

D.R. NO. 89-12

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

In the Matter of

LACEY TP. BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-88-35

LACEY TP. EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation determines that the Lacey Township Education Association waived its right to file a Clarification of Unit Petition to include the purchasing assistant employed by the Lacey Township Board of Education. Relying on Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15740 1984), the Director found the purchasing assistant position was created before the existing collective negotiations agreement was executed. The Director issues a Notice of Hearing to determine whether the payroll assistant performs confidential duties.

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Appearances:

For the Public Employer
Curry & Stein, Esqs.
(Mark Rogers, of counsel)

For the Petitioner
New Jersey Education Association
(Charles Walker, UniServ Rep.)

DECISION

On January 25, 1988, the Lacey Township Education Association ("Association") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") seeking to include the payroll assistant and the purchasing assistant in a broad-based unit of teachers, secretaries, bus drivers, custodians and cafeteria workers employed by the Lacey Township Board of Education ("Board"). The Board asserts the petition is untimely and alleges that the positions sought are confidential within the meaning of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),^{1/} they do not share a community of interest with other unit employees and the incumbents do not wish to be unit members.

We conducted an administrative investigation in this matter. N.J.A.C. 19:11-2.2. It reveals the following:

The Board and the Association are parties to a collective negotiations agreement covering the period from July 1, 1985 through June 30, 1988. The parties entered into an agreement on November 4, 1985 and the contract was signed on April 10, 1986. The agreement's recognition clause included the titles of teacher/health aide and computer operator. Both titles were created and approved by the Board between November 1985 and April 1986.^{2/}

The purchasing assistant position was created and posted by July 15, 1985. Nancy Noren was hired as purchasing assistant shortly thereafter. The payroll assistant position was approved on June 2, 1986. The position was posted and Kathy Nolan was hired on July 14, 1986. In both cases, job postings were prepared and posted in four school buildings in the usual posting areas.

1/ See N.J.S.A. 34:13A-3(g), which defines confidential employees.

2/ The recognition clause displayed the new titles as follows:

10. Teacher/Health Aides (BofE approved 12/16/85)
11. Computer Operator (BofE approved 3/17/86)

Each October, the Board provides the Association with a copy of the school census which the Association's membership chairperson reviews. The Association notifies the Board of membership changes so that the Board can properly deduct membership dues or agency fees from the payroll.

In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), the Director of Representation set forth the circumstances under which a unit clarification petition is appropriate. The Director stated:

Clarification of unit petitions are designed to resolve questions concerning the exact composition of an existing unit of employees for which the exclusive representative has already been selected.... Occasionally, a change in circumstances has occurred, a new title may have been created...[or] the employer may have created a new operation or opened a new facility [which would make] a clarification of unit proceeding appropriate.... Normally, it is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit for reasons other than the above. 3 NJPER at 251.

In Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980), the Commission held that a clarification of unit petition is not appropriate where a petitioner seeks to clarify a unit to include titles which existed at the time the unit was formed or where the majority representative had "slept on its rights with regard to a particular title." In Wayne, the Commission stated:

In those cases where it is found that there has been an agreement to exclude or evidence of a waiver on the part of the majority representative, it will result in the conclusion that this Petition raises a question concerning

representation. If it is found with regard to a classification that a question concerning representation exists, that portion of the clarification petition relating to such classification will be dismissed.

In Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984), the Director dismissed a petition to include titles created before execution of the existing collective negotiations agreement. The Director found that the majority representative had waived its rights to seek clarification of the existing unit. In Rutgers, we held that the majority representative has the responsibility to identify and petition for new titles during the contractual period in which it is established and before executing the next succeeding contract.

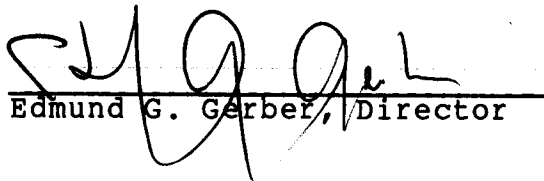
The purchasing assistant position was created on July 15, 1985. The parties did not reach an agreement on a successor contract until November 4, 1985 and did not sign the contract until April 10, 1986. Other new titles were included in the agreement. This petition was not filed until January 1988. Thus, the Association waived its right to clarify the unit to include the purchasing assistant. Since the payroll assistant title was not created until July 1986, the Association did not waive its right to petition to include that position in the unit.

We informed the parties of these conclusions and provided them with an opportunity to submit additional factual allegations. Neither did so. The Association filed a statement arguing that testimony would establish that it negotiated over the position

before the existing collective negotiations agreement was executed. The Association has an obligation, however, not only to identify the new title and make known its position, but, if unsuccessful in reaching a negotiated resolution, to petition for that title in the contract period in which it is established and before executing the next agreement. The Association has not raised factual allegations disputing that its petition was filed over one year after the next succeeding agreement was signed.

We dismiss the petition with respect to the purchasing assistant. Since there is a factual dispute as to whether the payroll assistant performs confidential duties, we issue a Notice of Hearing to determine the status of that position.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 19, 1989
Trenton, New Jersey