

D.R. NO. 2004-20

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

In the Matter of

MONROE TOWNSHIP BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. CU-2004-003

MONROE TOWNSHIP FEDERATION
OF TEACHERS, LOCAL 3391, AFT
AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of paraprofessionals, office assistants and nurse assistants represented by the Monroe Tp. Federation of Teachers to include the title of interpreter/transliterater for special needs students. The Director finds the petition to be timely under Clearview because, rather than delay the conclusion of negotiations for a successor agreement, the Federation advised the Board that it would pursue the inclusion of the title before the Commission; therefore, the parties preserved the issue concerning this title by clear and unequivocal conduct. The Director further finds that the title shares a community of interest with other paraprofessional unit titles.

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Appearances:

For the Public Employer,
Louis Rosner, attorney

For the Petitioner,
Jennings Sigmond, P.C.
(Mary Crangle, of counsel)

DECISION

On July 21, 2003, the Monroe Township Federation of Teachers, Local 3391 AFT, AFL-CIO (Federation) filed a Clarification of Unit Petition with the Public Employment Relations Commission seeking to add the title of interpreter/transliterator for special needs students to its existing unit of paraprofessionals, office assistants and nurse assistants employed by the Monroe Township Board of Education (Board). The Federation claims that the petitioned-for title is

a new title which is now appropriate for inclusion in the unit through the instant petition.

The Board opposes the petition. It asserts that it is untimely, as the petition was not filed until July 21, 2003, well after the parties reached a February 6, 2003 memorandum of agreement for their successor contract.

The Board further claims that the title does not share a community of interest with the other titles in the existing unit. It notes that Cynthia Rossi, the employee in the title, receives a significantly higher salary and some better benefits than those received by other employees in the unit. Further, according to the Board, the title is not interchangeable with other titles in the unit and is employed on an "as needed basis" to assist a particular student.

The Federation, however, asserts that the petition is timely under Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977), because it was filed after the parties' existing collective negotiations agreement had expired, and prior to the execution of their successor agreement. Moreover, the Federation notes the title shares a community of interest with those in the unit; performs the same types of duties as other unit paraprofessionals; thus, should be clarified into the unit immediately.

We have conducted an administrative investigation in accordance with N.J.A.C. 19:11-2.2 and 2.6. An investigatory conference was conducted on September 16, 2003. The parties submitted position statements, additional information and supporting documents by October 6, 2003. On April 15, 2004, I sent a letter to the parties setting forth the facts as they appeared and indicating that I was inclined to find that the interpreter/transliterater title should be included in the collective negotiations unit. Neither party responded. Therefore, the disposition of this matter is properly based upon our administrative investigation since there are no substantial, material facts in dispute which would warrant convening an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the investigation, I make the following:

FINDINGS OF FACT

The Federation and the Board were parties to an agreement effective September 1, 1997 through June 30, 2002. The Recognition Clause, Article 1, of that Agreement provides:

The Board recognizes the Monroe Township Federation of Teachers, Local 3391, American Federation of Teachers, AFL-CIO as the sole and exclusive bargaining agent for all paraprofessionals, office assistants, and nurse assistants; excluding secretaries/clerks/computer operators, certificated staff, custodians, maintenance, food service workers, superintendents and assistant superintendents, principals and any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, and substitutes pursuant to N.J.S.A. Title 4, Chapter 123, P.L. 1974.

On August 20, 2002, the Board created the new title of interpreter/transliterator for special needs students and appointed Cynthia Rossi to the position. Upon being hired, Rossi was informed by the Board that she was a paraprofessional. Rossi signed a Federation membership and dues authorization card and continues to be a dues-paying member.

In her certification, Corine Hogbin, vice president of the unit, certified that during negotiations for a successor agreement, the Federation proposed adding the interpreter/transliterator title to the existing unit, but the Board refused. The Federation's demand to represent Rossi's position in its unit continued up through the final negotiations session. Since it was the only outstanding issue impeding the parties from reaching full agreement, the Federation decided that, rather than go to impasse over the issue and delay concluding negotiations, it would, instead, submit the unit dispute to the Commission for resolution. The Federation's chief negotiator, Fougères Ferrier, informed the Board that it intended to file the instant petition. The Board agreed with the Federation's decision, concurring that the Commission should determine the issue. The Board and the Federation reached a Memorandum of Agreement for a successor agreement on February 6, 2003. The Federation filed the instant petition on July 21, 2003. The new collective bargaining agreement effective July 1,

2002 through June 30, 2006 was executed on August 19, 2003. The Board has not contested the Federation's factual assertions.

The duties of the Interpreter/Transliterater title include providing one-on-one support for a deaf student in the District. If the student is absent from school, Rossi is assigned other paraprofessional duties. If Rossi is absent, another paraprofessional in the unit is assigned to fill in for her and provide the one-on-one support to the child. In fact, such a substitution occurred when Rossi was absent from March 28 - May 5, 2003.

Other unit paraprofessionals provide the same type of one-on-one support for special needs students in the District and have also been informed, like Rossi, that their employment is on an "as needed" basis. Moreover, except for the salary she receives, Rossi is treated the same by the Board as others in the unit. In addition, while Rossi possesses sign language skills, so do at least two other unit paraprofessionals.

ANALYSIS

The Board argues that the petition, filed after the parties reached a Memorandum of Agreement for a successor contract, is not timely filed and should be dismissed. A clarification of unit petition is used to resolve a question concerning the scope of an existing negotiations unit under certain circumstances. One such circumstance occurs when the employer creates new titles

similar to those in the existing unit. Clearview. However, the majority representative is ordinarily responsible for identifying and petitioning for personnel in newly-created titles prior to executing a successor agreement, unless the parties agree to preserve the issue to then be determined by this Commission. See Township of Branchburg, D.R. No. 2004-2, 29 NJPER 396 (¶ 126 2004); Morris Cty. Voc. Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992); Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987); Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); County of Bergen (Bergen Pines Hospital), D.R. No. 80-20, 6 NJPER 61 (¶11034 1980); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977).

Here, the title of interpreter/transliterator for a special needs student was created August 20, 2002, after the parties' agreement had expired on June 30, 2002. While the parties did sign a memorandum of agreement for the next contract period on February 6, 2003, prior to the filing of this petition (on July 21, 2003), it appears from all of the circumstances here that the Federation did not waive its right to seek unit clarification. The Federation had promptly proposed inclusion of the title from the time the Board created it and appointed Rossi to the position. The Federation continued to press a negotiations proposal to include the title in the unit. When the issue remained as the only negotiations issue left unresolved, the

Federation determined not to hold up its contract and advised the Board that it would, instead, take the matter to this Commission for a resolution. The petition was filed with the Board's knowledge and acquiescence and prior to the execution of the new agreement. Therefore, I find that the parties, particularly the Federation, preserved the issue concerning this title by such conduct. See Union Cty. Regional H.S. Bd. Of Ed., D.R. No. 83-22, 9 NJPER 228 (¶14106 1983) (clarification of unit petition was timely where majority representative pressed for inclusion of disputed titles in negotiations, mediation, and factfinding, and promptly filed its CU petition after conclusion of collective agreement; such conduct demonstrated clear and unequivocal intent to preserve the issue); Compare Atlantic Community College, P.E.R.C. No. 85-04, 11 NJPER 30 (¶16015 1985) (Association failed to exercise "due diligence" where it concluded negotiations on all other issues, and advised College it would file clarification of unit petition before the Commission concerning unit status of culinary educators, but did not do so until eleven months after collective agreement was reached).

The title also shares a community of interest with the other unit titles, particularly, the paraprofessional title. Upon being hired, Rossi was informed by the Board that her title was that of a paraprofessional. As such, she performs the same types of duties and possesses similar skills to other

paraprofessionals. When she is absent, for example, another paraprofessional substitutes for her. Additionally, with the exception of her salary, the Board treats her the same as other paraprofessionals. In fact, other paraprofessionals are also considered as being employed on an "as needed" basis.

Finally, the Commission's reluctance to clarify units to include employees who have long been excluded from the unit is partly based upon its concern that such a procedure disenfranchises employees' opportunity to designate a negotiations representative through a secret ballot election. That concern is not present here since the employee is already a member of the Federation and pays dues to that organization.

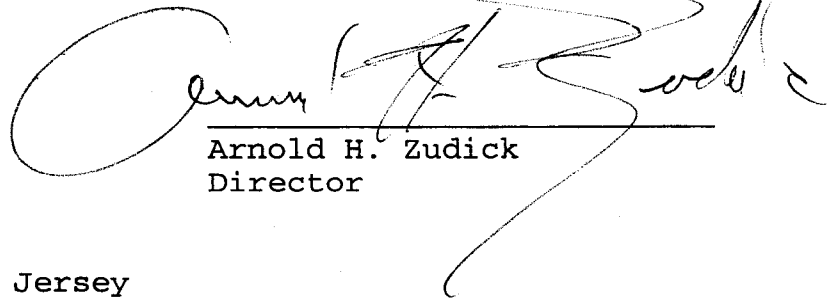
Based upon the above facts and discussion, I find that the Federation did not waive its right to file the instant clarification petition. I further find that the interpreter/transliterator title is appropriate for inclusion in the unit. Accordingly, I find that the title of interpreter/transliterator for a special needs student should be added to the Federation's unit, effective immediately.

Clearview.

ORDER

The Federation's unit in the Monroe Township Board of Education is clarified to include the interpreter/transliterater for a special needs student.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director

DATED: May 5, 2004
Trenton, New Jersey