

D.R. NO. 2015-8

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

In the Matter of

HAMILTON TOWNSHIP BOARD OF  
EDUCATION,

Public Employer,

-and-

Docket No. RO-2015-017

HAMILTON TOWNSHIP EDUCATION  
ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director certifies by card check the accretion of attendance officers to the existing unit of certificated and support personnel employed by the Hamilton Township Board of Education. The Director concluded that the investigative powers possessed by the attendance officers did not create an impermissible conflict of interest, as alleged by the Board. The Director found that the attendance officers' only monitored staff and reported potential misconduct, and otherwise lacked a level of independent oversight authority that would create a Wilton conflict.

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Appearances:

For the Respondent,  
Schwartz, Simon, Edelstein & Celso, attorneys  
(Andrew B. Brown, of counsel)

For the Petitioner,  
Selikoff and Cohen, PA. attorneys  
(Kathleen L. Kirvan, of counsel)

**DECISION**

On October 15, 2014, and October 27, 2014, the Hamilton Township Education Association ("Association") filed, respectively, a representation petition and an amended petition seeking to add the title, student resource/attendance officer<sup>1/</sup> (attendance officers), employed by the Hamilton Township Board of Education ("Board"), to its existing collective negotiations unit of certificated and support personnel. The petition, seeking

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<sup>1/</sup> Although the petition identified the title as "student resource officers," both of the parties' position statements identify the title as "student resource/attendance officer."

certification without election, was accompanied by valid authorization cards signed by a majority of employees in the petitioned-for title. The Board opposes the petition, arguing that the petitioned-for title in the Association's unit would create an impermissible conflict of interest.

We have conducted an administrative investigation. N.J.A.C. 19:11-2.2. The petition was timely filed. N.J.A.C. 19:11-2.8(c)3. By letter dated November 26, 2014, we notified the Board of the petition, requested it to provide a list of employees identified in the petition, and to post a notice to public employees describing the petitioned-for unit. By letter dated December 4, 2014, we advised the Board that we mistakenly identified the petition as requesting an election rather than certification through authorization cards, and therefore, provided to the Board an amended notice and certification of posting, which properly referenced the petitioner's submission of authorizations cards. On December 5, 2014, the Board provided the certification of posting for the amended notice. On January 20, 2015, the Board provided the list of employees. Based on the Board's list, we have determined that a majority of the petitioned-for employees timely signed valid authorization cards designating the Association as their representative for purposes of collective negotiations. N.J.A.C. 19:11-2.6(b).

On January 21, 2015, a conference was conducted among the parties. The Board objected to the petitioned-for unit. By letter dated February 13, 2015, we informed the Board that it had until the close of business on February 13, 2015 to identify the basis for its objection to the proposed unit with supporting documentation or sign the stipulation of appropriate unit that we enclosed. The Board timely filed its position statement and supporting certification from the superintendent, Michelle Cappelluti, Ed.D. We permitted the petitioner an opportunity to respond. The Association timely filed its position statement and supporting certification from one of the attendance officers, Art Faden.

After reviewing the parties' submissions, I find that no disputed substantial and material facts exist to warrant a formal hearing. N.J.A.C. 19:11-2.6(f). By letter dated March 31, 2015, I notified the parties of my tentative findings and conclusions. I invited the parties to file responses by the close of business on April 9, 2015. Neither party filed a response. I find the following facts.

The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). N.J.S.A. 34:13A-1 et seq.

According to the recognition clause of the parties' most recent collective negotiations agreement, extending from July 1,

2012 through June 30, 2015, the Association represents "certificated personnel and support personnel (employed for twenty (20) or more hours per week by the Board), whether under contract or on leave." This description is largely consistent with the Certification of Representative we issued on January 26, 1988 following the Association's accretion of support personnel. The certification provides "[a]ll full-time and part-time secretarial, clerical and custodial employees are added to the existing unit of certificated employees employed by the Hamilton Township Board of Education."

Two (2) attendance officers are currently employed by the Board. The Association provided a copy of the job description for the attendance officers. The job description identifies the job goal for the position as "one that creates a link between law enforcement and the school, school administration, teachers, parents, and most importantly, the students." It provides that the attendance officer reports to the superintendent and building principals. The job description further lists twelve (12) responsibilities, such as "confer[ing] with appropriate district personnel in investigating all truancy and residency issues, making the necessary home call/home visits"; "handl[ing] court matters pertaining to attendance problems"; and "assist[ing] school administrators in emergency crisis planning and building security matters." The twelfth responsibility cited in the job-

description, most relevant to the instant matter, provides that an attendance officer "[p]erforms other related duties as may be assigned by the Superintendent or building administrator as may be related to this position."

The Superintendent, Dr. Cappelluti, certifies that pursuant to the job description, she has assigned to the attendance officer title the responsibility of investigating alleged misconduct of other staff, which includes the certificated and support personnel represented by the Association. She certifies that the attendance officers regularly check security cameras to monitor employees' arrival and departure times, and destruction of property by staff. Dr. Cappelluti certifies that the attendance officers must report to her any staff-related issues that they view as suspicious.

In addition to monitoring, Dr. Cappelluti asserts that the attendance officers have an influential part in the discipline of staff. She cites two instances in March 2014 and November 2014 where an attendance officer removed a staff member suspected to be under the influence of alcohol. She certifies that the staff member removed in March 2014 received a suspension, and the staff member removed in November 2014 was terminated.

Dr. Cappelluti certifies that the attendance officers have an investigatory role with staff. Specifically, an attendance officer investigated a staff member's workers' compensation claim

by taking photos of the staff member and the vehicle involved in the claim to determine the staff member's eligibility. She further certifies that the attendance officers have regular discussions with her regarding possible criminal reporting, and act as her liaison with local law enforcement agencies in fulfilling that role.

Art Faden, one of the two attendance officers, concedes in his certification that one of his job duties is to investigate possible misconduct by coworkers. However, he also certifies that after an investigation, he reports his findings to the appropriate member of the administration, and has no involvement in discipline. Instead, Faden certifies that the administration handles any discipline of staff members following an investigation.

The Board contends that the attendance officers' inclusion in the Association's existing unit would create a substantial actual or potential conflict of interest because the attendance officers are responsible for investigating potential misconduct of board employees, including those represented by the Association, and for reporting all suspicious activity to the Superintendent. The Board analogizes the instant matter to Hudson Cty., D.R. No. 2006-16, 32 NJPER 203 (¶88 2006), where we excluded the title of welfare investigator from a unit of non-supervisory welfare agency employees because of a conflict of

interest with other unit members. It asserts that the internal affairs-type job duties performed by the welfare investigator are similar to the job duties performed by the attendance officers in the instant matter, and therefore, warrant the attendance officers' exclusion from the Association's unit.

The Association counters that even if the facts submitted by the Board are true, there is nonetheless an insufficient basis to support a finding of a substantial actual or potential conflict because the attendance officers have no influence over other unit members and merely report their findings of possible misconduct to the administration. The Association contends that the instant matter is analogous to State of New Jersey (Motor Vehicle Commission), 33 NJPER 177 (¶62 2007), where we clarified the title of MVC Investigator I to be included in a unit of non-supervisory inspection and security employees of the State's Motor Vehicle Commission, finding only a peripheral conflict of interest. It asserts that like the MVC Investigator I title, the attendance officers merely investigate coworkers for possible misconduct and report those findings to the administration, and have no independent influence over other unit members. The Association contends that our decisions demonstrate that such job duties do not create an impermissible conflict of interest.

The Commission is responsible for determining the appropriate collective negotiations unit when questions



concerning representation of public employees arise. N.J.S.A. 34:13A-6(d). The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3.

To determine whether the requisite community of interest exists in a proposed unit, the Commission examines a number of factors, such as common employer, shared goals, common supervision, job duties, and similarity in wages, hours and terms and conditions of employment. See State of New Jersey (State College Locals), D.R. No. 97-5, 24 NJPER 295, 297 (¶29141 1996); West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218, 219 (¶56 1971). However, a conflict of interest, other than peripheral or *de minimis*, among petitioned-for titles in an otherwise appropriate negotiations unit negates the requisite community of interest for that unit. West Orange Bd. of Ed. v. Wilton, 57 N.J. 417 (1971). In the context of a proposed supervisors unit, our Supreme Court in Wilton explained:

If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. [Id. at 426.]

A substantial actual or potential conflict of interest among employees in a non-supervisory unit also may violate the

community of interest requirement. City of Camden and Int'l Ass'n of Fire Fighters, Local 788, P.E.R.C. No. 52, NJPER Supp. 195 (¶52 1971) and P.E.R.C. No. 55 NJPER Supp. 216 (¶55 1971), aff'd NJPER Supp. 2d 12 (¶4 App Div 1972), certif. den. 62 N.J. 70 (1972). In City of Camden, we explained:

One may have various authorities over other employees, still not be a supervisor as the Commission define that term, yet be disqualified from unit inclusion because by their nature and exercise such authorities precluded a common bond. Seen from another view, such authorities, though not legally supervisory in character, may nevertheless be so intimately related to service of the management interest that failure to recognize such in making a unit determination would tend to or would in fact compromise that interest. [Id. at NJPER Supp. 196]

In order to determine whether a Wilton conflict exists in a proposed negotiations unit, we must examine the facts of each particular case. Wilton, 57 N.J. at 426. For example, an employee's role in evaluations or grievance procedures are significant factors in determining whether an actual or potential substantial conflict exists. Id. at 423. See also Somerset Cty. Library Comm'n, D.R. 96-18, 22 NJPER 189, 190 (¶27098 1996). Our case law requires that the contested employee's performance of evaluations amount to something more than recommendations of personnel actions. See e.g., Roselle Park Bd. of Ed., P.E.R.C. No. 87-80, 13 NJPER 73 (¶18033 1986); Atlantic Cty. Welfare Div., D.R. No. 94-2, 19 NJPER 408 (¶24179 1993).

In cases concerning the possible inclusion in one negotiations unit titles that are charged with "investigating" the conduct of other employees already included in that unit, the Commission generally does not find that a substantial actual or potential conflict of interest exists, even if the disputed title makes recommendations for discipline. See State of New Jersey (Motor Vehicle Commission), 33 NJPER 177, 181 (¶62 2007) (citing New Jersey Turnpike Auth., P.E.R.C. No. 94-23, 19 NJPER 459 (¶24217 1993) and New Jersey Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1997)).

For example, in State of New Jersey (Motor Vehicle Commission), the State asserted that a conflict of interest would exist if the Local's unit of non-supervisory inspection and security employees was clarified to include the title MVC Investigator I. Id. at 180. The parties agreed that the title was responsible for conducting internal investigations of fellow employees and the public, and for preparing investigative reports to the chief of investigations, which advise whether the complaints against a coworker are substantiated. Id. at 179. In reaching its decision, the Commission reviewed other cases where conflict of interest claims were based on a petitioned-for title's investigative authority. In its review, the Commission explained that it has not found a substantial actual or potential conflict where a title with investigative authority reports its

findings and recommendations to a higher level of authority, and independent action is required at that higher level before fellow unit members can face adverse job action based on the investigative findings and recommendations. Id. at 181 (contrasting New Jersey Turnpike Auth., 19 NJPER at 459 (finding no conflict of interest where assistant section chiefs report rule infractions of subordinate unit members and make disciplinary recommendations to higher level of supervision) and New Jersey Turnpike Auth., 23 NJPER at 511 (finding no conflict of interest where auditors investigate fellow unit members and make disciplinary recommendations to superiors) with South Jersey Transportation Auth., D.R. No. 2004-16, 30 NJPER 124 (¶36 2004) (finding a conflict of interest where toll audit manager audited subordinates, conducted performance evaluations, allocated work assignments and thus operated at "such a high level in th oversight chain of command"))).

I find that the attendance officers' inclusion in the Association's unit does not create a substantial actual or potential conflict of interest. I agree with the Association that the investigative powers possessed by the attendance officers in the instant petition are akin to the investigative authority possessed by the MVC Investigators I. The investigative portion of the attendance officers' multiple job responsibilities involves only monitoring Board staff and

reporting possible misconduct to the Superintendent. Attendance Officer Faden certifies that he has no role in disciplining or recommending discipline as a result of any investigations. He must report his findings to the administration. The Board's certifications establish that the attendance officers' findings can eventually lead to adverse employment action. No facts suggest that attendance officers conduct performance evaluations, or that those evaluations are closely tied to personnel actions. No facts suggest that the attendance officers have any role in the grievance procedure. In short, the attendance officers do not exercise a level of independent authority that would be consistent with a title higher in the oversight chain of command, and thus create a Wilton conflict.

The Board's reliance on the Director's decision in Hudson Cty., where we excluded the title of welfare investigator from a unit of non-supervisory welfare employees, is misplaced. In Hudson Cty., both parties agreed that the employee in the disputed title was assigned internal-affairs-type duties, and both agreed that those duties would create a conflict of interest justifying the employee's exclusion from the unit. Id. The only dispute between the parties was whether the employee was being assigned duties consistent with those belonging to his welfare investigator title. Id. at 203-04. Therefore, Hudson Cty. is of limited relevance in the instant matter because we did not decide

whether the employee's internal affairs function actually rose to the level of a Wilton conflict, but instead based our exclusion of the title in light of the parties' agreement that such a function created a conflict. Id. at 204.

Accordingly, I find that the petitioned-for title of student resource/attendance officers should be added to the Association's existing unit. There are insufficient facts to support a finding that the petitioned-for title's inclusion in the Association's unit creates a substantial actual or potential conflict of interest. Therefore, I grant the Association's petition.

I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed student resource attendance officers are added to the existing unit of certificated, secretarial, clerical, and custodial employees employed by the Hamilton Township Board of Education.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; police, craft employees, casual employees, and all other employees employed by the Hamilton Township Board of Education.

The Association has met the requirements of the Act, and it is entitled to certification based upon the authorization cards from a majority of the employees in the petitioned-for titles.

ORDER

I certify Hamilton Township Education Association as the exclusive representative of the unit described above, based upon its authorization cards.<sup>2/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

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Gayl R. Mazuco

DATED: April 13, 2015  
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 April 23, 2015.**

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<sup>2/</sup> An appropriate Certification of Representative will issue with this decision.