

D.R. No. 2012-4

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 No. CU-2011-006

TRENTON EDUCATIONAL
SECRETARIES ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of nonsupervisory clerical employees represented by the Trenton Educational Secretaries Association (TESA) to include the title, purchasing clerk. The Trenton Board of Education (Board) opposed the petition, asserting that the title is appropriately placed within the negotiations unit of blue and white collar employees represented by the Trenton Business and Technical Association (TBTA). The TBTA did not intervene on the petition.

The Director found the petition procedurally appropriate and timely notwithstanding an agreement between the Board and the TBTA to include the purchasing clerk title in the TBTA bargaining unit, since the TESA was not a party to that agreement and no facts suggest that the TESA waived its right to file the petition. The Director found that the Board did not provide any facts demonstrating that the negotiations unit represented by the TBTA is the most appropriate unit for the purchasing clerks title, nor did it demonstrate that the purchasing clerks do not share a community of interest with the unit represented by the TESA.

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Appearances:

For the Public Employer,
Parker McCay, PA
(Elizabeth M. Garcia, of counsel)

For the Petitioner,
Selikoff and Cohen, PA
(Keith Waldman, of counsel)

DECISION

On September 13, 2010, the Trenton Educational Secretaries Association (TESA) filed a petition to clarify its unit of secretarial employees to include the title, purchasing clerk. The Trenton Board of Education (Board) opposes the petition, asserting that the title is appropriately placed within the negotiations unit of blue and white collar employees represented by the Trenton Business and Technical Association (TBTA). On April 26, 2011, we wrote to the TBTA, inviting it to intervene on the petition. Although it did not intervene under N.J.A.C. 19:11-2.7, its President, Tanisha Powell, filed a certification.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. On September 6, 2011, I wrote to the parties, advising the parties of my tentative findings and conclusions and invited responses. No party replied. The disposition of the petition is properly based upon our administrative investigation. No substantial material facts are disputed which require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following:

The TESA represents a unit of all non-supervisory clerical employees of the Board. Among the titles in the TESA's unit are administrative I secretary, administrative II secretary, and senior secretary. The Board and the TESA are parties to a collective negotiations agreement effective July 1, 2009 through June 30, 2012.

The TBTA represents a unit of blue and white collar employees. Among the titles in the TBTA unit are accounts payable clerk, attendance officer, analyst, bookkeeper, accountant, technician, dispatcher, mechanic, and driver.

On or about May 3, 2010, the Board created the purchasing clerk title. The job description for the title provides, in pertinent part, that the purchasing clerk is to maintain the office file system for purchasing orders, vendors, contracts, and pricing information; assist in converting requisitions to

purchase orders; answer general inquiries regarding purchasing guidelines for schools and departments; use word processing, email, spreadsheets, copy machines, fax machines, printers, and calculators; coordinate purchasing details with vendors, including price revisions, order cancellations, discontinued items, acceptable substitutes, delivery date revisions, and invoice discrepancies; assist the business service coordinator/purchasing agent in establishing and maintaining vendor registration files; sort and distribute purchasing documents; assist with the preparation and distribution of invitations for bids, requests for proposals, and purchase orders for professional and technical services, materials, supplies, and equipment.

Also on May 3, 2010, the Board and the TBTA signed an agreement to include the purchasing clerk title in the TBTA bargaining unit, effective July 1, 2010.

The Board posted a vacancy announcement for the new title on May 26, 2010. Thereafter, the Board hired three purchasing clerks - Iris Dunn, Rosa Gonzalez, and Jill Stratton. On June 30, 2010, the Board laid off three secretaries in TESA's negotiations unit who worked in the purchasing department - Elizabeth Gill, Donna Gillard, and Lynda Sagonowski.

Gill was employed as an administrative II secretary in the purchasing department for several years before she was laid off.

Gillard was employed as a senior secretary in the purchasing department for several years before she was laid off. Both certify that during the time they were assigned to the purchasing department, they performed every job duty listed on the purchasing clerk job description. They also certify that they performed additional purchasing duties not listed on the purchasing clerk job description.

Ann Sciarrotta is the Vice President of TESA. She is employed by the Board as an administrative II secretary and is assigned to the school health services department. As part of her job duties, Sciarrotta visits the purchasing department to submit requisitions and sometimes discuss purchase orders. In so doing, Sciarrotta interacted with the secretaries formerly assigned to the purchasing department and now interacts with the purchasing clerks. Sciarrotta certifies that the purchasing clerks perform the same duties which were formerly performed by the secretaries assigned to the purchasing department.

Gene Queval has been employed by the Board as an accounts payable specialist since the 2008-2009 school year. He works in an office two doors away from the office where purchasing clerks perform their duties. Queval certifies that as an accounts payable specialist, he worked with the secretaries previously assigned to the purchasing department. He certifies that the work currently being performed by the purchasing clerks has not

changed "one iota" from the work performed by the secretaries previously assigned to the purchasing department.

Queval certifies that employees in the accounts payable office and in the purchasing department work closely with each other and that his duties require him to visit the purchasing department multiple times each day, where he receives paperwork prepared by the purchasing clerks. He certifies that those papers are identical to those formerly prepared by the secretaries who were assigned to the purchasing department. He certifies that the purchasing clerks type, file, and answer telephones, just as the secretaries did.

Tanisha Powell is the TBTA President and is employed by the Board as an information management assistant in the information technology department. Powell certifies that the purchasing clerks perform "clerk-like" duties similar to those that she performs.

ANALYSIS

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the Act or as set forth in the unit definition in a Commission certification or the parties' recognition agreement. Typically, a clarification is sought as to whether a particular title is contemplated within the scope of the unit definition. Clearview Reg. Bd. of Ed.,

D.R. No. 78-2, 3 NJPER 248 (1977). A 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. In such circumstances, a determination to include the title will ordinarily be effective immediately. Clearview at 251.

The Board created the purchasing clerk title on May 3, 2010, during the term of its current collective negotiations agreement with the TESA. The petition is therefore procedurally appropriate and timely, notwithstanding the agreement between the Board and the TBTA to include the purchasing clerk title in the TBTA bargaining unit. The TESA was not a party to that agreement and no facts suggest that the TESA waived its right to file the petition.

The Commission is charged with determining in each instance what unit is appropriate. N.J.S.A. 34:13A-6. Where more than one unit is potentially appropriate, the Commission must determine which unit configuration is most appropriate. State v. Professional Association of N.J. Dept. of Ed., 64 N.J. 231 (1974)

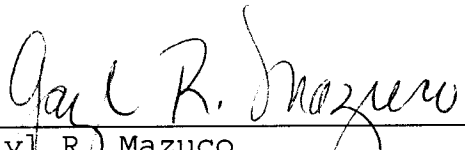
("Professional Ass'n."). N.J.S.A. 34:13A-5.3 requires that negotiations units be defined "with due regard for the community of interest among the employees concerned." The Commission has found that a community of interest exists among virtually all non-supervisory employees in an educational setting. West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp 218 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

The Board did not provide any facts demonstrating that the negotiations unit represented by the TBTA is the most appropriate unit for the purchasing clerks, nor did it demonstrate that the purchasing clerks do not share a community of interest with the unit represented by TESA. None of the Board's certifications dispute that the work now performed by purchasing clerks used to be performed by secretaries assigned to the purchasing department. Even if some facts had supported the Board's position, I am constrained by the TBTA's failure to intervene on the petition. Accordingly, I clarify the non-supervisory clerical unit represented by TESA to include the title, purchasing clerk.

ORDER

The unit is clarified to include the title, purchasing clerk, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco
Director of Representation

DATED: September 28, 2011
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 October 11, 2011.