

D.R. NO. 2020-4

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

In the Matter of

PARK RIDGE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2016-011

PARK RIDGE EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a collective negotiations unit of certificated and non-certificated employees to include the title data systems analyst. The employer contested the title's eligibility for inclusion, claiming that no confidential administrative assistant title has been included in the existing unit since at least 2010; that the recognition provision in the parties' collective negotiations agreement (CNA) excludes the data systems analyst from the existing unit; and that the data systems analyst lacks a community of interest with the existing unit. The Director determined that the facts demonstrated that the title confidential administrative assistant for the director of curriculum and instruction is included in the existing unit but that the position has not been filled since 2016, when the data systems analyst title was created; that the facts demonstrated a community of interest among the data systems analyst and the existing unit; that the unit description in the Certification of Representative and the recognition provision of the parties' CNA does not prohibit an accretion of the data systems analyst into the existing unit; and that the unit description in the recognition provision of the parties' CNA is sufficiently generic or broad enough to encompass non-certificated employees that share a community of interest with unit members.

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Appearances:

For the Respondent, Kenney, Gross, Kovats and Parton,
attorneys (Michael J. Gross, of counsel)

For the Petitioner, Springstead and Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION

On November 20, 2015, the Park Ridge 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 Park Ridge Board of Education (Board) to include the job title, data systems analyst (DSA). The Association contends that the DSA is identical or nearly identical to the title, confidential administrative assistant to the director of curriculum and instruction (CAADCI) that has been included in the unit since November, 2012. The Board opposes the petition, arguing that no confidential administrative assistant title has been included in

the Association's unit since at least 2010; that the recognition provision in the parties' collective negotiations agreement (CNA) excludes the DSA from the Association's unit; and that the DSA lacks a community of interest with the Association's unit.

On January 19, 2016, the Association filed a position statement and a certification with supporting exhibits from its President, Kelly Epstein (Epstein). On February 5, 2016, the Board filed a position statement together with exhibits. On February 12, 2016, an investigatory conference was held. On June 29, 2016, the Association filed a letter indicating that after interviewing the DSA, the parties were unsuccessful in their efforts to reach a negotiated resolution and that "it appears that a hearing will be necessary to resolve the controversy."

On October 27, 2016, a Commission staff agent sent a letter to the parties seeking responses to a series of questions (soliciting facts) about the DSA's 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, regarding the DSA; the names of person(s) who have held the titles CAADCI and DSA; the Board's table of organization; job descriptions for each title; the number of employees, and titles, in the Association's unit; specifications

regarding supervisory responsibilities for the DSA; and the appropriateness of the petition.

On December 1, 2016, the Board filed a letter and a certification with supporting exhibits from Robert Gamper, Ed.D. (Gamper), Board Superintendent.

On November 16, 2018, a Commission staff agent sent a letter to the parties requesting that they supplement/amend their responses to the agency's October 27, 2016 request for information with all current information, if any. The staff agent also requested responses to another series of questions soliciting additional facts about the DSA's 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 whether the DSA performed confidential duties within the meaning of the Act; whether the DSA performed supervisory duties within the meaning of the Act; and the existence, or lack thereof, of a community of interest between the DSA and the Association's unit. 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 December 7, 2018, the Board filed a letter and a supplemental certification with a supporting exhibit from Gamper.

On December 11, 2018, the Association sent an email to the staff agent attaching the Association's answers to the agency's October 27, 2016 request for information; the Association also indicated that it would make inquiries to determine if there were any changes to the answers previously given.

On July 22, 2019, a 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 30, 2019, a Commission staff agent sent an email to the parties seeking the DSA's salary history since 2016. On July 31, 2019, the Board provided the DSA's salary history from 2016-present. To date, neither party has provided any additional information or further response to the agency's 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 are parties to a CNA extending from July 1, 2014 through June 30, 2016 and a successor CNA extending from July 1, 2017 through June 30, 2020. Article I of

the parties' 2014-2016 and 2017-2020 CNAs, entitled

"Recognition," provides:

The Board recognizes the Association as the exclusive representative for collective negotiations concerning the terms and conditions of employment for all certificated personnel whether under contract or on leave in the following classifications: classroom teachers, nurses, guidance counselors, media specialists, special education personnel, coordinators, secretaries, accounts payable secretary and athletic trainers.

Unless otherwise indicated, the term "Employee", when used hereinafter in this agreement, shall refer to all employees represented by the Association in the negotiating unit as above defined, and references to male employees shall include female employees.^{1/2/}

As of November/December 2016, the Board employed about 152 unit employees in the following titles:

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- 1/ On December 16, 1996, the Association was certified as the majority representative of all secretaries, switchboard operator, payroll, computer secretary/attendance, accounts payable, custodians, head custodians, lead men, and maintenance I, II, III, employed by the Board to be added to the existing unit of teachers and professionals represented by the Association. (Dkt. No. RO-97-62).
- 2/ On November 30, 1998, IUOE Local 68, AFL-CIO (IUOE), was certified as the majority representative of all regularly employed blue collar employees employed by the Board including custodians, head custodians, lead men, and maintenance men I and II. (Dkt. No. RO-99-29). On December 3, 2001, IUOE was again certified as the majority representative of all regularly employed blue collar employees employed by the Board including custodians, head custodians, lead men, and maintenance men I and II. (Dkt. No. RO-2002-42).

teachers, guidance counselors, school psychologists, case managers, school counselors, media specialists, attendance secretary, main office secretary, guidance secretary, secretary to the principal, assistant principal, accounts payable secretary, administrative assistant to the director of special services, administrative assistant to the director of curriculum and instruction, secretary to the director of athletics, and buildings and grounds.
 [Epstein Certification, ¶(A)(4); Gamper Certification, ¶(A)(4)]

Administrative Organization and Structure

The Board's table of organization, which has not been updated since 2009, shows four titles that report to the Board:

- Superintendent;
 - Auditor;
 - Attorney;
 - Treasurer of School Monies.
- [Gamper Certification, ¶(A)(2), Ex. B]

The Board's table of organization includes a minimum of seven titles, in addition to an administrative assistant and a secretary to the superintendent, that report to the Superintendent:

- High School Principal;
 - West Ridge Principal;
 - East Brook Principal;
 - Director of Special Programs and Student Services;
 - Director of Curriculum and Instruction^{3/};
 - Director of Technology; and
 - School Business Administrator/Board Secretary.
- [Gamper Certification, ¶(A)(2), Ex. B]

^{3/} According to the Board, (though not shown on the table of organization) the Director of Curriculum and Instruction should be listed as a direct report to the Superintendent. See Gamper Certification, ¶(A)(2), Ex. B.

According to the Board, (though not shown on the table of organization) the confidential administrative assistant to the director of curriculum and instruction (CAADCI) reports directly to the Director of Curriculum and Instruction. See Gamper Certification, ¶(A)(2), Ex. B.

According to the Board, (though also not shown on the table of organization) the data systems analyst (DSA) reports directly to the Director of Technology. See Gamper Certification, ¶(A)(2), Ex. B.

CAADCI Title

The CAADCI title was created/approved by the Board on November 19, 2012. See Epstein Certification, ¶(A)(3)(a); Gamper Certification, ¶(A)(3)(a). The individual serving as CAADCI is employed in that title one-half time and the other half is shared with the Director of Special Services. See Epstein Certification, ¶(A)(3)(b). The CAADCI reports to the Director of Curriculum and Instruction, who also supervises and evaluates the CAADCI; the Director of Curriculum and Instruction reports to the Superintendent. See Epstein Certification, ¶¶(A)(2, 11). The CAADCI title is part of the Association's unit. See Gamper Certification, ¶(A)(3)(c); Epstein Certification, ¶(A)(3)(c). Patricia Idone served as CAADCI, but the position has not been filled since the DSA title was created. See Gamper Supp. Certification, ¶(2)(3); Epstein Certification, ¶(A)(1). After

the DSA position was created in 2015-2016, responsibilities for clerical work on behalf of the Director of Curriculum and Instruction have been filled by a negotiations unit 12-month secretarial position. See Gamper Supp. Certification, ¶(2)(3).^{4/5/}

The Board's job description for CAADCI, which is identical to the job description for administrative assistant for director of curriculum and instruction, specifies that the CAADCI performs these primary duties:

4/ Gamper also certifies that there are currently three confidential secretarial positions in the school district - confidential secretary to the superintendent; confidential secretary to the school business administrator; and confidential payroll secretary. See Gamper Supp. Certification, ¶(2)(12).

5/ The Board's assertions that the ". . . CAADCI . . . position does not exist" and that ". . . there are no Confidential Administrative Assistant positions in the Association, and there has not been since at least 2010 when the former Superintendent tried, and failed, to maintain such a position" are inaccurate; the Board's reference to Dkt. No. CU-2010-005 is of no consequence. See Board's February 5, 2016 Position Statement at 2. It is undisputed that the CAADCI title was created/approved by the Board on November 19, 2012 and is included in the Association's unit; that Patricia Idone served as CAADCI until 2016; and that the CAADCI position has not been filled since 2016. See Gamper Certification, ¶¶(A)(1-3); Gamper Supp. Certification, ¶(2)(3). On August 3, 2009, the Association filed a clarification of unit petition (CU-2010-005) seeking to clarify the Association's existing unit to include the newly-created title confidential administrative assistant for the department of special programs and student services (CAADSPSS). On February 1, 2010, the Director of Representation (Director) issued D.R. No. 2010-11, 36 NJPER 18 (¶9 2010), clarifying the Association's unit to include the CAADSPSS title.

- (1) coordinates the efficient workflow of the school system relative to the responsibilities of the Director of Curriculum & Instruction;
 - (2) performs all secretarial and confidential work as assigned by the Director of Curriculum & Instruction;
 - (3) assists in the preparation of all correspondence and reports emanating from the Office of Curriculum & Instruction;
 - (4) maintains a regular filing system, as well as a set of secure confidential files, and processes incoming correspondence;
 - (5) arranges for conferences, meetings, interviews, schedules appointments, make phone calls, records messages and keeps current calendar for the Director of Curriculum & Instruction;
 - (6) assists the Director of Curriculum & Instruction in preparing reports required by law, administrative code and board policy - including NJ Smart Reports: SID management, State Report, NJASK, Course Roster, Staff and Student and other NJ Smart Reports, and NJDOE reports as required;
 - (7) assist with the preparation for New Teacher Orientation and related workshops;
 - (8) assists with staff development workshops and in-service programs;
 - (9) assists with the work associated with NJ State mandated assessments including NJASK, HSPA, PARCC, technology, and other required assessments;
 - (10) provide assistance with updating curriculum and Curriculum Office web pages;
 - (11) maintains accounting records, types purchase orders and checks in all purchased material upon arrival and follow-up as required where problems arise;
 - (12) maintains attendance records for the office;
 - (13) maintains confidentiality as required and appropriate;
 - (14) maintains Student Information Database and NJ Smart; and
 - (15) performs other tasks related to the efficient operation of the office as assigned by the Director of Curriculum/Technology.
- [Epstein Certification, ¶(A)(3), Ex. B; Gamper Certification, ¶(A)(3), Ex. C]

Gamper certifies that ". . . CAADCI was a secretarial position . . . [with] [d]uties [that] were performed based on the

express verbal or written direction of the director of curriculum and instruction; it was a routine position that did not call for independent action." See Gamper Certification, ¶3.

DSA Title

The DSA title was created/approved by the Board on October 19, 2015, effective January 1, 2016. See Epstein Certification, ¶¶(A)(3)(a), (B)(1); Gamper Certification, ¶(A)(3)(a). The DSA is employed full-time in that title; works 260 days by contract (generally during the school day, but may be required to work at times when school is not in session); and is paid a salary that is established in an annual contract. See Epstein Certification, ¶(A)(3)(b); Gamper Certification, ¶¶(A)(5-12). The DSA does not evaluate any other Board employee; is not involved in any labor relations procedures or administration of contract; does not attend negotiations sessions; and does not prepare documents or data used in negotiations. See Gamper Supp. Certification, ¶(2)(5-9, 14-15). The DSA reports to the Technology Coordinator/Supervisor of Technology, who also supervises and evaluates the DSA; the Supervisor of Technology reports to the High School Building Principal, who in turn reports to the Superintendent. See Epstein Certification, ¶¶(A)(2, 11-12); Gamper Supp. Certification, ¶(2)(10-11, 13). The Technology Coordinator/Supervisor of Technology titles are not included in the Association's unit. See Gamper Supp. Certification,

¶(2)(10). Barbara Dell'Armo currently serves as the DSA and is the only individual who has worked in that title since January 1, 2017. See Epstein Certification, ¶(A)(1); Gamper Supp. Certification, ¶(2)(3).

The Board's job description specifies that the DSA performs these primary duties:

- (1) administer all aspects of the district's Student Information Systems and other district-wide database systems;
 - (2) provide support to all database users (Password/Login information, documentation, etc.);
 - (3) maintain state reporting information from the database for NJSMART and other required state and federal reports;
 - (4) work closely with the Guidance and Special Education Departments, particularly with customization of rank, GPA, transcripts, and IEP software integration;
 - (5) provide assistance and professional development to staff associated with district databases;
 - (6) provide assistance in building data-based reports;
 - (7) establishes and documents digital processes/procedures for executing and documenting all changes to the student enrollment register that affect reporting including, but not limited to enrollment, disenrollment, yearly rollover and promotion, change in attending/resident school, change in special education eligibility, change in self-contained program status, change in grade level, lunch program changes, basic skills/Title I changes, and ELL/LEP program changes and trains other district staff in execution of these processes;
 - (8) establishes and documents digital processes to maximize the efficiency and accuracy of all other student data operations, e.g. attendance, discipline, scheduling, etc. and trains other district staff in execution of these processes;
- * * *
- (10) performs ad-hoc data analysis as required to support administrative initiatives and answer administrative concerns in all areas of student data,

e.g. attendance, grades, demographics, test scores, course enrollment, etc.;

-(11) ensures student data based systems are configured in compliance with district mandates and requirements for all areas of student data, e.g. calculation of averages and GPA, grade scales, documentation of special absence types, transcript and report card production, etc.;

-(12) establishes security for systems containing student data so that integrity is maintained at the highest level possible;

-(13) participates in selection and implementation of software systems using student data to ensure that systems chosen maximize functionality, are compatible with existing systems, and are properly configured to meet district student data management requirements;

* * *

[Epstein Certification, ¶(A)(3), Ex. A; Gamper Certification, ¶(A)(3), Ex. C]

Epstein certifies that “. . . the DSA is currently performing duties that have been shared by virtually all of the currently recognized secretaries in the school district . . .” - i.e., she works on databases in the exact same way as, and asks for assistance from, the attendance secretary, administrative assistant to the director of special services, guidance secretary, and secretary to the principal. See Epstein Certification, ¶(B)(2). According to Epstein, “. . . all items on the job description for the DSA . . . were performed by the former administrative assistant to the director of curriculum and instruction except for items 7, 8, and 12 . . . [which] tie to the Board’s need to create the separate full-time job devoted to the data systems due to the increase in need surrounding the technology of the school district.” See Epstein Certification,

¶(B)(3). Epstein certifies that based upon interviews with the DSA and other secretaries, “. . . it was discovered that part of the DSA’s job includes technological aspects performed by the attendance secretary, guidance secretary, and administrative assistant to the director of special services . . . [and] [i]n some [instances], the DSA took over the responsibility previously held by those secretaries.” See Epstein Certification, ¶(B)(3). According to Epstein, “. . . the DSA now manages the student intake data which she took over from the guidance secretary”; “[s]he has . . . met several times with the administrative assistant to the director of special services and the attendance secretary to learn about aspects of Power School ([the school district’s] student data system) from the work these secretaries perform daily.” See Epstein Certification, ¶(B)(3).

Gamper certifies that “[t]he DSA is not a secretarial position . . .” and that the DSA and CAADCI positions “. . . are not [similar]” because there are more than “. . . ‘small differences’ between the two positions.” See Gamper Supp. Certification, ¶(2)(2); Gamper Certification, ¶2. According to Gamper, the DSA “. . . does not simply wait for direction from her supervisor[,] . . . [but] [r]ather . . . the DSA . . . administers the [school] [d]istrict’s databases and reporting responsibilities, as well as performs a multitude of other technical tasks.” See Gamper Certification, ¶¶4-6, Ex. A.

Gamper certifies that “. . . the activity logs maintained by the DSA confirm that her duties are independent, district-wide and technical, and thus belongs outside the Association - just as the [school] [d]istrict’s other technical staff are.” See Gamper Certification, ¶¶4-6, Ex. A. According to Gamper, the tasks described in the DSA’s activity log “. . . are manifestly different than those contained in the CAADCI”; “[t]hey are not merely clerical or routine ‘data entry’ . . . [but demonstrate that] the DSA affirmatively and actively manages the [school] [d]istrict’s reporting databases, and performans many technical tasks which the CAADCI would not be qualified to perform.” See Gamper Certification, ¶7, Ex. 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.

The Association’s clarification of unit petition is timely filed. The DSA title was created/approved by the Board on October 19, 2015, during the period of the parties’ 2014-2016 CNA. The petition was filed on November 20, 2015, prior to the parties’ execution of a successor CNA. See Union Cty., D.R. No. 2007-7, 32 NJPER 408 (¶168 2007) (noting 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”); accord Hamilton Tp. Bd. of Ed., D.R. No. 2004-14, 30 NJPER 93 (¶37 2004).

I note that the facts don't show and the Board hasn't argued that the DSA is a confidential employee, supervisor, or managerial executive within the meaning of the Act. See Board's February 5, 2016 Position Statement at 1-4; Board's December 1, 2016 Letter at 1-3; Board's December 7, 2016 Letter at 1. The Board has conceded that the DSA "is [not] involved in any labor relations procedures or administration of contract"; "does not attend negotiations sessions"; "does not prepare documents or data used in negotiations"; and "does not evaluate any other employee." See Gamper Supp. Certification, ¶¶(2)(5-15).

Community of Interest/Recognition Provision Discussion

The Commission has a "preference for broad-based units and reluctance to form units along occupational or departmental lines [that] is well established." Gloucester Cty., P.E.R.C. No. 2011-69, 37 NJPER 141 (¶42 2011) (citing State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974)). In Somerset Cty., D.R. No. 2014-14, 40 NJPER 527 (¶172 2014), the Director of Representation wrote:

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, location of employment, 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). '[T]he importance of any one factor in a particular case depends upon how it interrelates with other factors.' Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272, 273 (¶15134 1984).

* * *

The Commission has explained that 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 also examines whether a proposed unit would lead to undue unit fragmentation or proliferation. Id. See also New Jersey State Coll. of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977); Teaneck Tp., P.E.R.C. No. 88-20, 13 NJPER 721 (P18270 1987). Additionally, the Commission considers the history of the negotiations units, the extent of organization of the petitioned-for titles, the desires of the parties and the Act's purpose. See Passaic Cty., P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) recon. den. P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); State of New Jersey (Human Services), D.R. No. 95-1, 20 NJPER 308 (¶25154 1994); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12228 1981).

Accord Newark State Operated School Dist., D.R. No. 2018-12, 44 NJPER 195 (¶57 2017), adopted P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018).

The Commission has found "that a community of interest exists among virtually all non-supervisory employees in an educational setting." Trenton Bd. of Ed., D.R. No. 2012-4, 38

NJPER 372 (¶126 2012) (citing West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984)); see also Union Cty. Coll., D.R. No. 2019-9, 45 NJPER 184 (¶49 2018), adopted P.E.R.C. No. 2019-35, 45 NJPER 319 (¶84 2019), app. pending (App. Div. Dkt. No. A-3625-18T2) (clarifying an existing unit of instructional and professional library staff employed by the College to include academic specialists).

"[A] community of interest has been found to exist among those professional educational personnel who instruct pupils that comprise the normal student body, whether these personnel are considered 'regular' teachers or are employed in special programs." Union Cty. Reg. H.S. Dist. #1, D.R. No. 83-22, 9 NJPER 228 (¶14106 1983). Moreover, "[t]he Commission's determinations of community of interest among professional educational personnel have extended . . . to noninstructional professional Board employees who perform services related to the educational mission of a [b]oard of [e]ducation." Id.; see also Newark Bd. of Ed., D.R. No. 80-1, 5 NJPER 314 (¶10170 1979) (holding that "under its policy favoring broad-based units in school districts," the Commission has found "that a community of interest exists between regular classroom teachers and other professional and nonprofessional employees who, by performing functions which are auxiliary to the basic function of classroom

teaching, are an integral aspect of the total educational service provided by the [b]oard"); accord Union Cty. Coll., D.R. No. 2019-9, 45 NJPER 184 (¶49 2018), adopted P.E.R.C. No. 2019-35, 45 NJPER 319 (¶84 2019), app. pending (App. Div. Dkt. No. A-3625-18T2).

The requisite community of interest exists among unit members and the DSA. See Somerset Cty.; Newark Bd. of Ed.; Union Cty. Reg. H.S. Dist. #1. Specifically, unit members and the DSA are employed by the Board; share the goal of ensuring the Board's total educational service to students and parents; are supervised by the principal of a school or a director of particular program or the business administrator - all of whom report to the Superintendent; work in Board buildings or campuses; perform either classroom instruction or associated functions that are auxiliary to the fundamental purpose of ensuring the total educational service provided by the Board; are paid similar wages (e.g., unit members' salary range for the period 2014-2019 was approximately \$24,085-\$108,850; the DSA's salary range for the period 2016-2019 was approximately \$52,530-\$57,402); and have similar hours and terms and conditions of employment (i.e., full-time employment, although some unit members are 10-month employees and other unit members and the DSA are 12-month employees). Moreover, it is clear from the parties' submissions that the educational and experience requirements for the DSA are

similar to, and fall within the range of, unit members' educational and experience requirements. See Epstein Certification, ¶¶(A)(1-3, 5-12), Exhs. A-B; Gamper Certification, ¶¶2-7, (A)(1-3, 5-12), Exhs. A-C; Gamper Supp. Certification, ¶¶(2)(1-15), Exh. A; Board's July 31, 2019 email; see also Burlington Cty. College, D.R. No. 2004-6, 29 NJPER 426 (¶145 2003) (finding that an academic advisor title was appropriate for inclusion in a unit based, in part, upon the fact that the title had similar educational and experience requirements as other unit members).

The history of the negotiations unit also supports a finding that a community of interest exists among unit members and the DSA. See Somerset Cty.; Passaic Cty. Admittedly, the DSA performs job duties that are more "independent, district-wide and technical" in nature than any other pre-existing title. See Gamper Certification, ¶¶2-7, Ex. A; Gamper Supp. Certification, ¶¶(2)(1-4). However, before 2016, non-certificated unit members - such as the CAADCI - performed some of the same technology-related duties currently assigned to the DSA. Specifically, unit members were responsible for maintaining the Student Information Database and NJ Smart; assisting in the preparation of all reports emanating from the Office of Curriculum and Instruction as well as reports required by law, administrative code, and Board policy (e.g., NJ Smart reports: SID management, State

Report, NJASK, Course Roster, Staff and Student and other NJ Smart Reports, and NJDOE reports); assisting with the work associated with NJ State mandated assessments (e.g., NJASK, HSPA, PARCC, technology, and other required assessments); assisting with updating curriculum and Curriculum Office web pages; maintaining attendance records; and performing other tasks related to the efficient operation of the office as assigned by the Director of Curriculum/Technology. See Epstein Certification, ¶¶(A)(1-3), (B)(1-3), Exhs. A-B; Gamper Certification, ¶(A)(3), Ex. C.

Both the unit description in the Certification of Representative and the recognition provision in the parties' 2014-2016 and 2017-2020 CNAs, do not prohibit an accretion of the DSA into the existing unit. See Trenton Bd. of Ed.; Union Cty. Reg. H.S. Dist. #1. The Board's argument that the entire technology department is "excluded" from the Association's unit and that "the [Association's] unit is made up of the certificated teaching staff and secretarial staff, only" is inaccurate. See Board's February 5, 2016 Position Statement at 3-4.

Since 1996, the negotiations unit has included certificated and non-certificated personnel employed by the Board. Dkt. No. RO-97-62; "all secretaries, switchboard operator, payroll, computer secretary/attendance, accounts payable, custodians, head custodians, lead men, and maintenance I, II, III, employed by the

Board to be added to the existing unit of teachers and professionals."^{6/} The parties' (identically worded) recognition provisions of their two most recent CNAs do not accurately reflect that the unit is in fact comprised of certificated and non-certificated personnel. (See recognition provision on p. 5 of this decision).^{7/} The Commission has held that "[a] contract 'should not be interpreted to render one of its terms meaningless.'" Woodland Park Bd. of Ed., D.R. No. 2018-8, 44 NJPER 100 (¶33 2017) (citing Cumberland Cty. Improvement Auth. v. GSP Recycling, Inc., 358 N.J. Super. 484, 497 (App. Div. 2003)). Interpreting "all certificated personnel" literally would render

^{6/} In 1998, custodial staff formed their own negotiations unit that excludes professional staff. See Dkt. Nos. RO-99-29 and RO-2002-42 (certifying IUOE as the majority representative for "all regularly employed blue collar employees employed by the Board including custodians, head custodians, lead men, and maintenance men I and II").

^{7/} Teachers, nurses, guidance counselors, and athletic trainers are certificated personnel. See, e.g., N.J.A.C. 6A:9B-5.1 (teaching staff member), -14.3 (school nurse), -14.8 (school counselor), -14.17 (school athletic trainer). Secretaries and accounts payable secretary are non-certificated personnel. Only certain media specialists, special education personnel, and coordinators are certificated personnel. See, e.g., N.J.A.C. 6A:9B-14.14 (school library media specialist), -14.15 (associate school library media specialist), -14.5 (school social worker), -14.9 (school psychologist), -14.10 (learning disabilities teacher-consultant), -14.2 (student assistance coordinator), -14.19 (cooperative education coordinator-hazardous occupations), -14.20 (cooperative education coordinator). See also State of New Jersey, Department of Education - Certificate Subject Area/Grade Level and Codes (<https://nj.gov/cgi-bin/education/license/endorsement.pl?string=999&maxhits=1000&field=1>).

other language in the parties' recognition provision meaningless - i.e., non-certificated personnel such as secretaries, accounts payable secretary and certain media specialists, special education personnel, and coordinators would not be included in the unit. If the parties intended to exclude non-certificated employees other than those specified, it would be unnecessary to utilize the phrase "all certificated personnel" in the recognition provision - the included titles, whether certificated or non-certificated, simply could have been specified.

I disagree with the Board that the entire technology department or any title falling within is specifically "excluded" from the unit descriptions set forth in the relevant Certification of Representative or the parties' CNAs. The Certification of Representative specifically includes the "computer secretary" and "professionals." See Dkt. No. RO-97-62. That the Association omitted to identify and timely file a clarification of unit petition seeking to add other title(s) within the technology department is not indicative of whether those titles may appropriately be included in Association's unit. It simply means that the Association may be required to add those titles to its unit through voluntary recognition by the Board^{8/}

^{8/} For example, although not part of the Association's unit, it appears that the Board and the Park Ridge Administrators Association (PRAA) reached a CNA recognizing PRAA as the exclusive representative for the Director of

(continued...)

or by filing a representation petition rather than a clarification of unit petition. See Union Cty. Moreover, neither party has suggested that the DSA would more appropriately be included in another unit of Board employees (especially because the custodial unit excludes professionals (e.g., the DSA) and the administrators' unit includes supervisors (e.g., Director of Curriculum/Technology)). See N.J.S.A. 34:13A-6 ("[t]he commission . . . shall decide in each instance which unit of employees is appropriate for collective negotiation"); Trenton Bd. of Ed., D.R. No. 2012-4, 38 NJPER 372 (¶126 2012) ("[w]here more than one unit is potentially appropriate, the Commission must determine which unit configuration is most appropriate").

Finally, I find that the unit description in the parties' recognition provision is sufficiently generic or broad enough to encompass non-certificated Board employees (including the DSA) that share a community of interest with unit members. The Commission has held that ". . . [n]ewly created titles will be clarified into a unit only if they fall within the definition of the scope of the existing recognition clause of the parties' collective negotiations agreement." Irvington Housing Auth., D.R. No. 98-15, 24 NJPER 244 (¶29116 1998). The Board and

8/ (...continued)
Curriculum/Technology, among other titles. See 2002-2005
CNA, Art. I.

Association could have negotiated a restrictive recognition provision specifying the inclusion of "only" certain titles or types of employees (i.e., language that was literally consistent with the titles or types of employees included). They did not, however, and instead defined the unit - albeit, inaccurately - as including "all certificated personnel whether under contract or on leave" while referencing certain classifications that include both certificated and non-certificated personnel. Cf. City of Newark, D.R. No. 2018-18, 44 NJPER 415 (¶116 2018) (noting, conversely, that the parties "could have agreed to more encompassing or generic terms in the recognition provision that could have contemplated the inclusion of all employees performing communication work or all white collar employees within the police department not represented by other employee organizations" but "did not do so and instead defined the unit by . . . specifically-identified titles"); contrast Newark State-Operated School Dist., D.R. No. 2016-9, 43 NJPER 19 (¶6 2016), adopted P.E.R.C. No. 2017-16, 43 NJPER 115 (¶34 2016) (dismissing a clarification of unit petition because the titles sought were not identified in narrowly-defined recognition clauses which specifically included approximately 157 and 40 job titles, respectively, and lacked generic language covering the titles); East Orange Bd. of Ed., D.R. No. 80-25, 6 NJPER 114 (¶11061 1980) ("[g]iven the specificity of the unit inclusionary language,

there is no significance in the absence of language which would specifically exclude summer school teachers”).

Similarly, the parties could have agreed to a recognition provision that specified the exclusion of certain titles or types of employees (e.g., employees within the technology department). But no exclusions appear in the recognition provision. I do not find that the DSA must be excluded based upon the title’s lack of academic rank, teaching responsibilities, or certification status. In fact, the Association’s unit includes both teaching and non-teaching staff; both certificated and non-certificated personnel. See Burlington Cty. College (finding that an academic advisor title was appropriate for inclusion in a unit based, in part, upon the fact that the title was not excluded due to lack of academic rank or teaching responsibilities); contrast Mercer Cty. Special Services Bd. of Ed., D.R. No. 2000-3, 29 NJPER 102 (¶331 1999) (dismissing a clarification of unit petition because the titles sought were specifically excluded in narrowly-defined recognition clauses).

Accordingly, I find that clarifying the existing unit to include the DSA conforms with the Commission’s “preference for broad-based units” particularly in the educational setting.

Gloucester Cty.; Trenton Bd. of Ed.^{9/}

^{9/} Notwithstanding that the instant petition was filed in November 2015, neither party has raised Janus v. AFSCME,
(continued...)

ORDER

I clarify the Park Ridge Education Association's unit of certificated and non-certificated personnel to include the job title, data systems analyst, effective immediately.^{10/11/}

/s/Jonathan Roth
Jonathan Roth
Director of Representation

DATED: August 2, 2019
Trenton, New Jersey

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- 9/ (...continued)
Council 31, 138 S. Ct. 2448, 585 U.S. (2018) or the Workplace Democracy Enhancement Act (WDEA), N.J.S.A. 34:13A-5.11 et seq. in support of its position. The WDEA provides additional support for clarifying the existing unit to include the DSA. Under the WDEA, employees who "perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization." N.J.S.A. 34:13A-5.15.
- 10/ The instant petition, which pertains to a newly-created title, was filed while the parties' 2014-2016 CNA was in effect. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) ("[w]here the clarification determination involves a newly created job title, a change of circumstances, . . . a Commission determination to include these titles in the unit shall be effective immediately"; "[i]n all cases where the clarification of unit question is raised before the Commission prior to the execution of the parties' most recent contract, . . . the clarification of unit determination shall be effective immediately").
- 11/ "Inclusion in the unit does not mean that [the data systems analyst] is automatically covered by all of the terms of the parties' existing agreement . . . [but] [r]ather, the title's inclusion in the unit requires the parties to negotiate over matters of salary and other terms and conditions of employment." West Essex Reg. Bd. of Ed., D.R. No. 99-13, 25 NJPER 196, 199 (¶30091 1999); Sussex Cty., D.R. No. 92-25, 18 NJPER 212 (¶23095 1992).

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 12, 2019.