

EASTON SCHOOL COMMITTEE AND LOCAL 1702, AFSCME COUNCIL 93, AFL-CIO. CAS-2793 (8/20/89).

34.91 accretion
 34.92 clarification
 35.41 clericals

Hearing Officer:

Anne M. Desouza, Esq.

Appearances:

Mark J. Mahoney, Esq. ¹ Robin M. Ross, Esq.	- Representing the Easton School Committee - Representing Local 1703, AFSCME Council 93, AFL-CIO
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HEARING OFFICER'S DECISION

Statement of the Case

On December 22, 1987, the American Federation of State, County and Municipal Employees (AFSCME), Council 93, AFL-CIO filed a unit clarification petition with the Labor Relations Commission (Commission) seeking to have the positions of Payroll Clerk, Computer Operator,² and Secretary to the Assistant Superintendent accreted into a clerical bargaining unit of Easton school department employees represented by Local 1702, AFSCME Council 93 (the Union). After investigation the Commission dismissed that portion of the petition concerning the Secretary to the Assistant Superintendent because the evidence established probably cause to believe that said position is confidential within the meaning of General Laws, Chapter 150E (the Law).

Pursuant to notice, an expedited hearing on the remaining positions was held before the undersigned hearing officer on August 3, 1988. At that time, the parties chose to litigate only the Payroll Clerk position, in deference to a potential settlement agreement on the Computer Operator position. After the settlement attempts failed, the hearing was reopened and completed as to the Computer Operator

¹ Subsequent to the close of the hearing, but prior to the issuance of this decision, Mark J. Mahoney was succeeded as counsel for the School Committee by William T. Sherry, Jr., Esq.

² The parties stipulated that the position of "Payroll Clerk" is also known as "Payroll Systems Operator" and the position of "Computer Operator" is also known as "Student Systems Manager."



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position on March 1, 1989. At the hearing, all parties had a full and fair opportunity to be heard, to examine witnesses, and to introduce documentary evidence. The parties filed briefs after the close of the first day of hearing and made closing arguments at the close of the second day of hearing. Having carefully considered all arguments and evidence, I find and rule as follows:

Findings of Fact

On April 15, 1982, Local 1702, AFSCME Council 93, AFL-CIO (the Union) was certified as the collective bargaining representative of a unit consisting of all regular full-time and part-time clerical employees of the Easton School Committee.³ Prior to the 1982 certification, the same bargaining unit was represented by Easton Secretaries Association, Massachusetts Teachers Association.

At the time of the 1982 certification, there existed a full-time Business Office Clerk and a part-time Key punch Operator employed in the central administration office of the school department. These positions were not specifically referenced in the certification language; however, the parties agree that all central office positions have been excluded consistently from the unit both before and after the certification.

Joseph Curran, a Union agent who was involved in the filing of the petition seeking representation of the unit, testified that he was aware that all central administration positions were excluded from the Unit. He stated that the Union didn't seek to modify the unit because he understood that Commission decertification rules prohibited any changes at that time.

There have been at least two collective bargaining agreements in effect since the 1982 certification. In at least one bargaining session during the most recent round of negotiations, the parties discussed the inclusion of the Payroll Clerk and the Computer Operator in the unit. The contract was settled,⁴ however, without any agreement on the issue.

The Business Office Clerk position in 1982 was entitled "Business Office Clerk/Payroll," "Payroll Clerk," and "Payroll Systems Manager" over the years, and is the Payroll Clerk position now in dispute. It was undisputed that the present job duties and functions of the Payroll Clerk are essentially the same as those existing in 1982. The only differences are a result of the installation of a computer system in 1987 which deleted some keypunch duties and added some computer processing duties. The primary duties of the position include preparation, filing

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See, Easton School Department, Case No. MCR-3268.

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There was an agreement in effect at the time of filing of the instant petition, but the parties agreed to submit to the jurisdiction of the Commission in this matter and to waive the "contract bar" rule, 456 CMR 14.06(1).



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and maintenance of all information and documents relating to the payroll for school department employees; processing payroll checks; and gathering and providing payroll information and statistical reports to appropriate school personnel or outside agencies. Prior to the installation of the computer, the Payroll Clerk forwarded the payroll information to another office for processing. With the computer, the Payroll Clerk performs the actual check processing.

The Payroll Clerk does not participate in collective bargaining, but is asked to cost out proposals and provide budget forecasts of wage proposals that are being considered. On one occasion, management representatives sought the incumbent's input on a bargaining proposal concerning a change in the payroll system.

The Payroll Clerk is one of several employees working in the central administration offices,⁵ and will answer the telephone for anyone in those offices when necessary.

The part-time position of Key punch Operator which existed at the time of certification became a full-time position in 1982-1983. The job duties for the full-time position remained the same with the increase in hours and the addition of employee benefits such as vacation and sick-leave. The primary duties of the Key-punch Operator were to enter on IBM cards student information such as attendance, report cards, scheduling, busing, and registration. The IBM cards were sent to another office for processing, and various reports were generated on the basis of the information. Sometime in 1987, the computer system was installed and the position title changed to Computer Operator. With the computer, the Computer Operator enters the same type of information, but is now required to generate the various reports. The Computer Operator also is responsible for ordering certain supplies and for training and assisting several other employees on the computer, two duties which were not performed by the Key punch Operator.

The Computer Operator is not involved in collective bargaining and has no access to collective bargaining materials or to personnel files. The incumbent does answer the telephone for other central office personnel when necessary, in the same manner as the Payroll Clerk.

The Business Office Manager is the immediate supervisor of both the Payroll Clerk and the Computer Operator. The Business Office Manager in turn reports to the Administrative Assistant to the Superintendent for Fiscal Affairs, who reports to the Superintendent of Schools.

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The central administration offices, located on the second floor of a middle school, house the Superintendent and his secretary, the Administrative Assistant to the Superintendent for Fiscal Affairs and his secretary, the Business Office Manager, the Payroll Clerk, and the Computer Operator.



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Opinion

Under present Commission case law, a petition for clarification and amendment (CAS petition) will not be entertained if the disputed position existed at the time of the original certification and has not changed significantly since that time. City of Worcester, 11 MLC 1363, 1366 (1985) (and cases cited); Massachusetts Board of Regents, 12 MLC 1896, 1900 (H.O. 1985).

Both positions at issue in this case existed at the time of certification. Each position had a different title in 1982, but performed substantially the same functions. The advent of the computer in 1987 changed the manner in which those functions were performed, but the essential natures of both jobs have not changed materially since the time of certification.

Although the certification does not specifically reference either position, it is clear from the conduct of the parties that the positions were knowingly excluded from the bargaining unit in 1982. The Union agent involved in filing the representation petition was aware that the positions were excluded from the unit at that time,⁶ and even raised the issue without result in bargaining. Consequently, since the positions were excluded at certification and have not changed significantly, the Union may not now seek the positions through a CAS petition.⁷ In light of Commission precedent, I am bound to dismiss the petition as inappropriate.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

ANNE M. DeSOUZA, ESQ.
HEARING OFFICER

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Unfortunately, the Union agent failed to seek inclusion of the positions in the certification proceedings. In a petition for new or changed representation, a union may seek to change the parameters of a unit. See, Geriatric Authority of Holyoke, 15 MLC 1139, 1142 (1988).

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Because of this procedural rule, I cannot reach the issue of community of interest between these positions and existing unit positions.

