

L.D. NO. 90-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

MANCHESTER TOWNSHIP

-and-

MANCHESTER TOWNSHIP MUNICIPAL
EMPLOYEES ASSOCIATION

Docket No. L-90-1

-and-

MANCHESTER TOWNSHIP MUNICIPAL
SUPERVISORS ASSOCIATION.

Appearances:

For the Township, James P. Granello, Esq.

For the Associations, Klausner, Hunter & Oxfeld, Esqs.
(Stephen B. Hunter, of counsel)

LAP DECISION

On October 5, 1989, special labor counsel to the Township of Manchester requested that the Public Employment Relations Commission conduct an expedited hearing to clarify whether certain titles should be included or excluded from negotiations units represented by the Manchester Township Municipal Employees Association ("MTMEA") and the Manchester Township Municipal Supervisors Association ("MTMSA"). He indicated that all parties had agreed to submit the matter to the Commission's Litigation Alternative Program ("LAP").

On October 11, 1989, Chairman Mastriani indicated that the Commission had accepted this submission for determination and assigned me as the hearing officer.

On October 23, 1989, I conducted a hearing. The parties stipulated to these ground rules:

1. The parties agree to be bound by the decision issued as a result of this LAP proceeding with no further right of appeal.
2. The hearing officer will use the same standards which are applied to formal unit clarification proceedings.
3. A written transcript of the proceedings will be obtained.
4. The hearing will be open to the public.
5. No intervenors will be allowed to participate.
6. Written post-hearing briefs will not be filed.
7. An expedited written ruling will be issued within two weeks.

The parties then jointly introduced these documents:

- J-1 Manchester Township Ordinance 89-382
- J-2 Manchester Township Ordinance 89-381
- J-3 Manchester Township Ordinance 89-383
- J-4 Manchester Township Ordinance 75-51
- J-5 Personnel Policies and Requirements of the Township of Manchester dated January 1, 1984
- J-6 Job description - Deputy Treasurer/Payroll Supervisor
- J-7 Job description - Director of Public Assistance
- J-8 Job description - Secretary to the Chief of Police

The parties then stipulated that these titles listed in J-1 are excluded from any negotiations unit: administrator, executive secretary, committeeman, township clerk, chief financial officer/assistant administrator, township attorney and municipal court judge. I then heard testimony regarding the structure of the Township government and the job duties of employees.

Manchester has a Township committee form of government. There are five committeemen who select a chairman. Joseph Portash has served as Township administrator since that position was created in 1977. He directs and supervises the administration of all departments and offices of the municipal government, after consultation with the Township committee. He enforces all rules and regulations for the efficient management of the Township government. He serves as director of the division of personnel and develops and administers the personnel program and policies (J-4). He authored J-5, a comprehensive 61 page manual of personnel policies and procedures.

Most departments have department heads currently represented by the MTMSA. None of the department heads are involved for the Township in collective negotiations. They submit non-salary requests in advance of budget preparation, but have no role in developing the Township's budget.

In the Township Clerk's Department, Township Clerk Pauline McCallum is the liaison to the administrator. She has no role in budget formulation, but attends negotiations sessions and takes minutes of all sessions and caucuses where the whole Committee is present. No other current employees in the Clerk's Department have duties related to collective negotiations, budget formulation or policy-making.

Currently there is no deputy clerk position. The Township anticipates having a deputy clerk but has not yet formulated a job description. McCallum was a deputy clerk before becoming clerk. As

deputy clerk, McCallum assumed most duties of the Township clerk when the clerk was absent. Those duties did not, however, include confidential labor relations matters. As deputy clerk, McCallum was shielded from those and certain other matters. McCallum testified that it was likely that a new deputy clerk would not be exposed to confidential labor relations matters. If the clerk is absent, the confidential secretary to the Township administrator takes minutes of Committee meetings and caucuses.

The Financial Department is headed by Janice Gonzales, the treasurer, chief financial officer and assistant administrator. As treasurer, she is in charge of payroll preparation, the general ledger and the encumbrance directive. As chief financial officer, she is responsible for all revenues and expenditures, budget preparation, investments, bonds and emergency resolutions. As assistant administrator, she functions in the administrator's capacity in his absence.

The deputy treasurer/payroll supervisor is responsible for the compilation, computation and preparation of quarterly reports and transmittals (J-6). She is also responsible for payroll processing and purchasing. She has no role in budget preparation. The treasurer does it herself. She also has no role in collective negotiations. The administrator testified that no other employees of the financial department have any responsibilities for labor relations, budget formulation or policy-making.

The administrator also testified that no employees of the following departments, including the department heads, have any labor relations, budget formulation, or policy-making responsibilities: assessor; collection of taxes (including the tax collector); municipal court (including the municipal court clerk); building-maintenance (including the superintendent-buildings); bureau of inspections (including the chief building inspector and zoning officer); recycling department (including the coordinator recycling); lakes seasonal; grounds, parks and playgrounds; public works (including the supervisor/public works); planning board; vital statistics; cultural and historical; office of emergency management; and animal management. In addition, the EDP manager/encumbrance, environmentalist and assistant purchasing agent have no responsibilities for labor relations, budget preparation or policy-making.

Pamela K. Judy is director of public assistance and director of senior outreach. As director of public assistance, she reports to the five member Local Assistance Board. The Township treasurer prepares the budget for that department. Judy has no direct dealings with the Township administrator. Her hours and benefits are set by the employees' manual (J-5). She is the only employee of the welfare department. She reports to the Local Assistance Board the number of cases pending and any problems. She does not set the level of client benefits. Her job description (J-7) indicates that she is responsible for the day-to-day operations of the Division of Senior Services and Public Assistance.

As director of senior outreach, Judy implements a contract between the Ocean County Office on Aging and the Township Committee to provide services to senior citizens. Her hours and other conditions of employment are set by the Township's personnel manual (J-5).

Carol Hoffman is the secretary to the chief of police. She is currently the only secretary in the department and therefore also does secretarial work for other police officers. She prepared a job description (J-8) that outlines her clerical responsibilities. She has never been exposed to confidential labor relations materials; has nothing to do with negotiations for police or non-police units; does not assist in the preparation of salary proposals; has no role in hiring or promotions; has never typed a grievance response for the chief, and is not familiar with the grievance procedure.

N.J.S.A. 34:13A-3(f) defines managerial executives as:

persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

In Bor. of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, (¶11259 1980), the Commission elaborated on the standards for resolving whether or not an employee formulates or directs the effectuation of policy under the statutory definition. The Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of the employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Id.

The Appellate Division has approved the Montvale standards. Bergen Pines Cty. Hosp., D.R. No. 83-8, 8 NJPER 535 (¶13245 1982), review den., P.E.R.C. No. 83-76, 9 NJPER 47 (¶14022 1982), aff'd App. Div. Dkt. No. A-564-82T2 (10/18/83).^{1/}

Applying the Montvale standards, I find that none of the Township employees covered by Township Ordinance 89-381 are managerial executives. The Township administrator testified quite clearly that none of the department heads are involved in labor relations, budget determination, or policy-making.

^{1/} The Commission applies these standards case-by-case, with the exception of police chiefs. The Legislature has clothed police chiefs as a class with the authority and responsibility for managing their departments. Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984).

Specifically, I find that the Director of Senior Outreach/Director of Public Assistance is not a managerial executive. The record indicates that she does not formulate or direct the effectuation of management policies and she has no role in labor relations or budget matters.

N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

[E]mployees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission explained its approach in determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

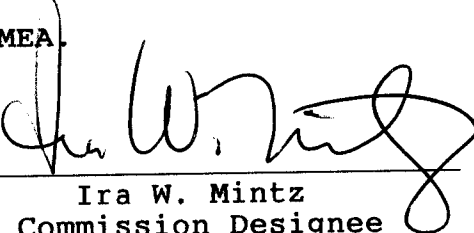
See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

Applying the statutory definition, I find that none of the titles listed in Township Ordinance 89-383 are confidential. The Township manager testified without contradiction that only the Township clerk and the chief financial officer are involved in labor relations and budget development. No other employees in those offices have any role in matters that would render them confidential employees.

Additional testimony was taken regarding the secretary to the police chief because employees in that title have previously been found to be confidential. Bor. of Clayton, D.R. No. 89-26, 15 NJPER 223 (¶20093 1989); Monroe Tp., D.R. No. 87-15, 13 NJPER 87 (¶18093 1986). Unlike those cases, however, the record indicates that Carol Hoffman has no role in negotiations, grievance processing or budget development. Accordingly, I specifically find that she is not a confidential employee.

Similarly, the deputy clerk will apparently be shielded from any confidential labor relations matter and therefore would not be a confidential employee. See Ringwood; contrast Tp. of Wayne v. AFSCME, 220 N.J. Super. 340 (App. Div. 1987) (deputy clerk assumed the full authority of absent clerk).

In conclusion, I find that all titles listed in Township Ordinance 89-381 are appropriately included in the negotiations unit represented by the MTMSA. I further find that all titles listed in Township Ordinance 89-383 are appropriately included in the negotiations unit represented by the MTMEA.


Ira W. Mintz
Commission Designee

DATED: November 1, 1989