

P.E.R.C. NO. 2017-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK STATE-OPERATED
SCHOOL DISTRICT,

Public Employer,

-and-

Docket No. CU-2015-012

SEIU LOCAL 617,

Petitioner,

-and-

NEWARK TEACHERS UNION LOCAL 481,
AFT, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies the request for review of the Director of Representation's decision in a clarification of unit petition filed by the SEIU and the NTU. The Commission finds no compelling reason warranting review of the Director's determination and that the Director properly found that a clarification of unit petition was not the appropriate vehicle to add newly-created job titles to an existing unit given that they were not specifically or generically identified in the recognition clause of the parties' most recent collective negotiations agreements.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Public Employer, Adams, Gutierrez &
Lattiboudere, LLC, attorneys (Adam S. Herman, of
counsel)

For the Petitioner, Oxfeld Cohen, P.C., attorneys
(Arnold S. Cohen, of counsel)

For the Intervenor, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys (Colin Lynch,
of counsel)

DECISION

On June 21 and 22, 2016, the Service Employees International Union, Local 617 (SEIU) and the Newark Teachers Union, Local 481, AFT, AFL-CIO (NTU), respectively, filed requests for review of D.R. 2016-9, 43 NJPER 19 (¶6 2016). In that decision, the Director of Representation dismissed the SEIU's amended

clarification of unit petition which sought to include the following newly-created job titles in its collective negotiations unit: family advocate, staffing coordinator, data analyst, health coordinator, coordinator of contact center, and coordinator of employee services.^{1/} The Director also denied the NTU's request to include the data analyst job title in its collective negotiations unit.^{2/3/} On July 6, 2016, Newark State-Operated School District (District) filed a response opposing review.

The SEIU advances two arguments in support of its request: (1) clarification of unit petitions are the appropriate vehicle for adding new job titles to an existing unit; and (2) the subject job titles, when they were positions with Newark Preschool Council, Inc. (NPC), were previously included in the

1/ The SEIU's original clarification of unit petition, filed on December 9, 2014, included the community engagement specialist and coordinator of federal programs job titles. The amended petition, filed on June 18, 2015, withdrew the community engagement specialist job title from consideration. As noted in footnote 2 of its request for review, the SEIU has also withdrawn the coordinator of federal programs job title from consideration.

2/ The NTU filed a separate clarification of unit petition (CU-2015-005) on September 11, 2014 which sought to include the data analyst and community engagement specialist job titles, among others, in its collective negotiations unit. Pursuant to N.J.A.C. 19:11-2.7, the NTU was permitted to intervene in the instant proceeding with respect to the data analyst and community engagement specialist job titles. After the SEIU amended its petition, the community engagement specialist job title was removed from consideration.

3/ We note that the NTU has also filed a related unfair practice charge (CO-2015-050).

SEIU and therefore their continued recognition by the District is required.

The NTU argues that the Director's unit clarification analysis erroneously applied the standard for evaluating existing job titles rather than the appropriate standard for evaluating new job titles. As a result, the NTU maintains that the Director improperly focused on the specific nature of the recognized job titles while failing to determine whether the new job titles performed duties similar to a recognized title and shared a community of interest with the existing unit.

In response, the District asserts that the SEIU and the NTU have failed to articulate any compelling reason warranting their requests for review. The District maintains that the unions' recognition clauses do not identify, and are not broad enough to cover, the subject job titles. The District also contends that the SEIU's request for review contains factually inaccurate information regarding the NPC and the subject job titles, specifically: the NPC did not employ anyone within the subject job titles except family advocate; the NPC was contracted by the District to provide early education services and, upon the contract's expiration, Community Development Institute (CDI) began providing these services; the SEIU has never established that NPC was a public employer.

Pursuant to N.J.A.C. 19:11-8.2, "a request for review will be granted only for one or more of these compelling reasons:"

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

The Commission has held that "[t]he 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." New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370 (¶30160 1999) (citing Clearview Reg. High School Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977)). "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" 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 (¶15140 1984) (citing Barnegat Tp. Bd. of Ed., D.R. 84-15, 10 NJPER 54 (¶15029

1983); Clearview Reg. High School Bd. of Ed.). Moreover, “[c]ommunity of interest considerations, alone, are not a sufficient basis to enlarge the scope of a negotiations unit through unit clarification.” Id.

We find no compelling reason warranting review of the Director’s determination. Contrary to the assertions made by the SEIU and NTU, the instant clarification of unit petition is not the appropriate vehicle to add the subject job titles to an existing unit given that the newly-created titles are not specifically or generically identified in the recognition clauses of the parties’ most recent collective negotiations agreements (CNA).^{4/} See Irvington Housing Auth., D.R. 98-15, 24 NJPER 244 (¶29116 1998) (“Newly 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.”). While there may in fact be a community of interest between the subject job titles and those within the existing units, we cannot reach that prong of the

^{4/} The recognition clause in the SEIU’s CNA with the District defines the unit, absent any generic language, as “all full and part-time employees of the Newark Public Schools under the following categories” and then lists 157 specific job titles with corresponding code numbers, none of which match the subject job titles. Similarly, the recognition clause in the NTU’s CNA with the District defines the unit, absent any generic language, as “employees of the Newark Public Schools . . . consisting of the following categories” and then lists 40 specific job titles, none of which match the subject job titles.

clarification analysis with respect to newly-created job titles where, as here, the parties' narrowly-defined recognition clauses circumscribe any broad-based interpretation that could encompass the subject job titles and no facts have been presented indicating that the parties intended to include more or less than what appears in the CNAs. See Newark Housing Auth., D.R. No. 95-22, 21 NJPER 132, 133 (¶26082 1995) (" . . . titles to be clarified into the unit must be identified as being within the scope of the existing unit; it is insufficient that a title may share a community of interest with the existing unit. ").

Moreover, unlike the recognition clauses at issue here, the following cases cited by the unions in support of their request for review are distinguishable as they were clarification of unit petitions or unfair practice charges where there was a finding that the titles at issue fell within broad-based unit definitions and/or were equivalent, both in name and job responsibilities, to identified job titles: Somerville Bor., D.R. No. 2005-17, 31 NJPER 132 (¶57 2005) (the Director of Community Development job title was clarified into an existing unit where the recognition clause at issue defined the unit as "all full-time and regularly employed part-time white collar and blue collar supervisory employees employed by the Borough" and then listed specific titles); Burlington Cty. College, D.R. 2004-6, 29 NJPER 426 (¶145 2003) (the Academic Advisor job title was clarified into an

existing unit where the recognition clause at issue defined the unit as "all full-time teaching faculty, student counselors and librarians" and additional titles could be "given to individuals employed by the College to perform duties similar to those performed by faculty, counselor, and librarian staff"); City of Englewood, D.R. No. 2004-11, 30 NJPER 89 (¶34 2004) (the Financial Analyst job title was clarified into an existing unit where the recognition clause at issue was broad-based and did not identify specific titles); Trenton Bd. of Ed., D.R. No. 2012-4, 38 NJPER 372 (¶126 2012) (the Purchasing Clerk job title was clarified into an existing unit representing "all non-supervisory clerical employees" and then listed specific titles); Camden Bd. of Ed., D.R. No. 2007-6, 32 NJPER 383 (¶159 2006) (the Clerk III job title was clarified into an existing unit where the recognition clause at issue defined the unit as "all secretarial and clerical employees"); Hamilton Tp. Bd. of Ed., D.R. 2004-14, 30 NJPER 93 (¶37 2004) (the Transportation Technician job title was clarified into an existing unit representing "a broad-based unit of professional and non-professional employees" including the specific titles "bus driver" and "relief driver/helper"); East Brunswick Bd. of Ed., H.E. 2001-10, 26 NJPER 453 (¶31178 2000) (the After School Media Specialist, After School Media Center Assistant and After School Media Center Manager job titles were clarified into an existing broad-based unit representing

"full-time and part-time certificated and non-certificated personnel" including the specific titles "librarian", "media specialist", "multi-media technical specialist" and "aides").

Accordingly, given that "the parties [in this case] have negotiated a contract that includes without reservation certain persons or titles, the Commission must assume that the written agreement is the result of good faith negotiations in which the parties have imparted finality to their give and take" and "[a] party to [those] agreement[s] should not be permitted to gain additional profit from resort to the Commission's processes after the contract is executed." Clearview Reg. High School Bd. of Ed.; see also, Mercer Cty. Special Services Bd. of Ed., D.R. No. 2000-3, 29 NJPER 331, 333 (¶102 1999).

Turning to the SEIU's assertion regarding NPC predecessor employees who were included within the unit and therefore must be recognized by the District, the SEIU has admitted that family advocate was the only job title that was previously a position with the NPC. Moreover, the District has represented that the NPC provided early childhood education services to the District as an independent contractor rather than as a joint-employer and that CDI, another contractor, assumed the NPC's administration of the program. Further, the SEIU has not established that NPC was a public employer. Accordingly, it was not necessary for the

Director to address this issue in the unit clarification analysis.

To the extent that the unions contend that the District has re-named existing positions in an effort to unilaterally diminish unit representation,^{5/} this issue is more appropriately raised in an unfair practice charge.^{6/} See N.J.S.A. 34:13A-5.4; see also, N.J.A.C. 19:14-1.1 et seq.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones and Wall voted against this decision.

ISSUED: September 22, 2016

Trenton, New Jersey

5/ The Appellate Division has upheld the Commission's determination that "shifting work from employees within a bargaining unit to other employees outside the unit is a mandatory subject of negotiations." Rutgers, The State University and Local 1761, AFSCME, Coun. No. 52, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶1110 App. Div. 1980); see also, Deptford Bd. of Ed. and Depford Ed. Ass'n, P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd NJPER Supp.2d 118 (¶98 App. Div. 1982).

6/ The Commission has held that "an employer acts at its peril of committing an unfair practice if its judgment about its obligation to negotiate with a collective negotiations representative over job titles which are assertedly part of an existing negotiations unit proves incorrect." East Brunswick Bd. of Ed., H.E. 2001-10, 26 NJPER 453 (¶31178 2000) (citing Passaic Cty. Reg. High School, District No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976)).