

86-051 4/2/86
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
Columbus Education Association, OEA/NEA,
Employee Organization,
and
Columbus Board of Education,
Employer.

CASE NUMBER: 86-REP-5-0149

DIRECTIVE GRANTING CLARIFICATION OF BARGAINING UNIT
AND DISMISSING PETITION

(Opinion Attached)

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;
December 4, 1986.

The Columbus Education Association, OEA/NEA (Employee Organization) filed a Petition for Representation Election seeking to represent the part-time hourly rated tutors employed by the Columbus Board of Education (Employer). The Employee Organization is the exclusive representative of a deemed certified bargaining unit of teachers. During investigation of the petition, the Employee Organization filed a Petition for Clarification of Bargaining Unit seeking to accrue the tutors into the existing bargaining unit rather than create a second bargaining unit. The original petition was supported by a showing of interest in excess of fifty percent (50%). The Employer raised no objections to the requested accrual.

For the reasons stated in the attached opinion, which is incorporated by reference, the requested clarification of the existing bargaining unit is granted. The original Petition for Representation Election is therefore dismissed as moot.

It is so directed.

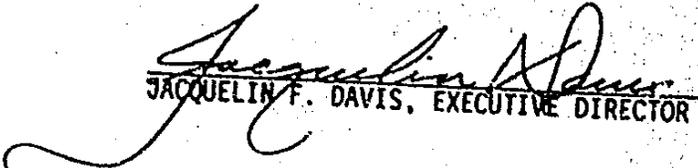
DAY, Chairman; SHEEHAN, Vice Chairman; and FIX, Board Member, concur.



JACK G. DAY, CHAIRMAN

DIRECTIVE GRANTING CLARIFICATION OF BARGAINING
UNIT AND DISMISSING PETITION
(Opinion Attached)
CASE NO. 86-REP-5-0149
DECEMBER 4, 1986

I certify that this document was filed and a copy served upon each party
on this 11th day of November, 1986.


JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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OPINION

Day, Chairman:

Columbus Education Association, OEA/NEA (union or OEA/NEA) is the deemed certified exclusive representative of a unit of teachers.¹ On May 2, 1986, OEA/NEA filed a petition for a representation election for a group of part-time hourly rated tutors. More than 50% of the affected employees provided the supporting showing of interest. A substitute petition for clarification filed September 17, 1986 sought the accretion of the same workers into the existing unit without an election. The Columbus Board of Education (School Board, management, or employer) raised no objection to the accrual nor to the replacement of the petition for clarification by the representation petition. OEA/NEA has indicated its intention to withdraw the latter if the State Employment Relations Board (SERB) approves the requested clarification and the resultant accretion.

This procedure raises a novel question. That question is - whether accretive representation can be or ought to be accomplished by a clarification petition in the absence of an objection?

¹See Section 4(A) of the temporary law.

On the pattern of facts in this case the question is answered, "Yes."

I

What appears to be a fairly uncomplicated problem at first blush is, in fact, one that may require diverse answers depending on the facts which give rise to it. Although accretion is not considered a representation question in some quarters, it certainly has implications for representation because it expands representation without the benefit of a ballot. And great care must be taken with factors bearing on the appropriateness of the joinder of the accretionary unit with the existing bargaining unit, especially with respect to questions involving community of interest and the potential impairment of representational interests. These concerns have been reflected in the variety of factors taken into account in accretion decisions by other jurisdictions.

Accretion, without an election, has been permitted or not depending upon 1) the amount of employee interchange between the accretive group and the existing unit,² 2) geographical proximity,³ 3) integration of operations,⁴ 4) centralization of administrative control,⁵ 5) similarity of working conditions, skills, and functions,⁶ 6) common control over

²Dura Corp., 59 LRRM 1519, 1520 (1965) enforced 375 F. 2d 707, 64 LRRM 2828, 2830 (Cir. 6, 1967).

³Sunset House, 66 LRRM 1243, 1244 (1967), enforced 415 F. 2d 545, 72 LRRM 2283, 2285-2286 (Cir. 9, 1969).

⁴Beacon Photo Serv. Inc., 64 LRRM 1439, 1440 (1967); Dura, id.

⁵Masters-Lake Success, Inc., 44 LRRM 1437, 1438 (1959), enforced as modified, 287 F. 2d 35, 47 LRRM 2607 (Cir. 2, 1961).

⁶Public Service Co., 77 LRRM 1129, 1130 (1971).

labor relations,⁷ 7) collective bargaining history,⁸ and 8) the number of employees in the accretive group in relation to the number in the existing unit to which accretion is proposed.⁹ These considerations will be taken into account in the instant case.

II

Here, 4200 teachers are represented in a deemed certified unit. The number of tutors the union seeks to add is 137. Of these, more than 50% have given support to a showing of interest. There is no indication that a union rivalry (as contemplated in Section 4(A) of the temporary law) threatens to dislodge the incumbent union or that the accretion would adversely affect the representational balance.

In addition, a constellation of the factors characteristic of permitted accretions is present here. It is patent that part-time tutors are likely to work in the same physical and "geographic" environment that the fulltime teachers do; there is an obvious relationship, if not an integration of operations, between fulltime teachers and part-time tutors; administrative control will be under the School Board (and in that sense centralized); similar working conditions, skills and functions are clearly implicated in both tutorial and classroom teaching; common control of labor relations is made manifest by the management role in the processing of the instant case; and the collective bargaining history in the deemed certified unit demonstrates that union representation for the teaching staff is not an

⁷Buy Low Supermarket, Inc., 47 LRRM 1586, 1587-1588 (1961).

⁸Panda Terminals, Inc., 63 LRRM 1419, 1423-1424 (1966).

⁹Id.; see also Renaissance Center Partnership, 100 LRRM 1121, 1122 (1979).

innovation. These circumstances, taken together, indicate that the accretion is proper and the unit appropriate. The accretion will have a minuscule to the point of zero effect on representation. Moreover, the management does not object to the addition, although the lack of objection is not crucial to decision.

III

There is no question of representation to impede the accretion. The matter at issue can be resolved through the clarification of the existing unit.¹⁰ The petition for clarification is a permissible procedural vehicle. It is granted and the accretion of the part-time, hourly rated tutors to the existing deemed certified unit is permitted.

Sheehan, Vice Chairman, and Fix, Board Member, concur.

¹⁰Cf. Panda Terminals, Inc., supra, at 1420.