



AN ANALYSIS OF A RECOGNITION CLAUSE

All contracts contain a recognition clause. This clause establishes which positions are included in the bargaining unit and are covered by the terms of the agreement. Although the composition of the bargaining unit can, and does, vary tremendously from district to district, all recognition clauses can be subjected to the same analysis. The analysis of the clause should consider the clause's legality, the components of the clause which can protect the board's needs in this issue and, of course, the clarity of its language.

Legality

The composition of the bargaining unit can be determined by the parties to local negotiations. However, the PERC Law establishes certain restrictions as to which employees do not have bargaining rights under the Law (e.g., superintendents and confidential employees) and as to standards for determining an appropriate bargaining unit (e.g., the general prohibition against supervisors' inclusion in a unit with the nonsupervisory employees they supervise). The Law further provides for nonadversarial procedures by which the parties can resolve any disagreements or disputes concerning the composition of the unit and the identity of its bargaining representative. For a full understanding of the legal framework please consult the NJSBA publication *The PERC Law*; representation issues are also discussed further in the Bargaining Units section of *The Negotiations Advisor*.

The legal framework governing bargaining units temper the parties needs in a recognition clause. If the parties cannot agree to exclude noncertificated staff from the teachers' unit or to the confidential status of a position, the dispute can be submitted to PERC for resolution. In these representation or bargaining unit issues, PERC has a legal authority it does not have in negotiability disputes. In accordance with the Law, PERC's resolution will be imposed on the parties' contracts; the unit's composition will be preempted from negotiations and the unit will be defined by PERC. A recognition clause, therefore, can express more than the parties' mutual agreement; it can also express a bargaining relationship deemed to be legally appropriate.

Therefore, an analysis of an existing or proposed recognition clause must consider the legality of the bargaining unit. The parties' desires or needs for a specific bargaining unit configuration may be superseded by a PERC determination, and they may be compelled to

accept a less than desirable bargaining unit. Nevertheless, boards should carefully analyze their recognition clause to determine the appropriateness and legality of the bargaining unit and to assess the clarity and precision of the clause in facilitating their contract administration.

Components of a Recognition Clause

The components necessary to a recognition clause are defined by the purpose of the clause: to identify the employees' bargaining agent and to establish the positions covered by the terms of the contract. From a board's perspective, the components should be constructed to avoid misinterpretation and to prevent the unanticipated extension of the contract to certain positions not considered for inclusion when the unit was initially defined. The typical components of a recognition clause, listed below, are examined from a board's perspective. The discussion of the components is intended to assist you to analyze your recognition clause but the examples are only offered as illustrations and are not recommended language for your district. The components of a recognition clause include:

The Identity of the Union Being Recognized Who is the Board recognizing as the bargaining unit's exclusive representative? Usually, the name of the union is clearly specified in the recognition clause.

The Purpose of Recognition In almost all contracts, the purpose of recognition is to establish the union's responsibility to negotiate over the bargaining unit's terms and conditions of employment and to handle unit members' grievances. This purpose is in accordance with the PERC Law's provisions: the union cannot represent non-unit positions and must represent all unit members, regardless of their union membership; similarly, the Board cannot bypass the majority representative to negotiate with a minority union or individual unit members.

The Definition of the Bargaining Unit Which positions are included in the bargaining unit? Does the unit appear to be legal? Does the definition accurately reflect the parties' agreement or PERC's determination?

This component is at the heart of the recognition clause and should be carefully scrutinized by a board of education. Provisions in New Jersey contracts vary enormously. Some of these differences stem from the positions included in the unit: a clause recognizing a

wall-to-wall unit which includes teachers as well as all of the district's nonsupervisory employees will, naturally, differ from a clause recognizing only teachers. However, even recognition clauses defining an all teacher unit demonstrate a wide range of approaches. For example, a teachers' contract contains this definition of its bargaining unit:

The Board hereby recognizes the _____ Education Association as the majority representative for all certificated personnel under contract.

A strict interpretation of this contractual clause would result in the inclusion of all professional employees, including the Superintendent, the school psychologist, the principal, as well as teachers. The Superintendent's inclusion would be preempted by the PERC Law, but none of the other positions requiring certification would be automatically barred from the contract's coverage. The generality of the language could work to the board's disadvantage, as inclusion of positions could become a source of dispute. Even if there is a current understanding and clear past practice as to the status of existing positions, the creation of a new position could lead to a potential future dispute. More specific and precise language could more accurately reflect the composition of the unit. Therefore, the scope of the unit should also include the following components:

Limitations on Inclusions Are there any standards that must be met before the position is considered part of the bargaining unit? Must there be a nonsupervisory certificated status? Must it be a permanent, full-time position or is there agreement to include part-time staff?

Specific Inclusions A listing of all the positions included can avoid confusion as to the position's status in the bargaining unit. Be careful, however, that the included positions accurately reflect the unit's intended composition. In cases where the unit is the result of a petition filed with the Public Employment Relations Commission, the clause should include only those positions formally included by PERC's order. When reviewing a unit that has been defined by the parties' mutual agreement, consider both the legality and the wisdom of your definition.

A number of contractual clauses include staff that is "to be employed or on leave." Both of these inclusions may create problems for a board of education. For example, could the "to be employed" language be read to permit the association to represent applicants for positions within the district? Could the "on leave" language be interpreted to commit a board to extend its fully-paid health insurance package, or its tuition reimbursement benefit, or any other benefit to employees who are not actively working?

Specific Exclusions A listing of excluded positions reinforces the clarity of specific inclusions. This is particularly important if certain subclassifications of employees are not in the unit, e.g., central office secretaries were specifically intended to not be included in a

secretarial unit.

The last four components can be expressed in a variety of ways. Consider these clauses which recognize the local Education Association as the exclusive bargaining representatives for:

All certificated full-time teaching staff members under contract, excluding supervisors and administrators. All other positions in the district not defined above are excluded from this bargaining unit.

or

. . . including full-time and part-time classroom teachers, special area teachers, librarians and nurses. Administrators, supervisors, and Child Study Team members are excluded from this bargaining unit.

or

Including the following positions:

- teachers
- librarians
- nurses
- aides
- custodians
- secretaries and clerks
- Child Study Team members
- permanent substitutes

But excluding:

- administrators
- supervisors
- psychologists
- head custodians
- central office secretaries and clerks
- per diem substitutes

All of these clauses are composed of all the components necessary to a clear and precise definition of the unit. Note how these clauses, in their various degrees of specificity, provide the guidance and accuracy missing from the generally vague clause first cited.

Definitions of Contract Words Most recognition clauses include a generic definition of bargaining unit members; for example:

"The term teacher when used throughout this contract, unless otherwise specified, shall refer to all members of the bargaining unit and references to male teachers shall apply to female teachers."

or

"The term teacher, unless otherwise specified, shall refer to all professional employees; the term employee shall refer to all members of the

bargaining unit. Where a personal pronoun is used in this Agreement, it is understood to include both genders.”

These definitions are helpful and provide a form of shorthand in drafting contract language. However, these definitions must be clearly and deliberately utilized in the body of the contract or the board will discover that it has inadvertently extended a benefit to employees who were not intended to be beneficiaries. For example, under both definitions cited above, “teacher” prep time would be extended to all professional staff, including the nurses and Child Study Team members of the unit. If the board intended such coverage, then the language would be appropriate; however, if the intent was to provide prep time to a certain classification of employees, such as high school teachers or full-time classroom teachers, but not to part-time staff, nurses or guidance counselors, then the prep time clause would need to clearly establish this distinction and to accurately modify the generic term “teacher.”

Similarly, a recognition clause that includes teachers who are on leave and/or to be employed staff may be modified by language within the contract. The use of the terminology “actively employed teacher” in any article of the contract will serve to specifically exclude unit members who are not currently at work in the district.

Careful utilization of terms defined in the recognition clause becomes very important in bargaining with mixed units, especially in the first set of negotiations with an extended bargaining unit. If custodians are being incorporated into an all teacher unit, the board should carefully review a possible Association proposal to change all references to “teachers” to “employees.” This proposal, which may appear to be a cosmetic, mechanical change to reflect the enlarged unit, is an extremely substantive and meaningful modification. Agreement to such language is an automatic extension of all the terms of your teachers’ employment to your custodians; it could result in a contractual commitment to grant custodians tuition reimbursement, sabbaticals, or other traditional teacher benefits. (See article on “Negotiating with Comprehensive Units” in the Bargaining Unit section.)

The definition of terms in a recognition clause is a common, and useful, component of the clause. However, it will provide guidance in interpreting your contractual obligations and will supersede vaguely worded intent of specific clauses. Therefore, *all* contractual provisions and bargaining proposals should be analyzed to assure that the definitions of the recognition clause are applied consistently and accurately.

Application of Contractual Articles Does the entire contract apply to the entire bargaining unit or are some

articles reserved for certain classification of employees? Although limitations can be achieved through a careful application of a definition of terms, many districts have also specified these restrictions in their recognition clauses.

For example:

Only Articles X, XI, and XII apply to teacher aides. All other articles do not affect the terms and conditions of aides.

or

Part-time teachers will receive prorated benefits under Articles V to X and are not included in the Work Day and Work Year articles.

or

Section A of this contract applies to all employees of the bargaining unit. Section B applies only to teachers; Section C applies only to secretaries.

These clauses establish clarity of intent and set the stage for a reading and an interpretation of your contract. Like the definition of terms component, however, applicable contractual articles must be consistently applied throughout the contract. If a round of negotiations results in a renumbering of articles, the specifics of this component would need to be reexamined in light of the changes.

Summary

A recognition clause is designed to define the scope of the bargaining unit. A clause which contains all of the components described above will clearly establish which positions in the district fall within the ambit of the contract. This clarity should assist the board’s contract administration, provide clear guidance, and prevent misunderstandings. The specifics of your recognition clause should, of course, reflect your bargaining unit and your contract, but the general structure of the clause will be enhanced by the inclusion of components necessary to provide you, your administrators and your union with clear guidance.

A carefully constructed recognition clause is the first step in providing contractual clarity. However, the rest of the contract must be consistent with the recognition provision: the contract cannot include provisions for positions not included in the unit; the clause’s definitions and applicability of terms must be consistently utilized in the body of the contract. Therefore, your recognition clause is one of the standards you will use in analyzing the rest of your contractual provisions.