

P.E.R.C. NO. 2009-29

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST MORRIS REGIONAL HIGH  
SCHOOL BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2005-015

WEST MORRIS REGIONAL ADMINISTRATIVE  
ASSISTANTS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that the position of payroll/benefits coordinator employed by the West Morris Regional High School Board of Education is confidential within the meaning of the New Jersey Employer-Employee Relations Act. The Commission rejects the exceptions to the Hearing Officer's report and recommended decision filed by the West Morris Regional Administrative Assistants Association. The payroll/benefits coordinator is confidential because she has functional responsibilities and knowledge in connection with issues involved in collective negotiations of a negotiations unit affiliated with the Administrative Assistants Association.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Public Employer, Parker McCay, P.A., attorneys  
(David W. Carroll, of counsel)

For the Petitioner, Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION

On July 21, 2008, the West Morris Regional Administrative Assistants Association filed exceptions to H.O. No. 2009-1, 34 NJPER 156 (¶66 2008). In that decision, Hearing Officer Perry O. Lehrer held that the position of payroll/benefits coordinator employed by the West Morris Regional High School Board of Education is confidential within the meaning of N.J.S.A. 34:13A-3(g). He recommended that the position be excluded from the collective negotiations unit represented by the Association. We adopt that recommendation.

On November 17, 2004, the Association filed a clarification of unit petition seeking to add the position of payroll/benefits

coordinator to its existing unit of administrative assistants. The Board opposed the petition on the ground that the duties of the position make its holder a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On October 11, 2005, the Director of Representation issued a Notice of Hearing. On January 10 and April 29, 2008, a hearing was conducted.<sup>1/</sup> The parties stipulated certain facts, examined witnesses, introduced exhibits, and filed post-hearing briefs. The Hearing Officer made findings of fact and concluded that the payroll/benefits coordinator is a confidential employee.

We have reviewed the record. We adopt and incorporate the Hearing Officer's findings of fact.

N.J.S.A. 34:13A-3(d) excludes "managerial executive and confidential employees" from the definition of "public employee." The exclusion of confidential employees from rights under the Act is also noted in the beginning of N.J.S.A. 34:13A-5.3, which provides:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and

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<sup>1/</sup> The Board's post-hearing brief, referenced in its response to the Association's exceptions, notes that the delay between the Notice of Hearing and the hearing dates was occasioned by numerous requests for adjournments necessitated by personal circumstances involving witnesses, both attorneys, and the Hearing Officer. The Board states that all parties consented to these delays.

without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees.

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

[W]hose 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.

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 explained our approach to determining confidential status:

[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 [employees were to be] included in a negotiating unit. [11 NJPER at 510]

New Jersey Turnpike Auth. v. AFSCME, Council 73, 150 N.J. 331, 358 (1997), approved those standards and 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.

The Association argues that an assertion of confidential status must be strictly scrutinized because exclusion from any negotiations unit would deprive that employee of constitutional and statutory rights. It asserts that the evidence does not demonstrate that the payroll/benefits coordinator performs confidential tasks and the position should be placed in its unit.

We make no judgment on the payroll/benefits coordinator's constitutional rights. Our decisions on confidential status construe the Act, not Article I, Paragraph 19 of the New Jersey

Constitution of 1947, which grants persons in public employment "the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing." See Union Beach Bd. of Ed. v. N.J.E.A., 53 N.J. 29, 44 (1968) (rights granted by Article I, Paragraph 19 may not be denied by legislature).

As for the issue of confidential employee status under the Act, the evidence showed that not only did the person who held the position until June 2006 prepare raw data (e.g. scattergrams showing the impact of raises of various percentages) for use in negotiations, but she was also advised of the Board's negotiating positions in advance of the negotiations sessions between the teams representing the Board and the West Morris Regional Education Association ("WMREA"), the majority representative of teachers and other professional employees.

Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186, 187 (¶165 1988), a case cited by the Association, is distinguishable because there, the executive secretary was insulated from all confidential labor relations information and duties.

The Association's exceptions note that the payroll/benefits coordinator does not assemble data or possess information for the negotiations between the Board and the petitioning majority

representative of administrative assistants; she only has responsibilities for the negotiations involving the teachers/professionals Association (WMREA). The Board responds that the two Associations are both New Jersey Education Association affiliates and that the Act makes a confidential employee ineligible for inclusion in any unit.

Although the Association has not separately argued that being a confidential employee as to one unit does not necessarily require a finding of confidentiality as to all units, we note that the Director of Representation rejected that argument in Borough of Edgewater, D.R. No. 92-27, 18 NJPER 230 (¶23103 1992). There, the petitioning union noted that the allegedly confidential employee was privy to labor relations information concerning a separate unit of police that the petitioner was not seeking to represent.

Confidential employees may not appropriately be included in any negotiations unit. . . . This also applies to employees who are privy to confidential information from a bargaining unit other than the one they seek to join.  
[18 NJPER at 232; citations omitted]

In any case, we agree with the Board that the affiliation between the two Associations would place the payroll/benefits coordinator in a position of divided loyalties. The statutory exclusion for confidential employees was intended to avoid placing employees in that untenable position and to provide employers with a group of

loyal confidential employees to assist them in collective negotiations. New Jersey Turnpike Auth., 150 N.J. at 352.

The payroll/benefits coordinator has functional responsibilities and knowledge in connection with issues involved in collective negotiations. She is therefore a confidential employee. Confidential employees do not have a statutory right to join an employee organization and the position may therefore not be included in the Association's unit.

ORDER

The clarification of unit petition is dismissed. The position of payroll/benefits coordinator is confidential and may not be included in the Association's unit.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: December 18, 2009

Trenton, New Jersey