

D.R. No. 2011-9

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

In the Matter of

BLOOMFIELD PUBLIC LIBRARY,

Public Employer,

-and-

Docket No. RO-2010-019

CWA LOCAL 1031,

Petitioner.

SYNOPSIS

The Deputy Director of Representation orders that senior accountants employed by the Bloomfield Public Library are added to a unit of professional and non-professional employees, blue collar employees, and white collar employees currently represented by Communication Workers of America Local 1031. The Library asserted that the senior accountant position was a confidential employee within the meaning of the Act. The Deputy Director found that the position's budgetary responsibilities, including formulation, review, analysis, and creating reports, did not involve collective negotiations or advance knowledge of management's handling of grievances or the negotiations process. Because mere access to budgetary information is insufficient to find confidential status, the Deputy Director added the title to the negotiations unit based on the authorization cards submitted with CWA's petition.

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Appearances:

For the Public Employer, Porzio, Bromberg & Newman,
attorneys (Thomas O. Johnston, on the brief)

For the Petitioner, Rene Garzon, Organizer

DECISION

On September 24, 2009, the Communication Workers of America Local 1031 (CWA) filed a representation petition, seeking to add the title, senior accountant to its collective negotiations unit by a check of authorization cards. The unit is comprised of all regularly employed professional and non-professional employees, blue collar employees and white collar employees of the Bloomfield Public Library (Library). The Library opposes the petition, claiming that the senior accountant 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).

The Library asserts that the senior accountant is privy to confidential information during the course of that employee's budget formulation duties, including exposure to salary and health benefit cost data. The Library also asserts that the CWA's petition is untimely because the senior accountant has been performing the same duties since he was hired on January 16, 1995.

We have conducted an investigation of the facts concerning the petition. N.J.A.C. 19:11-2.2. The Library and CWA have filed letters supporting their respective positions. On April 14, 2010, I wrote to the parties, informing them of my findings and tentative decision to add the senior accountant to the collective negotiations unit. The parties were offered the opportunity to respond. On May 10, 2010, the Board filed a letter brief and supporting certification, objecting to my tentative decision and requesting a hearing. Based upon our administrative investigation, I find the following facts.

N.J.A.C. 19:11-2.6.

The senior accountant is the Library's senior bookkeeper and reports to the Library Director. The facts do not indicate the educational, professional or experiential requirements for holding the title. The senior accountant's duties vary, and include budget formulation and non-budgetary duties. Non-budgetary duties include depositing money at the bank, opening all boxes

that are shipped to the library, placing orders for supplies and materials, answering phones, processing and paying invoices, preparing time sheets for Library staff, and completing other payroll functions.

The senior accountant prepares the annual budget, with instruction from the Director. The projected budget is not available to the public or CWA. The budget process requires the senior accountant to project salary costs, health benefit costs, and other expenditures for the Library. These amounts are based upon the prior year's actual costs and projections for the future.

Outside of a negotiations year, the budgeted salaries are known to the CWA, Library, and the staff because the parties have already negotiated the employees' compensation. During a negotiations year, and in advance of collective negotiations, the senior accountant has access to the dollar amount the Library projects for employee compensation for the next budget year. No facts indicate that the senior accountant is provided specific percentage increases to determine the salary projection. Rather, the senior accountant uses the same formula during negotiations and non-negotiations years, basing the projected salaries on the prior year's actual costs and projections for future costs. For example, the Library began preparing its 2010 budget on September 9, 2009, but did not commence negotiations with CWA over unit

employee salaries until an unspecified future date. On September 23, 2009, the Library Board of Trustees Treasurer asked the executive director about the 2010 budget, suggesting that the senior accountant create a list of projected salaries in order to have "some idea of what [the Library is] basing the salary line item proposal on." In any budget year, the senior accountant obtains the projected cost for health insurance from the State Health Benefits Plan web site, which is available to the public.

Every year, members of the Board, the Director, senior accountant, and Township Council meet to discuss the Library's budget. The meeting for the 2010 budget year took place on October 28, 2009. The senior accountant attended. Potential cost containment measures were discussed, including potential lay-offs of Library employees. The senior accountant was not asked to provide data, nor did he contribute his opinions or thoughts. It was the first time that the senior accountant had been asked to attend a meeting of this kind, although not the first time he has been asked to consider cost containment measures.

The senior accountant interacts with the Library's Board of Trustees, working directly with the Board's Treasurer and helping the Director present the budget to the Board. The Treasurer meets with the senior accountant each month to discuss expenses, budgetary issues, and requests a list of expenditures, or

estimates of them from the senior accountant, as needed. The senior accountant also routinely reviews and analyzes the budget to determine possible deficits or surpluses. The senior accountant also prepares monthly and annual financial reports for the Board and Director to review. The senior accountant does not attend closed session meetings of the Board, but attends the Board's budget committee meetings. In budget committee meetings, the senior accountant provides the committee data and/or figures.

The senior accountant does not serve on the Library's negotiations committee. In collective negotiations, the Library relies heavily on the financial data that the senior accountant prepares. On May 3, 2010, the three members of the Board met with the Director to discuss collective negotiations strategies. During the meeting, the Board requested to review a list of current employee salaries, and other unspecified material. The senior accountant provided each requested document and then promptly left the meeting room, stating that he did not believe he should remain since he had applied for membership to CWA. The Treasurer certifies that the senior accountant's continued presence at the meeting would have been helpful so that he could have provided needed financial information. No facts indicate what other "financial information" could or would have been obtained from the senior accountant.

The senior accountant works in the administrative department, which houses storage cabinets containing personnel records and correspondence between the Director, Board, and the Board's attorney. Although the senior accountant has access to the cabinets, the title's duties do not require access to those records and correspondence.

Lastly, an issue regarding employee dues deductions arose during August 2010. The senior accountant possesses the most information on dues deduction and how it has been administered because he is responsible for payroll. The Interim Director certifies that he "became alarmed at the prospect of [the senior accountant] overseeing improper dues deductions of union dues, while at the same time, actively seeking to join the union." The Interim Director decided not to speak openly with the senior accountant about the dues deduction issue because of the senior accountant's interest in joining the CWA, and for fear that he would advise CWA of the dues deduction investigation. The Interim Director also certifies that he has been hesitant to have contemporaneous consultations with another confidential employee and the senior accountant about management matters.

ANALYSIS

The Library asserts that the CWA's petition is not timely. I disagree. Generally, a representation petition may be timely filed between 90 and 120 days prior to the expiration of a

current collective negotiations agreement. N.J.A.C. 19:11-2.8(c)(2). In this case, the parties' collective negotiations agreement expired December 31, 2009. The open period ran from September 2 through October 2, 2009. The petition was filed on September 24, 2009, during a window period and is timely. A clarification of unit petition may also have been an appropriate petition to raise this issue.

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 deciding confidential status, the Commission has used the approach described in 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):

We scrutinize the facts of each case to find for whom each employee works, what [the employee] does or what [the employee] 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. [11 NJPER at 510]

In New Jersey Turnpike Authority v. American Federation of State, County and Municipal Employees, Council 73, 150 N.J. 331

(1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey. The Court explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g); see also, 11 [NJPER] ¶16179 (holding that final determination is '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.') Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358]

The Commission narrowly construes the term, confidential employee. State of New Jersey, 11 NJPER at 514. A finding of confidential status is based upon what the employee actually does, and not potential duties which may be assigned or

reassigned to him or her. State of N.J. (Office of Employee Relations) and Council of N.J. State College Locals, NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989) aff'd NJPER Supp.2d 246 (¶206 App. Div. 1991); Ringwood Bd. of Ed. and Ringwood Ed. Office Personnel Ass'n., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988).

Applying these standards to the facts, I find that the senior accountant is not a confidential employee. The Library's claim is based primarily upon the senior accountant's budgetary responsibilities - formulation, review and analysis, and creating reports. However, the senior accountant has no involvement with collective negotiations. Specifically, he does not sit on the Library's negotiating committee or have any responsibility for developing labor relations strategy, analyzing negotiations proposals, or costing out possible Library proposals. The Library submitted one budget document to support its claim that the title's budgetary responsibilities renders the title confidential, but failed to provide any explanation of the document's contents, who created it, when the senior accountant had access to the document (if ever), and how the document substantiates a confidential employee claim. Mere access to budgetary information is insufficient to warrant a finding of confidential status. New Jersey Turnpike Authority, 150 N.J. at 358; State of New Jersey.

The Commission has held that mere access to personnel files, or advance knowledge of employee personnel information unrelated to management's handling of grievances or the negotiations process, does not render an employee confidential, as that term is defined by our Act. Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); Montague Bd. Of Ed., P.E.R.C. No. 87-36, 12 NJPER 73 (¶17294 1986). The senior accountant appears to have mere physical access to cabinets containing personnel records and correspondence between the Director, Board, and the Board's attorney. When the Legislature adopted the definition of "confidential employee", it rejected a broader definition which would have excluded employees with "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey at n. 3, p. 516. In any event, no confidential labor relations and collective negotiations materials to which the senior accountant is claimed to have access have been proffered.

The test is whether the employee's inclusion in the unit would potentially compromise the employer in negotiating and administering the contract because the employee would have advanced knowledge of its negotiations strategies which might be shared with the employee representative. Camden Cty. Library Commission, D.R. No. 2008-4, 33 NJPER 298 (¶114 2007). The senior accountant's involvement with negotiations is limited to

cost analysis, through the creation of budget reports, salary reports, and providing cost analysis information to the Library. Mere access to budget information not specifically relevant to the employer's bargaining position does not indicate confidential status. Monmouth Reg. Bd. of Ed. D.R. No. 94-10, 20 NJPER 16 (¶25009 1993); Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985). Although the Library relies on that data in preparing for and during negotiations, "[the title's] knowledge of costs does not compromise the [Library's] negotiations strategy since [the employee] does not have advance knowledge of the [Library's] proposals." Cliffside Park Bd. of Ed. at 340. Furthermore, the Treasurer certifies that the senior accountant's presence at the May 3, 2010 meeting would have been helpful so that the senior accountant could have provided needed financial information. But the facts indicate that the senior accountant provided all of the financial information requested during the meeting. Additionally, the Library does not assert that the senior accountant would have been involved in any capacity beyond providing financial information, which, on its own, is insufficient to make the employee confidential. Accordingly, the senior accountant's responsibilities have not provided him advanced knowledge of the Library's negotiations strategies or other confidential labor relations information.

Although potential layoffs were discussed at the October 28, 2009 meeting, the Library has not proffered any evidence to demonstrate that the layoffs affected organized employees.^{1/} In any event, layoffs are a managerial prerogative. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977). The senior accountant's access to potential layoff scenarios, in and of itself, does not compromise the Library's negotiations strategies or contract administration. Also, the senior accountant certifies and the Library does not contest that he was not asked for and did not volunteer his opinion on any personnel matters, including potential layoffs, at that meeting or any other meeting.

Finally, the Library objects to the petition, based upon its dues deduction investigation. The Act contemplates restrictions upon the inclusion of personnel in a negotiations unit who have certain "conflicts" with other unit members. See Bd. of Ed. of

^{1/} The Library's October 30, 2009 letter and the Treasurer's certification refer to layoffs of Library employees, but do not indicate that the potentially-affected employees are represented in negotiations units.

W. Orange v. Wilton, 57 N.J. 404, 416 (1971). The Library asserts that, in this context, the senior accountant has split loyalties between the Library and CWA, because he could advise the CWA of the Library's investigation. Although the senior accountant's findings may be used during the processing of a hypothetical grievance if the Library changes the dues deduction structure and CWA objects, the senior accountant would not have advanced knowledge of the Library's actions or strategies. State of New Jersey, D.R. No. 2007-14, 33 NJPER 177 (¶62 2007). No facts support the notion that the potential conflict of interest between the senior accountant and his potential fellow unit members is substantial, thereby warranting his exclusion from the negotiations unit.

Under all the circumstances, I find that the Library has not provided sufficient facts showing that the senior accountant is a confidential employee within the meaning of the Act. Accordingly, the senior accountant shall be included in CWA's unit, based upon the submitted authorization card. I find that the following unit is appropriate for collective negotiations:

Included: All regularly employed senior accountants are added to the existing unit of professional and non-professional, white collar employees and blue collar employees employed by the Bloomfield Public Library.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, police employees, casual employees and all

other employees employed by the Bloomfield
Public Library.^{2/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

Jonathan Roth
Deputy Director of Representation

DATED: April 4, 2011
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 April 14, 2011.

^{2/} The formal certification is attached.