

D.R. NO. 2001-9

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-2000-21

TRENTON EDUCATIONAL SECRETARIES
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation dismisses a clarification petition filed by the Trenton Educational Secretaries' Association which seeks to include a newly created vacant paralegal position in its secretarial unit. The Commission's policy is not to determine the unit status of vacant positions and the Director finds that no extraordinary circumstances exist in this case which warrant an exception to the longstanding policy of refraining from ruling upon the unit status of vacant positions.

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Appearances:

For the Public Employer
Sumners, George & Dortch, P.C., attorneys
(Thomas W. Sumners, Jr., of counsel)

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

DECISION

On October 25, 1999, the Trenton Educational Secretaries Association, NJEA (TESA) filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission) seeking to include the newly created title "paralegal" in its secretarial unit at the Trenton Board of Education (Board). The Board opposes the petition. It argues that the proposed paralegal position, which has not yet been filled, will be confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

seq., and will not share a community of interest with the secretarial unit titles. An investigation has been conducted into the issue raised by the petition. N.J.A.C. 19:11-2.2 and 2.6. The parties submitted position statements and appeared before the assigned staff agent for two investigatory conferences. I make the following:

FINDINGS OF FACT

TESA has a collective negotiations agreement with the Board covering the secretaries unit for the period July 1, 1998 to June 30, 2001. The contract recognition clause at Article I specifically excludes "Trenton Administrators and Supervisors, Trenton Education Association, Attendance Officers, Security Officers, Executive Secretarial Unit, Business and Technical Unit, Cafeteria, Paraprofessional Unit, Mechanics and Laborers and Custodian Unit." TESA's recognition clause does not specifically identify the titles included in the unit. The recognition clause at paragraph "A" states that the Board recognizes TESA as the representative...for all personnel regularly employed...." The clause goes on to list the above excluded categories. Paragraph "D" of the recognition article notes that "...the term 'employee' and 'secretary'...shall refer to those employees identified in the negotiating unit defined herein."

A job posting dated September 30, 1999, reveals that the paralegal will be assigned to the Board's central services and/or legal and pupil personnel services unit. It is not apparent from the posting to whom the paralegal will report or whether it will

supervise any other employees. The proposed job duties include: conducting legal research; summarizing and compiling information on statutes, legal documents, and legal subjects; assisting in case preparation for litigation and hearings; collecting and analyzing facts and legal questions; and evaluating evidence. The paralegal's qualifications include possession of a legal assistant or paralegal assistant certificate and two years professional or legal assistant work. TESA does not dispute the accuracy of the proposed job duties or qualifications, or the fact that the paralegal position is vacant.

ANALYSIS

A clarification of unit petition is used to resolve questions concerning the composition of an existing collective negotiations unit. Such a petition is appropriate when new titles are created during the term of the parties agreement. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977). TESA properly acted promptly to seek this new title in its unit during the term of its existing agreement.

However, the Commission's policy is not to determine the unit status of vacant positions. Determinations about the unit eligibility of positions turn on actual duties and reporting relationships. For this reason, such decisions must be based on the most recent and accurate facts about such factors as actual duties performed, supervisory responsibilities, decision making authority, reporting relationships and the information processed by the employee. Unit clarification petitions result in determinations

about employees' rights to collective representation and the other protections of the Act. Accordingly, such determinations should not be speculation or based only on a job description. The policy of refraining from decisions on vacant positions avoids inappropriate consequences of guesswork. We have consistently applied this policy. See N.J. Tpk. Auth. and PERC and AFSCME, D.R. No. 94-29, 20 NJPER 295 (¶25149 1994), rev'd. and rem'd. 289 N.J. Super. 23 (App. Div. 1996), aff'd as mod. 150 N.J. 331 (1997) (Director of Representation declines to include vacant supervising engineer and assistant purchasing director positions in new unit where last incumbents retired); 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); Ridgefield Park Bd. of Ed., D.R. No. 98-12, 24 NJPER 89 (¶29048 1997) (Director finds it unnecessary to determine whether the high school social studies department chairperson is a supervisor because the position was abolished, and remains vacant); and Town of Secaucus, D.R. No. 95-25, 21 NJPER 149 (¶26090 1995) (Director declines to consider status of vacant assistant to construction official position).

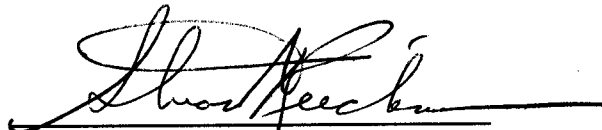
Here, it is undisputed that the Board has not hired anyone to fill the paralegal position. No extraordinary circumstances exist in this case which warrant an exception to our longstanding policy of refraining from ruling upon the unit status of vacant positions. Accordingly, the unit eligibility of the Trenton Board of Education's paralegal will not now be determined. Should the

Board fill this vacant position, either party is invited to promptly file a unit clarification petition.

ORDER

The petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Stuart Reichman, Director

DATED: March 7, 2001
Trenton, New Jersey