

In the Matter of BOSTON SCHOOL COMMITTEE  
and  
LOCAL 285, SERVICE EMPLOYEES INTERNATIONAL  
UNION

Case No. CAS-2937

34.2	<i>community of interest</i>
34.5	<i>established practice (history)</i>
34.8	<i>similarity of work</i>
34.91	<i>accretion</i>
35.6	<i>professionals</i>
35.7	<i>supervisory and managerial employees</i>
92.51	<i>appeals to full commission</i>

April 20, 1999

*Robert C. Dumont, Chairman*

*Helen A. Moreschi, Commissioner*

*Malcom S. Medley, Esq.*      *Representing the Boston School  
Committee*

*Betsy Ehreberg, Esq.*      *Representing Local 285, Service  
Employees International Union*

**DECISION ON APPEAL OF ADMINISTRATIVE LAW  
JUDGE'S DECISION**

Statement of the Case

On September 17, 1990, Local 285, Service Employees International Union (the Union) filed a petition with the Labor Relations Commission seeking to accrete a number of positions into a bargaining unit of employees in the School Committee's Division of Planning and Engineering. On August 31, 1994, Robert B. McCormack, a duly designated administrative law judge (ALJ) of the Commission, issued a Decision, accreting the petitioned-for employees into the unit.<sup>1</sup> On September 2, 1994, the School Committee appealed the ALJ's Decision on the ground that: 1) the ALJ made erroneous findings of fact; 2) the ALJ erroneously found that one of the petitioned-for employees was not a professional employee; and 3) the ALJ erroneously found that the petitioned-for employees shared a community of interest with the employees in the bargaining unit. On January 17, 1997, the Commission vacated the ALJ's Decision and remanded the matter

to the ALJ to make subsidiary findings of fact and to render a decision based upon those facts. The Commission did not consider the remaining arguments raised by the School Committee at that time. On February 24, 1997, the ALJ issued his second Decision, which also accreted the petitioned-for employees into the bargaining unit.<sup>2</sup> On March 3, 1997, the School Committee filed a second Notice of Appeal and requested an extension of time until April 7, 1997 to file its Supplementary Statement. However, the School Committee has not filed a Supplementary Statement in support of its appeal of the ALJ's second Decision. On August 25, 1997, the Union filed a Motion for Summary Dismissal of Appeal. The School Committee has not responded. For the reasons set forth below, we deny the Union's Motion for Summary Dismissal of Appeal, but affirm the ALJ's Decision accreting the petitioned-for employees into the bargaining unit represented by the Union.

Facts<sup>3</sup>

In its Supplementary Statement in support of its first appeal, the School Committee challenged many of the ALJ's findings of fact. We addressed that argument in our Ruling dated January 17, 1997 by directing the ALJ to make subsidiary findings of fact. Because the School Committee has not filed a Supplementary Statement in support of its second appeal or otherwise challenged any of the facts found by the ALJ in his second Decision, we adopt the ALJ's findings from his second Decision in their entirety and summarize the relevant portions below.

The Union represents a bargaining unit of employees in the School Committee's Division of Planning and Engineering (the Division). The Division is divided into two sub-divisions: 1) Planning and Administration; and 2) Engineering. The Division has approximately forty (40) to forty-six (46) employees, of which twenty-seven (27) are in the bargaining unit represented by the Union. The School Committee recognized the Union as the exclusive collective bargaining agent of the employees in the bargaining unit in approximately 1969. The recognition clause of the parties' most current collective bargaining agreement includes the following job titles:

- ◆ Assistant Supervisor of S.B., Electrical Installations and Maintenance
- ◆ Chief Electrical Engineer
- ◆ Chief Supervisor, S.B., Alterations & Repairs
- ◆ Chief Supervisor, S.B., Plumbing & Gasfitting
- ◆ Chief Supervisor, S.B., Heating & Ventilation
- ◆ Architectural Draftsmen (Junior)
- ◆ Civil Engineer (Junior)
- ◆ Senior Electrical Engineer
- ◆ Senior Supervisor, S.B., Alterations & Repairs
- ◆ Senior Supervisor, S.B., Electrical Installations and Maintenance

1. The full text of the ALJ's first Decision is reported at 21 MLC 1260.

2. The full text of the ALJ's second Decision is reported at 23 MLC 188.

3. The Commission's jurisdiction in this matter is uncontested.

- ◆ Senior Supervisor, S.B., Heating & Ventilation
- ◆ Senior Supervisor of Plumbing & Gasfitting
- ◆ Senior Supervisor, S.B. Roofs
- ◆ Storekeeper
- ◆ Supervisor, S.B., Alterations & Repairs
- ◆ Supervisor, S.B., Electrical Installations and Maintenance
- ◆ Supervisor, S.B., Heating & Ventilation
- ◆ Supervisor, S.B., Roofs
- ◆ Supervisor, S.B., Plumbing & Gasfitting
- ◆ Principal Architectural Draftsman

With the exception of the petitioned-for employees, the remaining employees in the Division are either managerial or in a bargaining unit of clerical employees.

All members of the bargaining unit are civil service employees and are assigned to one of several units, including: 1) alternations and repairs; 2) roofing; 3) civil engineer; 4) draftsman; 5) plumbing; 6) heating and ventilation; and 7) electrical installation and maintenance. The employees assigned to the various skilled trades units are responsible for basic maintenance and repair within their area of skill. Each unit has a supervisor who is a member of the bargaining unit. All the units are generally supervised for purposes of vacations, compensation matters, or benefits by either the structural engineer or the engineering assistant manager, neither of whom are members of the bargaining unit. The entire Division is managed by the director of facilities management.

With the exception of the civil engineer, none of the bargaining unit positions require a college degree, but all require knowledge and experience in a specialized area and many require licenses.

Prior to being within the Division of Planning and Engineering, two of the petitioned-for positions, the Technician and Senior Technician, were within the Custodial department. After learning the positions had been transferred, the Union also learned of the other petitioned-for positions.

The petitioned-for employees include the following:

The *senior coordinator/facility planner* develops and implements short- and long-term strategic plans relating to facilities. The position requires a bachelor's degree, although the incumbent holds a master's degree. The position works out of the School Committee's 26 Court Street facility and reports to the director of facility management.

The *senior specialist, energy management* works with chief supervisors and other supervisors to design and implement cost-savings programs in the school facilities. The position requires a bachelor's degree and a minimum of five (5) years experience. The position reports to the engineering assistant manager and, although required to spend time in the field, works out of both the School Committee's 26 Court Street facility and its Dorchester facility. The position is also responsible for applying for federal and state grants, conducting energy audits, and negotiating rates with utility companies. The position supervises three positions (see below).

The *specialist, energy; senior technician energy; and technician, energy* report to the senior specialist, energy management and generally provide assistance. Each of those positions requires vocational training, although a bachelor's degree is preferred.

The *senior specialist, environmental* reports to the director of facilities management and is responsible to respond to unusual air quality conditions and oversee the handling of asbestos, hazardous waste, and lead decontamination. The position requires a bachelor's degree in a related subject and knowledge of environmental regulations.

The *work order planner (technician)* reports to the assistant director of planning (who reports to the director of facilities management) and is responsible for processing all work orders.

None of the positions are civil service positions.

#### Opinion

Section 13.15 of the Commission's Rules, entitled "Appeal of Hearing Officers Decisions," states, in part:

(4) Within ten days after notice of the hearing officer's decision...any party appealing to the Commission shall file an original and four copies of a supplementary statement.

\* \* \*

(5) Supplementary statements shall state with specificity the basis of the appeal.

\* \* \*

Failure to provide the above-described information may result in a summary dismissal of the appeal.

Although the School Committee filed a Notice of Appeal of the ALJ's second Decision and requested an extension of time during which to file its Supplementary Statement, it never filed a Supplementary Statement. The Commission requires appealing parties to file Supplementary Statements in support of their appeal and have dismissed appeals on the ground that appealing parties have failed to file a Supplementary Statement, *See, Hampden County, MUP-9299, Notice Dismissing Appeal (October 24, 1995) aff'd sub nom. International Brotherhood of Correctional Officers, Local 246 v. Labor Relations Commission, 43 Mass. App. Ct. 1110 (1997)*. However, in its Supplementary Statement in support of its appeal of the ALJ's first Decision, the School Committee had argued that: 1) the ALJ erroneously found that one of the petitioned-for employees was not a professional employee; and 2) the ALJ erroneously found that the petitioned-for employees shared a community of interest with the employees in the bargaining unit. Because the Commission did not address those alternative arguments raised by the School Committee in support of its first appeal, we conclude that it was not necessary for the School Committee to re-state arguments it had already raised in this matter. Accordingly, we deny the Union's Motion for Summary Dismissal and will address the alternative arguments raised by the School Committee in its Supplementary Statement in support of its first appeal.

The School Committee first argues that the ALJ erred in finding that the senior coordinator/facilities planner is not a professional employee. As the ALJ correctly states in his second Decision, Section 1 of the Law defines "professional employee" as

any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

ALJ Decision at 21 (quoting M.G.L. c. 150E, §1). All four (4) of the criteria must be met to satisfy the definition. *Commonwealth of Massachusetts*, 10 MLC 1162 (1983). Further, to determine professional status, we must scrutinize the actual duties and responsibilities of employees. *Boston Water and Sewer Commission*, 7 MLC 1439, 1448 (1980). Here, the ALJ found that, although the incumbent facility planner "has credentials which qualify her as a true professional employee, her position does not call for a professional employee, even though her education undoubtedly enhances the various duties which she is called upon to perform." ALJ Decision at 21-22. Accordingly we affirm the ALJ's finding that the senior coordinator/facilities planner is not a professional employee within the meaning of Section 1 of the Law.

The School Committee next argues that the petitioned-for employees do not share a sufficient community of interest with the employees in the bargaining unit, pointing out that, although the members of the bargaining unit are subject to the Civil Service Law, the petitioned-for employees are not. The School Committee also argues that the petitioned-for employees do not share common supervision or similar work conditions.

First, the Commission has held that differences in Civil Service status does not by itself destroy community of interest. *City of Worcester*, 11 MLC 1363, 1365 (1985). As the ALJ correctly stated, community of interest does not require an identity of interest. ALJ Decision at 23-24 (citations omitted). Rather, community of interest exists if the petitioned-for employees comprise a coherent group, with employee interests sufficiently distinct from those of excluded employees to warrant separate representation. *See, City of Malden*, 9 MLC 1073, 1080 (1982). When determining whether employees share a community of interest, the Commission considers factors like common supervision, similar work environment, job requirements, education, training and experience, job interchange, and work contact. *Boston School Committee*, 2 MLC 1557 (1976). Here, the ALJ found that, although the petitioned-for employees and the employees in the bargaining unit have different skills and, because they are part of different work units, do not share common supervision at the lower levels, they all work either directly or indirectly under the direction of the director of facilities management. The ALJ further found that the petitioned-for employees and the employees in the bargaining unit "share the common goal of maintaining, repairing, renovating and

refurbishing the many properties managed by the School Committee." ALJ Decision at 23.

Despite differences in job duties, skills, and training and education, the petitioned-for employees and the employees in the bargaining unit share common supervision and a common work environment, and have considerable work contact while performing their various roles in maintaining the School Committee's facilities. As we observed in *City of Worcester*:

[not] all differences between employees affect their community of interest. The significant differences are those that would produce inevitable conflicts, irreconcilable through effective negotiation either at the bargaining table or during the administration of a collective bargaining agreement.

11 MLC at 1365 (citations omitted). Here, we find that the differences between the petitioned-for employees and the employees in the bargaining unit are not likely to produce conflicts that are irreconcilable through effective negotiation. Accordingly, we affirm the ALJ's Decision, accreting the petitioned-for employees into the bargaining unit.

Conclusion

For the reasons set forth above, we deny the Union's Motion for Summary Dismissal of Appeal, but affirm the ALJ's Decision and order the following employees accreted into the bargaining unit represented by the Union.

- ◆ Senior Coordinator/Facility Planner
- ◆ Senior Specialist, Energy Management
- ◆ Senior Specialist, Environmental
- ◆ Specialist, Energy
- ◆ Senior Technician, Energy
- ◆ Technician, Energy
- ◆ Work Order Planner (Technician)

SO ORDERED.

\* \* \* \* \*