

L.D. NO. 90-2

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

In the Matter of

EGG HARBOR TOWNSHIP,

Public Employer,

-and-

Docket No. CU-L-89-48

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 210,

Petitioner.

Appearances:

For the Township, Ruderman & Glickman, Esqs.  
(Steven S. Glickman, of counsel)

For IBEW Local 210, Schneider, Cohen, Solomon, Leder &  
Montalbano, Esqs. (Bruce D. Leder, of counsel)

LAP DECISION

On July 18, 1989, Egg Harbor Township ("Township") and the International Brotherhood of Electrical Workers Local 210 ("IBEW") jointly requested that a dispute concerning the unit placement of the Deputy Township Clerk be submitted to the Commission's Litigation Alternative Program. The parties agreed to submit letter memoranda and affidavits in lieu of an informal hearing. The parties have also agreed that this decision is binding and resolves the Clarification of Unit petition filed before the Commission.

Egg Harbor Township provided the following information in affidavits from Patricia Indrieri ("Indrieri"), who has been the

Township Clerk since July 1983. The Township Clerk attends public meetings of the Township Committee ("Committee") and takes meeting minutes. The Clerk also attends the Committee's closed executive sessions, where negotiations matters such as economic positions and negotiations parameters are discussed and counterproposals that will be made to the IBEW are formulated. The Township Clerk has access to negotiations, budget and grievance information.

In the past, the Deputy occasionally substituted for the Township Clerk when the Township Clerk was unavailable. From January 1, 1988 to September 1, 1988, while Indrieri was also Acting Township Administrator, the Deputy attended the majority of regular Township Committee meetings, including closed executive sessions.

After September 1, 1988, the Deputy's job functions were revised to include regular attendance at Township Committee meetings, including executive sessions. The Deputy shares that responsibility with the Township Clerk. As a result, the Deputy is exposed to negotiations, budget and grievance information.

When the Township Clerk attends closed Committee sessions where matters are discussed that are of a continuing nature, she informs the Deputy. Such matters include information about negotiations, the budget, personnel, grievances and employee discipline. The Deputy must be familiar with such matters because she may have to address them if the Township Clerk is unavailable.

The Township contends that the Deputy's knowledge of and exposure to its negotiations positions and strategies, as well as

her access to budget and grievance information support a finding that she is a confidential employee.

The IBEW states that there are currently several confidential employees excluded from the bargaining unit. It contends that exclusion of the Deputy Clerk will set a precedent for exclusion of additional employees from the unit and serve to deny excluded employees representation rights under the Act. The IBEW also alleges that the Township's decision to require the Deputy Clerk's attendance at closed Committee sessions was unnecessary and designed solely for the purpose of denying her representation.

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization." Confidential employees, however, are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d).

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), we explained our 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 Sayreville Ed. Assn. and Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19292 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); 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).

The Deputy Township Clerk attends closed executive sessions of the Committee where Township negotiations strategies and positions are discussed. The Deputy also has access to negotiations and grievance information. The Deputy's job responsibilities give her access to and knowledge of confidential labor relations information. Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10, (¶20002 1989), Tp. of Mullica, D.R. No. 90-1, 15 NJPER 455 (¶20185 1989); Western Monmouth Utilities Authority, D.R. No. 82-36, 8 NJPER 140, (¶13061 1981). This exposure to labor relations information could significantly compromise the Township's ability to maintain confidentiality in its negotiations process. Sayreville, Ringwood, Cliffside Park Bd. of Ed., 14 NJPER 339 (¶19128 1988). I find that the Deputy Township Clerk is a confidential employee.

The IBEW contends that exclusion of the Deputy Clerk from the unit will set a precedent for exclusion of other employees. It also alleges that the Township's revision of the Deputy's duties was unnecessary and designed solely to remove her from the unit. After examining the current composition of the unit, it appears that the City can accomplish its goals and maintain confidentiality with the

addition of the Deputy Clerk to the current number of excluded employees. If the Township attempts to further distribute confidential duties for the purpose of excluding additional employees from the unit, the IBEW can pursue any potential unfair practice charges with the Commission. Riverdell Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984); Tp. of Scotch Plains, D.R. No. 84-11, 9 NJPER 632 (¶14270 1983).

  
Margaret A. Cotoia  
Commission Designee

DATED: October 4, 1989  
Trenton, New Jersey