

D.R. NO. 2014-9

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

In the Matter of

CITY OF VENTNOR CITY,

Public Employer,

-and-

Docket No. CU-2011-018.

TEAMSTERS LOCAL NO. 929,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a clerical unit to exclude the title of secretary to the mayor. The Director finds that the secretary to the mayor is directly involved in collective negotiations and the grievance process. Accordingly, the title of secretary to the mayor is inappropriate for inclusion in the petitioner's unit.

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Appearances:

For the Public Employer,  
Hankin Sandman & Palladino, attorneys  
(Amy R. Weintrob, of counsel)

For the Petitioner,  
Freedman & Lorry, P.C., attorneys  
(Lance Geren, of counsel)

**DECISION**

On January 5, 2011, Teamsters Local Union No. 929 (Teamsters or Union) filed a Clarification of Unit Petition seeking to include the title of secretary to the mayor in its broad-based unit of clerical employees employed by the City of Ventnor (City). The City opposes the petition, contending that the secretary to the mayor is a confidential title within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., rendering it ineligible for inclusion in any negotiations unit. The Teamsters deny that the title is confidential.

We have conducted an investigation of the facts concerning this petition. N.J.A.C. 19:11-2.2. The parties attended an exploratory conference and presented facts about the duties performed by the secretary to the mayor. Unable to reach a voluntary resolution, both parties submitted briefs in support of their respective positions in June 2011. At that time, the City also filed an affidavit from the then-current mayor, Theresa Kelly.<sup>1/</sup> The City and the Teamsters subsequently negotiated initial and successor contracts<sup>2/</sup> for the clerical employees. By letter dated August 7, 2013, this agency requested that the parties provide additional certified facts regarding the duties of the secretary to the mayor. In response, the City provided two certifications from its current Commissioner of Public Works and former mayor, Theresa Kelly, and the current Business Administrator, Thomas Russo. The Teamsters provided two affidavits from the current secretary to the mayor, Patricia Larkin-Kedziora, and the Teamsters' Recording Secretary, John Bryan.

By letter dated October 21, 2013, I advised the parties of my tentative findings and conclusions. I invited the parties to

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<sup>1/</sup> The current mayor of the City of Ventnor is Michael Bagnell.

<sup>2/</sup> The term of the initial contract for the clerical employees covered January 1, 2011 through December 31, 2012, while the successor contract covers January 1, 2013 through December 31, 2016.

respond in writing by the close of business on October 30, 2013, if they believed my tentative determinations were incorrect or that there were new material facts that should be brought to my attention. As of the date of this decision, neither party filed a response.

The disposition of this petition is properly based upon our administrative investigation. No substantial material factual disputes exist that would require an evidentiary hearing.

N.J.A.C. 19:11-2.6. The following facts appear.

On November 1, 2010, PERC issued a certification of representative based upon authorization cards for the following unit: "All full-time and regular part-time clerical employees, including clerk typists, payroll clerks, purchasing clerks, records clerks, secretaries and housing inspectors employed by the City of Ventnor City." Because the Teamsters and the City could not agree during the representation proceeding whether the title of secretary to the mayor was confidential, the parties stipulated shortly before certification that they would file a clarification of unit petition if a voluntary resolution could not be achieved regarding the disputed title. The title of secretary to the mayor has no written job description.

A mayor and two other commissioners govern the City. The mayor and the commissioners are heads of their respective departments. The offices of the mayor, commissioners and the

business administrator are all located on the first floor of Ventnor City Hall and form a rough semi-circle around an open reception area through which visitors of the mayor, commissioners and business administrator must enter. The desk of the secretary to the mayor is located around the middle of that reception area.

The City of Ventnor has separate collective negotiations agreements covering its police officers, firefighters, public works employees, police dispatch employees and clerical employees. Teamsters Local No. 929 is the majority representative for all of the negotiations units except for the police officers' and firefighters' units.

According to the 2011 affidavit submitted by the City's then-current mayor, Theresa Kelly, the mayor and commissioners are the heads of their respective departments. Both the mayor and the commissioner of finance oversee employees who are represented by the Teamsters. A review of the City's contracts for the clerical employees shows that step one of the grievance procedure requires a complaint to be brought to a supervisor or department head.

Theresa Kelly certified that she served as mayor from May 2008 to May 2012. In her 2011 affidavit, Kelly identified a specific instance where the secretary to the mayor served as an independent third-party witness for the mayor. An employee represented by the Teamsters came to Kelly's office with a

complaint alleging possible improper conduct among certain co-workers. Kelly informed the complaining employee that she would leave her door open so that her secretary could listen to their conversation. More recently, Kelly certified that during her tenure as mayor, she had her secretary serve in this capacity on more than one occasion, including when Kelly asked her secretary to sit in her office because she had a meeting with an employee who Kelly felt had a tendency to act out. Kelly also certified that the secretary to the mayor handles the paperwork for any grievances before the business administrator or commissioners. More specifically, the current business administrator, Thomas Russo, certified that he has served as hearing officer for two grievances, and in both instances, the secretary to the mayor typed his final decisions.

The secretary to the mayor reports directly to the mayor but also assists the other commissioners and the business administrator. The secretary to the mayor answers all phone calls made to the mayor, commissioners and business administrator and transfers those calls to or takes messages on behalf of the appropriate party. Other than electronic mail communications, the secretary to the mayor prepares all correspondence for the mayor and the commissioners. The secretary to the mayor schedules appointments for the mayor and commissioners, including the scheduling of collective negotiations sessions between the

representatives of the City and its employees' majority representatives. Additionally, the secretary to the mayor copies and files documents, and undertakes other tasks typically associated with secretarial positions. Patricia Larkin-Kedziora, who serves as secretary to the mayor and has been employed by the City since 1996, certified that her work includes general clerical duties. There are no other secretaries or clerk typists in the negotiations unit who have been designated as confidential employees.

The mayor and commissioners, in conjunction with the chief financial officer and the business administrator, are responsible for negotiating on behalf of the City any collective negotiations agreements with the majority representatives of its employees, including the Teamsters. The mayor, commissioners, chief financial officer and business administrator have personally attended negotiation sessions with the Teamsters.

According to her 2011 affidavit, Kelly directed her secretary to make copies of confidential documents directly related to the negotiation process while she was involved in a meeting with other city officials regarding negotiations with the Teamsters. Both Theresa Kelly and Thomas Russo certified that the secretary to the mayor typed notes and made copies of documents for negotiation sessions during their tenure as mayor and business administrator, respectively. They also certified

that due to the secretary's proximity to their offices, the secretary can hear the content of their discussions during contract negotiations.

The affidavit of the current secretary to the mayor, Patricia Larkin-Kedziora, provides generally that she "ha[s] not played any role" in the negotiation of the contracts covering clerical employees, public works employees and communications operators. Additionally, according to the affidavit of the Teamsters' Recording Secretary, John Bryan, the secretary to the mayor "was not involved in any way with negotiations" of the agreements covering the units represented by the Teamsters. He further asserts that the public works commissioner, business administrator and chief financial officer represented the City during negotiations with the Teamsters for the most recent contract covering the public works employees, while the mayor, business administrator and chief financial operator represented the City during negotiations with the Teamsters for the most recent contract covering the dispatchers.

#### ANALYSIS

The Union asserts that the title of secretary to the mayor is not confidential because the secretary has never been responsible for any duties associated with collective negotiations, and has never had any knowledge related to collective negotiations. It also contends that the City can use,



and historically has used, the city clerk and the deputy city clerk to provide clerical assistance during the collective negotiations process.

The City argues that the title of secretary to the mayor is confidential because the title's job duties include providing clerical support to the mayor and other city officials, duties which give the secretary access to and knowledge of confidential labor relations material. The City also asserts that the frequency of those duties would increase once the title is determined to be confidential, as there is no other confidential clerical employee of the City.

The Act defines confidential employees of public employers, other than the State, 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. N.J.S.A. 34:13A-3(g).<sup>3/</sup>

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 510 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), the Commission explained the approach taken in determining whether an employee is confidential:

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<sup>3/</sup> Effective January 18, 2010, the New Jersey legislature modified the statutory definition of confidential employee for State of New Jersey employees. That modification does not apply here because the employee at issue is not a state employee.

[W]e scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and 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.

In New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997), our 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 State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (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 the 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.

New Jersey Turnpike Authority, 150 N.J. at 358.

"The key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract administration, grievance handling and preparation for these processes." Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); See also State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

The Commission is cautious in finding confidential status because the subject employee is not afforded the Act's protections and, therefore, speculation or conjecture about job functions cannot provide the basis for such a determination. Pompton Lakes Bd. of Ed.; Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989). However, confidential status will be found where the employee has the potential of coming in contact with confidential information, even though the she has not actually performed the duty. Twp. of Wayne v. AFSCME, 220 N.J. Super. 340, 345-46 (App. Div. 1987). The Act does not "require that the assignment of duties of a confidential nature be regular and continuous as a condition for finding an employee to be confidential." Tp. of Scotch Plains, D.R. No. 84-11, 5, 9 NJPER 632, 633 (¶14270 1983) (citing Tp. of Dover, D.R. No. 79-

19, 5 NJPER 61, 62 (§10040 1979). Finally, if the future job functions to be performed are clear and implementation is certain, then future circumstances may be considered in the evaluation of confidential status. Montgomery Tp. Bd. of Ed., D.R. No. 93-12, 19 NJPER 96, 97 (§24044 1993).

I find that the City has demonstrated sufficient facts upon which I can conclude that secretary to the mayor is a confidential employee. By copying confidential negotiations-related documents, typing up the mayor's notes from negotiations sessions, drafting all of the governing officials' correspondence except email, preparing final grievance decisions and serving as an independent third-party witness at the request of the mayor on personnel matters, the secretary to the mayor has performed functions directly associated with negotiations and grievance processing. The secretary to the mayor will continue to perform such functions because the secretary reports directly to the mayor, who is directly involved in collective negotiations and the grievance process. Furthermore, the secretary to the mayor has also copied documents and prepared notes for negotiations sessions on behalf of the business administrator, who is directly involved in collective negotiations. The former mayor's affidavit makes clear that the secretary to the mayor would copy confidential labor documents more frequently once the City received an administrative determination that the title is

confidential. Thus, if the secretary to the mayor were to be placed into the Teamsters' unit, it appears that the title's inclusion would compromise the City's ability to maintain confidentiality with regards to collective negotiations and grievances processing.

The affidavit of the current secretary to the mayor lacks sufficient specificity to support a finding that her title is not confidential. Ms. Larkin-Kedziora's statement that her "duties include general clerical duties" and her denial of "any role" in negotiations provides too little information regarding her actual job responsibilities to properly conclude whether those responsibilities are related to collective negotiations processes. Although the recording secretary's affidavit provides that the secretary to the mayor was not among the City's representatives at the negotiations table for the agreement covering public works employees, attendance at negotiations sessions is not a requirement for confidential status. Finally, while the City Clerk may have provided clerical assistance during negotiations in the past, the City has a managerial prerogative to determine duties to meet operational needs, and is therefore entitled to have the secretary to mayor also provide clerical assistance to the mayor, commissioners and business administrator during negotiations. See Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Principals and Supv. Ass'n, H.E. No. 87-63, 13

NJPER 419, 421(¶18163 1987) (citing Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 284 (1978); Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35, 43 (App. Div. 1980)).

Accordingly, I find that the City has provided sufficient facts establishing that the secretary to the mayor is a confidential employee within the meaning of the Act. Therefore, the Teamsters' collective negotiations unit is clarified to exclude that title, effectively immediately.

ORDER

The unit is clarified to exclude the title, secretary to the mayor, effective immediately.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Gayl R. Mazuco

DATED: December 3, 2013  
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 December 13, 2013.