

In the Matter of HULL TEACHERS ASSOCIATION  
and

HULL SCHOOL COMMITTEE

Case No. CAS-07-3713

34.2 community of interest  
34.91 accretion  
93.4 petition for clarification

January 4, 2011

Marjorie F. Wittner, Chair  
Elizabeth Neumeier, Board Member  
Harris Freeman, Board Member

Brendan Sharkey *Representing the Petitioner  
Hull Teachers Association  
(MTA)*  
Kevin S. Bresnahan, Esq. *Representing the Respondent  
Hull School Committee*

**DECISION<sup>1</sup>**

**Introduction**

This CAS petition brought by the Hull Teachers Association (Association or Petitioner) presents the following issue: whether the “Director of Athletics and Community Outreach Coordinator” (DACO Coordinator or disputed position) should be accreted into the bargaining unit represented by the Association. The Petitioner argues that the disputed position must be accreted into the bargaining unit because it combines all of the duties performed by the “Athletic Director” (AD), a position that has always been included in the existing bargaining unit, with new duties that are professional in nature. The Respondent Hull School Committee (Respondent or School Committee) contends that the disputed position is properly excluded from the unit because it is a newly created position with duties and responsibilities that are far different from those of the former AD position.

For the reasons stated below, the Commonwealth Employment Relations Board (Board) dismisses the petition for lacking sufficient evidence that the disputed position shares a community of interest with any of the positions in the existing bargaining unit.

**Statement of the Case**

On October 31, 2007, the Association filed the above-captioned Petition for Clarification or Amendment with the Division of La-

bor Relations (Division) seeking to accrete the disputed position into its existing bargaining unit of teachers and other professional employees.

The Division investigated the issues raised in this petition through a written investigation procedure that provided the parties with the opportunity to present facts, exhibits and legal arguments in support of their respective positions.<sup>2</sup> On November 21, 2007 the Association filed its written submission with the Division. The written submission consisted of the DACO Coordinator job description and two sections from the parties’ collective bargaining agreement; the recognition clause and Appendix C, *Stipends*. On January 8, 2008, the School Committee filed its responsive submission. Its written submission included an affidavit from Dr. Kathleen Tyrell, Superintendent of the Hull Public Schools.

**Findings**

During the relevant time, the Association and the School Committee were parties to a collective bargaining agreement (Agreement) that was effective from September 1, 2005 through August 31, 2007. The Agreement’s recognition clause describes the bargaining unit as:

3.1 [T]he Committee recognizes the Association as the exclusive bargaining agent and representative of the following professional employees (as such employees are defined in Section 3 of Chapter 150E of the General Laws of Massachusetts) of the Committee:

Unit A.<sup>3</sup>

Teachers, Guidance Counselors, Curriculum Facilitators, Speech/Language Pathologists, Library Teacher, Psychologists and Adjustment Counselors and all other professional employees of the School Committee, but excluding the Superintendent of Schools, Assistant Superintendent of Schools, Director of Student Services, Principals, Assistant Principals or Administrative Assistants and Nurses

Although not specifically listed in the recognition clause, the parties do not dispute that the AD position was a part-time position paid by a stipend negotiated between the Association and the Employer.

At the end of the 2006-2007 school year, the incumbent AD retired. Following the AD’s retirement, the School Committee decided to establish a new position, the DACO Coordinator position, which was created on or about September 1, 2007. The DACO Coordinator’s general duties, reporting arrangement, qualifications and responsibilities are set forth in a job description attached to both parties’ written submissions. The general duties are set forth in two distinct categories suggesting that the new position includes

1. Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission’s regulations, this case was designated as one in which the former Labor Relations Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) “shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission.”

2. Among other things, the Division’s Written Investigation Procedure requires a petition to include indicia for a community of interest including hours, pay, educa-

tion, certification and experience required at hire, supervision received and exercised, interchange with other employees in the existing bargaining unit and position description(s) for employees who perform similar functions. The Written Investigation Procedure can be found on-line at [www.mass.gov/dlr](http://www.mass.gov/dlr).

3. Article 35.7 of the Agreement, “Reduction in Force” references a “Unit B.” There is no further information in the parties’ submissions or the Division’s files regarding Unit B’s history or makeup.

duties formerly performed by the AD, but also additional duties associated with the role of Community Outreach Coordinator:

To provide each enrolled student of the secondary level (some middle school) an opportunity to participate in an interscholastic athletic activity that will foster physical skills, a sense of worth and competence, a knowledge and understanding of the pleasures of sport and the principles of fair play and good sportsmanship.

[and]

Develop an internship program that allows the students of Hull High School unique and relevant experiences that better prepare them for life after high school.

According to the job description, the DACO Coordinator reports to the “Hull High School Principal” and supervises “[a]ppropriate faculty, staff, coaches, internship supervisors, and students.” The listed qualifications are “[e]xtensive coaching experience, [e]xperience in business management, [d]emonstrated scheduling expertise, and [e]xperience building and implementing a budget.” No education requirements are listed. The DACO Coordinator job description contains the following twenty-one item list of responsibilities:

1. Organizes and administers the overall program of interscholastic sports activities and internships for the district.
2. Assists in the recruiting, interviewing, screening and recommending of qualified athletic coaches, internship sponsors, and supervisors.
3. Assumes the responsibility for the professional supervision, evaluation and development of coaches, internship sponsors and supervisors.
4. Fosters good school-community relations by keeping the community aware of and responsive to the school, extra-curricular, and athletic programs. Submit a monthly overview of school programs and events for publication in the Hull Times.
5. Assumes responsibility for the organization and scheduling of all interscholastic events and internship placements. Submit all record of events to the appropriate administrative authority.
6. Hires officials, EMT’s, policeman as required, and assumes general responsibility for the proper supervision of home events.
7. Arranges transportation for all athletic event participants. Ensures that transportation requirements have been addressed for all internship placements.
8. Processes necessary payroll for all coaches, EMT, police officers, staff and officials.
9. Process equipment bids, purchase orders and projected replacement items for all sports teams. Ensures that the equipment necessary to meet the educational objectives of an internship plan is available at all internship sites.
10. Develops and places into operation appropriate rules and regulations governing the conduct of athletic activities. Establishes workplace procedures and requirements for all internship placements.

11. Monitors the academic and physical requirements and eligibility of each student/athlete/intern.
12. Prepares and administers the interscholastic athletic budget as well as funds designated for community outreach.
13. Arranges all details of visiting teams needs to include medical support and gymnasium services.
14. Makes arrangements for use of fields/gymnasium with non-school organizations.
15. Assumes the responsibility for the processing of all injury report claims through the proper insurance channels.
16. Arranges awards nights- to include ordering of plaques, jackets, letters, and certificates.
17. Represents the district at SSL monthly meetings as well as MIAA activities.
18. Oversees the ordering, distribution, collection and cleaning of all uniforms and equipment.
19. Works closely with the Hull Boosters Club to help defray costs of items relative to needs of all of our athletic teams.
20. Builds a working relationship with the Hull Lifesaving Museum, Sail Nantasket, and other community organizations that have the ability to help meet the educational goals and objective of the Hull Public Schools.
21. Updates and maintains the school website components that pertain to athletics, internships, and community outreach.

#### Opinion

“A unit clarification petition is the appropriate procedural vehicle to determine whether newly-created positions should be included or excluded from a bargaining unit...” *Town of Sturbridge*, 32 MLC 33, 35 (2005) (citing *Sheriff of Worcester County*, 30 MLC 132, 136 (2004)). When determining whether an employee should be accreted into an existing bargaining unit, the Board’s analysis consists of a three-part test. *City of Boston*, 35 MLC 137, 140 (2008). First, it is determined whether the position was originally included in the certification or recognition of the bargaining unit. *Id.* If this inquiry produces an inconclusive result, the Board next examines whether the parties’ subsequent conduct, including their bargaining history, indicates that they considered the employee classifications to be included in the same bargaining unit. *Id.* If this inquiry is also inconclusive, the Board will then consider whether the position sought to be accreted shares a community of interest with the existing positions. *Id.*

Here, the first two prongs of the accretion test are inconclusive because the DACO Coordinator is a newly-created position for which there is no bargaining history. Accordingly, to decide this case, the Board must determine whether the employees share a community of interest. When making community of interest determinations, the Board considers factors such as “similarity of skills and functions, similarity of pay and working conditions, common supervision, work contact and similarity of training and experi-

ence.” *Town of Boxford*, 35 MLC 113, 119-120 (2008) (citing *Waltham School Committee*, 25 MLC 137, 139 (1999)). No single factor is outcome determinative and community of interest does not require identity of interest. *Id.* (citing *Town of Ludlow*, 27 MLC 34 (2000) and *Town of Somerset*, 25 ML 98 1000 (1999)).

In this case, the record contains insufficient evidence that the DACO Coordinator shares a community of interest with other bargaining unit titles. Although the DACO Coordinator job description, upon which the Petitioner exclusively relies, contains some information about “supervision received” (principal) and exercised (faculty, coaches and students), the Petitioner provided no information regarding the DACO Coordinator’s similarity of pay and working conditions, similarity of training or experience with other positions in its unit, or job descriptions of similar positions as required by the Written Investigation Procedure.

The Petitioner nevertheless asserts that since the disputed position combines all of the duties of the AD with new duties that are professional in nature and since the bargaining unit expressly includes “all other professional employees,” *ipso facto*, the disputed position properly belongs in the bargaining unit. The DACO Coordinator job description, on its face, is insufficient to establish a community of interest with the other titles in this unit. Rather, this job description describes an administrative position without any specific educational requirements<sup>4</sup> and no direct teaching, counseling, coaching or academic support duties.

Thus, the Union’s argument that the DACO Coordinator should be accreted to its unit simply because the AD was in the unit for a number of years fails to persuade us to grant this accretion petition on community of interest grounds. *Cf. City of Worcester*, 5 MLC 1332,1335 (1978) (Although bargaining history and extent of organization are relevant factors, they are not conclusive in determining an appropriate bargaining unit).

#### Conclusion

For the above-stated reasons, we deny the petition to accrete the DACO Coordinator position into the existing bargaining unit and dismiss the petition.

SO ORDERED.

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4. Section 1 of the Law defines a “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.