

2021 IL App (1st) 200910-U  
No. 1-20-0910  
Order filed September 20, 2021

First Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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MAINE TOWNSHIP HIGH SCHOOL DISTRICT 207,	)	Amended Petition for
	)	Administrative Review of a
Petitioner-Appellant,	)	Decision and Order of the
	)	Illinois Educational Labor
v.	)	Relations Board
	)	
MAINE TEACHERS' ASSOCIATION, IEA-NEA AND ILLINOIS EDUCATIONAL LABOR RELATIONS BOARD,	)	Illinois Educational Labor
Respondents-Appellees.	)	Relations Board Case Nos.
	)	2018-UC-0026-C and 2018- CA-0077-C

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Hyman and Justice Coghlan concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where a school district transfers most of the duties of a union worker to an employee in a newly created position, with minor changes in pay structure and job qualifications, the Illinois Educational Labor Relations Board does not commit clear error by finding that the new position belongs in the bargaining unit.
- ¶ 2 This is an appeal from a final order of the Illinois Educational Labor Relations Board (Board) that affirmed the recommended decision and order of its Administrative Law Judge (ALJ).

In 2018, Maine Township High School District 207 (District) created a new position, titled Career and College Admissions Specialist (Specialist). The Maine Teachers' Association, IEA-NEA (Union) filed a petition with the Illinois Educational Labor Relations Board (Board) to include the Specialists in the bargaining unit. The District appeals from the Board's decision granting the Union's petition. We find that the Board applied the correct standard, and its decision is not clearly erroneous. Therefore, we affirm the Board's decision.

¶ 3

### I. BACKGROUND

¶ 4 In 2017, the District employed 23 general counselors and 3 career and college counselors (career counselors). The District eliminated the position of career counselor but kept the 3 career counselors employed as general counselors. In December 2017 the District posted a job notice for a new position as Specialist. The Union filed an unfair labor practice charge against the District in June 2018, alleging that the District failed to bargain with the Union before removing work from Union members and transferring the work to the new Specialists. The Union separately filed a petition to include the Specialists in the bargaining unit.

¶ 5 An ALJ for the Board heard evidence on both petitions. Ken Wallace, the District's Superintendent, testified that he conceived of the Specialist as an integral part of a new approach to helping students find careers and colleges that fit their aptitudes and attitudes. He admitted that at first the Specialists would mostly do the work previously done by career counselors, but he expected the Specialists' job to change over time as the Specialists relied more on data and analytic tools to help the students. Wallace did not discuss his new approach with career counselors or with Union representatives. He also did not explain why career counselors could not use the new analytic tools to help students find appropriate careers and colleges.

¶ 6 Claudia Rueda-Alvarez, an assistant principal for the District, testified that the Specialists would not counsel the students. Instead, they would advise the students about their career and college opportunities. However, Rueda-Alvarez admitted,

“when you're counseling a student, you cannot separate the personal counseling, the social/emotional counseling from career and college. One of the things that we always talk in graduate school is personal counseling is career counseling, career counseling is personal counseling. If you're a counselor, you're constantly using skills with every one of your students or clients.”

¶ 7 Brianne Dilbeck, consultant for the Illinois State Board of Education, testified that the Specialist position did not require a teaching license, while the career counselor position required such a license. Dilbeck explained that in determining whether a position required a teaching license, “we look for exact verbiage,” like “key words such as teach and supervise” or “authority to suspend or discipline. Direct supervision, selection, retention and admission of dismissal of licensed teachers or staff.” Because the Specialist’s job description did not include the key terms, the position did not require licensing.

¶ 8 Stephanie Maksymiu, a general counselor who had served as a career counselor for more than a decade, testified about her work with one of the Specialists. The Specialist, like Maksymiu, had a teaching license. Maksymiu stated:

“[The Specialist] is continuing with having college representatives come to Maine South and meet with our students in the career resource center. She's continuing with hosting events such as college night or District financial aid night. She's continuing working with students, individually, as well as parent conferences. She has spoken at meetings that I also used to speak at for understanding the college

process for parents. She updates the website like I used to by putting together printouts and materials for students.”

¶ 9 Maksymiu noted that the District employed the Specialist for all 12 months each year, while it had employed Maksymiu and the other career counselors for only 10 months per year. Maksymiu said that parents often asked her, as a career counselor, about resources available over the summer. Maksymiu asked the District to extend her work to summer, but the District refused. Maksymiu said, “it usually came down to money. It seemed that that was a difficult thing, to find the funding for.”

¶ 10 The ALJ found:

“The Specialist position took almost all work that was performed by the Career [Counselors] except for counseling. This constitutes a significant impairment of reasonably anticipated work opportunities for those in the bargaining unit. \*\*\* [T]he transition of bargaining unit work to the new Specialist position was a mandatory subject of bargaining.

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\*\*\* [T]he Specialist position entails job functions similar to those of classifications covered by the existing unit, and [the ALJ] grant[s] the Union’s petition to include the Specialist positions in the bargaining unit.”

¶ 11 The District filed objections to the ALJ’s proposed rulings. The Board considered “the following community of interest factors in order to resolve unit determinations: employee skills and functions, degree of functional integration, interchangeability, and contact among employees, common supervisor, wages, hours and other working conditions of the employees involved, and the desires of the employees.” The Board rejected the District’s objections, holding that the District

committed an unfair labor practice in violation of section 14 of the Illinois Educational Labor Relations Act (115 ILCS 5/14(a)(5) (West 2016)), and the bargaining unit should include the Specialist position. The District now appeals.

¶ 12

## II. ANALYSIS

¶ 13 On appeal, the District does not challenge the finding of an unfair labor practice. Instead, the District appeals only from the inclusion of the Specialist position in the bargaining unit. The District argues that the Board applied the wrong criteria for deciding whether the bargaining unit must include the Specialist position, and the evidence does not support the Board's order.

¶ 14 “The first duty of a reviewing court in a case involving the findings of an administrative agency is to determine if the hearing officer applied the proper tests to the evidence presented. [Citation.] When the agency with primary jurisdiction applies the wrong standard to the evidence before it, any resulting finding is invalid.” *Violette v. Department of Healthcare & Family Services*, 388 Ill. App. 3d 1108, 1113 (2009). The Board correctly recited the statutory standard for determining whether the bargaining unit must include Specialists. See 115 ILCS 5/7(a) (West 2016). The District points out that in its order the Board does not explain how each factor affected the decision. “An agency is not required to make a finding on each evidentiary claim, and its findings need be only specific enough to permit an intelligent review of its decision.” *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 528 (1998). “[N]othing obligates the [Board] to make a written finding as to each factor, and [its] findings need be only specific enough to permit an intelligent review of [its] decision.” *E-Z Movers, Inc. v. Rowell*, 2016 IL App (1st) 150435, ¶ 29. We find the Board's decision, adopting the ALJ's findings of fact, sufficiently permits intelligent review of the Board's decision, and the Board used the correct standard.

¶ 15 The issue of whether the evidence supports the ruling that makes the Specialists part of the bargaining unit presents a mixed question of fact and law. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 472 (2005). We review the Board's decision deferentially, reversing only for clear error. *Id.*

¶ 16 The ALJ recommended including the Specialist in the bargaining unit because “[t]he Specialist position took almost all work that was performed by the Career [Counselors] except for counseling,” and “the Specialist position entails job functions similar to those of classifications covered by the existing unit.” The work performed by Specialists in 2019 matched closely the work performed by career counselors in 2017. The close connection between the two positions supports a finding that the employee skills and functions for the Specialist fit with the skills and functions of other Union members, just as the skills and functions of career counselors fit with the skills and functions of other Union members. The functional integration, interchangeability, and contact among employees for the Specialists also matches the functional integration, interchangeability, and contact among employees for the career counselors. Counselors and Specialists report to the same supervisor.

¶ 17 The District changed somewhat the wages and hours for Specialists. While Specialists work hours much like the hours of others in the bargaining unit throughout the school year, and receive similar compensation, the District keeps the Specialists, unlike career counselors or other Union members, employed through the summer. Maksymiu testified that when she worked as a career counselor she sought such employment over the summer, but the District never funded the work.

¶ 18 The District emphasizes that career counselors, unlike Specialists, needed to have a teaching license. Two of the District's three specialists have a teaching license, although the position does not require it. Dilbeck explained that the licensing requirement depended on the

precise wording of the job description. By leaving out key words from the description, the District fashioned the position to require no license.

¶ 19 The District assigned Specialists, like career counselors before them, responsibility for helping students find careers and colleges that fit their aptitudes and attitudes. The Board did not clearly err by finding that the District's changes to the compensation structure and job description for the Specialists do not require severance of the Specialists from the bargaining unit.

¶ 20

### III. CONCLUSION

¶ 21 The Board applied the correct standard for determining whether the bargaining unit should include the Specialists. The Board did not commit clear error when it determined that because Specialists largely performed functions previously performed by career counselors, the bargaining unit, which had included the career counselors, should include the Specialists. Accordingly, we affirm the Board's decision.

Affirmed.