

D.R. NO. 2014-5

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

In the Matter of

TOWNSHIP OF TOMS RIVER,

Public Employer,

-and-

Docket No. CU-2013-026

TOMS RIVER PROFESSIONAL ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the Toms River Professionals Association, a unit of full-time white collar employees, as including regularly employed part-time white collar employees holding positions, titles, and/or job descriptions that are currently recognized as being part of the full-time white collar unit.

D.R. NO. 2014-5

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

In the Matter of

TOWNSHIP OF TOMS RIVER,

Public Employer,

-and-

Docket No. CU-2013-026

TOMS RIVER PROFESSIONAL ASSOCIATION,

Petitioner.

Appearances:

For the Respondent,
(Kenneth B. Fitzsimmons, Esq.)

For the Petitioner,
(Charles E. Schlager, Jr., of counsel)

DECISION

On March 27, 2013, the Township of Toms River ("Township") filed a clarification of unit ("CU") petition, thereafter amended on April 15, 2013, seeking to include "all regularly employed part-time white collar employees" in a unit of full-time white collar employees represented by the Toms River Professionals Association ("Association"). On April 17, 2013, the Township submitted a statement of position explaining that in settlement of an unfair practice charge filed previously by the Association (Docket No. CO-2013-072), the parties voluntarily agreed to resolve the issue through a CU petition.

On May 9, 2013, the parties were asked to provide specific information regarding the title at issue. On May 20, 2013, the Association submitted a statement of position, and the Township confirmed by e-mail that it agreed with the Association's factual and legal analysis. The Association and Township agree that the parties' collective negotiations agreement expired on June 30, 2011, but that the contract has been extended by a series of memoranda to December 31, 2013.

On August 5, 2013, I wrote to the parties advising them that we were inclined to clarify the unit represented by the Association to include all regularly employed part-time white collar employees holding positions, titles and/or job descriptions that are currently recognized as being part of the full-time white collar unit. The parties were provided an opportunity to reply. Neither party filed a response. Here, the disposition of the CU petition is properly based upon our administrative investigation. I find that no disputed substantial material factual issues warrant our convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. The following facts appear.

The recognition clause of the collective negotiations agreement between the parties' for the term July 1, 2006 through June 30, 2011, extended by a series of memoranda to December 31, 2013, recognizes the Association as the exclusive representative

"as certified on May 13, 2003" by the Commission for the purpose of collective negotiations of all "full-time white collar employees ... as listed in Appendix A" employed by the Township, but excluding blue collar employees, craft employees, police, professional, deputy tax collector, and supervisors within the meaning of the New Jersey Employer-Employee Relations Act N.J.S.A. 34:13A, et seq. ("Act"), confidential employees, and all other employees. The appendix lists cashier/clerk grade 3 as an included title, which is the full-time position that Ann Marie Florio, the employee at issue, held prior to her retirement. Thus, the recognition clause only contemplated full-time white collar titles.

On September 24, 2012, prior to the filing of the Township's CU petition, the Association filed an unfair practice charge alleging that the Township unilaterally changed the employment status of Ms. Florio from full-time to part-time, which removed the title from membership in the existing unit. Appended to the charge is the certification of Association President Maddalena. She certifies that on May 15, 2012, the Township changed the employment status of Ms. Florio from full-time to part-time. Ms. Maddalena also certifies that Ms. Florio retired and was then rehired into the same position she held prior to her retirement, performing the same duties as before. The only change was that the position became part-time.

In a statement of position dated November 29, 2012, the Township asserts that once Ms. Florio disclosed in early 2012 that she was retiring, it undertook an examination of the cashier/clerk position. Based on its examination, the Township decided to change the cashier/clerk position from full-time to part-time status. It asserts that this was a policy decision due to the lack of sufficient work to warrant full-time duties. Ms. Florio retired on June 29, 2012. After her retirement, the Township approached her about returning as a part-time employee. On or about August 14, 2012, Ms. Florio returned to work as a part-time cashier/clerk 3.^{1/} On March 18, 2013, the parties agreed to resolve the issue through the filing of a CU petition, and the unfair practice charge was withdrawn.

On June 14, 2013, the Township submitted the certification of John Lynch, the head of the Department of Engineering, Construction Services, Code Enforcement and Community Development. Mr. Lynch certifies that Ms. Florio is employed on a part-time basis, her working hours are 9:00 a.m. to 4:30 p.m. with a one hour lunch break on Tuesday, Wednesday and Thursday of each week, and her hours of employment cannot exceed 19.5 hours per week.

^{1/} I find the Township's assertion that Ms. Florio started her part-time employment on August 14, 2012, as the more reliable date because it is the appointing authority.

On June 15, 2013, the Association submitted the certification of Association President Maddalena in which she states that while part-time employees were not initially a primary consideration for the union, it now agrees that the unit should include part-time employees because of changed circumstances. Due to economic pressures on its budget, the Township has been moving to replace retiring full-time employees with part-time employees. The Township and Association both agree that the unit should include not only Ms. Florio's part-time position, but also all part-time employees holding positions, titles, and/or job descriptions that are currently recognized as being part of the full-time white collar unit. Both parties also contend that the petition is appropriately before the Public Employment Relations Commission ("Commission") in accordance with Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977). Here, the parties entered into a series of memoranda extending the collective negotiations agreement. The recognition clause has remained the same. The part-time cashier/clerk position was created after Ms. Florio announced her retirement from her full-time cashier/clerk position.

Where there is a change in circumstances, a CU petition is appropriately filed at any time. Clearview Regional High School Board of Education, supra. Here, I find that Ms. Florio was re-

employed in the same title she previously held, but the hours were decreased to part-time employment. This action constitutes changed circumstances. Therefore, I find that the changed circumstances warrant the processing of the CU petition at this time. Clearview Regional High School Board of Education, supra.

Pursuant to N.J.S.A. 34:13A-6(d), the Commission has the authority to determine an appropriate unit. Our Supreme Court has affirmed the Commission's view that it is in the public interest to have broad-based employer-wide functional negotiations units rather than unit fragmentation and proliferation. State of New Jersey and Professional Assn. of the N.J. Dept. of Educ., 64 N.J. 231 (1974); Township of Randolph, D.R. 97-8, 23 NJPER 145, 146 (¶28070 1997); Somerset Co., D.R. No. 2009-14, 35 NJPER 170, 172 (¶64 2009). Units are not restricted to only full-time employees, nor should there be a separate negotiations unit for part-time employees. Township of Randolph, supra. Part-time employees with the same titles or similar duties as full-time employees, and who have regularity and continuity of employment, should be included in the same negotiations unit as full-time employees. Mt. Olive Bd. of Ed., P.E.R.C. No.82-66, 8 NJPER 102, 103 (¶13041 1982).

I find there are no facts which indicate that the Township's part-time employees are casual employees who lack fairly regular and continuous employment with the Township. I also find that

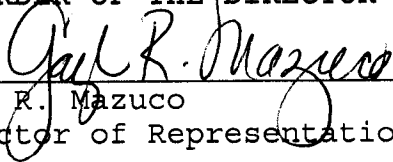
there are no factual disputes regarding the duties of the position at issue. The only aspect of the position which has changed is its conversion from a full-time to a part-time job. Based upon the facts of this matter and our case law, I certify a negotiations unit that includes regularly employed part-time employees.

I certify the following unit:

Included: All regularly employed, full-time and part-time white collar employees, who are not supervisors within the meaning of the Act, employed by the Township of Toms River.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; blue collar employees, craft employees, professional employees, police, deputy tax collector, deputy tax assessor; and all other employees of the Township of Toms River.

BY ORDER OF THE DIRECTOR OF REPRESENTATION



Gayl R. Mazuco
Director of Representation

Dated: August 29, 2013
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by September 13, 2013.