

P.E.R.C. NO. 2011-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP FIRE DISTRICT 2,

Public Employer-Petitioner,

-and-

Docket No. CU-2008-13

OLD BRIDGE TOWNSHIP CAREER FIRE  
FIGHTERS ASSOCIATION, LOCAL 3311, IAFF,

Employee Organization-Respondent.

SYNOPSIS

The Public Employment Relations Commission adopts a Hearing Officer's Report and Recommended decision that the secretary to the Board of Fire Commissioners of the Old Bridge Township Fire District 2 is not a confidential employee within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13-1 et seq., and that the District's clarification of unit petition seeking a determination of confidential status be dismissed.

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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Employee Organization-Respondent.

Appearances:

For the Public Employer-Petitioner, Ruderman &  
Glickman, attorneys (Steven S. Glickman, of counsel)

For the Employee Organization-Respondent, Kroll  
Heineman, attorneys (Raymond G. Heineman, of counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Officer's Report and Recommended Decision. H.O. No. 2010-1, 36 NJPER 109 (¶45 2010). In that decision, Hearing Officer Melissa Ferrara recommended that we find that Barbara Rizzolo, the secretary to the Board of Fire Commissioners of the Old Bridge Township Fire District 2, is not a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and that the District's petition seeking a determination of confidential status be dismissed. The Old Bridge Township Career Fire Fighters Association, Local 3311,

IAFF is the secretary's majority representative and opposes the District's petition.

The Hearing Officer found that there was no evidence to establish that the secretary has knowledge of the District's labor relations process. Specifically, she found that the secretary has not been privy to negotiations strategies or proposals and that the Board presented no evidence to indicate its intent to assign her confidential duties or to demonstrate implementation of those duties.

The District has excepted to two factual findings. One is the Hearing Officer's decision not to credit the testimony of Bruce Walker, a Board member who served from 1994 to 2003 about the secretary's attendance and participation at executive sessions because his testimony was vague and he had limited recollection of events regarding Rizzolo's attendance and note taking. The other is the Hearing Officer's finding that the appearance of Rizzolo's initials at the bottom of executive session minutes only supports that she created the template for the executive session minutes and not, as Walker suggested, that she either attended the meetings or took notes from a recording. The District has also excepted to three parts of the Hearing Officer's analysis, her conclusions that: the nature of the secretary to the Board position has changed over time; outside of potential exposure to confidential information during past

executive sessions, Rizzolo's knowledge of the District's labor relations has been limited to correcting typographical errors in collective negotiations agreements after their terms have been finalized and completing a form to request the Commission's mediation services; and no evidence has been proffered to establish that the secretary to the Board has knowledge of the District's labor relations process.

As for the testimony of former Board Commissioner Bruce Walker, the District argues that it makes no sense to discredit a witness' testimony because he could not give a specific date from seven to ten years earlier. On this point, the Hearing Officer found that even if she had credited his testimony and found that Rizzolo attended or listened to a tape of executive sessions, her attendance at executive sessions seven years ago is irrelevant to finding her confidential today. Walker was the District's only witness and he has not been a Board Commissioner since 2003. We find that even if not irrelevant, testimony about job duties seven years ago is of limited probative value to a determination of confidential status today.

As for the issue of the appearance of Rizzolo's initials on the bottom of executive session minutes, Robert Weiss, who served as a commissioner from 1998 to 2007, testified that Rizzolo generally did not attend executive sessions but that her initials indicated that she typed the minutes. Based on Weiss's and

Rizzolo's testimony, the Hearing Officer found that Rizzolo created the template for the executive session minutes and that her typed initials appeared at the bottom of minutes whether or not she attended the session or created the minutes. There is substantial evidence in the record to support that conclusion. In addition, it is undisputed that Rizzolo has not attended executive sessions or typed the minutes of those sessions since March 2007.

The District asserts that Rizzolo had confidential duties and that, consistent with its filing of this unit clarification petition in December 2007, it removed her from performing those duties until this matter could be fully adjudicated. The record, however, does not provide support for this assertion. The Board's only witness has not been a Board commissioner since 2003. No one testified about why, in March 2007, Rizzolo was told not to attend any executive sessions.

The Act covers all public employees except for elected officials, members of boards and commissions, managerial executives, and confidential employees. N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

Employees 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.

Mere access to labor relations information does not automatically render an employee confidential. New Jersey Turnpike Auth. v. AFSCME, Council 73, 150 N.J. 331, 358 (1997) instructs:

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.

The District cites to minutes of executive session meetings from 2004 and 2005 to support its assertion that Rizzolo is a confidential employee. The District does not cite to the minutes of executive session meetings from 2006 and 2007 that do not include discussion of any confidential labor relations issues. The undisputed testimony is that approximately 95% of Rizzolo's duties are non-confidential ones for the Bureau of Fire Prevention and the Fire Marshall. Rizzolo testified that although she attended executive sessions in the past, she never attended an executive session where the Board discussed labor relations or personnel issues. In the past, Rizzolo may have typed some one or two page minutes of the executive sessions that include very brief summaries of labor relations issues. But on this record, her access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process are not incompatible with inclusion in a collective negotiations unit.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins  
voted in favor of this decision. None opposed.

ISSUED: August 12, 2010

Trenton, New Jersey