

D.R. NO. 2000-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

MERCER COUNTY SPECIAL SERVICES
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-99-41

MERCER COUNTY SPECIAL SERVICES
SUPPORT STAFF ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation determines that the positions of secretary to the director of curriculum, secretary to the director of special services, and accounts coordinator were historically specifically excluded by agreement of the parties from the existing unit of full-time and part-time, salaried and hourly cleaning, clerical, custodial and transportation employees.

Based upon an application of Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) which establishes the circumstances under which a unit clarification petition is appropriate, the Director determines that the circumstances in the instant case do not meet the requirements of Clearview. The Director further determines that the Association's reliance on an alleged shared "community of interest" as the basis to include the positions at issue is misplaced and immaterial to a unit clarification petition. The Association's petition to clarify these positions into the existing unit is dismissed.

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Appearances:

For the Public Employer
Cassetta, Taylor, Whalen & Hybbeneth
(Garry M. Whalen)

For the Petitioner
Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel)

DECISION

On May 11, 1999, the Mercer County Special Services Support Staff Association/NJEA (Association) filed a Petition for Clarification of Unit seeking to add three employees to its collective negotiations unit at the Mercer County Special Services Board of Education (Board). The petitioned-for positions are secretary to the director of curriculum, secretary to the director of special services, and accounts coordinator. The Association's

existing unit includes all full-time and part-time, salaried and hourly cleaning, clerical, custodial and transportation employees.

The Association contends that the petitioned-for positions should be added to its existing unit because they share a community of interest with unit employees, and because they are not confidential employees.

The Board opposes the Association's petition. It asserts that these positions have historically been excluded from the unit, the parties negotiated their exclusion from the contract recognition clause, and there is no change in duties which would give rise to a unit clarification petition.^{1/} The Board further asserts that the Association may only seek to add these employees to the unit by filing a timely Representation Petition.

We have conducted an administrative investigation concerning the petition. N.J.A.C. 19:11-2.2 and 2.6. The parties provided the job descriptions and a brief history of the positions and the negotiations history surrounding them. All of the submissions have been considered. By letter dated September 1, 1999, I advised the parties that, based upon the facts submitted, I intended to dismiss the Association's petition as untimely. I provided the parties an additional opportunity to forward

^{1/} Although the Association refers to the employees' lack of "confidential" status as a reason for their proposed unit inclusion, the Board has not asserted here that the positions should be excluded as confidential. Therefore, the confidential nature of these positions need not be addressed.

evidentiary materials. After an extension of time, the Association advised us that it would make no further submissions. As a result of our administrative investigation, I find the following facts.

The Association and the Board are parties to a collective negotiations agreement covering the period July 1, 1998 through June 30, 2001. The current agreement was negotiated in late 1998 and specifically incorporates all pre-existing language from the 1993-1995 and 1995-1998 agreements, except as specifically modified by the parties' current agreement.

The position of secretary to the director of special services was established prior to the parties' execution of the 1993-1995 negotiations agreement. During negotiations for the 1993-95 agreement, the Board proposed and the Association agreed to the position's exclusion from the unit. Article II of the 1993-1995 agreement, Recognition of the Association, provides that the secretary to the director of special services is excluded from the unit. The position has remained specifically excluded from the unit recognition clause in each of the two subsequent collective negotiations agreements, 1995-1998 and 1998-2001.

Until 1995, the parties' collective agreements had excluded the title secretary to the assistant superintendent. During the parties' negotiations for the 1995-98 agreement, the Board proposed to change that title to secretary to the director of curriculum and instruction. The Association agreed and the secretary to the director of curriculum and instruction was specifically excluded

from the agreement in Article II, Recognition of the Association. Negotiations for the parties' most recent agreement, 1998-2001, culminated in a Memorandum of Agreement signed by the parties on January 1, 1999. That agreement incorporated all previous agreements and did not change the recognition clause. Thus, the secretary to the director of curriculum and instruction continues to be excluded from the unit.

During negotiations for the 1995-98 agreement, the Board also proposed and the Association agreed to the exclusion of the position of accounts coordinator. This title was specifically listed as an excluded position in the 1995-98 contract, and continues to be excluded by the terms of the parties 1998-01 contract.

No information has been provided to show any change in circumstances or job duties in any of the petitioned-for positions.

ANALYSIS

The threshold issue is whether the unit clarification petition is appropriate under the circumstances. Having reviewed the arguments and submissions presented by the parties as set forth above, I find that it is not.

The Commission's caselaw concerning the appropriate use of a unit clarification petition is well settled. In New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER ____ (¶____ 1999), aff'g H.O. No. 99-1, 25 NJPER 251 (¶30106 1999), the Commission recently observed:

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the Act or as set forth in the unit definition in a Commission certification or the parties' recognition agreement. Normally, it is inappropriate to use a clarification of unit petition to enlarge or diminish the scope of a negotiations unit for reasons other than the above. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). If a clarification of unit petition is not appropriate or timely, employees may be added to an existing unit through the filing of a representation petition. See N.J.A.C. 19:11-1.1.

As further explained in Clearview, the clarification of unit process is intended to resolve ambiguities concerning the composition of an existing negotiations unit as it relates to the identification of titles within a general classification for employees.^{2/} Additionally, the clarification of unit process is appropriate where circumstances have occurred which change a title's job functions or a new title has been created, from which we might find that the new or changed title could be identified within the parties' described unit. However, where the parties specifically agree to exclude employees from the unit, a clarification of unit petition is inappropriate and will be dismissed. Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980); Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981). As we explained in Clearview,

^{2/} For example, confusion may occur over whether "guidance counselors" are intended as part of a unit described by parties as "all teaching staff".

"...if the parties have negotiated a contract that includes [or excludes] without reservation certain persons or titles, the Commission must assume that the written agreement is the result of good faith negotiations in which the parties have imparted finality to their give and take. A party to the agreement should not be permitted to gain additional profit from resort to the Commission's processes after the contract is executed. Id. at 251-252.

Additionally, where there is a new title or change in circumstances, a petitioner must act promptly to seek unit clarification; absent specific preservation of the dispute, the parties' execution of a successor contract will ordinarily act as a waiver of the petitioner's right to seek unit clarification.

Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984) at 285.

In the instant case, the parties have mutually agreed to exclude all three of the petitioned-for titles from the unit as reflected in the agreement's recognition clause since at least 1995. There is no evidence of changed circumstances in any of the functions of the positions since that contract execution, nor is there any question as to identification of the positions as contemplated in Clearview. Additionally, the single change in job title in the instant case occurred in 1995 when the title of secretary to the assistant superintendent changed to secretary to the director of curriculum and instruction, one of the positions sought in this petition. At that time the then "new" title was specifically excluded from the unit by the parties by mutual agreement in negotiations.

Further, the Association's reliance on an alleged shared "community of interest" as the basis to include these three titles is entirely misplaced. Whether they share a community of interest with the existing unit is immaterial. Newark Housing Auth., D.R. No. 95-22, 21 NJPER 132 (¶26082 1995); Barnegat Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983). Even assuming a community of interest exists between the petitioned-for titles and the existing unit, to include the employees serving in the petitioned-for titles in the unit through a clarification of unit petition would deprive these unrepresented employees of their statutory right to choose whether or not they wish to be represented by an employee organization. N.J.S.A. 34:13A-5.3; Wayne; Clearview.

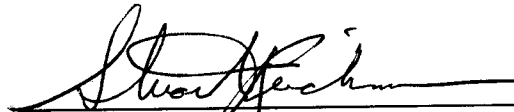
Based on the foregoing, especially the parties' specific, mutual, contractual agreement to exclude the secretary to the director of curriculum, secretary to the director of special services, and the accounts coordinator from the existing unit, and the lack of any changed circumstances for any of the petitioned-for positions subsequent to the execution of the 1998-2001 negotiations agreement, I find that the instant petition for clarification of unit is not the appropriate mechanism to seek to determine whether any of the petitioned-for positions should be included in the

existing unit. Therefore, I dismiss the unit clarification petition.^{3/}

ORDER

The clarification of unit petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: October 8, 1999
Trenton, New Jersey

^{3/} The Association may seek to represent these titles by filing a timely representation petition, together with an adequate showing of interest, asking to accrete the employees to the unit. We would likewise entertain any issue concerning their confidential status at that time.