

D.R. NO. 2004-14

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

In the Matter of

HAMILTON TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. CU-2002-028

HAMILTON TOWNSHIP SCHOOL SECRETARIES
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition timely filed by the Hamilton Township School Secretaries Association/NJEA which sought to include the transportation technician title in its unit. The Director found that the transportation technician shared a greater community of interest with those Board employees represented by the Hamilton Township Education Association/NJEA which was willing to represent that title.

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Appearances:

For the Public Employer,
Destribats, Campbell, DeSantis & Magee, attorneys
(Dennis M. DeSantis, of counsel)

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

DECISION

On March 11, 2002, the Hamilton Township School Secretaries Association/New Jersey Education Association (HTSSA) filed a clarification of unit petition seeking to include the title "Transportation Technician" in a unit of full-time secretarial personnel employed by the Hamilton Township Board of Education (Board). The Board opposes the inclusion of the Transportation Technician in the Association's unit and urges that the petition be dismissed. It asserts:

1. The duties of the position are not secretarial and the position is more appropriately included in the unit represented by the Hamilton Township Education Association (HTEA); and

2. During negotiations leading up to the parties' most recent agreement, the HTSSA did not contend that the position should be included in its unit.

HTSSA, relying upon the certification of a unit member that reviews 11 specific duties of the Transportation Technician, contends that the post is appropriately placed in its unit.

HTEA, however, asserts that the title is appropriate for inclusion in its broad-based unit and has expressed an interest and a willingness to represent the title.

Following negotiations which resolved disputes over the unit placement of three other titles, an administrative investigation was conducted into the matters raised by this petition. N.J.A.C. 19:11-2.2. The disposition of the petition is properly based upon the administrative investigation since no substantial, material factual issues are in dispute. N.J.A.C. 19:11-2.2 and 2.6.

By letter dated February 27, 2004, I summarized the parties' positions and accompanying evidence and advised the parties of my intention to dismiss the HTSSA's petition. I afforded the parties an opportunity to respond and forward additional

materials by the close of business on March 8, 2004. No additional information has been provided.

Based upon the investigation, I make these:

FINDINGS OF FACT

1. Except for a title added pursuant to the recent trilateral agreement among it, HTEA, and the Board, HTSSA represents a unit consisting of the titles Secretary Level 1A, 1, 2, 3 and 4. The recognition clause of its most recent agreement with the Board excludes all other personnel not specifically enumerated. It also provides: "However, all unit disputes regarding newly created positions may be referred to PERC for a unit determination."

2. The HTSSA and the Board have negotiated a series of collective agreements. The most recent agreement covers the period from July 1, 2001 to June 30, 2004. On May 22, 2001 representatives of both parties executed a handwritten Memorandum of Agreement, which specified changes to be made to the parties' existing agreement. The tenth paragraph of the memorandum provides that "This memorandum shall be incorporated into a revised contract between the parties which shall be subject to approval by the parties."

3. At its meeting on June 20, 2001, the Board passed a resolution approving the agreement negotiated by its negotiating committee with the HTSSA.

4. The position in dispute was first created on September 27, 1995. On that date, the Board abolished the position "Transportation Supervisor" and approved the addition of a newly created job "Transportation Technician." It appointed Natalie Severino to the post.

5. On September 1, 1999, the Board reinstated the Transportation Supervisor position and promoted Severino to it. It left the Transportation Technician position vacant.

6. In May 2001, the Board "restructured" its Transportation Department which "resulted in the position of Transportation Technician being reinstated with a revised job description, including the duties of the relief driver/helper. This position requires a CDL license.

7. On June 13, 2001 the Board posted a notice for the vacancy which it intended to fill as of July 1, 2001. On June 20, 2001, the Board appointed Tracy Rowe to the position.

8. HTEA represents a broad-based unit of professional and non-professional employees, including bus drivers and relief driver/helper.

ANALYSIS

The threshold issue is whether the unit clarification petition is appropriate under the circumstances. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977), explains the

circumstances under which a unit clarification petition is appropriate.

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 to add titles to the unit 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 had 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 right to seek clarification of the existing unit. The decision provided that the majority representative has the responsibility to identify and petition for new titles during the contractual period in which they are established and before executing its next succeeding contract. Rutgers. See also Vernon Tp., D.R. No. 2002-3, 27 NJPER 354 (¶32126 2001); Lacey Tp. Bd. of Ed., D.R. No. 89-12, 15 NJPER 106 (¶20051 1989). Alternatively, the parties could conclude negotiations for the successor contract but include a provision preserving the dispute for the Commission to decide. See Union Cty. Reg. H.S. District #1, D.R. No. 83-22, 9 NJPER 228 (¶14106 1983) (clarification granted where parties preserved issue in successor contract provision); compare, Atlantic Cty. College, P.E.R.C. No. 85-64, 11 NJPER 30 (¶16015 1984).

Here, although the Transportation Technician position had first been created in 1995, it was not filled continuously and its job duties were revised **after** the parties had reached a memorandum of agreement and **contemporaneously** with the Board's approval of the new agreement. The agreement was executed following the Board's ratification vote. I find that the Transportation Technician position did not exist in its present form when the parties' most recent agreement was executed. Accordingly the merits of the petition may be considered and the

determination will have immediate effect. See Clearview, 3 NJPER at 252.

I next consider whether the position is appropriate for inclusion in the HTEA unit or the HTSSA unit.

To determine whether a title is appropriately added to a unit, and falls within the definitional scope of the unit, our focus is on the job duties performed. Middletown Tp. Bd. Of Ed., D.R. No. 95-31, 21 NJPER 253 (126163 1995).

Upon review of the duties of the Transportation Technician, I find the title shares a strong community of interest with the members of the HTEA unit and is appropriate for the inclusion in that unit.

The HTEA unit is broad-based, and includes bus drivers and relief driver/helper; the Transportation Technician title fits these employees. In fact, the job description for the Transportation Technician encompasses the duties of the former Relief Driver/Helper title which is included in the HTEA unit, and the individual currently in the Transportation Technician title previously held the HTEA unit position of bus driver.

Unlike the secretarial titles in the HTSSA unit, the Transportation Technician title requires a CDL license, experience in the transportation field, and extensive knowledge of Hamilton Township roads, street conditions and geography, as the bus driver and relief driver/helper titles and its primary

duties include preparation and the transportation of students, scheduling of bus routes and maintenance of vehicles. More significantly, the Transportation Technician performs the duties of a bus driver when a driver is absent.

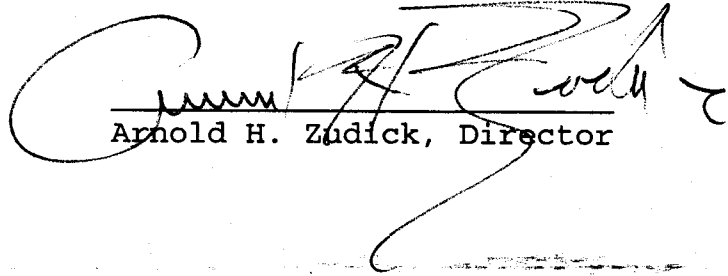
Despite the HTSSA's assertions, the Transportation Technician performs only minimal duties similar to those performed by its unit members. The members of the HTSSA unit perform secretarial/clerical school office duties unrelated to and not involving the transportation of students. In comparison, the Transportation Technician primarily performs transportation-related duties like those performed by the bus drivers and relief drivers/helpers included in the HTEA unit.

Accordingly, since the Transportation Technician performs similar functions and shares a greater community of interest with the bus driver and relief driver/helper titles in the HTEA unit than the secretaries and clerks of the HTSSA, I find that this title more appropriately belongs in the HTEA unit. Therefore, the clarification of unit petition filed by the NTSSA is dismissed. In the event that the Board refuses to voluntarily recognize the inclusion of the Transportation Technician in the HTEA unit, the HTEA may seek an order clarifying its unit consistent with this opinion, by filing its own clarification of unit petition.

ORDER

The unit clarification petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: March 22, 2004
Trenton, New Jersey