

D.R. NO. 2020-12

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

In the Matter of

HOLMDEL TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. RO-2020-010

CONFIDENTIAL OFFICE PERSONNEL
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a timely representation petition seeking certification by a check of authorization cards in a proposed collective negotiations unit of unrepresented "central office personnel" employed by the Holmdel Township Board of Education. The Board objected to the petitioned-for unit, claiming that the more appropriate unit included certificated and non-certificated employees, including secretaries, clerks, and office personnel, among others. It also claimed that the petitioned-for unit would result in "undue fragmentation" of negotiations units.

The Director concurred with the Board's position, following an investigation of the facts, based on statements of position and certifications responsive to specific questions. The Director also declined determination on whether any of the petitioned-for employees were "confidential" within the Act's meaning because the petitioned-for unit was not the most appropriate unit for negotiations.

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Appearances:

For the Public Employer,
Schenck, Price Smith and King, attorneys
(Paul H. Green, of counsel)

For the Petitioner,
(Tracie Yostpille, NJEA UniServ consultant)

DECISION

On October 3 and 11, 2019, the Confidential Office Personnel Association (COPA) filed a representation petition and amended petition, accompanied by an adequate showing of interest, seeking a certification of representative by card check for a separate negotiations unit of currently unrepresented central office personnel of the Holmdel Township Board of Education (Board). The petitioned-for employees are in the titles, bookkeeper, confidential secretary to Director of Special Services, confidential secretary to Director of Special Services/Child Study Team Activities, confidential secretary to Director of

Curriculum and Instruction, administrative assistant to the Superintendent/Special Projects, and executive secretary to the Superintendent of Schools.

On October 16, 2019, I sent a letter to the Board requesting, among other things, a list of the petitioned-for employees and a certification that the accompanying Notice to Employees was posted where notices are normally posted for the involved employees. This letter also scheduled a telephone conference call among the parties and the assigned Commission staff agent for October 29, 2019.

On October 21, 2019, the Board provided a certification that the Notice to Employees was posted on October 17, 2019. The Board also requested a list of the specific titles sought by COPA in order to provide the employee list, and it advised that no other organization had expressed interest in the prior 12 months in representing currently unrepresented employees. On October 22, 2019, COPA clarified that the specific titles it seeks are bookkeeper, confidential Secretary to Director of Special Services, confidential secretary to Director of Special Services/Child Study Team Activities, confidential secretary to Director of Curriculum and Instruction, administrative assistant to the Superintendent/Special Projects, and executive secretary to the Superintendent of Schools.

On October 29, 2019, the Commission staff agent conducted the scheduled telephone conference with the parties. The Board provided the list of employees in the petitioned-for titles. The Board conceded that the employees in the confidential secretary to Director of Special Services and confidential secretary to Director of Special Services/Child Study Team Activities titles were not confidential employees within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. However, the Board averred that the other sought titles were confidential and inappropriate for inclusion in any unit.

The Board also contended that the unit represented by Holmdel Township Education Association (HTEA), which, among other titles, currently includes secretaries, clerks, and office personnel other than the petitioned-for central office titles, was the more appropriate unit for any non-confidential employees in those central office titles rather than the stand-alone unit sought by COPA. Both COPA and HTEA are affiliated with the New Jersey Education Association (NJEA). During the conference, the NJEA UniServ representative advised that she would review the unit options.

On October 31, 2019, COPA elected to pursue its petition for a separate unit. On November 18, 2019, the staff agent requested position statements and responses to questions provided, with factual assertions to be made in certifications.

On December 6, 2019, COPA filed its position statement and responses, accompanied by a notarized affidavit signed by Tracie Yostpille, the Region 9 NJEA UniServ Consultant, and by some of the employees in the petitioned-for titles, including Marsha Acquaviva, Elena Jaume, Patricia Dasaro, and Marie Deane, attesting that the information provided in COPA's submission was factual to the best of their knowledge.

Also on December 6, the Board requested an extension of time to file its position statement, to which COPA did not object. The request was approved. On December 10, 2019, the Board filed its position statement and responses, along with certifications of School Business Administrator Michael Petrizzo, Director of Human Resources and Compliance Mandie Peart, and Director of Curriculum and Instruction Dineen Seeley.

We have conducted an administrative investigation to determine the facts. The disposition of the petition is properly based upon our administrative investigation. No substantial and disputed material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts.^{1/}

1/ As explained in the analysis further below, I need not reach the issue of whether any of the petitioned-for employees are confidential employees. Accordingly, I make only limited findings of facts for the purpose of resolving whether HTEA's existing unit or COPA's proposed unit is more appropriate. Union Cty. College, P.E.R.C. No. 2019-35, 45 (continued...)

An attested statement filed by COPA provides that on unspecified dates, the Holmdel Township Child Study Team Association represented a separate unit of about nine employees, but that association did not remain "active" and its members were eventually included in HTEA's unit. I take administrative notice that the Holmdel Child Study Association (HCSA) filed a representation petition that it withdrew in 1992, pursuant to an agreement reached with the Board. A number of collective negotiations agreements (CNAs) with HCSA were submitted to the Commission, pursuant to N.J.S.A. 34:13A-8.2, with the most recent agreement ratified on August 11, 2015, and extending from July 1, 2013 through June 30, 2016. Its recognition provision identified HCSA as the exclusive negotiations representative for certified child study team members in the classifications of psychologists, social workers, and learning disabilities teacher consultants, excluding principals, supervisors, secretaries, aides, and all other employees of the Board.

The most recent CNA between the Board and HTEA was ratified on March 29, 2017, and extended from July 1, 2016 through June

1/ (...continued)
NJPER 319 (¶84 2019) ("Clarification of unit petitions always involve information requested by the Commission during the investigation phase that may or may not be specifically referenced or discussed in the Director's decision, depending on their relevance."), Morris Sch. Dist. Bd. of Ed., D.R. No. 82-52 at n.2, 8 NJPER 297(13130 1982) (not determining confidential status where employee was excluded from unit for other reasons).

30, 2019. The recognition provision in this agreement shows that the Board had since recognized the psychologists, social workers, and learning disabilities teacher consultants (the titles previously represented by HCSA in a separate unit) as being represented by HTEA in its broad-based unit with other titles.^{2/}

More specifically, it provides:

The Holmdel Township Board of Education recognizes the Holmdel Township Education Association as the majority representative for collective negotiations concerning the terms and conditions of employment of those employees in the unit composed solely of the following classifications:

A. Classroom Teachers
 Resource Center Teachers
 Teachers of Special Subjects
 Librarians
 Nurses
 Guidance Counselors
 Athletic Trainer
 Student Assistance Counselor
 Occupational Therapists
 Orientation and Mobility Specialist
 Psychologists
 Social Workers
 Learning Disabilities
 Teacher-Consultants

^{2/} HTEA's unit formation was through voluntary recognition by the Board, as no Commission certification for the unit or its later accretions were issued. We did certify HTEA as the representative of a previously recognized custodial and maintenance unit after it prevailed over the incumbent in the election directed in Holmdel Tp. Bd. of Ed., D.R. No. 80-29, 6 NJPER 120 (¶11065 1980) (Dkt. No. RO-80-40). As indicated in that decision, however, HTEA already represented a recognized unit of teachers, secretaries, librarians, nurses, guidance counselors, and clerks as early as 1979. The consolidation with custodial and maintenance employees occurred without Commission certification.

Transition Coordinator
Social Skills Program Facilitator

The above will be referred to as
"teacher" throughout the contract.

B. All secretaries, clerks, and other office personnel excluding the secretaries to the Superintendent of Schools, Assistant Superintendent, Secretary to the Board of Education, the bookkeeper, and confidential secretaries.

The above will be referred to as "office service personnel" throughout the contract.

C. All custodial, maintenance and grounds personnel.

All technology support assistants, desktop support, media technicians help desk, etc. will be referred to as "Technology Service Personnel" within the Building Service Personnel Department.

The above will be referred to as "building service personnel" throughout the contract.

D. All instructional support personnel. This category consists of all instructional support personnel, including school monitors both hourly and salary and permanent substitutes. For purposes of this contract, permanent substitutes are substitutes hired by the Board of Education on a continuing basis but not replacing teachers on a leave of absence.

E. All Bus Drivers, Van Drivers and Bus attendants. The above will be referred to as "Transportation Service Personnel"

F. All nurse assistants.

The HTEA CNA also provides that certain articles apply only to certain groups. That is, while some articles apply to all titles in the unit, some articles apply only to teachers; some only to office service personnel; some only to building service personnel; some only to technology support personnel; some only to transportation support personnel, or some only to instructional support personnel.

HTEA represents 467 employees (approximately 442 are organizational members). Both COPA (the petitioner) and the Board concur that HTEA has expressed a willingness to represent the petitioned-for titles.

The Holmdel Township Administrators Association (HTAA) represents 18 employees. Its current CNA with the Board extends from July 1, 2017 through June 30, 2020, and its recognition provision covers certified administrative personnel (principals, assistant principals, supervisors, Director of School Counseling Services, and Director of Special Services) and excludes administrative assistants, assistant superintendents, Superintendent of Schools, School Business Administrator/School Board Secretary, Assistant School Business Administrator, Director of Human Resources, Director of Plant, Operations and Maintenance, Assistant to the Director of Plant, Operations and Maintenance, Director of Technology, and Network Engineer.

In addition to the unrepresented titles that COPA seeks to represent, COPA avers that the titles, human resource secretary and purchasing coordinator are not currently represented in any collective negotiations unit.^{3/}

COPA argues that its petitioned-for separate unit of central office personnel is the most appropriate unit because previously a similarly narrow unit (of child study team employees represented by HCSA) existed; that COPA and its members understand "the functions of being an active association" (to which HCSA did not adhere, according to COPA); and because HTEA's most recent CNA recognition provision currently excludes the

^{3/} We requested of the parties identification of unrepresented titles, including those not sought by COPA. Such information is relevant to our determination. See New Jersey Turnpike Auth., D.R. No. 2005-14, 31 NJPER 36 (¶18 2005) (listing various factors in analyzing whether a narrow unit is appropriate, including the extent of organization of the employer's employees and whether the proposed unit would include the last of the employer's unrepresented employees); Mercer Cty. Comm. Coll., H.O. No. 80-3, 5 NJPER 336 (¶10181 1979) ("Fragmentation takes on different meaning depending upon the extent to which fragmentation is possible. Thus, a unit designation which leaves a residuum of unrepresented employees from which only one or two possible additional units may spring must be viewed differently from circumstances in which the residuum may constitute the basis for a multiplicity of possible units."), adopted D.R. No. 80-13, 5 NJPER 507 (¶10262 1979); New Jersey State College of Medicine and Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977) (explaining the potential for proliferation in terms of whether the proposed unit's method of categorization of employees could lead to an undue number of additional units for the residual unrepresented employees should they organize along similar lines in the future).

central office personnel.^{4/} COPA asserts that a community of interest among the sought employees exists because they all deal with confidential student information and confidential personal employee information, although not, according to COPA, confidential labor relations information within the meaning of the Act.

The Board views a community of interest as existing between the confidential secretary to Director of Special Services and the confidential secretary to Director of Special Services/Child Study Team Activities titles (which the Board concedes are not confidential within the meaning of the Act) and the secretarial titles already represented by HTEA on the basis of similarity in skills, duties, and working conditions. Although the Board acknowledges that the other petitioned-for central office personnel also share a community of interest among themselves, it does not argue that they have a conflict of interest with HTEA's unit (other than their possible confidential status), despite differences in duties and skills. Therefore, the Board argues that HTEA's broad-based unit is more appropriate for any non-

^{4/} Although COPA refers to the HTEA recognition provision as currently excluding the "community of interest" among the sought titles, COPA does not argue that there is a conflict of interest or that there can be no community of interest between the sought employees and the employees in HTEA's unit if a combined unit were sought by HTEA.

confidential petitioned-for titles rather than a stand-alone unit on the basis of the "presumption against fragmentation of units."

ANALYSIS

The Commission is responsible for determining the appropriate collective negotiations unit when questions concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). When more than one unit is potentially appropriate, the Commission must decide which unit configuration is the most appropriate. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231, 257 (1974) (State Professional). The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. "What is called for on the part of the Commission is 'due regard for', not exclusive reliance upon such community of interest." State Professional at 257.

In State Professional, the Supreme Court upheld the Commission's use of other policy considerations, including the interests of the employer and the public at large, when the Commission determined that it would generally give preference to broad-based units. Id. The Commission is reluctant to form units along occupational or departmental lines. Newark State Operated Sch. Dist., P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018).

The Commission's stated preference was based on the policy considerations of the Act for stability and harmony^{5/} that would be jeopardized by a multiplicity of negotiations units caused by fragmentation with its attendant problems of competing demands, whipsawing, and continuous negotiations. State Professional at 241. As to the contrary suggestion that the special problems and interests of employees in a broad-based unit would be submerged and inadequately dealt with by the common representative, the Court explained:

[T]his is always a problem where discrete categories are placed in a common negotiating unit. It must be assumed, however, except where shown to the contrary in a particular case, that the common representative will perform its duty fairly in respect of all within the unit and exercise its good faith judgment as to when or whether different characteristics within the group warrant different demands. [State Professional at 64 N.J. 258]

See also Randolph Tp., D.R. No. 97-8, 23 NJPER 145 (¶28070 1997) (holding that differences in benefits do not indicate lack of community of interest).

In West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218, 219 (¶56 1971), the hearing officer explained that differences in the availability of tenure, leave, insurance, and pension, and the unavoidable competition for the same limited public dollars do not constitute a conflict of interest nor

^{5/} See N.J.S.A. 34:13A-2.

detract from a community of interest. The Commission adopted the hearing officer's conclusion that a community of interest existed among teachers, aides, and office personnel despite disparities in job qualifications, working conditions, benefits, and hours, because they all performed functions immediately related or necessarily adjunct to the education function of the employer.

Teachers and supportive staff share a community of interest stemming from such factors as their shared goals, the central authority controlling their working conditions, and their common working facilities and environment. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984). Indeed, "a community of interest exists among virtually all non-supervisory employees in an educational setting." Newark State Operated Sch. Dist., D.R. No. 2018-12, 44 NJPER 195, 199 (¶57 2017), req. for rev. den. P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018).

Where a community of interest exists within each of two proposed units, we weigh other factors, including breadth, to determine the most appropriate unit.^{6/} In New Jersey Turnpike

^{6/} Although our cases sometimes refer to a particular proposed unit as being "inappropriately" narrow, it should be noted that those units were inappropriate under the weighing of the factors in those particular cases compared to other possible units, and not necessarily per se inappropriate under all factual scenarios. A narrow unit description that might not be the most appropriate unit in one case may be found to be appropriate in another. Compare E. Windsor Tp., P.E.R.C. No. 97-68, 23 NJPER 51 (¶28035 1996) (finding narrow EMT unit inappropriate where there were no facts
(continued...)

Auth., D.R. No. 2005-14, 31 NJPER 36 (¶18 2005), the Director explained the various factors the Commission has considered when determining whether a narrow unit is appropriate, particularly in the case of residual employees who have been left out of existing units. These factors include the structure and history of existing units; the community or conflict of interest with existing units; the incumbent's willingness to represent the petitioned-for employees (if not willing, whether the employees have tried to organize and remained unrepresented for a period of time); whether the employer waived its right to insist on broad-based units (explicitly or implicitly, by already accepting many other units including those along single professions); whether the petitioned-for titles were created after the formation of a broad-based unit (indicating that the employer did not waive its right to insist on the new titles' inclusion in the broad-based unit); and the extent of organization of the employer's employees (that is, whether the proposed narrow unit is the final group of

6/ (...continued)
indicating incumbent of broader white-collar unit was unwilling to represent them and the employer had not waived objection to placement of the newly created title, but noting that should the incumbent be unwilling, the Commission may reconsider appropriateness) with City of Passaic, D.R. No. 2004-1, 29 NJPER 393 (¶125 2003) (finding EMT unit appropriate where titles existed before employer and white collar unit representative agreed to exclude them, they had long been unrepresented, and there was low risk of further proliferation because the they were the last unrepresented titles).

employees to be organized or could lead to an undue number of additional units of other unrepresented employees along similar lines). New Jersey Turnpike Auth. The Director dismissed the petition for a proposed unit of unrepresented Parkway maintenance division managers because the incumbent of an existing broad-based managers unit was willing to represent them, there was a community of interest with the existing unit, other small residual units did not exist, and further proliferation along divisional lines would otherwise be possible. New Jersey Turnpike Auth.

In University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 84-28, 9 NJPER 598 (¶14253 1983) (UMDNJ), the Commission acknowledged that although the existing broader unit may have had a community of interest with the petitioned-for employees and that the similarities standing alone would otherwise make the unit appropriate, it would consider significant differences "if the balance of all relevant factors so indicated." In UMDNJ, the Commission found that there was no undue risk to existing labor stability because the proposed unit would only change the number of units from seven to eight and would not lead to a multitude of other units. The Commission also found that the petitioned-for employees would be left without a practical opportunity to be represented when they had been twice rebuffed by the incumbent of the broader unit. In

light of these other factors, the Commission looked to the significant differences between the employees and found a separate unit to be appropriate, but noted that it was not foreclosing the possibility of consolidation if the balance of the other factors changed. See also Camden Bd. of Ed., P.E.R.C. No. 87-53, 12 NJPER 847 (¶17326 1986) (distinguishing UMDNJ and dismissing petition for separate unit of unrepresented psychologists when they had not unconditionally sought representation by the incumbent of existing professionals unit).

COPA does not argue that there is a conflict of interest or a general lack of community of interest between the petitioned-for employees and HTEA's unit. That they were excluded in the recognition provision of HTEA's most recent CNA (since expired) does not mean that there is not a community of interest, and it does prevent HTEA from filing its own representation petition to add the petitioned-for titles to its existing unit. The petitioned-for employees, to the extent they are not confidential, share a community of interest with each other and with HTEA's unit. See Piscataway Tp. Bd. of Ed., Newark State Operated Sch. Dist. The Commission's preference for broad-based units (like HTEA's) and reluctance to form units along departmental and occupational lines (like COPA's proposed unit of six secretarial and clerical titles in the central office)

preliminarily favors a finding that HTEA's unit is the more appropriate unit.

Both COPA and the Board acknowledge that HTEA is willing to represent the petitioned-for employees. Therefore, the record does not indicate that these employees have unsuccessfully tried to exercise their rights to be represented under the Act for a long period of time.

No other existing narrow units, other than the HTAA's supervisory unit, would be inappropriate for the non-supervisory petitioned-for employees on the basis of a substantial potential conflict of interest, if not statutory exclusion.^{7/} Although the Board previously recognized a narrow child study team unit, it later recognized its merger into HTEA's unit before COPA filed its petition. I do not view the Board's previous recognition of a unit that no longer exists as presently waiving its right to insist on HTEA's broad-based unit.

I also do not view the Board's exclusion of these pre-existing titles from HTEA's last CNA as a waiver, since it's clear that the Board (and likely HTEA) originally carved out these titles under the belief that they were likely confidential and statutorily excluded under the Act. That is, the Board did

^{7/} See W. Orange Bd. of Ed. v. Wilton, 57 N.J. 404 (1971); N.J.S.A. 34:13A-5.3, -6(d).

not waive its right to insist that these titles be added to HTEA's unit should they be found to be not confidential.

Furthermore, although the Board refused to identify other unrepresented titles, COPA identified at least two other unrepresented titles for which it is not petitioning: human resource secretary and purchasing coordinator. Thus, the petitioned-for unit would not be the last group of employees to be organized, which could lead to the employees in the residual titles seeking their own narrow unit.

Although, in some ways, secretarial and clerical employees working together in the same office may have a stronger community of interest with each other than with other secretarial and clerical employees in the same school district, there is nevertheless still a community of interest between any non-confidential petitioned-for employees and HTEA's unit. In the absence of an asserted conflict of interest and in light of the other factors analyzed above that weigh in favor of HTEA's unit, it is unnecessary to review every similarity and difference. The balance of the relevant factors weighs clearly in favor of HTEA's broad-based unit.

I find that HTEA's unit would be more appropriate than COPA's proposed unit, and that COPA's unit is inappropriate, under the circumstances. Accordingly, I will dismiss COPA's petition. As COPA's proposed unit is inappropriate, it is

unnecessary for me to determine which, if any, of the petitioned-
for employees are confidential within the meaning of the Act.^{8/}

ORDER

Confidential Office Personnel Association's representation
petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

/s/ Jonathan Roth
Jonathan Roth
Director of Representation

DATED: December 26, 2019
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 January 7, 2020.

^{8/} Even if a unit of non-confidential central office personnel
were found appropriate, a determination of confidential
status in this representation case might not be necessary.
The Board concedes that two of the employees are not
confidential, the minimum number for a unit. See Jamesburg
Boro., D.U.P. No. 79-5, 4 NJPER 398 (¶4180 1978). Whether
using COPA's or the Board's count of non-confidential
employees, COPA has submitted valid authorization cards from
a majority. Any determination of confidential status could
be determined by a later clarification of unit case. Cf.
Livingston Library, D.R. No. 2004-15, 30 NJPER 123 (¶45
2004) (directing election where eligibility of 1 in 5
employees was in dispute and explaining that resolution of
disputed ballots would occur in the representation case only
if outcome determinative; if not determinative, a
certification could issue with the status disputes resolved
in a later clarification of unit case).