

D.R. NO. 2020-5

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

In the Matter of

BEDMINSTER TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2017-015

BEDMINSTER EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a clarification of unit petition (petition) filed by Bedminster Education Association (Association). The petition sought clarification of a unit of certificated and non-certificated employees of the Bedminster Township Board of Education (Board) to include the titles, technology technician; executive assistant to the business administrator and supervisor of student services; school secretary/data specialist; administrative assistant to the superintendent, school principal, and director of instruction; payroll/human relations; accounts payable/assistant board secretary; and transportation coordinator/receptionist. Given that the parties resolved their dispute regarding the executive assistant to the business administrator and supervisor of student services, technology technician, and transportation coordinator/receptionist titles, the Director only addressed the remaining titles at issue. The Director determined that the petition was not timely filed based upon the undisputed fact that the Association became aware of changes to existing job titles/duties and newly-created titles (i.e., the petitioned-for titles) before or shortly after the parties' 2012-2015 collective negotiations agreement (CNA) expired but did not file the petition until after both parties executed, and ratified, a memorandum of agreement for their successor CNA; and the undisputed fact that the Board wrote a memorandum to the Association providing that certain petitioned-for titles were confidential and that the parties had agreed to exclude those titles from the Association's unit, and the Association in turn informed at least two of three of the employees serving in those titles that they were being removed from the Association's unit. The Director found that the Association was obligated to raise the issue of clarification by either (a) filing the petition before concluding negotiations for the 2015-2019 CNA; or (b) concluding negotiations for the 2015-2019 CNA but explicitly reserving its right to file the petition with the Commission.

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Appearances:

For the Public Employer, Busch Law Group, Inc.,
attorneys (Nicholas Celso, of counsel)

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

DECISION

On December 2, 2016, the Bedminster Education Association (Association) filed a clarification of unit petition (petition) seeking to clarify its collective negotiations unit of certificated and non-certificated personnel employed by the Bedminster Township Board of Education (Board) to include the titles, technology technician; executive assistant to the business administrator and supervisor of student services; school secretary/data specialist; administrative assistant to the superintendent, school principal, and director of instruction; payroll/human relations; accounts payable/assistant board secretary; and transportation coordinator/receptionist. The

Association contends that the Board unilaterally removed the petitioned-for titles from the unit and that the petitioned-for titles are not confidential. The Board opposes the petition, arguing that the Association has waived its right to clarification because the petition was not timely filed and that the petitioned-for titles must be excluded from the Association's unit because they are confidential and are incompatible with membership in a negotiations unit.^{1/}

On March 9, 2017, an investigatory conference was held. On April 7, 2017, a Commission staff agent sent a letter to the Board and the Association requesting responses to a series of questions (soliciting facts) about the petitioned-for employees' job duties and related matters. The staff agent requested certifications or affidavits of individuals with personal knowledge of such responsibilities, together with specific examples of work performed and detailed explanations of when the titles were created and filled; where they fit within the Board's

^{1/} The Association has conceded that the title executive assistant to the business administrator and supervisor of student services is confidential and should be excluded from the unit. See Association's June 2, 2017 Position Statement at 13. The Board has conceded that the titles technology technician and transportation coordinator/receptionist are not confidential. See Board's June 2, 2017 Position Statement at 2. Accordingly, this decision will only address the remaining titles at issue - i.e., school secretary/data specialist; administrative assistant to the superintendent, school principal, and director of instruction; payroll/human relations; and accounts payable/assistant board secretary.

organizational hierarchy; whether title names were ever changed and/or whether related job descriptions have ever been revised; whether the titles were discussed during contract negotiations; and whether the titles performed confidential duties within the meaning of the Act. The letter advised the parties that the "failure . . . to provide competent evidence in support of a claim . . . may result in the dismissal of the petition or rejection of a position opposing the petition."

On June 2, 2017, the Board filed a response, altogether comprised of a letter; exhibits; a certification from Marguerite Colonel (Colonel), Executive Assistant to the Superintendent, School Principal, and Director of Instruction; a certification from Jennifer Giordano (Giordano), Superintendent; a certification from Kimberly Jeronimo (Jeronimo), former Payroll/Human Relations/Assistant Board Secretary and Payroll Consultant; a certification from Karna Johnsen (Johnsen), School Secretary/Data Specialist; a certification from Mary Marone (Marone), Executive Assistant to the Business Administrator/Board Secretary; a certification from Liz Meechan (Meechan), former Transportation Coordinator/Receptionist and current Payroll/Benefits Specialist; a certification from Lisa Rica (Rica), Accounts Payable Purchasing Specialist; and a certification from Alicia Schauer (Schauer), Business Administrator/Board Secretary.

Also on June 2, 2017, the Association filed a response, altogether comprised of a letter; a certification from Danny Hughes (Hughes), Technology Technician; a certification from Kimberly Jeronimo (Jeronimo), the Board's former Payroll/Human Relations/Assistant Board Secretary and currently Franklin Township Board of Education's Payroll Supervisor; and a certification with supporting exhibits from Jolanta Kolodziejcki (Kolodziejcki), Association Co-President.

On March 1, 2019, another Commission staff agent sent a letter to the parties requesting clarification of certain responses that were previously provided by Jeronimo, Johnsen, and Rica. The staff agent also requested clarification and additional information pertaining to the title administrative assistant to the superintendent, school principal, and director of instruction.

On March 29, 2019, the Association filed an email providing that it had "repeatedly attempted to contact Jeronimo, who . . . left employment with the [Board] before submitting her May 24, 2017 certification," but "[had] not been able to [reach] her." The Association specified that "unless [it] hear[d] from Jeronimo . . . , [it would] rest[] on its submissions to date and will not file a supplementary certification for Jeronimo."

On April 1, 2019, the Board filed a letter and a supplemental certification with supporting exhibits from Giordano.

On July 19, 2019, the Commission staff agent inquired and counsel for the parties subsequently confirmed that the submissions set forth above encompass the complete record in this matter. On July 24, 2019, a Commission staff agent sent an email to the parties seeking their collective negotiations agreements (CNA) and/or memoranda of agreement (MOA) for the period 2007-2015. Also on July 24, 2019, the Association provided the parties' CNAs and/or MOAs for the period 2007-2015. On July 26 and 29, 2019, a Commission staff agent sent an email to the parties seeking any/all tables of organization that existed for the school district before/during/after the petition was filed; and the date when the Association ratified the parties' 2015-2019 MOA. On August 7, 2019, the Board provided additional tables of organization for the period 2013-2018; the date when the Board ratified the parties' 2015-2019 MOA; and the date when the parties executed the 2015-2019 CNA. On August 8, 2019, the Board provided - and the Association confirmed - the dates when the Association and the Board, respectively, ratified the parties' 2015-2019 MOA. To date, neither party has provided any new facts or further response to our requests for information.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. Our review of the parties' submissions does not present substantial and material factual issues requiring an evidentiary hearing. N.J.A.C. 19:11-2.6(f). I find the following facts.

Association's Negotiations Unit

The Board and the Association signed a CNA extending from July 1, 2012 through June 30, 2015. Article I of the 2012-2015 CNA, entitled "Recognition," provides:

A. The Board hereby recognizes the Bedminster Education Association as the exclusive and sole representative for collective negotiations for all certificated professional personnel under contract including:

Certificated Personnel

Classroom Teachers
Special Subject Teachers
Special Education Teachers
Librarian
School Social Worker
Psychologist
School Nurse
Guidance Counselor(s)
Learning Disabilities Teacher Consultant (LDTC)
Speech Language Therapist

Non-Certificated Personnel

Instructional Aides
Principal's Secretary*
School Secretary*
Technology Assistant/Support*
Payroll/Human Resource Specialist*
Accounts Payable/Assistant Board Secretary*
Transportation Secretary*
Office Assistant*
*Referred Collectively as Support Staff

but excluding:
 Superintendent
 Board Secretary & Administrative Assistants
 Principal
 Asst. Principal/Supervisor
 Director of Student Services
 Curriculum Technology Specialist
 Operations Manager
 Custodial and Maintenance Staff
 Substitute Teachers
 Teacher Interns

The term employee, as set forth hereafter, shall refer to all certificated personnel who are members of the bargaining unit. Where a personal pronoun is used in this agreement, it is understood to include both genders. Terms and conditions of employment for instructional aides and support staff are set forth in Article XIX.^{2/}

Kolodziejski certifies that “[i]n 2014, after 6 support personnel members moved to de-certify the Association, a settlement was reached after the Association and the Board reviewed all the positions in the bargaining unit and mutually agreed which positions would remain in the unit . . . [and] specifically agreed to keep all of the contested positions in the unit.” See Kolodziejski Certification, ¶¶(II)(2)(A). According to Kolodziejski, “[a]fter the settlement was reached, the

^{2/} On February 2, 2012, the Association was certified as the majority representative of all instructional aides employed by the Board to be added to the existing unit of all regularly employed non-supervisory certificated employees represented by the Association. (Dkt. No. RO-2012-030).

Association continued to represent the employees in the contested positions." See Kolodziejski Certification, ¶¶(II)(2)(A).^{3/}

Kolodziejski certifies that ". . . between 2012 and 2015, the Board changed the title of the contested positions and unilaterally removed them from the bargaining unit." See Kolodziejski Certification, ¶¶2, (I)(2)(A), (I)(7)(B), (I)(8). According to Kolodziejski, after the parties' 2012-2015 CNA expired, "[n]egotiations between the Association and the Board for a [successor] CNA lasted for approximately 1 year" and "[d]uring these negotiations, the Board and the Association had many intense and thorough discussions over the terms and conditions of the [successor CNA]." See Kolodziejski Certification, ¶(II)(2)(A). However, Kolodziejski certifies that ". . . the Board never raised an issue with the contested positions being part of the bargaining unit" and the parties

^{3/} On January 15, 2014, the Bedminster Support Staff filed a decertification petition seeking to decertify the Association as the majority representative for employees in the following six support staff titles: principal's secretary; school secretary; technology assistant/support; payroll/human resources; accounts payable/assistant board secretary; and transportation secretary. (Dkt. No. RD-2014-005). On April 8, 2014, the Director of Representation issued a letter dismissing the decertification petition because it was not accompanied by a valid showing of interest of not less than thirty percent of the Association's entire unit. The Director noted that the petitioned-for titles were included in the Association's unit.

". . . did not specifically discuss the composition of the bargaining unit." See Kolodziejcki Certification, ¶(II)(2)(A).

Giordano, who was appointed Superintendent in August 2015, certifies that ". . . [t]he parties entered into negotiations [for a successor agreement] in May of 2015 and exchanged proposals . . . [but] [n]either party proposed to change the Recognition Clause." See Giordano Certification, ¶3; Board's June 2, 2017 Position Statement, Exhs. C-D. However, according to Giordano ". . . the Administration entered into discussions with the Association in 2015 and the parties agreed that the Assistant Board Secretary, Payroll/Human Relations, and School Secretary/Data Specialist positions were confidential and would not be part of the Association." See Giordano Certification, ¶2.

On September 23, 2015, Giordano sent a memorandum to Cheryl Mitchell (Mitchell), Association Co-President, with copies to Alicia Subervi, Association Co-President; Karen Bishop, Assistant Board Secretary; Kimberly Jeronimo (Jeronimo), Payroll/Human Relations; and Karna Johnsen (Johnsen), School Secretary/Data Specialist. The memorandum provides:

As per our verbal conversation on September 22, 2015 the positions of Asst. Board Secretary, Payroll/Human Relations and School Secretary/Data Specialist are no longer included as part of the [Association's] bargaining unit effective with the 2015-2016 school year.

As per your verbal confirmation, due to the language in the job descriptions for the

above mentioned positions, it is inferred that they are not eligible for membership in the [Association]/NJEA.

If you have any other questions and/or concerns regarding this matter, please don't hesitate to reach out to me.
[Board's June 2, 2017 Position Statement, Ex. B]

Jeronimo certifies that ". . . [her] job description changed in 2015 and [she] was informed by Mitchell, Association Co-President, that [her] position was being removed from the Association because the job duties were incompatible with Association membership." See Jeronimo's Board Certification, ¶3. Johnsen also certifies that ". . . [she] was informed by Mitchell, Co-President of the Association, in September of 2015 that [her] position was confidential and no longer part of the Association." See Johnsen Certification, ¶2.

On March 7, 2016, the parties executed an MOA for a successor CNA extending from July 1, 2015 through June 30, 2019. See Board's June 2, 2017 Position Statement, Ex. E; Giordano Certification, ¶4. On September 7, 2016, the Association ratified the MOA. See Board's August 8, 2019 email; Association's August 8, 2019 email. On November 17, 2016, the Board ratified the MOA. See Board's June 2, 2017 Position Statement, Ex. F; Giordano Certification, ¶5; Board's August 8, 2019 email; Association's August 8, 2019 email.

On November 18, 2016, the Association filed the instant petition.^{4/}

On November 29, 2016, the parties executed their 2015-2019 CNA. See Board's August 7, 2019 email. Article I of the parties' 2015-2019 CNA, entitled "Recognition," provides:

A. The Board hereby recognizes the Bedminster Education Association as the exclusive and sole representative for collective negotiations for all certificated professional personnel under contract including:

Certificated Personnel

Classroom Teachers
 Special Subject Teachers
 Librarian
 School Social Worker
 Psychologist
 School Nurse
 Guidance Counselor(s)
 Learning Disabilities Teacher Consultant (LDTTC)
 Speech Language Therapist

Non-Certificated Personnel

Instructional Aides
 Principal's Secretary*
 School Secretary*
 Technology Assistant/Support*
 Payroll/Human Resource Specialist*
 Accounts Payable/Assistant Board Secretary*
 Transportation Secretary*
 Office Assistant*
 Transportation Coordinator/Receptionist*
 *Referred Collectively as Support Staff

but excluding:
 Superintendent

^{4/} We received the petition on November 18, 2016. It was not docketed until December 2, 2016. Unable to account for the discrepancy and for purposes of this decision, I assume that the petition was filed on November 18, 2016.

Board Secretary & Administrative Assistants
Principal
Asst. Principal/Supervisor
Director of Student Services
Curriculum Technology Specialist
Operations Manager
Custodial and Maintenance Staff
Substitute Teachers
Teacher Interns

The term employee, as set forth hereafter, shall refer to all certificated personnel who are members of the bargaining unit. Where a personal pronoun is used in this agreement, it is understood to include both genders. Terms and conditions of employment for instructional aides and support staff are set forth in Article XIX.^{5/}

Administrative Organization and Structure

The Board's 2017 table of organization shows one title that reports to the Board:

-Superintendent
[Board's June 2, 2017 Position Statement, Ex. A]

The Board's 2017 table of organization includes a minimum of five titles, in addition to the executive assistant to superintendent, principal, and director of instruction (EASPDI), that report to the Superintendent:

-Principal;
-Director of Instruction;
-Director of Student Services/LDTC;
-Business Administrator/Board Secretary; and
-Technology Coordinator.
[Board's June 2, 2017 Position Statement, Ex. A]

^{5/} The parties' 2012-2015 CNA included Special Education Teachers; it did not include Transportation Coordinator/Receptionist.

The Board's 2017 table of organization shows that two titles report to the Principal:

- Teachers;
 - School Secretary/Data Specialist (SSDS).
- [Board's June 2, 2017 Position Statement, Ex. A]

The Board's 2017 table of organization shows that six titles report to the Business Administrator/Board Secretary:

- Accounts Payable/Ass't Board Secretary (APABS);
 - Payroll/Human Relations (PHR);
 - Transportation;
 - Buildings & Grounds Maintenance;
 - Food Service; and
 - Childcare.
- [Board's June 2, 2017 Position Statement, attached Ex.]

Alicia Schauer (Schauer), the Board's Business Administrator, certifies that "[b]ecause the Bedminster School District is small and . . . a one building school district, many positions in the school district serve dual functions." See Schauer Certification, ¶3.

PHR/PBS Title

The title, payroll/human resources specialist was changed to payroll/human relations (PHR) when the Board created the latter title in/or around April 2015; the PHR job description was revised and approved/issued on April 23, 2015. See Kolodziejcki Certification, ¶¶(I)(2)(A), (I)(7)(B), (I)(8), Exhs. B, D; Board's June 2, 2017 Position Statement, Ex. O. The PHR title was revised to payroll/benefits specialist (PBS), and the related job description was revised and approved/issued, on May 25, 2017.

See Board's June 2, 2017 Position Statement, Ex. O. The PHR/PBS title was discussed with the Association and the parties agreed that it was "confidential" in September of 2015; the PHR/PBS title was not included in the support staff salary calculations during the last round of negotiations with the Association. See Giordano Certification, ¶18; Schauer Certification, ¶¶20, 32.

Kimberly Jeronimo (Jeronimo) served as PHR/PBS from September 2013 until February 24, 2017; her original title, payroll/human resources specialist, was changed to payroll/benefits specialist for the 2014-2015 school year, payroll/human relations specialist for the 2015-2016 school year, and payroll/benefits specialist/assistant board secretary for the 2016-2017 school year. See Jeronimo Ass'n Certification, ¶¶1, (2)(I)(4); Giordano Certification, ¶¶16-17; Schauer Certification, ¶¶21, 29. Jeronimo assumed the title of assistant board secretary on July 1, 2016; presently, no one serves in that title but the Board intends to train the employee holding the accounts payable/purchasing specialist/assistant board secretary position. See Schauer Certification, ¶28.

Liz Meechan (Meechan) is the current PHR/PBS; she was hired as the transportation coordinator/school receptionist (included in the Association's unit) in July, 2015. She accepted the PHR/PBS position on/about February 27, 2017. See Meechan Certification, ¶1.

Kolodziejski certifies that when the title, payroll/benefits specialist was changed to PHR, the following job duties were changed:

New Duties:

- Preparation and processing of employee accident reports
- Handle retiree annuity payments and prepare all retirement paperwork
- Assist the Business Administrator and Superintendent in negotiations, personnel data collection, salary guide proposals, and health benefit analysis

Former Duties No Longer Responsible for:

- Banking
 - Perform accounts receivable function
 - Billing and collection for contractor, facilities use, and tuition
 - Assist the District Auditors in preparation for the annual audit
 - Works to develop staff morale and loyalty to the organization
 - Treats all personnel fairly, without favoritism or discrimination while insisting upon the performance of duties
 - Gives proper and definite directions to all staff
 - Performs other duties and responsibilities incidental to the office and/or as assigned by the Superintendent or designee
- [Kolodziejski Certification, ¶(I)(7)(B).

Kolodziejski certifies that she has ". . .never seen the PHR attend negotiations for a new CNA or participate in grievance procedures." See Kolodziejski Certification, ¶(I)(3)(A).

EASPD I Title

The title, secretary to the principal was changed to administrative assistant to the superintendent, school principal, and director of instruction (AASPD I) when the latter title was

created on/around January 1, 2014; the AASPDI job description was approved/issued on March 17, 2015. See Kolodziejski Certification, ¶¶(I)(2)(A), (I)(7)(B), (I)(8), Exhs. B, D; Board's June 2, 2017 Position Statement, Ex. J. The AASPDI title was again revised to executive assistant to the superintendent, school principal, and director of instruction (EASPDI), and the related job description was rewritten and approved/issued, on August 20, 2015. See Schauer Certification, ¶14; Board's June 2, 2017 Position Statement, Ex. J; Kolodziejski Certification, Exhs. B, D. The EASPDI title has never been included in the Association's unit and was not included in the support staff salary calculations during the last round of collective negotiations with the Association. See Giordano Certification, ¶7; Schauer Certification, ¶¶16, 18.

Marguerite Colonel is the current EASPDI; she served as AASPDI and then EASPDI since on/about January 1, 2014. See Giordano Certification, ¶6; Kolodziejski Certification, ¶(I)(4)(A, C). Colonel certifies that she began to work for the Superintendent in January of 2014 and was never included in Association's unit. See Colonel Certification, ¶4. According to Colonel, ". . . [n]o one from the Association approached [her] during negotiations to ask if [she] wanted to be in the Association or to state that [she] belong[s] in the Association." See Colonel Certification, ¶5.

Schauer certifies that “. . . the updated job description was modified slightly to include ‘performing all other duties assigned by Superintendent’, ‘creating agenda by gathering information from multiple sources’ and ‘to perform other duties and responsibilities incidental to the office and/or assigned by the Superintendent.’” See Schauer Certification, ¶18.

Kolodziejcki certifies that she has “. . . never seen the AASPDPI attend negotiations for a new CNA or participate in grievance procedures.” See Kolodziejcki Certification, ¶(I)(3)(A).

SSDS Title

The title school secretary was changed to school secretary/data specialist (SSDS) when the latter title was created in/around April 2015; the SSDS job description was approved/issued on April 14, 2015. See Kolodziejcki Certification, ¶¶(I)(2)(A), (I)(7)(B), (I)(8), Exhs. B, D; Board’s June 2, 2017 Position Statement, Ex. W. The SSDS job description was rewritten and approved/issued on August 20, 2015. See Schauer Certification, ¶33; Board’s June 2, 2017 Position Statement, Ex. W; Kolodziejcki Certification, Exhs. B, D. The SSDS title was discussed with the Association and the parties agreed that it was “confidential” in September of 2015; the SSDS title was not included in the support staff salary calculations

during the last round of negotiations with the Association. See Giordano Certification, ¶28; Schauer Certification, ¶¶34, 42.

Karna Johnsen (Johnsen) is the current SSDS; she was hired as school secretary on/around January 1, 2014 and has served as SSDS since on/about March-April 2015. See Kolodziejski Certification, ¶(I)(4)(A, C); Johnsen Certification, ¶¶1, 3.

Kolodziejski certifies that when the title school secretary was changed to SSDS, the SSDS retained the same job duties with the following additions:

New Duties:

- Types and assists with all preparation related to documents needed for negotiations
 - Manages data for state and internal assessment tools
 - Manages teacher and administrative evaluation data in NJ SMART
- [Kolodziejski Certification, ¶(I)(7)(B).

Kolodziejski certifies that she has “. . . never seen the SSDS attend negotiations for a new CNA or participate in grievance procedures.” See Kolodziejski Certification, ¶(I)(3)(A).

APABS/APPSABS Title

The title, accounts payable/assistant board secretary (APABS) was unchanged from when it was originally created in/around November 2012 until May 25, 2017; the APABS job description was approved/issued on November 29, 2012. See Kolodziejski Certification, ¶¶(I)(2)(A), (I)(7)(B), (I)(8), Exhs. B, D; Board's June 2, 2017 Position Statement, Ex. DD. The APABS

job description was rewritten and approved/issued on June 25, 2015. See Board's June 2, 2017 Position Statement, Ex. DD. The APABS title was revised to accounts payable/purchasing specialist/assistant board secretary (APPSABS), and the related job description was rewritten and approved/issued, on May 25, 2017. See Board's June 2, 2017 Position Statement, Ex. DD. The Board intends to train the accounts payable/purchasing specialist to assume the functions of the assistant board secretary. See Schauer Certification, ¶43. The assistant board secretary position was discussed with the Association and the parties agreed that it was "confidential" in September of 2015. See Giordano Certification, ¶35.

Lisa Rica (Rica) is the current APABS/APPSABS; she was hired as accounts payable/purchasing specialist on/around July 2016 with the understanding that her position was "confidential." See Rica Certification, ¶1; Kolodziejcki Certification, ¶(I)(4)(A, C). The assistant board secretary position was vacated in February 2017; Rica will be trained as the assistant board secretary and then assume those job functions as listed in the job description. See Rica Certification, ¶7.

Kolodziejcki certifies that the APABS/APPSABS title remains unchanged and the only additional duty assigned is to assist the Board Secretary in all aspects of preparations for negotiations. See Kolodziejcki Certification, ¶(I)(7)(B). Kolodziejcki

certifies that she has “. . . never seen the APABS attend negotiations for a new CNA or participate in grievance procedures.” See Kolodziejcki Certification, ¶(I)(3)(A).

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.” Newark State-Operated Sch. Dist., P.E.R.C. No. 2017-16, 43 NJPER 115, 116 (¶34 2016); accord State of New Jersey (Montclair State University), D.R. No. 2018-15, 44 NJPER 244 (¶70 2018), adopted P.E.R.C. No. 2018-42, 44 NJPER 398 (¶111 2018). More specifically, the purpose of the clarification of unit procedure is to identify unit employees whom the parties have intended to be encompassed by the unit definition but it “. . . may not normally be used to enlarge the scope of an existing unit to include previously unrepresented employees.” Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284, 285 (¶15140 1984) (citing Barneget Tp. Bd. of Ed., D.R. 84-15, 10 NJPER 54 (¶15029 1983); Clearview Reg. High School Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977)). Moreover, “[c]ommunity of interest considerations, alone, are not a sufficient basis to enlarge the scope of a negotiations unit through unit clarification.” Id.

Timeliness Discussion

The Association's clarification of unit petition is not timely filed. The Commission has held that ". . . a 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 . . . [and] [o]nce the opportunity for a CU passes, a union may then only seek to enlarge its unit through a representation petition asking to accrete employees to an existing unit." Union Cty., D.R. No. 2007-7, 32 NJPER 408, 409 (¶168 2007).

"Alternatively, the parties could conclude negotiations for the successor contract but include a provision preserving the dispute for the Commission to decide." Hamilton Tp. Bd. of Ed., D.R. No. 2004-14, 30 NJPER 93 (¶37 2004).

The Association acknowledges that it became aware of changes to existing job titles/duties and newly-created titles (i.e., the petitioned-for titles) before or shortly after the parties' 2012-2015 CNA expired on June 30, 2015. See Kolodziejcki Certification, ¶¶2, (I)(2)(A). However, the Association did not file the instant petition until November 18, 2016 - after both parties executed the MOA for their successor CNA (March 7, 2016); and after both parties ratified the MOA (the Association on September 7, 2015, the Board on November 17, 2016). See Board's June 2, 2017 Position Statement, Exhs. E-F; Giordano

Certification, ¶¶4-5; Board's August 8, 2019 email; Association's August 8, 2019 email.

Also, on September 23, 2015, the Board wrote a memorandum to the Association providing that the PHR/PBS, SSDS and assistant board secretary titles were "confidential" and that the parties had agreed to exclude those titles from the Association's unit. See Board's June 2, 2017 position statement, Ex B; Giordano certification, ¶2, 18, 28, 35; Schauer certification, ¶2, 20, 34. The Association, in turn, informed at least two of three of the employees serving in those titles that they were being removed from the Association's unit because their job responsibilities were confidential and/or incompatible with Association membership. See Jeronimo's Board Certification, ¶3; Johnsen Certification, ¶2.

The Association has not rebutted the facts set forth above, nor has it offered any legal argument/authority to establish that its petition is timely filed. Even if I assume that the parties did not discuss the composition of the Association's unit during negotiations for the 2015-2019 CNA and/or that the Board did not specifically raise the issue of excluding the petitioned-for titles from the Association's unit, I find that the Association was obligated to raise the issue by either (a) filing a clarification of unit petition before concluding negotiations for the 2015-2019 CNA; or (b) concluding negotiations for the 2015-

2019 CNA but explicitly reserving its right to raise the instant dispute with the Commission. In light of the Association's omission to pursue either course, it must seek to add the petitioned-for titles by filing a timely representation petition. Union Cty.; Hamilton Tp. Bd. of Ed.

ORDER

The Bedminster Education Association's clarification of unit petition is dismissed.

/s/Jonathan Roth
Jonathan Roth
Director of Representation

DATED: August 16, 2019
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 August 26, 2019.