

D.R. NO. 90-10

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

In the Matter of

BOROUGH OF PARAMUS,

Public Employer,

-and-

Docket No. CU-90-5

PARAMUS EMPLOYEES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation clarified a supervisors unit to include the Building Department Director. The Director rejects the Borough's contention that this newly created position is confidential. The Borough failed to show any nexus between the employees responsibilities and the collective negotiations process.

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Appearances:

For the Public Employer
Giblin and Giblin, Esqs.
(Brian Giblin, of counsel)

For the Employee Representative
Michael Farhi, Esq.

DECISION

On August 10, 1989, the Borough of Paramus ("Borough") and the Paramus Employees Association ("Association") jointly filed a Petition for Clarification of Unit with the Public Employment Relations Commission. The parties seek a determination concerning the unit status of the Building Department Director.^{1/} The

^{1/} The Association initially raised the issue in an unfair practice charge (Docket No. CO-90-16) which it filed against the Borough in July, 1989. The parties subsequently agreed to submit the unit placement question to the Commission in a jointly filed unit clarification petition.

Borough created the Building Department Director position during a personnel reorganization in 1988. It contends that the position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association maintains that the position is not confidential and is appropriate for inclusion in its supervisors' unit.

The most recent collective negotiations agreement between the parties expired on December 31, 1988. The Association represents a collective negotiations unit of supervisory employees which includes department heads. On June 5, 1989, the Borough appointed Patrick Hines as the new Building Department Director. As a department head, Hines reports to the Mayor and Council. He directs the enforcement of Uniform Construction Code provisions. He is responsible for hiring, promoting, disciplining and discharging employees in his department. The Borough asserts that Hines periodically meets with the Mayor and Council to review subordinates' work performance and discuss "matters relating to the employees." Based upon his authority to hire, discipline and discharge employees, the parties agree that the Building Department Director is a supervisor within the meaning of the Act.

The Borough contends that although Hines is a supervisor, he should be excluded from the supervisors unit because he is a confidential employee within the meaning of the Act. N.J.S.A. 34:13A-3(g) defines a confidential employee as an employee

...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.

The Commission's policy is to narrowly construe the term confidential employee. Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp'd. App. Div. Dkt. No. A-1375-85T1 (1/9/87). When the Legislature adopted the above definition requiring a nexus linking an employee's functions and responsibilities to the negotiations process, it rejected a broader definition which would have excluded employees with "access to personnel files or information concerning the administrative operations of the public employer." State of New Jersey.

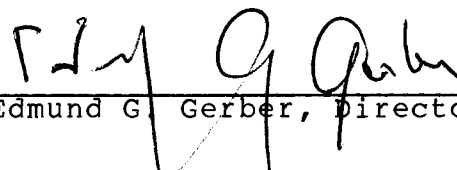
Thus, the key to confidential status is an employee's access to and knowledge of materials used in labor relations processes, including contract negotiations, contract administration, grievance handling and the preparation for these functions on management's behalf. State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983); County of Essex, D.R. No. 84-7, 9 NJPER 574 (¶14239 1983). Finding confidential status requires a case-by-case examination of each employee's responsibilities for and knowledge of sensitive collective negotiations issues which would compromise the employer's position in the collective negotiations process. 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); State of New Jersey; River Dell Regional Board of Education, P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶11131 1980).

Nothing in the Building Department Director's job responsibilities suggests that he is in any way involved in the formulation of negotiations proposals, the negotiations process or the administration of labor agreements on the Borough's behalf. Although his meeting with the Mayor and Council concerning personnel matters affecting his staff may denote supervisory status, without more, these activities are not sufficient to support finding that the Building Department Director is a confidential employee. The Borough's presentation does not establish the required nexus between Hines' responsibilities and the collective negotiations process to sustain a finding of confidentiality.

Accordingly, I find that the Building Department Director is not a confidential employee position within the meaning of the Act. The supervisors' unit is hereby clarified to include the Building Department Director, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: October 27, 1989
Trenton, New Jersey