aides.”

Further, there existed in 1988 a separate bargaining unit of “certificated professional employees”, which included the District’s professional employees. Specifically ineligible for inclusion in any appropriate bargaining unit under the Public School Employment Relations Act are public school administrators ¹ and confidential employees. ² There is no allegation in the unit clarification petition that the Braillist position is ineligible for inclusion in the bargaining unit for either of these reasons. Neither is there an allegation that the Braillist serves in a supervisory role vis-à-vis other bargaining unit employees.

Consequently, the question is simply whether the Braillist position falls within or without the existing bargaining unit definition. In order to resolve this question, the history of the relationship of the parties as it relates to this particular position is important. It is undisputed that Braillist position was created during the summer of 1995, and that Linda Rust (f/k/a Linda Betts) was the first individual to hold this position. During Ms. Rust’s tenure as Braillist from 1995 through August, 2002, she was a member of the Lake Forest Education Association, and her dues were regularly collected through wage deduction by the Lake Forest School District. Based on the fact that the District withheld dues from the Braillist’s wages for a period of seven years, there is no other reasonable conclusion to reach but that the parties tacitly agreed that the Braillist position fell within the general category of “all secretaries, clerks, custodians and aides.”

The disposition of a clarification petition is dependent upon the individual and specific conditions of employment and classification systems at issue in the case. In RE: Delaware DHSS

¹ “Public school administrator” means and includes all public school employees performing primarily administrative functions and employed under an administrative contract by a public school district. §4002(o).

² “Confidential employee” means any employee whose essential job function and advanced knowledge about the issues involved in collective bargaining would make it unduly burdensome for the employer to negotiate effectively if the employee were a member of an appropriate bargaining unit. §4002(f)

and AFSCME Council 81, Local 2038, Del.PERB, IV PERB 2089 (2000). In this case, both the descriptive bargaining unit definition and the history of dues withholding by the District immediately following the creation of the position support the conclusion that the Braillist was included within the bargaining unit of Lake Forest Support employees represented by Lake Forest Education Association, DSEA/NEA, when the position was created in 1995. There is nothing on the record created by the parties which indicates the responsibilities of the Braillist position have significantly changed since the position was created in 1995. The District does not allege a compelling change in circumstances or a question of eligibility under the PSERA has arisen involving the Braillist position. There is nothing of record which supports a conclusion that the bargaining unit status of this individual position has changed from the original agreement of the parties in 1995 that this is a bargaining unit position.

DECISION

For the reasons set forth herein, it is determined that Lake Forest School District employees holding the position of “Braillist” are included in the bargaining unit of educational support employees defined in DOL Case No. 184.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
PERB Hearing Officer

DATED: 5 May 2003