

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

In the Matter of

TOWNSHIP OF DOVER,

Public Employer,

-and-

DOCKET NO. CU-77-58

DOVER TOWNSHIP MUNICIPAL
EMPLOYEES UNION, LOCAL 2279,
A.F.S.C.M.E.,

Petitioner.

SYNOPSIS

The Director of Representation determines that the Secretary to the Chief of Police of Dover Township is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act and, accordingly, is inappropriate for inclusion in the negotiations unit representing clerical employees. In so finding, the Director examined the various duties of the Chief's secretary which included the typing of the Chief's recommendations concerning negotiations proposals and the typing of communications involving the disposition of grievances as well as other communications relating to labor relations.

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Petitioner.

Appearances:

For the Public Employer
Gerald A. Dorf, P. A.
(David A. Wallace, of Counsel)

For the Petitioner
Ralph Head & Raymond J. Tanner, Representatives
(Joseph A. Asbell & Associates, P. A.
on the Brief)

DECISION

On March 19, 1977, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Dover Township Municipal Employees Union, Local 2279, A.F.S.C.M.E. ("AFSCME") with respect to a question concerning the composition of a collective negotiations unit of employees of the Township of Dover (the "Township") for which AFSCME is the exclusive representative. AFSCME seeks a

determination as to whether Mrs. Donna Ruppe, the Secretary to the Chief of Police, is a confidential employee within the meaning New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

Pursuant to a Notice of Hearing, a hearing was held before Hearing Officer Joan Kane Josephson on June 28, 1977, at which all parties were afforded an opportunity to present evidence, to examine and to cross-examine witnesses, and to argue orally. The Township and AFSCME submitted post-hearing briefs.

On May 25, 1978, the Hearing Officer issued her Report and Recommendations, a copy of which is attached hereto and made a part hereof. The Township filed exceptions to the Hearing Officer's Report. AFSCME has not excepted to the report; nor has it filed an answering brief to the Township's exceptions.

The undersigned has considered the entire record, including the Hearing Officer's Report and Recommendations, the transcript and the exceptions, and on the basis thereof finds and determines as follows:

1. The Township of Dover is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. The Dover Township Municipal Employees Union, Local 2279, A.F.S.C.M.E. is an employee representative within the meaning of the Act and is subject to its provisions.

3. AFSCME has filed a Petition for Clarification of Unit seeking Commission clarification with respect to the representational status of the Secretary to the Chief of Police. AFSCME

is the certified representative of the Township's white collar employees. The Chief's secretary was included in the unit as originally certified. However, the Township has treated the Secretary as excluded from the unit because of alleged confidential status. Accordingly, the Township claims that Mrs. Ruppe's duties as Secretary to the Chief of Police are of such a nature as to render her a confidential employee within the meaning of the Act. There is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for determination.

4. The Hearing Officer concluded that Mrs. Ruppe was not a confidential employee. First analyzing the duties of the Chief of Police, the Hearing Officer made the following factual findings: he hears grievances at different levels under the contracts between the Township and the PBA, an organization representing police employees, and between the Township and AFSCME, the organization which represents white collar employees; ^{1/} he prepares an annual budget for the police department which contains a flexible salary figure; and although he does not sit on the Township's negotiating team, he does meet with the Township Administrator and the Township's professional negotiator to

1/ Under the contract between the Township of Dover and AFSCME, the Chief represents the Township at the second step of the grievance procedure which requires that he conduct investigations and provide a written response to the grievant. In addition, the Chief testified that he provides a written recommendation to the Township Clerk-Administrator.

discuss various negotiations proposals affecting his employees. ^{2/}
Second, with regard to Mrs. Ruppe, the Hearing Officer found that she generally types all the Chief's correspondence but that such correspondence does not directly relate to labor relations. The Hearing Officer also found that Mrs. Ruppe was unable to recall ever having typed the Chief's negotiations proposals.

Initially, the undersigned notes that the Commission is statutorily charged with the responsibility of determining the confidential status of public employees based upon the definition which appears at N.J.S.A. 34:13A-3(g). ^{3/} Thus, in reviewing the record herein, the undersigned must consider whether or not Mrs. Ruppe's job functions permit her access to or knowledge of the material involved in the collective negotiations process so as to make her membership in the existing clerical unit, represented by AFSCME, incompatible with her official duties.

A number of factors are material in making such a determination. Where the confidential status of a clerical employee is at issue, the involvement of the individual in the collective negotiations process for whom the clerical duties are performed

^{2/} The Chief testified that these proposals affect the PBA contract, the AFSCME contract and a Teamster contract.

^{3/} This subsection provides: "'Confidential employees' of a public employer means employees 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."

is highly relevant. Based upon the Hearing Officer's factual findings herein, and an independent review of the record, the undersigned must conclude that the Chief's involvement in labor relations is significant. Uncontraverted testimony demonstrates that the Police Chief submits prior written proposals to and participates in negotiations strategy sessions with the Township Administrator and the Township's professional negotiator with regard to three different negotiations units. In addition, the Chief prepares and administers a three million dollar budget and functions as the Township's representative at the second step of the contractual grievance procedure established by AFSCME. Moreover, the Chief acknowledges that aside from contract negotiations he formulates labor relations policies pertaining to such working conditions as shifts, dress and haircuts. The record demonstrates that the Chief, in the context of a question concerning whether park police should be placed in the AFSCME or PBA unit, discussed the appropriate placement of employees in various grades and steps of the salary guide, work week, and the deployment of manpower personnel. Thus, it is clear that the Chief plays an integral role in labor relations as a representative of management with regard to several negotiations units and is instrumental in formulating certain elements of the Township's labor relations policy. While this evidentiary conclusion is not necessarily dispositive with regard to Mrs. Ruppe's status as a confidential

employee, it must be accorded considerable weight in light of the fact that Mrs. Ruppe types virtually all of the Chief's correspondence. ^{4/}

Mrs. Ruppe has been the Chief's personal secretary for the past ten years. Both the Chief and Mrs. Ruppe have testified that she is responsible for virtually all of the Chief's typing and filing requirements. The record substantiates that the Chief generates written correspondence and memoranda with regard to grievances which Mrs. Ruppe types. With regard to the typing of negotiations proposals, Mrs. Ruppe's testimony is somewhat ambiguous. Mrs. Ruppe's testimony on this critical point, considered in conjunction with the Chief's testimony that he submits written positions in advance of collective negotiations to the Township Administrator, leads the undersigned to the conclusion that Mrs. Ruppe is involved in the typing of these proposals.

Finally, the Chief testified that minutes of staff meetings and other confidential materials are kept in locked files for which Mrs. Ruppe has a set of keys. Access to such material is another important criteria in judging an employee's confidential status.

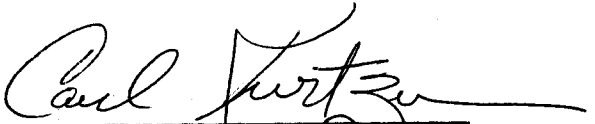
4/ See In re Passaic County Regional High School Dist. No. 1, Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976), wherein the Hearing Examiner found that the Assistant Superintendent's role as the Board representative on second step grievances under the contract with the office workers association provided his personal secretary with intimate knowledge of the Board's position on employee grievances. This fact when coupled with the Assistant Superintendent's role in negotiations was viewed by the Hearing Examiner as sufficient to classify the disputed title as confidential. The Commission adopted the Hearing Examiner's recommendations as to the confidential status of the Assistant Superintendent's secretary.

Although the record may not conclusively demonstrate a continuous pattern of exposure to the collective negotiations process, the statutory definition does not make confidential status dependent upon regular involvement in labor relations.

The undersigned is satisfied that the extent of Mrs. Ruppe's access and exposure to the collective negotiations process renders her membership in any appropriate negotiating unit incompatible with her official duties.

Accordingly, the undersigned finds and determines that Mrs. Ruppe is a confidential employee, and shall, effective upon the issuance of this decision, be excluded from AFSCME's negotiations unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 5, 1979
Trenton, New Jersey

STATE OF NEW JERSEY
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-and-

Docket No. CU-77-58

DOVER TOWNSHIP MUNICIPAL EMPLOYEES
UNION LOCAL 2279, AFSCME,

Petitioner.

SYNOPSIS

A Commission Hearing Officer in a clarification of unit proceeding recommends that the Secretary to the Chief of Police is not a confidential employee and that the title which was included in the original certification ~~until removed~~ by the employer because of alleged confidential status is included in the unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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For the Public Employer
Gerald A. Dorf, P.A.
by David A. Wallace, Esq.

For the Petitioner
Ralph Head and Raymond J. Tanner, Dover Township
Municipal Employees Union Local 2279, AFSCME
(Joseph A. Asbell and Associates, P.A. on the Brief)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On March 16, 1977, a petition was filed with the Public Employment Relations Commission, (the "Commission") by the Dover Township Municipal Employees Union, Local 2279, AFSCME, (the "Union") seeking to resolve a question concerning the composition of a collective negotiations unit of employees of the Township of Dover (the "Township") for which the Union is the exclusive representative. The petition seeks to determine whether the Secretary to the Chief of Police is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act (the "Act").

Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on June 28, 1977, in Trenton at which all parties had the

opportunity to examine witnesses, present evidence and argue orally. Both parties filed briefs subsequent to the hearing. The Petitioner's brief was received October 4, 1977, and the Employer's October 13, 1977. Upon the entire record the Hearing Officer finds:

(1) The Township of Dover is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.

(2) The Union is an employee representative within the meaning of the Act and is subject to its provisions.

(3) The Union filed a petition for clarification of unit seeking to include the title of Secretary to the Chief of Police in the white collar unit for which the Union is the majority representative. The title was included in the original certification of the unit and subsequently removed from the unit by the public employer because of her alleged confidential status.^{1/} A question concerning the composition of the negotiations unit exists, and it is properly before the Hearing Officer for a Report and Recommendation.

Chief of Police Richard C. Clement is the head of the Dover Township Police Department. There are about 200 employees in this Department, most of whom are police officers in the PBA bargaining unit. There are a small number of white collar employees represented by AFSCME and a few garage mechanics who apparently are not included in the Township's blue collar unit. (Tr. p. 14)

^{1/} The Union was certified by the Commission on April 14, 1973, as the majority representative of all white collar employees employed by the Township of Dover (RO-565). The Secretary to the Chief of Police was included in that bargaining unit and continued to be so until January 4, 1977 (Tr. p. 8) when the Township Administrator L. Manuel Hershblond directed that she be withdrawn from the unit. The Union seeks to have her clarified as **included in** the unit.

Mrs. Donna K. Ruppe has been the personal secretary to the Chief of Police for 10 years.^{2/} The Township maintains that the Chief of Police exercises managerial functions as to labor relations and therefore his secretary is a confidential employee within the meaning of the Act and not entitled to any of the rights of representation accorded by the Act.^{3/}

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

(g) "Confidential employees" of a public employer means employees 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.^{4/}

Mrs. Ruppe generally types all the Chief's correspondence, including at times, confidential personnel matters. Such correspondence does not relate directly

^{2/} Tr. p. 18

^{3/} The employer also posits that since the Chief of Police is a managerial executive within the meaning of the Act, his secretary can be presumed to be a confidential employee. This expanded definition is not supported in the Act or the decisions of the Commission or the NLRB. See n.4 below; Brookdale Community College, D.R. No. 78-10; Orange Board of Education, D.R. No. 78-28; and B.F. Goodrich Co., 115 NLRB, 722, 37 LRRM 1383 (1956) where the Board noted that it intended to limit the definition of confidential "to embrace only those employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations."

^{4/} The Act bars confidential employees from the right to join, form or be represented by an employee organization. (N.J.S.A. 34:13A-5.3)

Prior to the amendment of the Act to include the above definition of confidential employee, the Commission had adopted as part of its rules N.J.A.C. 19:10-1.1 which defined a confidential employee as:

"...any employee for whom a principal duty is to assist and act in a confidential capacity to persons who formulate, determine and effectuate management policy in the area of labor relations... The term 'confidential employee' shall be narrowly construed."

Nothing in the Commission's definition is inconsistent with the legislative definition, and therefore the undersigned considers N.J.A.C. 19:10-1.1 as a guide to be used in application of N.J.S.A. 34:13A-3(g). In light of the fact that the legislature has chosen to completely bar confidential employees from representation by an employee organization, it is more vital than ever that the term be narrowly construed. (See Brookdale Community College, D.R. No. 78-10 (1977))

to labor relations.^{5/}

While the Chief hears grievances at different levels under the PBA contract and the AFSCME contract, the fact that Mrs. Ruppe might type the Chief's response to a grievance at some time does not make her a confidential employee under the Act who is privy to confidential management policies in the formulation of labor relations.

Chief Clement prepares annually a recommended budget and submits it to the Township Administrator. The budget is prepared after consultation with Division Commanders with the help of Captain Reed. A flexible salary figure is included but the actual figure is set by the Township's negotiating team. He stated that he does not recommend the amount of salary increases.^{6/}

The Chief testified that he does not sit in on negotiations as part of the Township's negotiating team but does meet with the Township administrator and the Township's professional labor negotiator to discuss contract proposals affecting his employees. He testified that his recommendations are based on discussions he has with the employees in his department^{7/} and if it is necessary to gather data from departmental records, such data would be prepared by the Department's administrator, Captain Reed, and typed by Reed's secretary.^{8/}

While the Chief testified that if he were to make written recommendations to the Township's negotiating team his secretary Mrs. Ruppe would type such recommendations,^{9/} Mrs. Ruppe testified she could not recall ever having typed such

^{5/} The employer introduced a copy of a letter the Chief wrote to the Township Administrator in response to an inquiry from the Administrator as evidence of her confidential labor relations status (PE-2). The letter set out the Chief's position that his secretary should not be removed from the unit. He asked for assurances that Mrs. Ruppe would not lose any employee benefits if she were to be removed from the unit. Mrs. Ruppe typed this letter for the Chief, but I do not find that such a letter rises to the level of formulating, determining and effectuating management policies in the field of labor relations.

^{6/} Tr. p. 26, 27

^{7/} Tr. p. 37, 39

^{8/} Tr. p. 63

^{9/} Tr. p. 80

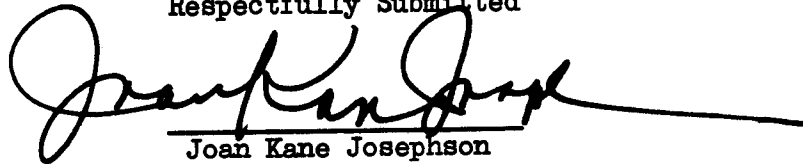
recommendations.^{10/} Some future potential involvement in labor relations is not sufficient to find an employee to be a confidential employee. There must be regular involvement in work concerning labor policy. Brookdale Community College, D.R. 78-10 (1977); In re Springfield Board of Education, E.D. No. 52 (1974); In re Plainfield Board of Education, E.D. No. 1 (1970).

It is clear from the unrefuted testimony of the witnesses that Mrs. Ruppe is not regularly involved in a confidential capacity concerning labor relations material. The undersigned finds her therefore not to be a confidential employee within the meaning of the Act in accordance with prior standards enumerated by the Commission in previous decisions involving confidential employees.^{11/}

RECOMMENDATIONS

For the above stated reasons, the undersigned recommends that the Union unit is clarified as including the Secretary to the Chief of Police.

Respectfully Submitted



Joan Kane Josephson
Hearing Officer

DATED: May 25, 1978
Trenton, New Jersey

10/ Tr. p. 79

11/ In re Board of Education of West Milford, PERC NO. 56 (1971); In re Bloomfield Board of Education, E.D. No. 76-40 (1976); In re Springfield Board of Education E.D. No. 52 (1974); Orange Board of Education, D.R. No. 78-28 (1977)