

STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD

North Palos Education Association,	)	
IEA-NEA,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. 2022-UC-0024-C
	)	
North Palos School District 117,	)	
	)	
Employer	)	

**OPINION AND ORDER**

**I. Statement of the Case**

On March 12, 2022, North Palos Education Association, IEA-NEA (Union or Petitioner) filed a petition with the Illinois Educational Labor Relations Board (IELRB or Board), seeking to clarify an existing bargaining unit of employees of North Palos School District 117 (Employer or District or Respondent) to include the title or position of Behavior Specialist/Multi-Tiered Systems of Support Coordinator (Behavior Specialist/MTSS Coordinator).<sup>1</sup> There is one employee in the petitioned-for title or position and 292 employees in the existing unit.<sup>2</sup> The Employer opposed the petition. Following a hearing, an IELRB Administrative Law Judge (ALJ) issued a Recommended Decision and Order (ALJRDO) dismissing the petition. Therein, he found that in

<sup>1</sup> The parties jointly waived the 120 day limit in Section 7(c-6) of the Illinois Educational Labor Relations Act, 115 ILCS 5/7(c-6), for the Board to issue a certification of the clarified unit or dismiss the petition. The waiver extended the 120 day deadline by 150 days. The parties jointly waived the time limit again on November 21, 2022. The second waiver extended the 270 day period (original 120 days + 150 day waiver) by ninety days.

<sup>2</sup> The existing unit description as certified in Case No. 2012-RS-0015-C is as follows:  
INCLUDED: All certified full-time teachers, part-time teachers, social workers, psychologists and certified nurses.  
EXCLUDED: All other employees, supervisory, managerial, and confidential employees as defined in the Illinois Educational Labor Relations Act.

addition to being untimely filed, the unit clarification petition was inappropriate to add the title to the existing unit, as its job functions are not similar to those of classifications covered by the existing unit. The Union filed the following exceptions to the ALJRDO: (1) the ALJ improperly determined that there was no substantial change in the position of Behavior Specialist to MTSS Coordinator, creating a new job classification; (2) the ALJ incorrectly determined that the petition was not timely filed; and (3) the ALJ erroneously recommended dismissal of the petition. The Employer filed a response to the exceptions. For the reasons discussed below, we affirm the ALJRDO.

## **II. Factual Background**

We adopt the facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except where necessary to assist the reader.

## **III. Discussion**

Pursuant to the unit clarification process, employees may be added to, or removed from, a bargaining unit without the requirement of a showing of interest or election. Consequently, because it impinges on employees' rights to self-determination under Section 3 of the Illinois Educational Labor Relations Act, (Act or IELRA), 115 ILCS 5/1 *et. seq.*, the unit clarification process is appropriate in only the following limited circumstances: (1) a newly created job classification that entails job functions that are similar to those of classifications covered by the existing unit; (2) an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit; or (3) there has been a change in statutory or case law that affects the bargaining rights of employees. *SEDOL Teachers Union v. IELRB*, 276 Ill. App. 3d 872, 658 N.E.2d 1364 (1st Dist. 1995). *But cf.*, *Niles Township High Sch. Dist. 219 v. IELRB*, 369 Ill. App. 3d 128, 859 N.E.2d 57 (1st Dist. 2006) (No time limit on unit

clarification petitions seeking remove statutory excluded employees). As the ALJ recognized, none of these circumstances applies here.

The Union argues in its exceptions that there was a substantial change to the petitioned-for position so recent as to render the petition timely. It is true that District expanded the Behavior Specialist position's role and changed the job title to Behavior Specialist/MTSS Coordinator in 2021. Despite the title change and the expanded responsibilities, there was significant overlap in duties between the Behavior Specialist and Behavior Specialist/MTSS Coordinator titles. Thus, the position has not undergone substantial change that would render the petition timely.

What is more, even if the petition was timely, the record does not indicate that the petitioned-for position's job functions are similar to the job functions of members of the existing unit. That does not mean that they do not share a community of interest with members of the existing unit, but shared community of interest does not mean similar job functions.

None of the circumstances under which the unit clarification procedure is appropriate are present in this case. A unit clarification petition is not the proper vehicle to add the Behavior Specialist/MTSS Coordinator position to the existing unit. For that reason, we affirm the ALJRDO and dismiss the petition.

#### **IV. Order**

The Administrative Law Judge's Recommended Decision and Order is affirmed. The Unit Clarification petition is dismissed.

#### **V. Right to Appeal**

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB

maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **March 8, 2023**

Issued: **March 8, 2023**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

/s/ Chad D. Hays

Chad D. Hays, Member

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/s/ Michelle Ishmael

Michelle Ishmael, Member

**STATE OF ILLINOIS**  
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North Palos Education Association, IEA-NEA,	)	
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Petitioner	)	
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and	)	Case No. 2022-UC-0024-C
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North Palos School District 117,	)	
	)	
Employer	)	
	)	

**ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER**

**I. BACKGROUND**

Petitioner, North Palos Education Association, IEA-NEA (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on March 21, 2022, seeking to clarify the scope of its existing bargaining unit of persons employed by North Palos School District 117 (District). The District opposed the petition.

The hearing in this matter was conducted before the undersigned on June 9, 2022, pursuant to the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq*, and Section 1110.160 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs by September 13, 2022.<sup>1</sup>

**II. ISSUES AND CONTENTIONS**

**Petitioner:** The Union seeks to include in its existing bargaining unit of educational professionals employed by the District, the job title of Behavior Specialist/Multi-Tiered Systems of Support Coordinator (Behavior Specialist/MTSS Coordinator). The sole employee in the petitioned-for title is currently unrepresented for purposes of collective bargaining. The Union asserts the unit clarification process is appropriate for this purpose, and the instant petition was timely filed. Moreover, the Union contends the petitioned-for employee is an educational employee as defined by the Act, and is thus, entitled to representation.

**Employer:** The District opposed the petition, asserting it was untimely filed and the employee sought therein is confidential within the meaning of Section 2(n) of the Act, or managerial within the meaning of Section 2(o) of the Act, and therefore must be excluded from bargaining under Sections 2(b) and 3 of the Act.

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<sup>1</sup>The parties agreed to a limited waiver of the operation of the 120-day rule set forth in Section 1110.160(g) of the Rules, approving 150 days in addition to the 120 set out in the statute.

### **III. FINDINGS OF FACT**

The District is located southwest of the City of Chicago and has a total of five schools, serving students from Hickory Hills, Palos Hills, and Bridgeview, in Kindergarten through 8th grade.<sup>2</sup> Tr. 20-21. Jeannie Stachowiak is the District superintendent, and has been for eleven years. Tr. 20. Stachowiak's duties include overseeing the District's educational programming, its finances, its personnel management, and working with District's board of education to set policy. Tr. 20. Carrie Stacy is the District's director of special education. Tr. 51-52. Stacy reports to the superintendent and oversees the District's pupil personnel services and special education department, which includes all the District's programs, services, and supports for students with specialized needs. Tr. 53. In addition, Stacy supervises the preschool coordinator, the lead program coordinator, and the Behavior Specialist/MTSS Coordinator, who monitor these programs and services. Tr. 53. The Union represents a bargaining unit of the District's teachers and other educational professionals, but the coordinators are not in the unit. Tr. 23, 53.

In 2017, the District hired the Consortium of Educational Change (CEC) to conduct an audit of the District's special education needs. Tr. 21-22, 60-61. The audit uncovered concerns with the manner in which the District's special education programs and services were being managed and implemented. Tr. 61. As part of the CEC's overall recommendation, the auditors urged the District provide increased support to address student behavior needs. Tr. 21, 61-62. At the time, the District had been using an outside contractor, calling in behavior analysts on an as-needed basis. Tr. 22, 61-62. As a result of the audit, the District decided to hire its own behavior analyst, and created the Behavior Specialist position, which the District's board of education approved in its May 2019 meeting. Tr. 22-23, 59. Thereafter the District advertised for the position, and ultimately, hired Erin Denny into it in June 2019. Tr. 23, 62, 166.

As the District's behavior specialist, Denny filled several roles. Tr. 168-70. Denny informed, advised, and assisted Stacy, the director of special education, with feedback from the classrooms, regarding the effectiveness of various programs and interventions. Tr. 169; Emp. Ex. 3; Pet. Ex. 8. Denny consulted and strategized with the District's social workers and teaching staff in the five schools, as to the implementation of various behavior management techniques specific to individual students or small groups of students with behavioral challenges. Tr. 26, 64, 169; Emp. Ex. 3; Pet. Ex. 8. Denny occasionally observed individual students or small groups of students to assist in determining behavior management plans. Tr. 169; Emp. Ex. 3; Pet. Ex. 8. Denny's responsibilities as behavior specialist included imparting

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<sup>2</sup>Reference to exhibits in this matter will be as follows: Petitioner's exhibits, "Pet. Ex. \_\_\_\_"; Employer's exhibits, "Emp. Ex. \_\_\_\_"; Joint exhibits, "Jt. Ex. \_\_\_\_." References to the transcript of proceedings will be "Tr. \_\_\_\_."

knowledge and skills to the District's staff in order to allow them to properly observe individual students, to collect and document their observation data, and to properly analyze the observation data to inform their decision-making with regard to individual students. Tr. 64-65, 178-80, 183, 187; Emp. Ex. 3; Pet. Ex. 8. In general, Denny was also to ensure open lines of communication with District staff to address behavior problems and to provide solutions to improve student performance. Tr. 64, 90, 181-82; Emp. Ex. 3; Pet. Ex. 8. As the behavior specialist, Denny consulted with and supported the District's Individualized Education Plan (IEP) teams, assisting with the completion of functional behavioral assessment and individual behavior management plans. Tr. 64-65; Emp. Ex. 3; Pet. Ex. 8. Denny, as the behavior specialist, developed in-service programs for the District's administrators, teachers, and paraprofessionals, with regard to best practices in positive behavioral intervention and applied behavior analysis in the school setting. Tr. 64-65; Emp. Ex. 3; Pet. Ex. 8. In the Behavior Specialist position, Denny worked a ten-month year, eight-and-one-half hours per day, with twelve sick days, two personal days, and no vacation days. Tr. 28, 44.

The District's school psychologist and social workers are in the existing bargaining unit. Tr. 227, 234. The school psychologist has a role with the IEP teams, and highly-experienced social workers work with other educational professionals in their assigned schools with regard to students' behavioral concerns, and develop and present in-service programs to their colleagues. Tr. 227-28, 234-235, 243-44. However, although the school psychologist and social workers perform certain tasks which have similarities to those performed by the behavior specialist, the overall job functions of the behavior specialist are far broader in the sense they are generally district-wide and deal with a greater range and degree of behavioral problems, but in addition, deal with certain issues on a far less granular basis, making the behavior specialist's job functions substantially different than the job functions of the school psychologist or the social workers. Tr. 64-65, 90, 168-70, 178-80, 181-183, 227-28, 234-235, 243-44.

During the 2019-2020 school year, Stachowiak, Stacy, and others in District leadership saw a need to expand behavioral assessments and intervention tools beyond the special education arena, to increase successful educational outcomes for all students served by the District, an education model referred to as "multi-tiered systems of support." Tr. 70-73. Toward that end, in January 2020, the District hired a Tier 1 Social Worker at one of its schools, and added three more the following school year. Tr. 67-69. In mid- to late-2021, Stacy, in consultation with Stachowiak and the District's directors of teaching and learning, discussed expanding Denny's responsibilities from behavioral issues and challenges in the special education area, to academics and education with regard to the District's general population. Tr. 71-73, 170-71. As a result, in September 2021, the District expanded Denny's role and changed her title from Behavior Specialist,

to that of Behavior Specialist/Multi-Tiered Systems of Support Coordinator. Tr. 27-28, 72-74, 167. Primarily, the change required Denny to perform all her existing duties as the behavior specialist, and in addition, work more closely with the District's directors of teaching and learning and its academic staff, and to perform more extensive analysis of observation data linked to academic achievement, so as to inform decision-making with regard to students' needs and educational environment. Tr. 71-73, 80-81, 174-75, 203-08, 213-16. As the expansion of Denny's responsibilities into the MTSS realm principally concerned behavioral components, there was consequently significant overlap with her duties as a behavior specialist.<sup>3</sup> Tr. 27, 44, 71-73, 203-08. In the Behavior Specialist/MTSS Coordinator position, Denny works a twelve-month year, eight-and-one-half hours per day, with twelve sick days, three personal days, and twenty-five vacation days. Tr. 27-28, 102-03.

#### **IV. DISCUSSION AND ANALYSIS**

Pursuant to the unit clarification process, employees may be added to, or removed from, a bargaining unit without the requirement of a showing of interest or an election. Accordingly, because of the undemocratic nature of the process, the Board has approved its use in only limited instances, holding that established bargaining units may be clarified in the following circumstances: 1. a newly-created job classification that entails job functions that are similar to those of classifications covered by the existing unit; 2. an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit; or 3. there has been a change in statutory or case law that affects the bargaining rights of employees. Local 604, IFT-AFT, AFL-CIO/Lockport Township High School District 205, 8 PERI ¶1111, 1992 WL 12647374 (IELRB 1992); Niles Township Federation of Teachers, IFT-AFT, AFL-CIO/Niles Township High School District 219, 6 PERI ¶1124, 1990 WL 10610863 (IELRB 1990); Limestone Federation of Teachers, Local 3886, IFT-AFT, AFL-CIO/Limestone Community High School District 310, 4 PERI ¶1150, 1988 WL 1588626 (IELRB 1988); Union of Support Staff, IEA-NEA/Thornton Township High School District 205, 2 PERI ¶1103, 1986 WL 1234568 (IELRB 1986).

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<sup>3</sup>As the Union rightly notes, the District's board of education, in its minutes of its September 21, 2021 meeting, wherein it approved Denny's title change from Behavior Specialist, to that of Behavior Specialist/Multi-Tiered Systems of Support Coordinator, listed the action under the heading "Employment/Personnel," rather than using the heading of "Title Change," and approved Denny's employment to the title of "District-Wide MTSS Coordinator." Tr. 274; Pet. Ex. 7. However, the testimony at hearing was unequivocal and persuasive, the District has never had a stand-alone MTSS Coordinator. Tr. 72, 298. Moreover, the record strongly supports this conclusion, as it plainly indicates Denny continues to perform both the combined duties of the Behavior Specialist/MTSS Coordinator title. Tr. 27, 44, 71-73, 203-08.



However, a party loses its option to use the unit clarification petition when it fails to do so in a timely fashion. See Water Pipe Extension Bureau of Engineering v. Illinois Local Labor Relations Board, 252 Ill. App. 3d 932, 938, 625 N.E.2d 733, 737 (1<sup>st</sup> Dist. 1993)(unit clarification petition untimely where four to seven years elapsed between arguable changes in circumstances and the filing of the petition); Beach Park Educators/Beach Park Community Consolidated School District No. 3, 10 PERI ¶1089, 1994 WL 16839678 (IL ELRB 1994)(unit clarification petition untimely where sixteen months elapsed between creation of position and the filing of the petition); American Federation of State, County and Municipal Employees/State of Illinois, 2 PERI ¶2005, 1985 WL 1144992 (IL SLRB 1985)(unit clarification petition filed two years after changed circumstances served to waive any right petitioner may have had to accrete subject employees into its existing unit without a vote); Tuscola Intermediate School District, 3 MPER ¶21116, 607 (MERC 1990)(unit clarification petition untimely where no changed circumstances in two years prior to filing of petition).

In this case, of the limited instances where established bargaining units may be clarified, only two are possibilities: 1. a newly-created job classification that entails job functions that are similar to those of classifications covered by the existing unit; and 2. an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit. The third circumstance—that there has been a change in statutory or case law that affects the bargaining rights of employees—is plainly inapplicable, as neither party contends, nor is there evidence, there has been such a change.

The District created the Behavior Specialist title in May 2019 and hired Denny into it in June 2019. Therefore, the Union filed its petition in this matter nearly three years after the District created the Behavior Specialist title, making it untimely as to that title. Water Pipe Extension, 252 Ill. App. 3d 932; Beach Park, 10 PERI ¶1089; American Federation of State, County and Municipal Employees, 2 PERI ¶2005. Regardless, even if the instant petition was timely filed as to the Behavior Specialist title, the job functions of the title are not similar to those of either the School Psychologist or Social Worker titles presently in the existing bargaining unit. As the record indicates, certain tasks performed by unit titles are similar to certain tasks performed by Denny in the behavior specialist role, but the overall job functions of each title are very different. Accordingly, in addition to being untimely filed as to the Behavior Specialist title, the unit clarification is inappropriate to add the title to the existing unit, as its job functions are not similar to those of classifications covered by the existing unit.

In September 2021, the District expanded Denny's role and changed her title from Behavior Specialist, to that of Behavior Specialist/MTSS Coordinator. In so doing, the District obligated Denny to perform all her existing duties as the behavior specialist, and in addition, work more closely with the District's directors of teaching and learning and its academic staff, and to perform more extensive analysis of observation data linked to academic achievement, so as to inform decision-making with regard to students' needs and environment. Since the expansion of Denny's responsibilities into MTSS primarily concerned behavioral components, there was significant cross-over with her duties as a behavior specialist. Due to the substantial overlap between her job functions as a behavior specialist and those in her new role, the Behavior Specialist/MTSS Coordinator title is not a newly-created job classification. Even if it was, the job functions of the Behavior Specialist/MTSS Coordinator title were not made more similar to those of either the School Psychologist or Social Worker titles presently in the existing bargaining unit, by the addition of Denny's MTSS responsibilities. Again, certain tasks performed by unit titles are similar to certain tasks performed by Denny in her expanded role, but the overall job functions of each title are very different. Accordingly, under the first of the two circumstances listed above—a newly-created job classification that entails job functions that are similar to those of classifications covered by the existing unit—the instant petition is inappropriate to add the Behavior Specialist/MTSS Coordinator to the existing unit, as the title is not a newly-created job classification, nor are the title's job functions similar to those of classifications covered by the existing unit.

The second of the two circumstances listed above—an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit—is likewise unavailing. Initially, neither the Behavior Specialist or Behavior Specialist/MTSS Coordinator existed when the unit herein was certified, placing the instant situation outside circumstances appropriate for use of the unit clarification petition. Secondly, as indicated above, the evidence does not demonstrate the job functions of the Behavior Specialist classification were substantially altered with the District's expansion of Denny's role to encompass the MTSS responsibilities. Instead, due to significant cross-over with Denny's duties as behavior specialist, the District's action served to only minimally alter her title's functions. As the District's September 2021 action did not substantially alter Denny's classification's job functions, the unit clarification is inappropriate to add the Behavior Specialist/MTSS Coordinator title to the existing unit.<sup>4</sup>

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<sup>4</sup>Given the disposition of the appropriateness issue, it is unnecessary to reach whether the petitioned-for title is confidential within the meaning of Section 2(n) of the Act, or managerial within the meaning of Section 2(o) of the Act.

**V. RECOMMENDED ORDER**

In light of the above findings and conclusions, the petition filed in the above-captioned case is hereby dismissed in its entirety.

**VI. EXCEPTIONS**

In accordance with Section 1110.160(c)(3) of the Board's Rules, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after receipt hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after receipt of the exceptions and briefs in support thereof. Exceptions and responses must be filed, if at all, at [ELRB.mail@illinois.gov](mailto:ELRB.mail@illinois.gov) and with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.**" If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Sections 1100.20 and 1120.50 of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14 day period, the parties will be deemed to have waived their exceptions.

**Issued in Chicago, Illinois, this 15th day of November, 2022.**

**STATE OF ILLINOIS  
EDUCATIONAL LABOR RELATIONS BOARD**

*John F. Brosnan*

**John F. Brosnan  
Administrative Law Judge**