

D.R. No. 2006-19

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

In the Matter of

BOROUGH OF RAMSEY,

Public Employer,

-and-

Docket No. CU-2006-008

TEAMSTERS LOCAL 469,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies a unit of supervisory employees by finding that the position: principal public works manager is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act. The employee holding that position has knowledge of the Borough's negotiations positions/proposals/strategies prior to that information being conveyed to respective labor organizations.

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Appearances:

For the Public Employer,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Employee Representative,
Timothy Hott, attorney

DECISION

On September 21, 2005, the Borough of Ramsey (Borough) and Teamsters Local 469 (Local 469) jointly filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission). The petition asks the Commission to decide whether the title of principal public works manager is appropriate for inclusion in the unit of approximately ten supervisory employees, including department heads, employed by the Borough and now represented by Local 469. The Borough contends that the title is a managerial executive and a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., N.J.S.A. 34:13A-1 et seq. and thus is

inappropriate for inclusion in the unit. The Borough also asserts that if the title is included in the unit, a potential impermissible conflict of interest will exist between it and other unit employees, because he has supervisory and disciplinary authority over those employees.

Local 469 disputes that the principal public works manager is either a managerial executive or a confidential employee under the Act or that any conflict exists.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2 and 2.6. Through a detailed September 29, 2005 questionnaire, and follow-up correspondence, a Commission staff agent conducted an informal investigation into the status of the petitioned-for title. Both Local 469 and the Borough subsequently submitted lengthy responses with relevant documents, in support of their respective positions by February 13, 2006. By letter dated May 9, 2006, I informed the parties of my findings and intended conclusions, and invited responses. Neither party made further submissions. Based on our investigation, these facts appear:

Findings of Fact

1. Based upon my February 15, 2005 Decision and Direction of Election in Borough of Ramsey, D.R. No. 2005-10, 31 NJPER 21 (¶10 2005), an election was held among the instant unit of approximately 10 supervisory employees, including department heads, employed by the Borough. Local 469 received a majority of

the valid votes cast in the election and thus, on April 20, 2005, was certified as the majority representative of the unit. The parties could not agree on the eligibility status of the petitioned-for title of principal public works manager and thus agreed the title could vote a challenged ballot in the election. They further agreed to: "voluntarily resolve the status of the title or rather the parties may file a clarification of unit petition asking us to determine the proper unit status of the disputed title."

The parties were unable to voluntarily resolve the title's status; therefore, they jointly filed the instant petition and have maintained their separate positions.

2. Under the Borough organizational chart, the Borough Administrator oversees the heads of the various departments within the Borough, including the tax collector, engineer, construction official, sanitation/health officer, fire official, and the petitioned-for title of principal public works manager. William H. Horton, Jr. currently serves as the principal public works manager and has done so for many years.

3. The principal public works manager reports to two individuals - the President of the Water Utility and the Borough Administrator for the Road Department. Beneath the principal public works manager are three assistant superintendents - 1) the assistant superintendent of building and grounds; 2) the assistant superintendent of roads; and 3) the assistant

superintendent of water. These employees are represented by Local 469. Beneath the three assistant superintendents are approximately 17 full-time and 15 part-time workers/laborers throughout the road and water departments. Local 11 represents the water department employees and Teamsters Local 945 represents the road department employees.

4. The principal public works manager title was created by Borough Ordinance 2-15 which states that:

The Superintendent of Public Works shall also be known as the Principal Public Works Manager and shall have management responsibility for the entire Public Works Department and all other Public Works employees shall report to and be supervised by the Superintendent of Public Works (Principal Public Works Manager).

Sec. 2-15.5 of the Ordinance further lists one of the principal public works manager's duties and responsibilities as "the supervision of public work employees". Specifically, he has the authority to hire, fire, and initiate discipline for all those who work in his department, including the three assistant superintendents represented by Local 469. He has not yet exercised his authority to hire or fire, and has not yet had to discipline his three assistant superintendents in the Local 469 unit. However, he has disciplined many rank-and-file employees who work in the Local 11 and Local 945 units. For example, in April 1998, he issued an official reprimand and a three-day

suspension to an employee, and in June 2001 and December 2002, he issued five day suspensions for two employees.

5. The principal public works manager also serves as the Borough's Step 1 response under the grievance procedures for employees represented by Locals 11 and 945. Recently, in October 2005, he reviewed and responded to a grievance by Local 945; he analyzed the collective agreement and decided to deny the grievance. Because Local 469 does not yet have an agreement or grievance procedure with the Borough, it is not yet known if the principal public works manager will also be a step in its grievance process.

6. The Borough considers Principal Public Works Manager Horton a key player in negotiations with the other unionized employees he supervises, particularly with respect to the recent negotiations with Local 11 which led to the signing of a February 2006 memorandum of agreement. For example, Horton participated in a management strategy meeting before the Borough met with the union, and made helpful management oriented suggestions during that meeting. Moreover, he attended four to five negotiations sessions prior to reaching the agreement with Local 11, including a December 19, 2005 session; his participation in both caucuses and face-to-face negotiations with Local 11 led to the resolution of the following issues:

1. Article VIII - Job Related Injuries - with Horton's input, the parties were able to amicably resolve the issue of release time to visit a doctor for job related injuries.
2. Article XXV - Meal Allowances - Horton decided that the meal allowance change proposed by Local 11 should be part of the Memorandum of Agreement.
3. Article XXVII - Stand-by Pay - Horton's input helped the parties resolve this issue.
4. Article XXX - Tuition Reimbursement - Horton stated management's desire for employees to obtain additional certifications that benefit employees' job performance.

Also, on the final day of negotiations, the mayor, the Borough Administrator and Horton met in private caucus to discuss an economic package that the Borough intended to propose to Local 11. During the caucus, Horton indicated that he thought it was a fair package to resolve the outstanding negotiations; the mayor then returned to the negotiations, relaying Horton's opinion to Local 11.

Horton also has advanced knowledge of confidential labor relations information, including management proposals to be given to Locals 11 and 945, before the unions receive them and has attended many negotiation sessions and management caucuses throughout 1992-1997 involving road and water department employees.

In particular, the Borough provided notes from negotiation sessions on July 7, 1992; December 22, 1993; June 1, 1994; September 26, 1996; and June 19, 1997 at which Horton both

attended and participated. The notes included Borough proposals and potential Borough responses to union proposals. Further, he attends every executive session of the Water Utility Board, including those dealing with labor negotiations. Horton, however, claims that he has not attended a management caucus for over 10 years, and has not offered any suggestions to the Borough concerning negotiations issues.

Because there is no negotiations history with Local 469, the Borough doesn't yet know exactly what Horton's involvement will be in Local 469 negotiations; although, in Fall 2005, he was instructed by the Borough to attend a negotiations session to negotiate an initial agreement with Local 469. He, however, was advised by a Local 469 representative not to attend because of the instant dispute regarding his unit status.

7. The Borough Administrator considers the principal public works manager to be the chief administrator of the Borough's collective bargaining agreements, although Local 469 claims the Borough Administrator is the chief administrator.

8. Under Borough ordinance, the Borough Administrator is responsible for establishing and maintaining Borough personnel practices and for the continued review of all department and office operations and their expenditures; however, the principal public works manager can make recommendations regarding Borough personnel policies and operating procedures. For example, he provided input into Borough policies concerning smoking in

municipal vehicles and snow removal. He also suggested modifications to Borough employee uniforms and changes to the "stand-by" policy, including the number of employees and hours required, as well as compensation. Specifically, Horton participated in a September 25, 2003 meeting with the Road Department at which the Borough's stand-by policy was negotiated; he drafted the Borough's proposal and was an integral part of its amendments.

9. Borough ordinance states that the Borough Administrator has the authority to "[e]xercise the duties of Purchasing Agent and, as such, purchase all materials, supplies, equipment, work and labor required by all departments . . . and cause a purchase order to be issued for same upon authorization of a department head . . ." According to the Borough, the principal public works manager, however, also has full authority to make purchases. He signs road and water department vouchers and chooses equipment; he signs hundreds of requisitions a year. In addition, he drafts the budget for the Road, Buildings and Grounds, and Water Departments.

10. The principal public works manager does not evaluate employees because performance evaluations are not conducted for Borough employees. He has authority to recommend the retention or release of a probationary employee in Local 469, and his recommendation is subject only to the ministerial action of the

Mayor and Council adopting a resolution. However, he has never exercised this authority.

ANALYSIS

The Borough contends that Principal Public Works Manager Horton is both a confidential employee and a managerial executive under the Act and thus cannot appropriately be included in any negotiations unit. It also claims that his inclusion in Local 469's unit creates an impermissible potential conflict of interest, as he directly supervises and has authority to discipline lower level supervisors in that unit.

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

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

The Commission has narrowly construed the term confidential employee. See Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977). 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 processes. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See 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); Ringwood.

Based on my review of his duties, I find that the principal public works manager is at least a confidential employee under the Act.

Horton has played a key role for the Borough in its union negotiations. He is privy to the Borough's confidential negotiations information, including proposals to be given to the unions. Further, he has attended and participated in many Local 11 and 945 negotiation sessions and Employer caucuses on behalf of the Borough since 1992; the Borough provided notes from some sessions which included its potential responses to the union proposals. Further, with respect to the Borough's most recent negotiations with Local 11 which led to a February 2006 memorandum of agreement, Horton attended several negotiations sessions and management strategy meetings. His participation in these negotiations on behalf of the Borough led to the resolution of several articles of the agreement, specifically, those

involving Job Related Injuries, Meal Allowances, Stand-by Pay and Tuition Reimbursement.

Moreover, it appears that Horton may be involved in future negotiations with Local 469. Although there is no history of negotiations with Local 469 because it was just recently certified, the Borough asked Horton to attend a Local 469 negotiations session to negotiate an initial agreement; a Local 469 representative, however, instructed Horton not to attend because of the instant dispute.

Based on the above, I find that the principal public works manager is a confidential employee under the Act. He has access to and knowledge of the employer's positions in the labor relations processes, including contract negotiations. Further, he is privy to the Borough's negotiations strategies and proposals before their disclosure to the unions and has direct involvement in the Borough's conduct of negotiations. Knowledge of this negotiations information could compromise the Employer's position in the collective negotiations process. State of New Jersey; River Dell Reg. Bd. of Ed.

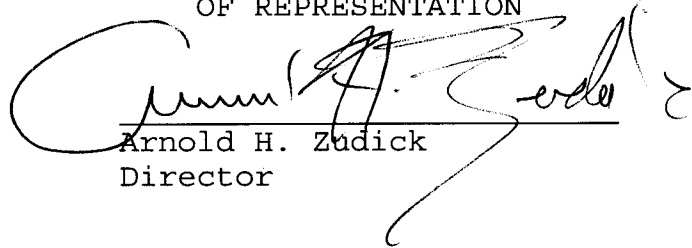
Based on these circumstances, I find that the principal public works manager is a confidential employee and thus is precluded from inclusion in any negotiations unit.^{1/}

^{1/} Since I find that the principal public works manager is not appropriate for inclusion in the newly certified unit on the basis that he is a confidential employee under the Act, I
(continued...)

ORDER

The title of principal public works manager is not appropriate for inclusion in the Local 469 unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director

DATED: May 25, 2006
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by June 7, 2006.

1/ (...continued)
need not consider whether the principal public works manager is also a managerial executive under the Act or whether a Wilton conflict of interest exists with other unit supervisors.