

D.R. NO. 93-13

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

In the Matter of

CITY OF SOUTH AMBOY,

Public Employer,

-and-

Docket No. CU-92-60

MUNICIPAL EMPLOYEES UNION
OF SOUTH AMBOY,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of blue collar and white collar employees to include the administrative secretary assigned to the Department of Public Works. The Director of Representation finds that a unit clarification petition is procedurally appropriate here, notwithstanding the employee's history of unit exclusion, because there is a significant change in the employee's duties. Further, the facts show that this employee no longer performs any confidential duties and should be returned to the negotiations unit.

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Appearances:

For the Public Employer
Savage & Serio, attorneys
(Thomas J. Savage, of counsel)

For the Petitioner
Michael McCarthy, President

DECISION

On June 24, 1992, the Municipal Employees Union of South Amboy ("Union") filed a Petition for Clarification of Unit seeking to include the Administrative Secretary assigned to the Department of Public Works, Catherine McCarthy, in its collective negotiations unit of blue collar employees and white collar employees of the City of South Amboy ("City"). The City objects to the petition and asserts that McCarthy's position is excluded from the unit by the parties' contract recognition clause. The City further contends that McCarthy is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

We have conducted an administrative investigation into the issues raised by the petition. There appear to be no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The parties' most recently executed collective negotiations agreement covered the period from January 1 through December 31, 1990. At the time of the filing of this petition, the parties had not yet signed a successor contract.

Article I of the 1990 agreement describes the Union's contractual unit:

I.2. The bargaining unit shall consist of all regular blue and white collar employees of the City located in various departments, now employed or hereafter employed, excluding professional, craft and confidential employees; managerial executives, police, supervisors (foreman and above); seasonal employees, casual employees and school crossing guards, and those employees working twenty (20) or fewer hours per week, on the average, in a 180-day period.

I.3. Confidential employees shall be defined to include the following positions in the Department of Administration and Department of Finance in the City of South Amboy: Accountant, Administrative Secretary, Clerk-Typist, Principal Clerk Typist, Purchasing Assistant.

McCarthy has worked for the City for more than ten years. From 1986 until the summer of 1990, McCarthy was the Administrative Secretary in the City's Department of Administration. In that capacity, she performed confidential duties for the City Administrator. In summer 1990, she took a maternity leave. Kathy Vigalante, another City employee, was assigned to take over

McCarthy's regular duties in the City Administrator's Office. When McCarthy returned from her leave of absence in December, 1990, she retained the title Administrative Secretary, but was transferred to the City's Department of Public Works.

The City asserts that, although McCarthy was physically transferred to the Public Works garage, she is still assigned to the City Administrator, who also acts as head of the Public Works Department.^{1/} The Union asserts that since McCarthy's transfer to the Department of Public Works, she performs no duties for the City Administrator which are confidential under the Act. She no longer handles budget or negotiations matters. She does not type any labor-related correspondence, memoranda, or reports for the Administrator or Mayor. She works for the Assistant to the Superintendent of Public Works. According to a written statement signed by McCarthy and the Assistant Public Works Superintendent, McCarthy's duties include answering telephone inquiries from the City residents concerning recycling, water or sewer problems and refuse collections; writing requisitions and filing purchase orders for public works purchases; typing reports, bills and correspondence concerning public works projects; cleaning the Public Works facilities, and handling a petty cash account.

^{1/} McCarthy appealed to the State Department of Personnel, which directed the City to maintain McCarthy's title and assignment. Whether the City adequately complied with the State Department of Personnel ruling by McCarthy's present assignment is not an issue before us.

N.J.S.A. 34:13A-3(g) defines confidential employees as those employees of a public employer "...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."

It is the policy of the Commission to narrowly construe the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶ 4018 1977); 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); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). In State of New Jersey, 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 collective negotiations process if the employee was included in a negotiating unit. 11 NJPER 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).

A finding of confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position in the collective negotiations process. River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983);

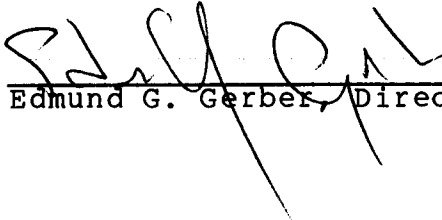
Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶111131 1980).

We are inclined to grant the Union's unit clarification petition. It appears that the petition is procedurally appropriate. Where there is a change in circumstances or a significant change in duties, we will entertain a timely petition to clarify a unit to include an appropriate title, even where the parties have historically excluded the position from the unit. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Here, although the 1990 contract excluded administrative secretaries in the Department of Administration, McCarthy's significant change in duties since her transfer to the Department of Public Works vitiates the authority of the contract language and warrants our review of her alleged confidential status.

Based upon the facts presented to us, we find that McCarthy is not a confidential employee and should be included in the unit. Whether the City considers McCarthy's position to be within the Department of Public Works or within the Department of Administration in its table of organization is not dispositive of her status as a unit employee. There is nothing in this record which suggests that McCarthy's present duties are in any way related to labor relations. Her present duties in the Department of Public Works do not appear to have any nexus to the collective negotiations process or in any way compromise the employer's right to confidentiality in its labor relations processes. Accordingly, we

clarify the blue collar employee/white collar employee unit to include Catherine McCarthy's position of Administrative Secretary assigned to the Department of Public Works.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 14, 1993
Trenton, New Jersey