

D.R. NO. 2001-7

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

In the Matter of

MILLTOWN BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2000-14

MILLTOWN EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a negotiations unit at the Milltown Board of Education to include the secretary to the principal at the Joyce Kilmer School. The Director concludes that the secretary is not a supervisor and is eligible for inclusion in the Milltown Education Association's nonsupervisory unit.

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Appearances:

For the Public Employer
Alan J. Schnirman, attorney

For the Petitioner
Richard Petersen, NJEA Field Representative

DECISION

On September 27, 1999, the Milltown Education Association, NJEA (Association) filed a clarification of unit petition with the Public Employment Relations Commission (Commission). The petition seeks to include the secretary to the principal of Joyce Kilmer School in the Association's broad-based negotiations unit of non-supervisory employees employed by the Milltown Board of Education (Board). The Board opposes the petition and argues that the position is supervisory and ineligible for inclusion in the unit. An investigation has been conducted into the issue raised by the petition. N.J.A.C. 19:11-2.2 and 2.6. As a consequence of the investigation, correspondence among the parties was exchanged. On November 22, 2000, the Board requested that we pend further

processing of this matter until December 22, 2000, in order to allow it the opportunity to meet and resolve its position. The Association consented to the Board's request and the case was held in abeyance until then. On February 1, 2001, we wrote to the parties notifying them of our tentative findings and conclusions and invited their responses. Neither party responded. The investigation reveals the following findings.

At the time the petition was filed, the Association had a collective negotiations agreement covering the unit for the period July 1, 1997 to June 30, 2000. The parties have since entered into a new agreement which begins July 1, 2000. According to the 1997-2000 agreement, at Article I - Recognition, the unit includes all certificated non-administrative personnel, and all full-time contracted secretarial, custodial, and school clerk-teacher aides. Specifically excluded are all part-time aides, library aides, lunch aides, teacher aides, secretary to the superintendent, confidential clerk-typist, bookkeeper-payroll specialist, other central office personnel, and confidential secretary to supervisor of curriculum, instruction, technology and special education. In or about August 1999, the Board changed the job description of the secretary to the Joyce Kilmer School and unilaterally removed the position from the Association's unit.

The secretary at issue reports to Dr. Burt Nussbaum, the Joyce Kilmer School principal. According to a written job description, revised on April 26, 1999, the secretary's job goal is

"to provide...support services to the principal and school office [and] to handle managerial responsibilities of the office to assure an effective and efficiently run department." The description enumerates at least 42 job responsibilities. The secretary organizes clerical and secretarial work; acts as the principal's personal secretary; compiles information; completes reports; maintains schedules and calendars; maintains lists of students, statistical and financial records and files; completes reimbursement forms; reviews the principal's mail; takes and transcribes dictation; schedules meetings; contacts parents; coordinates locker assignments; and evaluates other office staff.

ANALYSIS

The Association's petition is procedurally appropriate. In August 1999, the Board changed the job description of the secretary to the Joyce Kilmer School and unilaterally removed the position from the Association's negotiations unit. The Association then acted promptly to restore the position to its unit by filing the instant clarification petition. It did so prior to the execution of a successor collective agreement with the Board for this unit. See generally Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977) (recent change in circumstances makes CU petition appropriate); Rutgers University, D.R. No. 84-19, 10 NJPER 284

(¶15140 1984) (CU precipitated by changed circumstances must be filed before successor contract is signed).^{1/}

The Board argues that the secretary to the Kilmer School should remain outside the Association's unit because she is a supervisor. The Act provides at N.J.S.A. 34:13A-5.3 that supervisors shall not be included in units with non-supervisory employees. The Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Tp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend these actions. An indication that the power claimed to be possessed is actually exercised is needed. See Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976) and City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987).

Here, there are no facts supporting the claim that the secretary has either been given the authority to supervise others or has actually exercised that authority, including effectively recommending the hiring, firing or disciplining of another employee. No employees over whom this secretary allegedly possesses

^{1/} Disputes over unit composition are best addressed through a clarification of unit petition. In fact, the Board might have filed a CU petition rather than risking an unfair practice that comes through unilateral action. See Passaic Cty. Reg. Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

supervisory authority were identified. No examples were provided of her having recommended the hiring, firing or disciplining of other personnel.

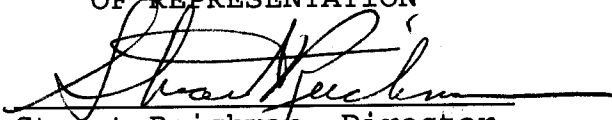
Further, despite the Board's assertion in the general job description that the secretary "evaluates" other staff, there are no examples of her having evaluated any other employee, or explanation about how such evaluations are used in connection with other personnel actions. Even if there were evidence that this secretary had input into evaluations, such evidence without a specific showing of an adverse personnel action would not be sufficient to support the conclusion that she is a supervisor within the meaning of the Act. See Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987) (Commission found that business administrator's secretaries were not supervisors based solely on their input into a clerk's performance evaluation).

Based upon the above facts and applicable standards, I conclude that the secretary to the principal at the Joyce Kilmer School is not a supervisor and is eligible for inclusion in the Association's unit.

CONCLUSION

The secretary to the principal at the Joyce Kilmer School is included in the negotiations unit represented by the Association.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: February 23, 2001
Trenton, New Jersey