

L.D. NO. 96-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH JERSEY TRANSPORTATION AUTHORITY,

Public Employer,

-and-

Docket Nos. CU-L-94-52
and CU-L-95-7

IFPTE LOCAL 196,

Employee Representative.

Appearances:

For the Public Employer,
Blank, Rome, Comisky & McCauley, attorneys
(Scott F. Cooper, of counsel)

For the Employee Representative,
Schneider, Goldberger, Cohen, Finn, Solomon,
Leder & Montalbano, attorneys
(James M. Mets, of counsel)

DECISION

On May 19, 1994, the South Jersey Transportation Authority filed a Clarification of Unit Petition^{1/} seeking to remove the senior toll analyst, toll analyst, finance clerks and the accounts payable clerk from a unit of non-supervisory blue and white collar employees represented by the International Federation of Professional and Technical Engineers Local 196. On August 19, 1994, Local 196 filed a Clarification of Unit Petition seeking to add the payroll clerk and the junior accountant to its non-supervisory

^{1/} The Authority amended its petition on August 26 and October 11, 1994.

unit. I conducted conferences for these matters on July 28, 1994, September 9, 1994, June 21, 1995 and March 6, 1996. At the March 6, 1996 conference, the Authority and Local 196 jointly requested that the disputes be decided through the Commission's Litigation Alternative Program. The parties requested that the LAP decision be based in information provided at the March, 1996 conference. The parties also agreed that this decision is binding and resolves both Clarification of Unit Petitions filed before the Commission.

Accounts Payable Clerk Theresa Thomas is currently included in Local 196's unit. Payroll Clerk Patty Rice and Junior Accountant Ada Chiles are not included in the unit. Since Local 196 filed its petition in 1994, the payroll clerk and the junior accountant have been retitled to accountant III and have been cross-trained in each other's job functions. The employees in all three of these positions report to Accountant I Sue Tsingas. Tsingas is not included in Local 196's unit. Tsingas reports to Accounting Manager Barbara McDonald, who in turn reports to Director of Finance Kathleen Sharman. McDonald and Sharman are also not included in any collective negotiations unit.

The Authority has avoided giving Thomas, Rice and Chiles confidential duties while these petitions were pending decision before the Commission. The Authority seeks to have all three employees found confidential because it wishes to use them to assist Sharman, McDonald and Tsingas with negotiations preparations. If the accounts payable clerk is found to be a confidential employee,

the Authority intends to change the title to accountant III. It will update the job description, cross train the accounts payable clerk with the accountant III's and each will be expected to fill in for the others in the performance of all duties.

The Authority would like to assign the accountant III's duties such as costing out its collective negotiations proposals. The accountant III's would be directed to prepare lotus spreadsheets with alternate budget scenarios for presentation at the table. The accountant III's would be expected to prepare cost comparisons for health care plans and the potential savings that could result from changes in either the type of health plan or the identity of the provider. By preparing such spreadsheets, the accountant III's would see the Authority's negotiations proposals, from initial positions to compromise positions, before they are presented to the union at the table. The Authority also wishes to expand the role of the accountant III's in budget preparation. It anticipates using them to assist with the preparation of alternate budget drafts that would contain information on how many positions would be budgeted for and how many and which positions would be subject to elimination because of budgetary constraints. Sharman and McDonald have worked many hours beyond their normal day in preparation for negotiations, which are ongoing. The Authority wishes to use the accountant III's immediately to assist them with negotiations preparation.

The senior toll analyst, toll analyst and three finance clerks are currently in Local 196's unit. The Authority seeks

removal of all five employees in these titles on the basis of confidential status. The senior toll analyst and toll analyst ensure the internal integrity of toll collections. They verify the deposit of toll revenues and the amount of tolls collected in relation to a treadle count at each toll booth. These employees bring variances in toll collections to the attention of management, as well as produce reports on toll revenues. These employees also supervise the three finance clerks, who perform data entry functions. The finance clerks input information from tapes of toll collection records and prepare information for the toll analyst. They prepare and pre-scan toll collection reports for the toll analyst and bring material variances in toll collection revenues to her attention.

Local 196 contends that all of the disputed positions are eligible and appropriate for inclusion in its unit. It states that the two accountant III's and the accounts payable clerk are low-level positions with no exposure to information related to the labor relations process and that there is no necessity to reveal negotiations information to these employees. Local 196 argues that any employee can formulate and cost out financial comparisons, but development of such information is not necessarily dispositive of negotiations strategy. Local 196 states that the Authority can protect any confidential negotiations related information without implicating employees in these three positions. Local 196 contends that there are no confidential duties in the accounts payable

clerk's job description, none of the new duties assigned to her are confidential and that there is no evidence that the employer will give her duties that will make her confidential in the future.

Local 196 states that the duties of all three titles in dispute in the toll audit group deal with gathering toll receipts and gross revenue figures and have no relation to labor relations. It states that the finance clerks are entry level employees in the department who merely input, gather and transfer data without any review or interpretation and that the senior toll analyst and toll analyst also receive and relay data to others. Neither the senior toll analyst nor the toll analyst plays a role in the grievance procedure and they have no authority to impose or recommend discipline. Local 196 points out that there are no confidential functions in the job descriptions for any of these titles.

Confidential status is determined by 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 close working relationship with another confidential employee, including employees substituting for each other or providing "back up" support may indicate confidential status. See 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 773

(¶17294 1986); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); 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 190 (¶14084 1983); Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); and W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 56 (1971). Employees in clerical positions can also be deemed confidential due to their supervisor's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell; W. Milford.

The Authority contends that the accounts payable clerk and two employees in the title accountant III (formerly payroll clerk and junior accountant) should be excluded from the unit represented by Local 196 based upon their impending performance of confidential functions. Such functions would include assisting their supervisors with negotiations preparation, such as preparation of spreadsheets with alternate budget scenarios that will be presented to the union at the negotiations table. These employees would therefore have exposure to and knowledge of the Authority's negotiations positions before they were presented to Local 196.

The Commission is cautious when excluding an employee from the protections of the Act. Where a confidential status determination relies upon "speculation or conjecture as to job function," the Commission has concluded that such circumstances are insufficient to warrant excluding an employee from a negotiations

unit. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). However, where future job functions are clear and the implementation of changes is certain, then future contingencies may be acceptable. Commercial Tp.; Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); West Paterson Bd. of Ed., NJPER Supp. 333 (¶77 1973).

The Authority and Local 196 are currently engaged in collective negotiations. Throughout the negotiations process, Sharman and McDonald have worked many hours in excess of their regular work day to prepare materials that the Authority takes to the bargaining table. The Authority has retitled the payroll clerk and junior accountant to accountant III and has cross trained them in each other's duties in anticipation of assigning them to assist Sharman and McDonald. It desires to retitle the accounts payable clerk to accountant III, to cross-train her with the other accountant III's, and to assign her the same duties it anticipates assigning to the others in this title.

Director of Finance Sharman clearly articulated both the Authority's and her need for assistance with negotiations preparation. By retitling the payroll clerk and junior accountant to accountant III and cross-training them, the Authority has manifested its intent to assign these employees duties to assist Sharman and McDonald with negotiations preparation. On this record, given the actions the Authority has taken with respect to the payroll clerk and the junior accountant, the implementation of

change appears certain. I also find that the Authority has demonstrated that such change will extend to the accounts payable clerk. Upon retitling, all three of these employees will be cross-trained to prepare negotiations proposals for the Authority, and will therefore have access to and knowledge of its proposals and positions before Local 196 receives them at the table.

Since an employee's access to and knowledge of materials used in the labor relations process is the key to confidential status, based upon the foregoing, the accountant III's (formerly payroll clerk and junior accountant) are ineligible for inclusion in the unit and the accounts payable clerk must be removed from the unit. Borough of Brooklawn, P.E.R.C. No. 94-37, 19 NJPER 570 (¶24267 1993); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); Borough of Ringwood, D.R. No. 93-19, 19 NJPER 196 (¶24093 1993); State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

The Authority's unwillingness to assign confidential duties to these employees pending a decision on their status from the Commission necessitates making this determination on duties that the Authority anticipates assigning to the accountant III's. However, after an appropriate period of time under this arrangement, if the accountant III's are not performing duties which give them access to and knowledge of confidential labor relations materials, Local 196 may file a clarification of unit petition seeking to place the title in its unit.

In contrast to the accountant III's, it is clear that the senior toll analyst, toll analyst and the finance clerks do not have and will not be given access to and knowledge of materials used in the labor relations process. These employees have access to raw data regarding the Authority's toll collections and revenues. They gather the information and pass it on without evaluation. These employees are not involved in the grievance procedure or the disciplinary process in any manner. Unlike the accountant III's and the accounts payable clerk, the data and information these employees have access and exposure to plays no part in the negotiations process. The Authority has not contended that the functions of these employees will be changed or expanded to include duties that would render them confidential within the meaning of the Act. Accordingly, I find that auditing toll clerks is not a confidential function, and that the senior toll analyst, toll analyst and the finance clerks are not confidential employees and shall remain in the unit represented by Local 196.

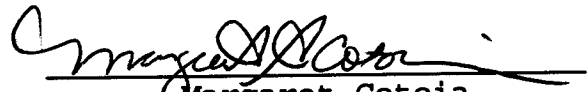
Conclusion

1. The accountant III's (formerly payroll clerk and junior accountant) are confidential employees and are ineligible for inclusion in the unit represented by Local 196.
2. The accounts payable clerk is a confidential employee within the meaning of the Act. I therefore ORDER that she be

removed from the unit represented by Local 196 immediately.

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977)^{2/}.

3. I find that the senior toll analyst, toll analyst, and the finance clerks are not confidential employees within the meaning of the Act and therefore shall remain in the unit represented by Local 196.


Margaret Cotoia
LAP Umpire

DATED: March 18, 1996
Trenton, New Jersey

^{2/} This removal is without prejudice to Local 196's right to file a timely clarification of unit petition in the future if the accountant III's are not performing confidential duties within the meaning of the Act.