

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of
District 925/Service Employees International Union,
Employee Organization,
and
Euclid Public Library,
Employer.

Case Number: 94-REP-11-0248

OPINION

MASON, Board Member:

I. INTRODUCTION

This representation case comes before the State Employment Relations Board ("SERB" or "Board") on a Petition for Amendment of Certification jointly filed by District 925/Service Employees International Union and Euclid Public Library on October 28, 1994. The parties seek to amend the certification of the bargaining unit to reflect negotiated changes, among them the inclusion of "pages," in the existing bargaining unit. Previously, "student pages" had been excluded from the unit. The other changes in the bargaining unit involve deleting positions that no longer exist and changing terminology to conform with changes in classification titles.

On February 3, 1995, the Board directed this matter to a hearing. The parties have waived an evidentiary hearing being in agreement that no disputed issues of fact exist, the case is directly before the Board for a decision. On April 24, 1995, the parties filed Joint Stipulations of Facts ("J.S.") and, on August 15, 1995, the parties filed Supplemental Joint

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Stipulations of Fact ("S.J.S."). District 925/Service Employees International Union filed a brief on the unit modification issue; the Euclid Public Library endorsed the rationale for the bargaining unit modification as set forth in that brief.

II. ISSUES

1. Whether the student pages are "students" as described by Ohio Revised Code ("O.R.C.") § 4117.01(C)(1) and, thus, exempted from the definition of "public employees" in O.R.C. § 4117.01(C).

2. Whether the Petition for Amendment of Certification should be granted to add the "pages" to the bargaining unit.

III. FINDINGS OF FACT

1. District 925/Service Employees International Union ("District 925") is an employee organization, as defined in O.R.C. § 4117.01(D). (J.S. No. 1).

2. Euclid Public Library ("Employer") is a public employer, as defined in O.R.C. § 4117.01(B). (J.S. No. 2).

3. On July 9, 1987, District 925 was certified as the exclusive bargaining representative in a combined unit of professional and nonprofessional employees. (J.S. No. 3).

4. In the fall of 1994, District 925 and the Employer engaged in negotiations for a collective bargaining agreement which concluded on or about October 26, 1994. The tentative agreement was thereafter ratified by both parties. (J.S. No. 4).

5. A part of the tentative agreement reached between the parties was an agreement to jointly file a Petition for Amendment of Certification, which would seek to amend the certification as follows:

- (A) To delete the positions of "Head Secondary School Library Assistant," "Roving Assistant," "Typist," "Payroll Officer," "Asst. Head of Main Library," "Head of School Libraries/Purchasing Agent" and "Branch Librarian" for the reason that these positions no longer exist;
- (B) To delete the reference to "(Main Library)" as unnecessary;
- (C) To change the positions of "Head of Main Library" to "Head of Adult Services," "Head-Children's Services" to "Head of Children's Services," "Finance Clerk" to "Finance Assistant," "Head of Circulation Desk" to "Head of Circulation Services," and "Periodical Assistant" to "Periodical Assistant I" and "Periodical Assistant II," to conform with changes in classification titles;
- (D) To add the classifications of "Deputy Director," "Secretary," "Catalog Technician," "Reference Assistant/Supervisor of Pages" and "Audio-Visual Assistant";
- (E) To delete "student pages" from the excluded language, for the reason that the pages share a community of interest with other employees in the bargaining unit, there is no reason to distinguish between adult pages and student pages, and because student pages do not fall within the definition of "students," as defined in O.R.C. § 4117.01(C)(11). (J.S. No. 5).

6. If the requested changes are accepted, the amended bargaining unit would be described as follows:

INCLUDED:

Head of Automation Dept., Head of Audio-Visual Dept., Reference Librarian, Reference Asst. II, Cataloger, School Librarian (Elementary), Reference Asst. I, Asst. Head-Children's Services, Asst. II-Children's Services, Asst. I-Children's Services, Asst. Head of Circulation Desk, Circulation Desk Asst. II, Circulation Desk Asst. I, Branch Loan Asst., Interlibrary Loan Asst., Head of Extension Services, Art Coordinator, Catalog Asst., Book Mender, Receptionist, Catalog Asst., Order Asst., Periodicals Asst. I, Periodicals Asst. II, Head of Desk (Upton Branch), Branch Asst. (Public Desk), School/Branch Library Asst., Head of Maintenance, Janitor, Secretary, Catalog Technician, Reference Assistant/Supervisor of Pages, Audio-Visual Assistant, and Pages.

EXCLUDED:

Director, Deputy Director, Clerk-Treasurer, Deputy Clerk-Treasurer, Finance Assistant, Head of Adult Services, Head of Children's Services, Head of Circulation Services, Head of Technical Services, Public Relations Coordinator, Executive Secretary, Security Guard, Substitutes, and Temporary Employees. (J.S. No. 6).

7. There are no disputed issues of fact. The parties waive a hearing and believe it is adequate to file briefs on this issue. (J.S. No. 7).

8. The Employer employs approximately fourteen (14) pages, some of whom are high school students and some of whom are adults. The primary responsibility of the pages is to re-shelve books. The Employer makes no distinction between adult pages and student pages, and the job responsibilities of both are the same. Student pages who work for the Employer do not work for the primary purpose of educational training. (J.S. No. 8).

9. The working hours of the pages vary. The pages who work an average of at least ten (10) hours per week (with that weekly average based on the employee's compensated hours of work for the preceding ninety-day period) share a community of interest with the employees in the bargaining unit. (J.S. No. 9).

10. There has been no specific number of page positions assigned to students in 1994 or 1995. When openings arise, the Employer hires pages without regard to whether the person is a student or not. (S.J.S. No. 4).

11. When a student is hired into a page position, a teacher recommendation is not required. The Employer does not report to the school about the student's job performance, about disciplinary problems, or when the employment ends. (S.J.S. Nos. 5 and 6).

12. Page work is not related to academic coursework. Pages do not receive academic credit for the library work or any recognition from the school for the library employment. (S.J.S. Nos. 8, 9, and 10).

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13. In the past there were one or two student pages who worked in the library as part of a work/study program. Currently, there are no work/study students and the Employer has no present expectations to hire any. Work/study students would not be considered part of the bargaining unit. (S.J.S. No. 7).

IV. DISCUSSION

The first issue in this case is whether student pages are "students" as described in O.R.C. § 4117.01(C)(11) and, thus, exempted from the definition of "public employee" in O.R.C. § 4117.01(C). O.R.C. § 4117.01(C) defines "public employee" in relevant part as:

[A]ny person holding a position by appointment or employment in the service of public employer . . . except:

* * *

(11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;

Employees who fall under the student exception to the above definition of "public employee" must have both a primary purpose of educational training *and* work less than fifty percent of the normal year in the employee's bargaining unit. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 1993 SERB 4-1. Thus, if the employees' primary purpose was not for educational training or if they worked more than fifty percent of the normal year in the bargaining unit, then these employees would not be considered students pursuant to O.R.C. § 4117.01(C)(11).

The record in this case shows that none of the student pages worked more than fifty percent of the normal year in the employee's bargaining unit. (S.J.S. Nos. 1 and 3). Thus, the determination of student status hinges on whether the student pages' primary purpose in working was educational training.

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To have a primary purpose of educational training, the job assignments designated for the students must be targeted to teach job related skills that will be needed by the students for future careers. Employment that is primarily for educational training is an extension of the classroom, with the learning of skills coming instead in the work context.¹ Such employment would be "the means by which the learning process is carried out." *Cedars-Sinai Medical Center*, 223 N.L.R.B. No.57, 91 L.R.R.M. 1398 (1976). Thus, to determine if employment is for the primary purpose of educational training, we must determine whether the primary purpose for the student taking the job was to learn specific skills needed for a particular career in coordination with classroom activity or to gain academic credits. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, *supra*. Indicia of such employment may be, among other factors, any of the following: the employment may be related to an educational program, either running concurrently with classroom activity or subsequent to it;² such a job would put into practice what is or was being taught in the classroom;³ the employment may be necessary to meet academic, licensing or certification requirements;⁴ the job will also often either include a supervisor at work who performs a "teaching function"⁵ or would allow the school or a teacher to become involved in the supervision of the work.⁶

¹The Illinois State Labor Relations Board held that a high school student employed by the Village of Riverside through the school's work/study program should be excluded from a bargaining unit since "the primary purpose of her employment with the Village is to learn job skills which she can use to obtain future employment." *Village of Riverside*, 4 PERI ¶ 2017 (Ill. SLRB 1988). The Board noted that the work/study student received a grade for her performance and was still subject to the Illinois School Code truancy provisions.

²*System Auto Park & Garages, Inc.*, 248 N.L.R.B. No. 115, 103 L.R.R.M. 1550 (1980); *Cedars-Sinai Medical Center*, *supra*.

³*Cedars-Sinai Medical Center*, *supra*.

⁴*Samaritan Health Services, Inc.*, 238 N.L.R.B. No. 56, 99 L.R.R.M. 1551 (1978); *Clark County Mental Health Center, dba Mental Health & Family Services Center*, 225 N.L.R.B. No. 105, 92 L.R.R.M. 1545 (1976); *Cedars-Sinai Medical Center*, *supra*.

⁵*Clark County Mental Health Center*, *supra*.

⁶*Towne Chevrolet*, 230 N.L.R.B. No. 60, 96 L.R.R.M. 1554 (1977).

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However, in recent years, another category of programs has been developed. This category includes special programs to teach people basic job skills which are not specific to one career only but can be utilized in every future job. When determining whether individuals are "students" under O.R.C. § 4117.01(C)(11), we will consider the "primary purpose" of students enrolled in such programs to be "educational training."

It should be emphasized that the statutory description of "student" does not intend to exclude from collective bargaining individual workers who take a few evening courses to improve their working skills or their education. The test is not an individual employee test, i.e., whether a specific employee in a certain classification is a "student" under the collective bargaining law. The test is whether a specific classification or program was established to hire students who engage in the employment for the primary purpose of educational training as defined above.

Based on the record before the Board and the analysis above, the Employer's student pages are not exempt from the definition of "public employee" pursuant to O.R.C. § 4117.01(C) as "students" as described in O.R.C. § 4117.01(C)(11). The record does not show that the "page" classification was established to hire students only or to teach individuals basic job skills. On the contrary, when there is an opening the Employer hires a page whether the person is a student or not. (S.J.S. No. 4). Moreover, the record does not show that the student pages' primary purpose for employment is educational training. The page job has no relation to any educational program or classroom activity. No credit was given by the school for the work; nor was the work part of any academic, licensing or certification requirement. Supervisors at work did not perform any "teaching function," nor did any teacher or school personnel oversee the student pages' work.

The second issue in this case is whether the joint Petition for Amendment of Certification should be granted. The classification of "page" is not in the bargaining unit certified by SERB. Thus, the issue here is whether the pages may be accreted to the bargaining unit through a Petition for Amendment of Certification. While we agree with the parties that the bargaining unit would still be an appropriate unit if the page classification is

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included, the petition before us is not the appropriate vehicle to achieve such inclusion.

Ohio Administrative Code ("O.A.C.") Rule 4117-5-01 (G) provides:

When a petition to amend certification seeks the addition of a group of employees to the existing unit, such addition may be permitted only if the number of employees to be added is *substantially smaller* than the number of employees in the existing unit. (emphasis added).

The parties stipulated that eighteen (18) students were employed as pages in 1994 and thirteen (13) in 1995. (S.J.S. No. 2) The petition itself, which requested the addition of student pages to the unit, stated there are approximately sixty (60) employees in the existing bargaining unit, including the adult pages. However, since SERB never authorized the inclusion of adult pages in the bargaining unit, the parties' private arrangement to include them is not binding on SERB. *In re State of Ohio, Office of Collective Bargaining*, SERB 91-008 (9-19-91). Thus, we have before us a bargaining unit which includes less than sixty (60) employees and a Petition for Amendment of Certification requesting the accretion of approximately fourteen (14) employees to the unit. The number of employees the parties seek to add to the bargaining unit is not "substantially smaller" than the number in the existing unit, as required by O.A.C. Rule 4117-5-01(G) to allow such an addition through amendment. Therefore, since the addition of pages (both adults and students) to the bargaining unit creates a question concerning representation, the appropriate way to add the pages to the existing unit is by opt-in election or voluntary recognition in accordance with O.R.C. §§ 4117.05 and 4117.07.

The other changes requested in the Petition for Amendment of Certification, i.e., deleting positions that no longer exist and changing terminology to conform with changes in classification titles, are granted.

V. CONCLUSIONS OF LAW

1. District 925/Service Employees International Union is an employee organization, as defined in O.R.C. § 4117.01(D).
2. Euclid Public Library is a public employer, as defined in O.R.C. § 4117.01(B).
3. The student pages are not "students" as described in O.R.C. § 4117.01(C)(11).
4. The following unit is an appropriate unit for the purposes of collective bargaining:

INCLUDED:

Head of Automation Dept., Head of Audio-Visual Dept., Reference Librarian, Reference Asst. II, Cataloger, School Librarian (Elementary), Reference Asst. I, Asst. Head-Children's Services, Asst. II-Children's Services, Asst. I-Children's Services, Asst. Head of Circulation Desk, Circulation Desk Asst. II, Circulation Desk Asst. I, Branch Loan Asst., Interlibrary Loan Asst., Head of Extension Services, Art Coordinator, Catalog Asst., Book Mender, Receptionist, Catalog Asst., Order Asst., Periodicals Asst. I, Periodicals Asst. II, Head of Desk (Upson Branch), Branch Asst. (Public Desk), School/Branch Library Asst., Head of Maintenance, Janitor, Secretary, Catalog Technician, Reference Assistant/Supervisor of Pages, and Audio-Visual Assistant.

EXCLUDED:

Director, Deputy Director, Clerk-Treasurer, Deputy Clerk-Treasurer, Finance Assistant, Head of Adult Services, Head of Children's Services, Head of Circulation Services, Head of Technical Services, Public Relations Coordinator, Executive Secretary, Security Guard, Substitutes, and Temporary Employees.

VI. ADJUDICATION

For the reasons above, we find that the student pages do not meet the statutory description of a "student" in O.R.C. § 4117.01(C)(11). We grant the Petition for Amendment of Certification in part to include the changes that the parties agreed upon in their negotiations, i.e., deleting positions that no longer exist and changing terminology to conform

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with changes in classification titles. However, we deny the Petition in part as it pertains to the inclusion of the classification of pages in the bargaining unit. The bargaining unit is hereby certified as amended and described in Conclusion of Law No. 4.

Pohler, Chairman, and Pottenger, Vice Chairman, concur.