

D.R. NO. 2016-8

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

In the Matter of

WASHINGTON TOWNSHIP
BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-2016-011

WASHINGTON TOWNSHIP
EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director certifies by card check the addition of behavior specialists to the existing unit of all regularly employed professionally certificated personnel under ten month contract or on leave approved by the Board, and secretaries employed by the Washington Township Board of Education. The Director finds that the unit is appropriate in light of the Commission's policy favoring broad-based units of non-supervisory education employees and the statutory rights of eligible public employees to representation. Moreover, the Director determines that the Board failed to demonstrate that no community of interest exists between the behavior specialists and the titles in the existing unit.

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Appearances:

For the Public Employer
Capehart & Scatchard, P.A., attorneys
(Joseph F. Betley, of counsel)

For the Petitioner
Alfred H. Beaver, UniServ Representative

DECISION

On October 8, 2015, the Washington Township Education Association ("Association") filed a representation petition seeking to add the title behavior specialist to its existing collective negotiations unit of teachers (professionally certificated personnel) and secretaries employed by the Washington Township Board of Education ("Board"). The petition seeks certification by card check. The petition was accompanied by authorization cards designating the Association as majority representative of the petitioning employees. The Board opposes

the petition, arguing that the petitioned-for title lacks a community of interest with the existing unit and is explicitly excluded from the recognition provision in the parties' collective negotiations agreement.

Our records confirm that on February 5, 1988, we issued a Certification of Representative for a unit including, "[s]alaried office personnel under contract employed by the Washington Township Board of Education," and excluding, "board secretary; assistant board secretary in charge of payroll; assistant board secretary in charge of computer/bookkeeping machine operations; two confidential secretaries to the superintendent; three confidential secretaries to the deputy superintendents; special assistant to the superintendent in charge of personnel; adult/community education office managers, secretaries, clerks and assistants employed while evening adult school is in operation; certificated employees; supervisory employees; managerial employees; professional employees; computer coordinator/programmers; custodians and light housekeeping employees; maintenance, substitute and per diem employees" (RO-88-98).^{1/}

^{1/} By letter dated February 29, 2016, I advised the parties of my tentative findings and conclusions and invited responses. In that letter, I erroneously referred to a Certification of Results which involved Washington Township, Morris County. The Board also suggested that the 1988 Certification of Representative related to a different Washington Township, (continued...)

We have conducted an administrative investigation of the facts. N.J.A.C. 19:11-2.2. The petition appears to be timely filed. N.J.A.C. 19:11-2.8(c)3. On October 16, 2015, we requested that the Board provide a list of employees identified in the petition, and post a notice to public employees describing the petitioned-for unit. On October 29, 2015, the Board provided the list of employees and advised that it posted the notice on October 21, 2015. 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 October 30, 2015, an investigatory conference was held seeking an agreement by the parties for a Stipulation of Appropriate Unit. The Board refused to execute the Stipulation at the conference. Submissions were requested, and on November 13, 2015, the Board filed a position statement that included a certification of Board Business Administrator/Board Secretary Margaret Meehan, together with exhibits. The Association did not submit a position statement. After reviewing the parties'

1/ (...continued)
not in Gloucester County, because the 1988 Certification of Representative differs from the Recognition Clause in the parties' 1988-1991 and 1992-1994 collective negotiations agreements. The 1988 Certification is the correct certification for Washington Township, Gloucester County.

submissions, no disputed substantial and material facts warrant a formal hearing. N.J.A.C. 19:11-2.6(f). The following facts appear.

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.

Two behavior specialists are currently employed by the Board. The Board argues that no community of interest exists between the petitioned-for title, behavior specialist, and current unit employees because the title "specialist," as well as all non-certificated personnel, are explicitly excluded from recognition in the parties' collective negotiations agreement.

The parties' most recent collective negotiations agreement, extends from July 1, 2013, through June 30, 2016. Article I, entitled "Recognition," specifies:

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiations concerning grievances and terms and conditions of employment for all regularly employed professionally certificated personnel under ten month contract or on leave approved by the Board, excluding: Superintendent, Deputy and Assistant Superintendent, Executive Director of Human Resources, Business Administrator, Purchasing Agent, Board Secretary, Director of Pupil Personnel Services, District-wide Coordinators, Specialists, Supervisors, Managers, Child Study Team Director, Facilitator/Supervisor, Special Assistants, Principals, Assistant Principals, Vice Principals, Director of Guidance, Department Chairpersons, Media Technician, Financial

Technicians, Substitute School Teachers, Adult Community Education Teachers, and all non-certificated employees except those secretaries listed below.

The Board also recognizes the Association as the exclusive and sole representative for collective negotiations concerning grievances and terms and conditions of employment for all regularly employed secretaries, excluding all others, including all Confidential and Administrative Secretaries to Superintendent, Deputy Superintendent, Board Secretary, Assistant Superintendents, Executive Director for Human Resources, Administrative Secretary in Charge of Payroll, Assistant to Superintendent for Personnel, District Bookkeeper, Office Manager for Student Personnel Services, Adult/Community Education evening personnel and substitute employees.

Since the original certification in 1988, the parties have voluntarily expanded the scope of the unit, as is evidenced in the recognition clause in the current collective negotiations agreement.

The Board concedes that there are two specialist titles in the unit, i.e., speech language specialist and educational media specialist, despite the exclusion of "specialists" in the recognition clause. The Board asserts that these specialist titles, unlike the behavior specialist, require certification from the Commissioner of Education. The Board further asserts that although the unit also ". . . encompasses four different secretarial titles who are considered non-certificated personnel," the parties have "purposely included such positions within the unit."

The Board also argues that behavior specialists are ineligible for tenure, unlike the other certificated titles in the unit, and are "ten-month/ten summer day employees", unlike other "professionally certificated personnel under ten-month contract." Finally, the Board argues that to the extent that the salary of one of the behavior specialists, Rebecca Forrestal, is aligned with the unit salary guide, "this was a misunderstanding on behalf of the former Superintendent," who believed that Forrestal ". . . was in the WTEA bargaining unit in determining her salary." (Meehan Certification, ¶11.)^{2/} Thus, the Board argues that the fact that Ms. Forrestal's salary is already "on guide" is "nothing more than an oversight", and "not a basis to warrant inclusion in the WTEA."

The Commission determines in each instance which unit is appropriate for collective negotiations. N.J.S.A. 34:13A-6(d). We are obligated to define the appropriate unit with "due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. Our Supreme Court has affirmed the Commission's policy favoring broad-based negotiations units over units structured along departmental or occupational lines. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974).

^{2/} We note but do not rely on the portion of the cited language which attributes motivation to a former Superintendent which could not be within the personal knowledge of the author of the Certification.

Broad-based units streamline negotiations by reducing the potential for such problems as "competing demands, whipsawing and continuous negotiations" that could result from negotiations with numerous smaller units. Id. at 241 (quoting State of New Jersey (Prof'l Ass'n), P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972)).

The Commission has long held that broad-based units of education employees are appropriate for collective negotiations. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp 218 (¶56 1971). It has specifically found that a community of interest exists among virtually all non-supervisory employees in an educational setting. Ramsey Bd. of Ed., D.R. No. 2011-8, 37 NJPER 124 (¶36 2011).

The Board argues that no community of interest exists because the title specialist, as well as all non-certificated personnel, are explicitly excluded from recognition in the parties' collective negotiations agreement. That same recognition provision includes, ". . . all regularly employed [and 'non-certificated'] secretaries," thereby vitiating any claim to a negotiations unit comprised of professional employees, exclusively. N.J.S.A. 34:13A-6; N.J.A.C. 19:10-1.1.

While the Board argues that behavior specialists cannot be included in the unit, it concedes that two specialist titles are currently included in the petitioned-for unit: speech language

specialist and educational media specialist. The Board's proposed distinction, that behavior specialists, unlike speech language specialists or educational media specialists, are ineligible for tenure and are "ten month/ten summer day employees," does not justify the exclusion of the petitioned-for title from the existing unit, which already includes specialist titles and non-certificated titles.

I find that eligible public employees have exercised their statutory right to choose an exclusive representative and a majority representative seeks to include them in the existing unit. Under all of the circumstances, I find that the titles in the proposed unit are appropriate for representation and shall be included in the extant unit.

I find the following unit is appropriate:

Included: Behavior specialists are added to the existing unit of all regularly employed professionally certificated personnel under ten month contract or on leave approved by the Board, and secretaries employed by the Washington Township Board of Education.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; Superintendent, Deputy and Assistant Superintendent, Executive Director for Human Resources, Business Administrator, Purchasing Agent, Board Secretary, Director of Pupil Personnel Services, District-wide Coordinators, Specialists (other than Behavioral, speech language or educational media specialists), Child Study Team Director, Facilitator/Supervisor, Special Assistants, Principals, Assistant Principals, Vice Principals,

Director of Guidance, Department Chairpersons, Media Technician, Financial Technician, Substitute School Teachers, Adult Community Education Teachers, Confidential and Administrative Secretaries to Superintendent, Deputy Superintendent, Board Secretary, Assistant Superintendents, Executive Director for Human Resources, Administrative Secretary in Charge of Payroll, Assistant to Superintendent for Personnel, District Bookkeeper, Office Manager for Student Personnel Services, Adult/Community Education evening personnel, substitute employees and all other employees employed by the Washington Township Board of Education.

ORDER

I certify Washington Township Education Association as the exclusive representative of the unit described above, based upon its authorization cards.^{3/}

Very truly yours,

/s/Gayl R. Mazuco
Director of Representation

DATED: May 3, 2016
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 May 13, 2016.

^{3/} The formal certification is attached.