

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Greene County Career Center Classified Employees Association, OEA/NEA,

Employee Organization,

and

Greene County Career Center Education Association, OEA/NEA,

Employee Organization,

and

Greene County Career Center,

Employer.

Case Nos. 2004-REP-11-0208 & 2004-REP-11-0209

**DIRECTIVE DENYING PETITIONS FOR CLARIFICATION OF BARGAINING UNIT
(OPINION ATTACHED)**

Before Chairman Mayton, Vice Chairman Gillmor, and Board Member Verich:
June 22, 2006.

On November 12, 2004, the Greene County Career Center Classified Employees Association, OEA/NEA ("Classified Unit") and the Greene County Career Center Education Association, OEA/NEA ("Certified Unit") each filed a Petition for Clarification of Bargaining Unit seeking to clarify the existing units by excluding the Financial Aid Specialist position from the Classified Unit and including the FAS position in the Certified Unit. On December 1, 2004, the Greene County Career Center ("the Employer") filed position statements. On February 25, 2005, both bargaining units filed replies. On March 17, 2005, the Employer filed a supplement to its position statement.

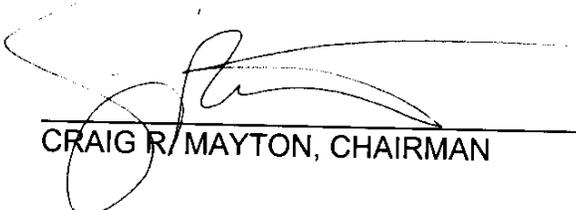
On August 25, 2005, after a preliminary investigation, the State Employment Relations Board ("the Board") consolidated the two cases, directed these cases to hearing to determine the bargaining-unit status of the position in question, and directed the parties to mediation. A hearing was held on December 19, 2005.

On April 19, 2006, a Recommended Determination was issued by the Administrative Law Judge. On May 1, 2006, the Employee Organizations filed exceptions to the Recommended Determination. On May 5, 2006, the Employer filed a response to the exceptions.

After reviewing the record, the Recommended Determination, the Employee Organizations' exceptions, the Employer's response to the exceptions, and all other filings in this case, the Board amends Finding of Fact No. 15 in the Administrative Law Judge's Recommended Determination to add "in 1995" in the first sentence so that it reads: "In the first negotiated agreement after OEA was elected to represent the Classified Unit in 1995, Ms. Bottorff's position title was changed from Financial Aid Coordinator to Financial Aid Specialist ("FAS"); however, her duties did not change." The Board adopts the Findings of Fact, as amended, Analysis and Discussion, and Conclusions of Law in the Administrative Law Judge's Recommended Determination, finding that the bargaining unit represented by the Greene County Career Center Classified Employees Association, OEA/NEA should not be clarified to exclude the position of Financial Aid Specialist and that the bargaining unit represented by the Greene County Career Center Education Association, OEA/NEA should not be clarified to include the position of Financial Aid Specialist. As a result, the Board denies the Petitions for Clarification of Bargaining Unit.

It is so ordered.

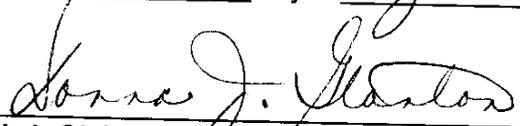
MAYTON, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CRAIG R. MAYTON, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Court of Common Pleas within fifteen days after the mailing of the State Employment Relations Board's directive.

I certify that a copy of this document was served upon each party's representative by certified mail, return receipt requested, this 28th day of June, 2006.



DONNA J. GLANTON, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

GREENE COUNTY CAREER CENTER CLASSIFIED EMPLOYEES ASSOCIATION, OEA/NEA,	:	CASE NOS. 2004-REP-11-0208 2004-REP-11-0209
Employee Organization,	:	
and	:	
GREENE COUNTY CAREER CENTER EDUCATION ASSOCIATION, OEA/NEA,	:	KAY A. KINGSLEY
Employee Organization,	:	Administrative Law Judge
and	:	
GREENE COUNTY CAREER CENTER,	:	<u>RECOMMENDED DETERMINATION</u>
Employer.	:	

I. INTRODUCTION

On November 12, 2004, the Greene County Career Center Classified Employees Association, OEA/NEA ("Classified Unit") and the Greene County Career Center Education Association, OEA/NEA ("Certified Unit") each filed a Petition for Clarification of Bargaining Unit seeking to clarify the existing units by excluding the Financial Aid Specialist ("FAS") position from the Classified Unit and including the FAS position in the Certified Unit. On December 1, 2004, the Greene County Career Center ("Employer" or "Career Center") filed position statements. On February 25, 2005, both bargaining units filed replies. On March 17, 2005, the Employer filed a supplement to its position statement.

On August 25, 2005, after a preliminary investigation, the State Employment Relations Board ("SERB") consolidated the two cases, directed these cases to hearing to determine the bargaining-unit status of the position in question, and directed the parties to mediation. A hearing was held on December 19, 2005, wherein testimonial and documentary evidence was presented. Subsequently, all parties filed post-hearing briefs.

II. ISSUE

Whether the petitions for clarification should be granted to exclude the FAS position from the Classified Unit and include the FAS position in the Certified Unit?

III. FINDINGS OF FACT¹

1. The Greene County Career Center is a “public employer” as defined by Ohio Revised Code § 4117.01(B).² The Career Center is composed primarily of two programs, a high school vocational program and an adult education program. (S. 1, 2)
2. The Greene County Career Center Classified Employees Association, OEA/NEA and the Greene County Career Center Education Association, OEA/NEA are “employee organizations” within the meaning of § 4117.01(D). (S.)
3. The Classified Unit was certified by SERB in 1995 pursuant to a representation election. (S. 4; SERB Case No. 95-REP-03-0047)
4. SERB’s order in Case No. 95-REP-03-0047 described the Classified Unit as follows:
 - Included: All full-time and regular part-time employees without Certification including all job classifications listed in Board policy.
 - Excluded: Certified staff, confidential employees, substitutes, supervisors, and administrators.
5. Prior to 1995, the classified employees were represented by Ohio Association of Public School Employees (“OAPSE”). In the 1995 representation election, Ohio Education Association (“OEA”) was unanimously elected as the representative of the Classified Unit. The Certified Unit did not challenge the representation election. (S. 5, 11, 12)
6. The Certified Unit is a deemed-certified bargaining unit. Article 1(A) of the Recognition clause of the agreement between the Certified Unit and the Career Center reads as follows:

¹ All references to the Joint Stipulations of Fact are indicated parenthetically by “S.,” followed by the stipulation number(s). All references to the transcript of hearing are indicated parenthetically by “T.,” followed by the page number(s). All references to the Employer’s exhibits in the record are indicated parenthetically by “Er. Exh.,” followed by the exhibit number(s). All references to the Union’s exhibits in the record are indicated parenthetically by “U. Exh.,” followed by the exhibit numbers. All references to the Joint exhibits in the record are indicated parenthetically by “Jt. Exh.,” followed by the exhibit number(s). References to the record are intended for convenience only and are not intended to suggest that such references are the only support in the record for that related Finding of Fact.

² All references to statutes are to the Ohio Revised Code, Chapter 4117, and all references to rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

Article I - Recognition

Section A. For the purposes of negotiations, the Greene Joint Vocational School Board of Education will recognize the Greene Joint Vocational Education Association/OEA/NEA as the sole and exclusive bargaining representative for all regularly employed certificated staff, under contract, and employed by the district. Regularly employed certificated staff shall be deemed to include all instructors, including night school, holding or obtaining limited or continuing contracts of at least nine (9) months duration who are not the Superintendent, Directors or Supervisors. (Jt. Exh. 21)

7. The recognition clause of the July 1, 1987 agreement described the Certified Unit as being the "sole and exclusive bargaining representative for all regularly employed certificated staff, under contract, and employed by the district." The recognition clause defined "regularly employed certificated staff" as follows:

Regularly employed certificated staff shall be deemed to include all instructors, including night school, holding or obtaining limited or continuing contracts of at least nine (9) months duration but excluding the Superintendent, Directors or Supervisors. (Jt. Ex. 4)

8. The recognition clause of the July 1, 1989 through June 30, 1992 agreement described the Certified Unit as being "the sole and exclusive bargaining representative for all regularly employed certificated staff, under contract, and employed by the district." The recognition clause defined "regularly employed certificated staff" as follows:

Regularly employed certificated staff shall be deemed to include all instructors, including full-time adult school instructors, holding or obtaining limited or continuing contracts, but excluding the Superintendent, Directors, or Supervisors. (emphasis in original) (Jt. Exh. 22)

9. The recognition clause of the July 1, 1992 through June 30, 1995 agreement described the Certified Unit as being "the sole and exclusive bargaining representative for all regularly employed certificated staff, under contract, and employed by the district." The recognition clause defined "regularly employed certificated staff" as follows:

Regularly employed certificated staff shall be deemed to include all teachers, including full-time adult school teachers, holding or obtaining

limited or continuing contracts, but excluding the Superintendent, Directors, or Supervisors. (emphasis in original) (Jt. Exh. 23)

10. The recognition clause of the July 1, 1995 through June 30, 1998 agreement described the Certified Unit as being "the sole and exclusive bargaining representative for all regularly employed certificated staff, under contract, and employed by the district." The recognition clause defined "regularly employed certificated staff" as follows:

Regularly employed certificated staff shall be deemed to include all teachers, including full-time adult school teachers, holding or obtaining limited or continuing contracts, but excluding the superintendent, directors, or supervisors. (Jt. Exh. 24)
11. The recognition clause of the July 1, 1998 through June 30, 2001, and the July 1, 2001 through June 30, 2004 agreements described the Certified Unit as being "the sole and exclusive bargaining representative for all regularly employed certificated/licensed staff, under contract and employed by the District." Both recognition clauses defined "regularly employed certificated/licensed staff" as follows:

Regularly employed certificated/licensed staff shall be deemed to include all teachers, including full-time adult school teachers, holding or obtaining limited or continuing contracts but excluding the superintendent, directors, or supervisors. (Jt. Exhs. 25, 26)
12. Jill Bottorff was hired in 1992 for the newly created position of Financial Aid Coordinator. The position was placed in the Classified Unit. Prior to Ms. Bottorff's hiring, financial aid duties were handled by Irene Krause in the position of Student Services Coordinator. Ms. Krause also handled enrollment, registration, assessment and student accounts and she was paid according to the teacher's salary schedule. Ms. Krause retired in 1999. The Student Services Coordinator position was not in either the Classified Unit or the Certified Unit. (S. 6; T. 80, 104-105, 112-113, 182-183, 300)
13. Neither the Certified Unit nor the Classified Unit filed any grievance or unfair labor practice about the placement of the Financial Aid Coordinator position in the Classified Association until 2003. (S. 8)
14. Ms. Bottorff received and at all times during the course of her employment, has continued to hold a non-teaching contract. Ms. Bottorff was initially placed on Step 2 of the Secretary salary schedule of the CBA between the Career Center and OAPSE. (S. 9)

15. In the first negotiated agreement after OEA was elected to represent the Classified Unit in 1995, Ms. Bottorff's position title was changed from Financial Aid Coordinator to Financial Aid Specialist ("FAS"); however, her duties did not change. This position was assigned to the classification of Office Support Personnel. (S. 13; T. 111-314)
16. Ms. Bottorff moved up steadily in the steps of the Secretary salary schedule and then in the steps of the Office Support Personnel schedule. She obtained her BA in Management and Human Development in 2001. (S. 16-29)
17. The adult education department in which Ms. Bottorff works has eleven full-time and 140 part-time employees. The full-time employees include coordinators, consultants, career development staff, student services (the group into which Ms. Bottorff's position falls), and support staff. (T. 253-254)
18. The Career Center's adult education program has held the designation of Full Service Center since 1987. Full Service Centers operate under the Full Service Center Guidelines issued by the Ohio Department of Education ("ODE"). Compliance with the guidelines allows the adult education program to receive a certain amount of funding. In this case, the Career Center receives \$18,000 annually. Compliance with the guidelines is not required to operate an adult education program or to offer financial aid services, but only to receive the annual funding. (S. 8; T. 33, 34, 207)
19. According to the Full Service Center Guidelines as amended in 2000, a "certified" or "licensed" staff member must be assigned to administer financial aid services. Ms. Bottorff has been assigned to administer financial aid services from 1992 to the present. According to ODE, a person holding an adult education temporary teaching permit satisfies this requirement. No teaching experience is required. (S. 35; Jt. Exh. 11; T. 11-13, 67)
20. The FAS position itself does not require a bachelor's degree or a teaching certificate, permit, or license. To satisfy the Full Service Center requirements, a "certified" or "licensed" staff member must be assigned to administer financial-aid services. (T. 11)
21. The Full Service Center Guidelines use the term "certified" at page 6 and "licensed" at page 10, in describing the same qualification. The guidelines do not define the terms. (Jt. Exh. 11; T. 11-12)
22. According to Carolyn Gasiorek of ODE's adult workforce unit, before licensure standards were adopted, all required adult education documents were called certificates. They are now called permits. (T. 14-16, 17-18, 20-22)

23. Persons in adult education with an education background generally have a four-year certificate. Persons in adult education with an industry background have a one-year adult certificate. After the new licensure standards were adopted, those persons from an education background had a four-year license and those from an industry background had a one-year adult permit. (T. 37-38, 41-42)
24. For the 1995-1996, 1999-2000, and 2000-2001 school years, Ms. Bottorff applied for and received an adult education temporary teaching certificate from ODE. The certificates were issued in the areas of Homemaking and Consumer Education and Business Administration/Management. For the 2003-2004 school year, Ms. Bottorff was provided and completed an adult education teaching certificate application and was issued an adult education teaching permit. For the 2004-2005 and 2005-2006 school years, Ms. Bottorff applied for and received an adult education temporary teaching permit from ODE. The permits were issued in the areas of Office Operation and Personal Living. (S. 31, 32, 40)
25. The teaching document Ms. Bottorff received is good for one year. The requirements to obtain this document are a high school diploma, good moral character, and a recommendation from the employing school district. The document is valid for one year for teaching adults in an adult education program. It must be reapplied for each year. (Jt. Exh. 10, p. 18; T. 50, 202-203)
26. The teaching document Ms. Bottorff received does not enable her to teach primary or secondary education. (T. 42)
27. Ms. Bottorff's primary job duties involve recordkeeping and student financial aid assistance both in person and by phone. (Jt. Exh. 6, Tab 311; T. 254-257, 283)
28. The FAS position description does not include teaching duties. However, in her position as FAS, Ms. Bottorff presented a financial aid workshop and taught a telephone courtesy class. Ms. Bottorff presented the two-hour financial-aid workshop twice in January of the 1995-1996 school year. No textbook was used in this class, and no grades were issued in this class. (U. Exh. 7; T. 114-115, 117, 120-122, 160, 167-168, 257)
29. Ms. Bottorff taught a three-hour telephone courtesy class at the Career Center and in local high schools. Ms. Bottorff taught the telephone courtesy class three times in the 1999-2000 school year and twice in the 2000-2001 school year. (U. Exh. 8, 9; T. 120-123, 125, 167-168, 302)
30. Two career center employees who hold adult education temporary teaching permits are (or have been) members of the Certified Unit – the Adult Education Public

Safety Coordinator and the Adult Education Criminal Justice Coordinator. (S. 36; T. 140-141, 275-276)

31. The Adult Education Public Safety Coordinator is not currently a full-time position and is not currently a position within the Certified Unit. The person holding this position is required to have an Associate's or Bachelor's degree and an Ohio license as a certified EMR-Paramedic and/or Firefighter. The person holding this position is also required to develop program plans and curriculum and to teach classes as necessary. (S. 37, T. 268-269)
32. The Adult Education Criminal Justice Coordinator is a member of the Certified Unit. The person holding this position is required to have a bachelor's degree and an Ohio Peace Officers Training Academy ("OPOTA") certification. The OPOTA certification allows the individual to teach criminal justice classes for the State of Ohio. The Adult Education Criminal Justice Coordinator is also required to develop program plans and curriculum, evaluate student performance, and teach classes as necessary. This position is filled according to a 184-day contract. (S. 38; T. 266-268, 331)

IV. ANALYSIS AND DISCUSSION

Two Petitions for Clarification of Bargaining Unit were filed to have the FAS position excluded from the Classified Unit and included in the Certified Unit. The purpose of a clarification petition is to determine whether a particular employee or group of employees is included in or excluded from an existing bargaining unit based upon the existing unit description and the duties performed by the employees in question. Rule 4117-5-01(E)(2). Unit clarification does not alter the status quo, but rather maintains it. In re Ohio Council 8, AFSCME, SERB 95-021 (12-29-95).

As a deemed-certified bargaining unit, the Certified Unit was already in existence when Chapter 4117 became effective on April 1, 1984. The recognition clause in 1987 for this deemed-certified unit included "all regularly employed certificated staff, under contract and employed by the District. Regularly employed certificated staff shall be deemed to include all instructors, including night school, holding or obtaining limited or continuing contracts of at least nine (9) months duration who are not the Superintendent, Directors or Supervisors." Over time, the recognition clause changed the word "instructor" to "teacher." The current recognition clause defines regularly employed certificated staff as "all teachers, including full-time adult school teachers, holding or obtaining limited or continuing contracts, but excluding the Superintendent, Directors, or Supervisors."

The Classified Unit was certified by SERB in 1995 pursuant to a representation election; at the time of certification, the recognition clause for the Classified Unit read "all

full-time and regular part-time employees without certification including all job classifications listed in Board policy." The primary distinction between the two units was and is teaching versus non-teaching.

The FAS position was not created until 1992. Many of the financial aid duties incorporated into the FAS position were performed by an individual (Ms. Krause) whose position as Student Services Coordinator was not included in either bargaining unit. No substantive changes have been made in the duties of the FAS position.

It is within this framework that Ms. Bottorff realized that Ms. Krause had been paid at a teacher's level while Ms. Bottorff was being paid at a secretary's level. Upon discussing this realization with her supervisor, Ms. Bottorff was told that the Supervisor would observe Ms. Bottorff's job performance and then would look at her position the next time salaries were discussed. (T. 106). Ms. Bottorff worked at obtaining her college degree, believing that it would help her earn more money in the FAS position. (T. 109-110).

In 2000, a change occurred in the workforce development guidelines requiring an individual who performs financial aid duties to be either licensed or certified. Although not a requirement for the FAS position itself, it was a requirement if the career center was to keep its Full Service Center designation. The guidelines themselves did not define the terms certified or licensed. The individuals from ODE, who did not author but who did modify the guidelines, were uncertain as to the meaning of the terms. In order to comply with the guidelines, Ms. Bottorff's supervisor requested that she obtain a temporary one-year renewable adult education permit. (T. 263).

Ms. Bottorff observed two other positions that were not teacher positions per se that were included in the Classified Unit, the Adult Education Public Safety Coordinator and Adult Education Criminal Justice Coordinator positions. Based upon all of these factors, Ms. Bottorff determined that she was underpaid and sought to see what action she could take to remedy the situation. The Employer told Ms. Bottorff she would have to seek relief through the Classified Unit. Either the Employer or the Classified Unit could have proposed negotiating to create a new classification within the Classified Unit with a higher pay range for the FAS position, to give Ms. Bottorff the pay increase she was seeking. Instead, two petitions for clarification were filed.

The purpose of a Petition for Clarification of Bargaining Unit is succinctly stated in In re Pickaway County Human Services Dept, SERB 95-015 (9-29-95):

A Petition for Clarification of Bargaining Unit seeks a determination of the bargaining-unit status of an employee or group of employees based on the existing unit description and content, and the duties performed by the employees in question. A unit clarification is essentially a ruling by SERB that a position is already covered by the wording of the existing unit

description. Clarification may involve a change in the roster of bargaining-unit members, but does not involve any substantial change in the content of the unit in terms of what work is being performed by employees in the bargaining unit. Employees may be clarified into a unit if their duties are substantially similar to those performed by employees already in the unit. Clarification may involve a change in the written unit description, but only as a result of a determination that the employees in question are included or excluded based on the existing description and work content of the unit.

What the Classified and Certified Units are seeking is a ruling by SERB that the FAS position is already covered by the wording of the unit description of the Certified Unit. Ms. Bottorff's position may be clarified into the Certified Unit only if her duties are substantially similar to those performed by employees already in the Certified Unit. The Certified Unit has from its inception contemplated teachers. Regularly employed certificated staff has been defined in the recognition clause since the inception of the unit as: "Regularly employed certificated staff shall be deemed to include all teachers. All teachers, including full-time adult school teachers, holding or obtaining limited or continuing contracts." The FAS position, currently in the Classified Unit, is not a teaching position. The FAS duties do not transform the FAS position into a teaching position. Ms. Bottorff's telephone courtesy class (three hours, taught three times one year, two times another year) and financial aid workshop (two hours, presented twice one year) are not sufficient to consider her position a teaching position. The bulk of her duties are non-teaching. They do not involve regular teaching responsibilities such as writing lesson plans, evaluating students, and teaching regular classes.

Since Ms. Bottorff's teaching document was once called a certificate and the Workforce guidelines require a certified or licensed person, the petitioners assert that mere semantics require the FAS position to be included in the Certified Unit. The recognition clause of the Certified Unit did not contemplate inclusion of anyone with any type of document called a certificate. Certificated staff, pursuant to the recognition clause of the CBA, clearly meant those persons in teaching positions. Just because Ms. Bottorff's document was once called a certificate does not make it the same type of certificate contemplated in the CBA. The very definition in the recognition clause of the CBA provides evidence of its meaning and intent. It does not matter what the document is called; the FAS position is not a teaching position.

Ms. Bottorff and her counsel seemed convinced that as a matter of fairness and in return for her hard work that she should gain inclusion into the Certified Unit. If those considerations were the standards, she might well be in that unit. The duties she performs, however, are not substantially similar to the duties performed by the persons in the Certified Unit. Even the two persons who are most similar to her hold adult teaching permits as opposed to teaching certificates. The only two positions that have adult education permits and are in the Certified Unit are the Adult Education Criminal Justice

Coordinator and the Adult Education Public Safety Coordinator. The Adult Education Criminal Justice Coordinator position requires a bachelor's degree as well as OPOTA certification. The individual holding this position develops program plans and curriculum, teaches classes, and evaluates student performance. Although the Adult Education Public Safety Coordinator position is not currently filled, the position requires an associate's or bachelor's degree and an Ohio EMT-Paramedic or Firefighter license. The position requires the development of program plans and curriculum and the teaching of classes. The requirements for both of these positions differ from those of the FAS position, which requires no degree, no specific license or certification (except for the full service center requirements that are fulfilled by an adult education permit), and involves only occasional presentation of a one-time telephone courtesy class or financial-aid workshop.

Neither the duties performed nor the intent expressed in the recognition clauses support, under the standard for a petition for clarification, Ms. Bottorff's argument that the FAS position should be in the Certificated Unit. Based upon the foregoing analysis and discussion, the two petitions for clarification should not be granted.

V. CONCLUSIONS OF LAW

1. The Greene County Career Center is a "public employer" as defined by § 4117.01(B).
2. The Greene County Career Center Classified Employees Association, OEA/NEA and the Greene County Career Center Education Association, OEA/NEA are "employee organizations" as defined by § 4117.01(D).
3. The bargaining unit represented by the Greene County Career Center Classified Employees Association, OEA/NEA should not be clarified to exclude the position of Financial Aid Specialist.
4. The bargaining unit represented by the Greene County Career Center Education Association, OEA/NEA should not be clarified to include the position of Financial Aid Specialist.

VI. RECOMMENDATIONS

Based upon the foregoing, the following is respectfully recommended that:

1. The State Employment Relations Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The State Employment Relations Board deny the Petitions for Clarification of Bargaining Unit.