

BEFORE THE STATE OF NEW MEXICO  
PUBLIC EMPLOYEE LABOR BOARD

COMMUNICATIONS WORKERS OF )  
AMERICA )

And )

STATE OF NEW MEXICO )  
DEPARTMENT OF PUBLIC )  
EDUCATION )  

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Case Nos., CP 29-95(s)  
CP 30-95(s)

DECISION OF THE HEARING OFFICER

On April 5, 1995 , Petitioner Communication Workers of America, (hereinafter "CWA"), filed two separate petitions with the Board to accrete certain employees of the State of New Mexico Department of Education into its "paraprofessional unit 10" and "technical unit 8" bargaining units. Each of the respective petitions filed had the required sixty per cent showing of interest necessary to commence the instant actions. The petitions were consolidated by the Board and heard as one case on October 27, 1995. During the hearing CWA and State Department of Education ("Department") presented evidence in the form of testimony by witnesses and documentary evidence. Both parties cross-examined witnesses. After the hearing, the parties submitted written proposed findings of fact and

Do the fifteen Financial Specialists and the one Procurement Specialist employed by the State Department of Education listed in CWA's petition have a sufficient community of interest with members of the CWA "paraprofessional unit 10" so as to require the employees to be accreted into the existing unit?

Does the Constitutional status of the State Board of Education insulate it from the efforts by CWA to accrete employees into the existing units?

#### POSITION OF THE PARTIES:

CWA urges that its petition (CP 29-95(s)) to accrete the Department's Financial Specialists and Procurement Specialist into what the CWA has designated a "paraprofessional unit 10" bargaining unit should be granted. CWA cites to the recent collective bargaining agreement between itself in coalition with other unions and the State of New Mexico as evidence of the intent of the State and the unions to enter into bargaining based not on a department by department basis but rather on a state wide basis. If a legally sufficient community of interest is found to exist, the employees should be accreted into the existing unit.

CWA urges that a legally sufficient community of interest exists between the members of the existing paraprofessional bargaining unit and the Financial

Specialists and Procurement Specialist employed by the Department of Education. The Department employees and those of the CWA unit each are governed under the same State Personnel Rules that apply to classified employees. Moreover the employees are hired under State Personnel Job Descriptions which set entry level job requirements. The unit employees and the subject employees are compensated within identical wage ranges for their respective classifications.

CWA also urges that additional evidence for its position comes from the meetings that have taking place between members of the unions involved in state collective bargaining and state officials to functionalize into broad categories of employment the multiple number of job classifications now present. This effort to merge separate job classifications into broad functional groups indicates a preference on the part of the State for bargaining based on job groups and not on a department by department basis. CWA makes the same arguments in reference to its petition (CP 30-95(a)) to accrete the print shop employees of the Department into its existing technical unit.

The Department urges that the petitions to accrete should not be granted. It cites to several factors to support of its position: The Department alone can discipline and direct the employees at issue. The Department does not have any history of bargaining with the CWA. The Department

employees' jobs are proprietary to the Department and have little in common with the work done by the unit employees. The Department's employees may choose a different pension plan than what is available to the members of the bargaining units. All of the Department employees at issue are employed at Santa Fe. Many of the employees in the bargaining units are employed throughout the State and are not resident in Santa Fe. The CWA does not have any bargaining history or relationship with the Department of Education. Finally the Department urges that its constitutional status immunizes it from the accretion process under the PEBA.

#### STIPULATIONS OF FACT:

The parties stipulated that the instant petitions are properly before the Board for decision.

#### FACTS-BACKGROUND

The State of New Mexico State Board of Education is a constitutionally created entity under Article XII, section 6 of the New Mexico State Constitution. Among other things, the Board oversees the direction of the "State Department of Public Education" which carries out public school policy and vocational educational policy within the State of New Mexico. To carry out its mandate, the Department disburses



and accounts for the budget under which the State's public schools operate. The Departments current internal fiscal operating budget is \$12,328,700. To help it carry out its financial management duties the Department employs fifteen Financial Specialists and one Procurement Specialist. The Financial Specialists and the Procurement specialist are employed at the Department of Education building located in Santa Fe at W. deVargas and Don Gaspar.

The Department also maintains a print shop to do its printing. The print shop also does work for other Departments in State government. The four subject print shop employees work in the Federal Building in Santa Fe, which is located at S. Federal Place and Grant St. Altogether, the Department employs 235 employees.

The Department maintains a collective bargaining relationship with AFSCME that covers employees who work in the Vocational Rehabilitation area of the Department.

CWA is a labor organization as defined under the PEBA. At present CWA is the certified exclusive bargaining representative for certain employees who work for the Department of Health, Environment Department, Commission on the Status of Women, Agency on Aging and Office of Cultural Affairs. CWA represents both technical and paraprofessional employees in the above departments.

Among the paraprofessional employees represented by CWA are employees designated as Financial Specialists and

Procurement Specialists under State Personnel Office job classification. The technical employees represented by CWA include Audio Visual Spec. I and II, Lab Tech III, Computer Operator, Medical technologist II, Photographer Specialist, Micro Computer Operator, Respiratory Therapist I, Surgical Tech, and X-Ray Tech I, and II, Printing Bindery Technician, Printing Technician and Senior Printing Technician. CWA is not certified to represent any Education Department employees.

On December 9, 1994 the CWA and a coalition of unions entered into a collective bargaining agreement with the governor and the State of New Mexico that defines the respective parties' legal obligations to one another. Among other things the agreement provided that the Unions were to be recognized by the State as "the exclusive bargaining representative as that term is defined in section 4 G of the PEBA, 10-7D(1) etseq, NMSA, for employees in the Bargaining Unit where each labor organization has been certified or recognized. (emphasis added)

In 1993, a committee comprised of labor and management representatives was assembled to review the multitude of State job classifications. The job of the committee was to designate the various job classifications into several functional groups according to the functional make up of the jobs as well as level of education necessary to perform in the position and other factors. The union maintains that the committee's effort was designed to facilitate a union's

ability to represent employees across a functional group without regard to what State agency or department they worked for.

#### FINDINGS OF FACT

1. CWA is the certified exclusive bargaining representative of certain employees who are employed by the State Department of Health, Commission on the Status of Women, Environment Department, Agency on Aging and Cultural Affairs Department. The employees represented by CWA in its paraprofessional unit include persons employed as Financial Specialists and Procurement Specialists. CWA represents employees designated as Printing Bindery Technician, Printing Technician and Senior Printing Technician in its technical bargaining unit.

2. The Department employs fifteen Financial Specialists, one Procurement Specialist and four print shop technicians.

3. The CWA does not have a history of collective bargaining with the State Department of Education.

4. No agency or department within the State of New Mexico government may discipline, evaluate or direct any employee of the Education Department. Management of the Department

cannot supervise, evaluate or discipline any employee outside of the Department.

5. All employees referenced in CWA's petitions work in Santa Fe. Not all of the employees represented by CWA work in Santa Fe.

6. All employees of the Department may choose to be covered under State PERA or the Teacher's retirement plan. No employee represented by CWA may be covered under Teacher's retirement plan.

7. The employees at issue as well as those who are members of the existing bargaining units are governed under State Personnel Department rules.

#### CONCLUSIONS OF LAW

1. The present petitions are properly before the Public Employee Labor Relations Board ("PERLB"). The PERLB has jurisdiction over the questions presented as well as jurisdiction over the respective parties.

2. "Unit accretion" means the inclusion into an existing bargaining unit of employees who do not belong to any existing bargaining unit and who share a community of interest with the employees in the existing unit and whose



inclusion will not render the existing unit inappropriate." PELRB Rules and Regulations 1.3 n.

3. The Department employees at issue do not presently belong to any bargaining unit of employees certified by the PELRB.

4. PELRB Rule No. 2.31(a) provides "the exclusive representative of an existing collective bargaining unit . . . may petition the Board to include in the unit employees who do not belong at the time the petition is filed to any existing bargaining unit who share a community of interest with employees in the existing unit and whose inclusion in the existing unit would not render the unit inappropriate."

5. "Community of Interest" has been accepted by the PELRB to refer to "a listing of relevant criteria for deciding whether a group of employees have sufficient economic relatedness to one another to justify their being grouped in an existing Bargaining Unit." NEA-Belen et al., 1 PELRB Case Number 2, pp 5,6, ALJ recommendations, NEA-Belen et al., pp 22-23. The factors cited most often to be considered whether a community of interest exists are the existence of:

- 1) a difference in method of wages or compensation,
- 2) different hours of work; 3) different employment benefits;
- 4) separate supervision; 5) the degree of dissimilar qualifications; 6) difference in job functions and amount of working time spent away from the employment or plant situs;

7) the infrequency or lack of contact with other employees;  
8) lack of integration with the work functions of other employees or interchange with them; 9) the history of collective bargaining. Kalamazoo Paper Box Corp., 136 NLRB No. 10, 1962.

6. Applying the aforementioned criteria to the question of the existence of a "community of interest" I find and conclude as follows:

Difference in calculation of wages or compensation

There is a difference between the Department's method for calculating wages for the affected employees and the method used to calculate wages for bargaining unit employees. The Department apportions wages based on an internal formula. As a result some employees may get more money than others. The difference in wages allocated is due in part to differing levels of experience and education between the employees. The bargaining unit employees may or may not enjoy such differential treatment depending upon where they work. The ultimate pay range for any job at issue here is set through the State Personnel office.

Difference in work hours

The Department employees work the same hours as the Bargaining Unit Employees except during the summer months when the Department employees may work a flex schedule.

#### Different benefits

Department employees enjoy the choice of participating in State PERA or the Teachers' Retirement plan. Bargaining unit employees enjoy no such choice and are limited to the State PERA plan. The medical plans are the same for bargaining unit and non bargaining unit employees.

#### Separate supervision

No department supervisor may supervise, evaluate or discipline any CWA bargaining unit employee. No Department employee may be supervised, evaluated or disciplined by any supervisor or manager in any other department.

#### Dissimilar skills, training, qualifications

The employment qualifications for the Procurement Specialists and Financial Specialists employed by the various state departments are identical and based on a State Personnel Department Job Description. Once hired the Education Department Financial Specialists work with a financial accounting system that is unique to the

Department. The Print Shop employees do similar work as other print shop employees who are members of the bargaining unit although the equipment used may be different. The location where the Department print shop employees do their work is not shared with any other unit member. The Procurement Specialist does similar work as other Procurement Specialists in state service. The work done by the Procurement Specialist is done at the Department office building.

Frequency of contact with bargaining unit employees

The CWA did not establish that the subject employees interact with the bargaining unit employees at any level while at work.

Integration of work functions between subject employees and unit employees

The work performed by the subject employees is not interchangeable with the work performed by the unit employees. There is no cross-training that would familiarize the employees of the Education Department with the work performed by the unit members in their respective areas. Employees of the Education Department are not sent into outside departments to do work. Unit employees are not



brought in to the Education Department to do work nor does cross training go on.

History of collective bargaining between Department and CWA.

None. The Department does have a collective bargaining relationship with AFSCME concerning employees who work in the Vocational Rehabilitation area of the Department. The Department does not maintain any bargaining relationship with CWA.

7. The CWA has failed to prove within a preponderance of the evidence that a community of interest exists between the paraprofessional unit and the Financial and Procurement Specialists so as to permit an accretion into the unit to occur.

8. CWA has failed to prove within the preponderance of the evidence that a community of interest exists between the subject print shop employees and members of its technical bargaining unit so as to permit an accretion into the unit to take place.

9. Since no community of interest is found to exist to permit an accretion into an existing bargaining unit to take place, the constitutional issue raised by the Department shall not be addressed.

Conclusion:

The employees sought to be accreted into the CWA Bargaining units do not have a legally sufficient community of interest to warrant their inclusion in the bargaining unit through accretion. While the employees at the time of their hire are hired under the same job classification for a particular position the evidence presented at hearing is clear that such employees go on to become a part of a distinct work unit where the work is governed by the particular needs of the Department irrespective of the job classification. As a result the employee's work identity is based upon where the employee works and what work they do and not by their job classification. Due to the internal procedure followed by the Department the wages achieved by the Department employees differ from their unit counterparts. The subject employees and the unit employees do not interact with any frequency nor are their positions interchangeable with those of the unit personnel. The unit employees cannot be disciplined or supervised by the Department management nor can the subject employees be managed by the units' managers. The CWA and the Department have no prior history of collective bargaining. Such factors point to a lack of economic relatedness between the subject employees and their bargaining unit member counterparts. Therefore under the

facts presented here accretion of the subject employees into the bargaining units is not appropriate.

The Petitions filed by CWA in this action are therefore dismissed for failure to establish a legally sufficient community of interest between the employees sought to be accreted and those who are in the existing bargaining units.

#### REQUEST FOR REVIEW

Pursuant to Board Rule 2.15 within ten work days after service of this decision any party may file a request for Board review. The request for review shall state the specific portion of the Decision to which exception is taken and the factual and legal basis for such exception. The request may not rely on any evidence not presented at hearing. The request must be served on all other parties. Within ten work days after service of a request for review, any other party may file and serve on all parties a response to the request for review.

Issued at Albuquerque, New Mexico, January 3, 1996.



Patrick. E. Bingham,  
Hearing Officer, PELRB