

D.R. No. 2006-20

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

In the Matter of

TRENTON BOARD OF EDUCATION,

Public Employer,

-and-

Docket Nos. CU-2005-022
and CU-2005-023

TRENTON EDUCATIONAL SECRETARIES
ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a Clarification of Unit petition by the Trenton Educational Secretaries Association to include two titles in its support staff unit. One title, Secretary to the Assistant Superintendent of Human Resources is currently unfilled, and the Director will not ordinarily issue a unit clarification decision on vacant positions. A second title, Insurance Specialist, was placed in the Business and Technical unit and appears more appropriate for that unit.

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Appearances:

For the Respondent,
Sumners, George, P.C., attorneys
(Thomas Sumners, of counsel)

For the Petitioner,
Bergman & Barrett, attorneys
(Michael T. Barrett, of counsel)

DECISION

On February 7, 2005, the Trenton Educational Secretaries Association/NJEA (TESA) filed two clarification of unit petitions with the Public Employment Relations Commission. The Association seeks to add the titles Secretary to the Assistant Superintendent of Human Resources, and Insurance Specialist to its existing unit of secretaries employed by the Trenton Board of Education (Board). TESA claims these titles are new titles which are now appropriate for inclusion in the unit through the instant petitions.

The Board opposes both petitions. It claims the Secretary to the Assistant Superintendent of Human Resources is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and thus inappropriate for inclusion in the unit. The Board argues that position will assist the Assistant Superintendent of Human Resources in developing and preparing the Board's collective negotiations proposals and responses to union proposals. Further, it notes that it has the managerial prerogative to create this confidential position and assign confidential duties and responsibilities which are necessary to the effective administration of the District.

The Board also asserts that the Insurance Specialist title is more appropriate for inclusion in the unit represented by the Trenton Business and Technical Association since it is similar to the Benefits Specialist title which is in that unit; and because that unit has a more appropriate salary guide.

TESA disputes the Board's assertion that the Secretary to the Assistant Superintendent of Human Resources is a confidential employee. According to TESA, the overwhelming majority of secretarial work related to negotiations is performed by the secretary in the Legal Department, a position TESA acknowledges is a confidential employee. Further, TESA notes that an earlier Memorandum of Agreement entered into between the parties limited

the number of confidential employees to one in each department. The Board's designation of another confidential position in the Human Resources Department would, TESA claims, run counter to that Agreement (CU-95-009).

Finally, TESA asserts that the Insurance Specialist's duties are secretarial in nature, and therefore, the title is appropriate for inclusion in its secretarial unit, rather than the Business and Technical unit, as the Board claims.

We have conducted an administrative investigation into the issues raised by the petitions. N.J.A.C. 19:1-2.2. By letter dated May 11, 2006, I advised the parties of my tentative findings and conclusions and invited responses. Neither party filed additional submissions. I make the following:

FINDINGS OF FACT

TESA and the Board are parties to a collective negotiations agreement for the period July 1, 2001 through June 30, 2005. The parties are currently in negotiations for a successor agreement. The recognition clause of the expired agreement in pertinent part provides:

A. The Board hereby recognizes the Association as the sole and exclusive representative for collective negotiations concerning grievances and terms and conditions of employment for all personnel regularly employed under contract, or on leave from the Board, but excluding:

Trenton Administrators and Supervisors
Trenton Education Association

Attendance Officers
Security Officers
Executive Secretarial Unit
Business & Technical Unit
Cafeteria
Para-Professional Unit
Mechanics and Laborers
Custodian Unit

D. Unless otherwise indicated, the terms 'employee' and 'secretary' when used hereinafter in this Agreement shall refer specifically to those employees identified in the negotiating unit defined herein.

Secretary to the Assistant Superintendent of Human Resources

In the Fall of 1997, TESA and the Board entered into a Memorandum of Agreement settling an earlier Petition for Unit Clarification (CU-95-009), in which TESA challenged the Board's exclusion of six secretaries from the unit on the basis that they were confidential employees. The Agreement contemplated that there would be one confidential secretarial employee in each department.

In September 2004, Angelia Fortson was transferred out of her confidential position as the Administrative Assistant for Human Resources. Thereafter, the Board appointed Delina Butler as the confidential secretary in the Human Resources Department. TESA does not dispute that Butler's position performs confidential duties and is thus appropriately excluded from its unit. Butler assists the Assistant Superintendent of Human Resources in developing and preparing the Board's collective negotiations proposals and responses to union proposals and, in

fact, has already attended negotiations sessions with other bargaining units. Further, she gathers data, works with scattergrams, and takes minutes of bargaining meetings. According to TESA, Butler's confidential secretary position in the Human Resources Department keeps within the terms of the Memorandum of Agreement.

However, in March 2005, the Board created a second confidential secretary position in the Human Resources Department. That position's job description is identical to that of Butler's confidential secretary position. That job description provides,

7. Work with Assistant Superintendent to prepare, research and review items for collective bargaining.

a. Preparation of background negotiations, information and data for the Superintendent and the Board.

b. Preparation of scattergrams for bargaining units.

c. Preparation and maintenance of files with respect to grievances filed with the Superintendent, including the Superintendent's responses thereto.

a. preparation of materials related to contract negotiations and contract administration.

d. Maintain contract distribution to all district unions.

e. Prepare all correspondence to union leadership.

- f. Maintain schedule of tasks to be performed by administration per respective bargaining agreement.
- g. Maintain collective bargaining schedule.
- h. Work with the Legal Secretary in the Legal Department to maintain collective bargaining information.
- i. Work with Assistant Superintendent to ensure collective bargaining Memorandum of Agreement items are accurately produced in the written agreement.

The Board asserts that this second confidential position in Human Resources will perform the same undisputedly confidential duties as Butler. Currently, however, this position remains unfilled.

Insurance Specialist

The Insurance Specialist is responsible for administering all non-health related benefits plans. Angelia Fortson is currently in this position.

Originally, upon her September 2004 transfer from the Human Resources Department, Fortson was placed in the TESA unit position of Administrative II Secretary because her duties were and are secretarial in nature. However, the Board then created the title Insurance Specialist and posted the position in January, 2005. Fortson was appointed to the new title, which the Board unilaterally placed in the Business and Technical Unit. The Association contends that the Board did so because Fortson's salary was higher than any contemplated by the TESA salary guide.

The job description for Insurance Specialist provides that the qualifications for the title require an associate's degree or equivalent experience. The title also requires a minimum of four years experience in completing insurance records and required insurance documentation. The duties include:

1. Provide support to the Business Administrator in insurance areas including, but not limited to, property, auto, general liability, EDP, errors and omissions, and unemployment insurance
2. Reconcile reports for the various organizational insurances.
3. Provide technical support when needed and directed by Business Administrator.
4. Maintain ledger as directed by Business Administrator.
5. Maintain accurate files for organizational insurances.
6. Provide required information to insurance companies as directed by Business Administrator.
7. Keep Business Administrator abreast of concerns, problems, and changes in insurances.
8. Disseminates insurance information as directed by Business Administrator.
9. Perform other duties as assigned by Business Administrator.

The Board contends that Fortson handles the Board insurance coverages, processes claims for loss, handles auto insurance claims, and acts as liaison to the Board's insurance counsel, providing information for the Board's defense of law suits. She also prepares insurance forms.

According to James Loper, NJEA Field Representative for both TESA and the Business and Technical Unit, the Business and Technical Unit has, however, indicated that it has no interest in representing the Insurance Specialist position.

ANALYSIS

A clarification of unit petition is appropriately filed where the majority representative has identified and petitioned for newly-created titles or positions during the contract period in which the new title was established and prior to the execution of the next succeeding contract. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370, (¶30160 1999); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980) Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Here, the disputed position of the second secretary to the Assistant Superintendent of Human Resources was created March 2005, and the disputed title of Insurance Specialist was created in November 2004; thus both were created during the contract period which expired on June 30, 2005. The parties have not yet executed a successor contract; therefore, the petitions are timely filed. Borough of Somerville, D.R. No. 2005-17, 31 NJPER 132 (¶57 2005); Burlington Cty College, D.R. No. 2006-5, 31 NJPER 382 (¶150 2005).

However, the Commission will not ordinarily issue decisions on vacant positions. This long-standing policy prevents reliance on a job description alone, and avoids the inappropriate consequences of guesswork about what duties the employee will actually perform once the position is filled. See N.J. Turnpike Auth. and AFSCME, P.E.R.C. No. 94-24, 19 NJPER 461 (¶24218 1993), rev'd and rem'd 289 N.J. Super. 23 (App. Div. 1996), aff'd as mod. 150 N.J. 331 (1997) (Commission declines to decide vacant titles where former incumbents retired); Tp. of Bordentown, D.R. No. 2006-3, 31 NJPER 263 (¶104 2005) (Director declines to decide status of vacant deputy court administrator); Trenton Bd. of Ed., D.R. No. 2001-009, 27 NJPER 197 (¶32066 2001) (Director dismisses petition seeking to include newly created vacant paralegal assistant position into clerical unit); City of Newark, D.R. No. 2000-11, 26 NJPER 234 (¶31094 2000) (Director declines to determine status of several vacant positions in city's law department); and Town of Secaucus, D.R. No. 95-25, 21 NJPER 149 (¶26090 1995) (Director declines to consider status of vacant position, assistant to construction official).

Here, while the Board has apparently adopted a job description for the second "confidential" position in the Human Resources Department, it would be inappropriate for us to decide the unit status of that yet unfilled position based solely upon the Board's assertion of intended job responsibilities.

Accordingly, the unit eligibility of the second "confidential" secretary in Human Resources will not be determined at this time. After the position is filled and the appointee assumes whatever duties are assigned, we will be in a better position to evaluate the true nature of the position. Accordingly, either party may refile the CU petition at that time.^{1/}

The Board demonstrated that the salary of the Insurance Specialist is more in line with salary guides for the Business and Technology unit, and further maintains that the title performs job functions more like the Benefits Specialist, a title already in the Business and Technical Unit.

N.J.S.A. 34:13A-6 empowers the Commission to determine the appropriate unit and provides that we do so "with due regard for community of interest." It appears that the Insurance Specialist, at least according to the job description, may have a

^{1/} Notwithstanding the Association's claim that the earlier Memorandum of Agreement bars the creation of a second confidential position in Human Resources, we would decide the position's unit status on the merits. That agreement does not necessarily restrict the Board from the legitimate and good faith creation of another confidential position. An employer has a managerial prerogative to create new positions and assign confidential duties. Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 29 (1973); Ramapo-Indian Hills Bd. of Ed. v. Ramapo-Indian Hills Ed. Ass'n, 176 N.J. Super. 35, 47 (1980); Monroe Tp. Fire District, P.E.R.C. No. 98-158, 24 NJPER 347 (¶29165 1998); Gloucester Cty., P.E.R.C. No. 90-36, 15 NJPER 624 (¶20261 1989). Moreover, an employee found to be confidential is not a public employee covered by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3.

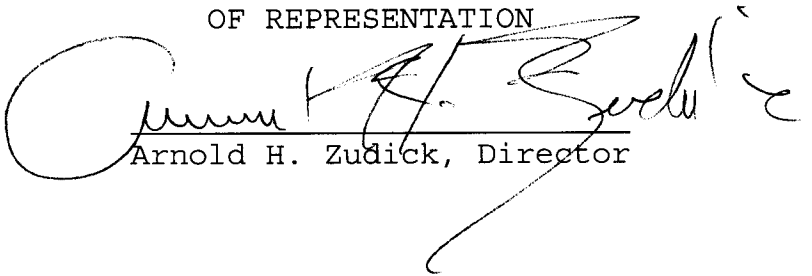
greater community of interest with the Business and Technical Unit, rather than TESA's unit. I note that the position qualifications require an associate's degree or equivalent experience, qualifications not normally required for titles in TESA's unit. It is also required to have a minimum of four years experience in completing insurance records and required insurance documentation. The duties include providing support to the School Business Administrator for insurance issues, including property, auto, liability, EDP, errors and omissions, and unemployment insurance. The employee in the position is expected to reconcile insurance reports, maintain ledgers and files for organizational insurances, disseminate insurance information, and provide technical support to the Business Administrator. It appears by the job description that the title does not perform secretarial duties, but rather performs duties that are more technical in nature and therefore, shares a greater community of interest with the business and technical unit. While TESA asserts that Fortson's duties are primarily secretarial, it submits no specific example of the duties that individual might perform which would be primarily clerical. Further, even if, as the NJEA Representative claims, the Business and Technology Association is not interested in representing the title, the positions of the parties, while relevant to unit placement, are not dispositive. Under these circumstances, I find that the

Insurance Specialist title is appropriately placed in the Business and Technical Unit.^{2/} Therefore, I dismiss the Petition to add the title to TESA's unit.

ORDER

The Association's Petition for Unit Clarification is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: May 26, 2006
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 June 8, 2006.

^{2/} Any refusal by the Business and Technical Unit to represent that title in what appears to be the appropriate unit, does not necessarily justify its placement into any other unit. The Business and Technical unit may be obligated to continue to represent that title.