

P.E.R.C. NO. 2024-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2024-014

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Neptune Township Education Association's unopposed motion to seal Commission records containing medical information of a grievant. The Commission, in the absence of a regulation, applies the comparable Administrative Rule governing motions to seal (N.J.S.A. 1:1-14.1(b)). After balancing the Grievant's privacy interest with the public's right to open government records and proceedings, the Commission determined that granting the motion serves to protect the Grievant from the undue deprivation of privacy in his or her medical information.

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 Petitioner, Weiner Law Group, LLP, attorneys
(Mark A. Tabakin, of counsel; Ashley L. Roessler, on
the brief)

For the Respondent, Selikoff Cohen, attorneys (Keith
Waldman, of counsel; Hop T. Wechsler, on the brief)

DECISION

On September 13, 2023, the Neptune Township Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Neptune Township Education Association (Association). As part of the Association's response to the petition, the Association requested that the Commission partially seal the records maintained as part of the petition pursuant to R. 1:38-11 on the grounds that it contained personal medical information of the grievant, T.S. On December 14, 2023, the Commission issued a Decision and Order on the petition which denied that request without prejudice, noting:

[T]he Association may file a separate Motion to Seal setting forth the basis for an order sealing all or part of the record. The motion should be accompanied by a brief addressing: (1) the standard for sealing a record that the Commission, in the absence of a regulation, should adopt, and (2) when applying that standard to the facts here, why the motion should be granted.

[Neptune Tp. Bd. of Ed., P.E.R.C. No. 2024-29, ___ NJPER ___ (¶ ___ 2024)]

On December 26, 2023, the Association filed an appropriate Notice of Motion to Seal, which was accompanied by a brief, exhibits and a proposed order. The Board does not oppose this motion. Included in the case file of this petition are:

1. September 13, 2023 Scope of Negotiations Petition;
2. September 14, 2023 Brief of Petitioner;
3. October 12, 2023 Response and Brief of Respondent;
4. November 1, 2023 Reply Brief of Petitioner;
5. December 14, 2023 Commission Decision;
6. December 26, 2023 Motion to Seal;
7. Miscellaneous correspondence related to petition processing.

Portions of these documents contain detailed narratives of an incident leading to a personal medical condition and subsequent treatment of the grievant. The Association has filed an exhibit with the motion with proposed partial redactions of the affected documents.

The Association contends that, pursuant to the New Jersey Uniform Administrative Procedure Rules (Administrative Procedure Rules), the Commission should grant the motion. It asserts that both the Administrative Procedure Rules and the Court Rules require a balancing between public and private rights or interests when sealing records. The Association further argues that there is no independent public interest in the disclosure of the grievant's medical information. PERC is an independent quasi-judicial administrative agency, which is not expressly bound by the Administrative Procedure Rules.^{1/} The Administrative Procedure Rule addressing the standards for a motion to seal is as follows:

In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

N.J.A.C. 1:1-14.1(b)

^{1/} The Administrative Procedure Rules do not expressly apply to PERC because "the office shall be independent of any supervision or control by the department [of Labor] or by any board or officer thereof" and the EERA provides the Commission with its own authority to promulgate regulations. N.J.S.A. 34:13A-5.1(a); 13A-16.5.

The Court Rules require consideration of similar factors.^{2/}

Since there is not a PERC regulation establishing a standard for sealing a record, we are guided by the standards set forth in N.J.A.C. 1:1-14.1(b) in determining whether to seal the requested documents. After applying those standards, we grant the Association's request to partially seal the record. The Association's request is limited in scope since it seeks only to redact the part of the record that contains the grievant's medical information. Medical information is a matter of fundamental privacy and the maintenance of a public file including that information could create "undue embarrassment or deprivation of privacy."

2/ R. 1:38-11 defines the parameters for sealing a record as follows:

(a) Information in a court record may be sealed by court order for good cause as defined in paragraph (b)....The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.

(b) Good cause to seal a record...shall exist when:

(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

(2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

In making this determination, we also considered whether the subject documents are exempt from disclosure under the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 to 13, and the common law right of access to government records. See McClain v. College Hosp., 99 N.J. 346 (1985). The common law right of access requires “balanc[ing], in each case, [of] the individual’s rights to the information against the public interest in the confidentiality of the file.” Id. at 995 (citing Nero v. Hyland, 76 N.J. 213 (1978)). The requested medical documents would be exempt from disclosure under OPRA pursuant to Executive Order No. 26 (Gov. McGreevey, 2002). Additionally, the description of the medical incident and treatment at issue is significantly intertwined with the factual background of a grievance and collective negotiations, and records containing information from that category are also exempt from OPRA. See N.J.S.A. 47:1A-1.1; 1A-10. Finally, the balancing test under the common law right of access clearly weighs in favor of sealing the grievant’s medical records. The motion to seal is granted and we adopt the proposed redactions in Exhibit A of the Association’s submission.

ORDER

The Motion to Seal filed by the Neptune Township Education Association is granted. All necessary steps to implement this directive shall be taken.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Kushnir and Papero voted in favor of this decision. None opposed. Commissioner Higgins was not present.

ISSUED: February 29, 2024

Trenton, New Jersey