

D.R. NO. 2018-17

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

In the Matter of

TOWNSHIP OF JACKSON,

Public Employer,

-and-

Docket No. CU-2017-005

JACKSON TOWNSHIP MUNICIPAL SUPERVISORS,

Petitioner.

SYNOPSIS

The Director clarifies a supervisory unit to include a code compliance supervisor, municipal engineer, and purchasing agent. The Director further clarifies the unit to exclude four vacant titles, five casual titles, and an accountant for having no supervisory authority.

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Appearances:

For the Employer,
Gilmore & Monahan, attorneys
(Andrea E. Wyatt, of counsel)

For the Petitioner,
(Fred Rasiewicz, President)

DECISION

On August 22, 2016, Jackson Township Municipal Supervisors (JTMS) filed a clarification of unit petition seeking to clarify a collective negotiations unit of all regularly employed supervisory employees of Jackson Township (Township) to include the following thirteen titles: 1)code compliance supervisor, 2)Municipal engineer, 3)purchasing agent, 4)assistant director of public works, 5)school traffic guard supervisor, 6)supervising school traffic guard, 7)supervising code enforcement officer, 8)emergency management coordinator, 9)municipal recycling

coordinator, 10) payroll supervisor, 11) safety coordinator, 12) stormwater coordinator, and 13) accountant.

On September 22, 2016, during the scheduled in-person investigatory conference attended by a Township representative,^{1/} the Township agreed to clarify the supervisory unit to include the code compliance supervisor, municipal engineer, and purchasing agent in the petitioned-for unit. Also, the parties do not dispute that the assistant director of public works, school traffic guard supervisor, supervising school traffic guard, and supervising code enforcement officer are vacant titles. The Commission does not determine the unit status of unfilled titles. Bordentown Tp. D.R. No. 2006-3, 31 NJPER 263 (¶104 2005). Accordingly, the seven (7) above-identified titles are no longer subject to this petition.

The Township contends that of the remaining six (6) contested titles, the emergency management coordinator, municipal recycling coordinator, payroll supervisor, safety coordinator and stormwater coordinator are casually employed, rendering them ineligible for inclusion in the unit. The Township also asserts that the accountant does not supervise any other Township

^{1/} No JTMS representative appeared at the conference. Later the same day, the assigned staff agent phoned and spoke with JTMS President, Fred Rasiewicz.

employee, and should remain excluded from the unit for lack of community of interest.^{2/}

The Association represents a unit of regularly employed supervisory employees of the Township, working 35 or more hours per week. On August 25, 2017, the Township filed a Notice of Impasse and the parties are participating in mediation, seeking to achieve their first collective negotiations agreement (Dkt No. I-2018-022). We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2.

On September 23, 2016, the assigned staff agent issued a letter to the parties requesting detailed facts about the functions and responsibilities of the six (6) disputed titles. Replies were due no later than October 14, 2016. JTMS did not respond. On October 14, the Township filed a reply, including certifications of Township Business Administrator, Helene Schlegel (Schlegel), and Township Personnel Officer, Kathleen Green (Green).

Emergency Management Coordinator

Schlegel certifies that the emergency management coordinator (EMC) serves in a "three-year term [appointed] by the Mayor with the advice and consent of Council. The EMC is responsible for coordinating all of the emergency services during a state of

^{2/} The Township also maintains that none of the casual titles supervise anyone.

emergency." Green certifies that Barry Olejarz (Olejarz), the current EMC, works between approximately one half and two hours per week as the EMC, and is paid an annual, non-pensionable stipend of \$6,206.

Municipal Recycling Coordinator

Green certifies that "Susan Kane (Kane) was appointed as municipal recycling coordinator on July 28, 2014." Schlegel certifies this is a 'voluntary position' . . . responsible for the Township's recycling program. Schlegel and Green certify that Kane "performs her duties as municipal recycling coordinator for approximately 2 hours per week" and is provided an annual, non-pensionable stipend of \$4,000.

Payroll Supervisor

Green certifies that Patricia Schwark (Schwark) is employed as the Township's Payroll Supervisor. Green certifies that Schwark . . . prepares, approves, and calculates payroll for the Township. Schwark is paid an annual stipend of \$18,000 for her payroll supervisor duties. Schlegel certifies that Schwark "works approximately four (4) hours, every two weeks as Payroll Supervisor."

Safety Coordinator

Green certifies that Robert Stauffer (Stauffer) was ". . . appointed to the volunteer position of safety coordinator." Both Schlegel and Green certify that Stauffer is paid a stipend " of

\$2,500 per year" and works an "average of 1-2 hours per week as the safety coordinator."

Stormwater Coordinator

The stormwater coordinator for the Township is Susan Kane (Kane). Schlegel certifies that Kane ". . . prepares grant applications and files paperwork for Township reporting to [a]dministrative [a]gencies relating to [s]tormwater." Green certifies that Kane "is paid a \$4,000 [annual] stipend for the volunteer appointment," which is not included in her pensionable salary. Both Green and Schlegel certify that Kane "spends approximately two (2) hours per week as the stormwater coordinator."

Accountant

Green certifies that Michelle Inman (Inman) is employed as an accountant for the Township's Department of Public Works. She further certifies that Inman has been employed since October 6, 2000, and earns an annual salary of \$48,177.80. Both Green and Schlegel certify that Inman does not supervise any Jackson Township employee, and her direct supervisor is Rasiewicz (JTMS President and petitioner).

ANALYSIS

The purpose of a clarification of unit petition is to resolve questions concerning the scope and composition of a collective negotiations unit as defined by a Commission

certification or by a recognition clause in a collective negotiations agreement. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370, 371 (¶30160 1999); Clearview Reg.Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Unit clarification petitions cannot be used to enlarge the scope of an existing unit to include previously unrepresented employees. New Jersey Transit; Clearview Reg. Bd. of Ed. In Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984), the Director explained the purpose behind unit clarification petitions:

The Commission's clarification of unit procedure is for the purpose of identifying unit employees whom the parties have intended to be encompassed by the unit definition. Community of interest considerations, alone, are not a sufficient basis to enlarge the scope of a negotiations unit through unit clarification. [10 NJPER at 285]

We have repeatedly held that titles must be identified as part of an existing unit in order to be clarified into a unit. Barneget Tp. Bd. of Ed., D.R. No. 84-15, 10 NJPER 54 (¶15029 1983).

Public employees who are employed with sufficient regularity and continuity are eligible for representation under our Act. State of New Jersey, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987)(directing representation election among part-time faculty to determine whether a majority wished to be included in existing unit of full-time faculty). "Regularity of employment is a measure of how frequently the employee works -- the recurrence of

employment." Id. at 327. "Continuity of employment . . . runs to the relative 'permanency' of the employment, and the degree of stability within the unit." Id.

In contrast, casual employees "work on an occasional or sporadic basis; their contact with the employer is too tenuous and infrequent to warrant inclusion in the same unit with regular employees." Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982). Therefore, our case law precludes casual employees, who are hired on a "limited, non-recurring basis," from obtaining collective negotiations rights. State of New Jersey, 13 NJPER at 327. See also State of New Jersey (William Paterson Univ.), 25 NJPER 148 (¶30067 1999)(musicians working approximately 52 hours annually were casual employees not afforded collective negotiations rights).

In Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982) the Commission adopted a standard for determining casual employment. The Commission upheld the Director of Representation's decision not to count the ballots of three substitute bus drivers who worked less than one-sixth (1/6) of the average number of hours worked by the regular full-time and part-time bus drivers. The Commission explained that "although mathematical formulae may not always govern questions of casual status," the substitute bus drivers whose ballots had been challenged worked too infrequently to be eligible for

representation in a unit of full-time and part-time bus drivers. Id. at 103.

Similar to the substitute bus drivers in Mt. Olive Bd. of Ed., I find that the emergency management coordinator, municipal recycling coordinator, payroll supervisor, safety coordinator, and stormwater coordinator are all casual employees, ineligible for inclusion in a negotiations unit. Even conceding that the disputed titles are not strictly "voluntary," I find that they are stipended positions that do not meet the Commission's "one-sixth" threshold and consequently fail to demonstrate the requisite continuity and regularity of employment.

Titles that are to be clarified as included in a negotiations unit must be identified as being within the scope of the existing unit. Irvington Housing Auth., D.R. No. 98-15, 24 NJPER 244 (¶29116 1998). It is for this reason that the accountant must also be excluded from the unit. The parties' contractual unit is defined as "[a]ll regularly employed, supervisory employees of the Township of Jackson . . ." Unlike the employees in the unit, the accountant does not supervise any other Township employee and does not fall within the scope of the existing unit.

ORDER

The Township Supervisory unit is clarified to include the code compliance supervisor, municipal engineer and purchasing agent. I decline to consider for inclusion or exclusion the currently

vacated titles of assistant director of public works, school traffic guard supervisor and supervising code enforcement officer. The accountant has not exercised any supervisory authority; the unit is clarified to exclude that title.

/s/Daisy B. Barreto, Esq.
Acting Director of
Representation

DATED: March 1, 2018
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 March 12, 2018.