

D.R. NO. 2002-3

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

In the Matter of

TOWNSHIP OF VERNON,

Public Employer,

-and-

Docket No. CU-2001-3

UAW LOCAL 2326,

Petitioner.

**SYNOPSIS**

The Director of Representation dismisses a unit clarification petition filed by the majority representative of municipal clerical employees seeking to include the secretary to the police chief in its negotiations unit. The Director finds that the union waived its right to add the secretary by a clarification petition when it executed a successor collective agreement, with no written agreement with the Township preserving the dispute. The Director also found that the parties' recognition clause, even in the successor contract, specifically excludes the chief's secretary in whatever title that employee holds. Finally, the Director noted that even if a clarification petition were appropriate, the secretary's duties continue to be confidential within the meaning of N.J.S.A. 34:13A-3(g), and therefore, membership in any negotiations unit is inappropriate.

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Appearances:

For the Public Employer  
Struble, Ragno, Petrie, Spinato,  
Bonanno, MacMahon, Conte & Honig, attorneys  
(Joseph Ragno, of counsel)

For the Petitioner  
Reinhardt & Schachter, attorneys  
(Paul Schachter, of counsel)

DECISION

On July 17, 2000, UAW Local No. 2326 (UAW), filed a clarification of unit petition with the Public Employment Relations Commission (Commission) seeking to include the secretary to the chief of police<sup>1/</sup> in its collective negotiations unit of white-collar employees employed by the Township of Vernon (Township). The Township opposes the petition and argues that the

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<sup>1/</sup> UAW's petition identifies the position assigned to the chief as principal clerk typist, while the Township states that the chief's secretary is actually titled senior clerk typist. It is clear that the dispute concerns the secretary to the chief, presently occupied by Angie Fantuzzi.

chief's secretary is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), and, therefore, should be excluded from the unit.

We have conducted an investigation into the issue raised by the petition. N.J.A.C. 19:11-2.2 and 2.6. An investigatory conference was conducted by a Commission staff agent, and the parties were asked to supply additional information and to consider informal resolution of the petition. The parties each asked for additional time to respond and such requests were granted. The Township filed a written position statement together with supporting documents which it asked be kept confidential. The UAW was made aware of the general content and nature of the documents submitted by the Township. On August 10, 2001, the parties were notified of our tentative findings and invited to respond. Neither party has responded. Based upon our investigation, I make the following:

#### FINDINGS OF FACT

1. UAW has a collective negotiations agreement with the Township covering the period January 1, 1999 to December 31, 2001. According to the agreement, at Article I - Recognition, the unit consists of:

...all regularly scheduled full-time and regular part-time clerical employees, Public Safety Telecommunicators and Police Records Clerks, Assistant Animal Control Officers, Animal Control Attendants; excluding: sanitarians, nurses, inspectors, sub-code officials, Zoning Officer, confidential positions of the Assistant Municipal Clerk, the Administrative Clerk to the Township

Manager, the Administrative Clerk to the Director of DPW, and the Clerk Typist - Principal Clerk Typist (by whatever title this position holds) to the Chief of Police, department heads, and other managerial employees. (emphasis added)

2. Carol Schroeder was the personal secretary to the police chief for many years until her retirement in January 2000. In 1993, Schroeder was promoted from a clerical title to administrative assistant and was removed from the UAW's unit. That title is not included in the unit recognition clause. The Township asserts that Schroeder was a confidential employee. It submitted examples of work typed by Schroeder between 1997 and 1999, including the chief's answers to disciplinary grievances and a memorandum containing the chief's negotiations proposals, prepared for Township Manager Meredith Robson in advance of negotiations with the PBA. Schroeder also prepared various staffing and timekeeping reports which relate to the Township's contract interpretation.

3. Angie Fantuzzi was hired in September 1999 as a part-time clerk, was appointed to full-time clerk typist in January 2000, and promoted to senior clerk typist in March 2000. In January 2000, Fantuzzi assumed the duties of the police chief's secretary previously performed by Schroeder. These duties include typing memoranda, reports, and correspondence; maintaining files; opening and routing mail, including the chief's answers to grievances; and handling materials prepared by the chief for use by the Township in collective negotiations. The Township also submitted documents typed by Fantuzzi since January 2000, which include certain personnel matters the chief was investigating.

4. The police chief is an integral part of the Township's negotiations team. The previous chief, Kenneth Johnson, prepared and submitted his negotiations suggestions to the Township manager prior to negotiations. His secretary at the time, Schroeder, typed the memoranda and was aware of the chief's suggestions in advance of their disclosure to the employee organizations.

5. Chief Roy Wherry was appointed in March 2000, and has not yet been involved in the Township's negotiations. It is expected that Wherry will have the same role that Johnson had on the Township's negotiations team. Since January 2000, no negotiations have occurred between the Township and its police negotiations unit or the UAW. Thus, there has not yet been an opportunity for Fantuzzi to type or file confidential negotiations materials. Wherry will prepare his written recommendations for negotiations in the form of proposals and strategies, and he intends to have Fantuzzi type these memoranda to the Township manager. It is expected with a high degree of certainty that Fantuzzi, like Schroeder, will be aware of the Township's negotiations positions and strategies before they are revealed to any union.

#### ANALYSIS

The Township argues that the position of secretary to the police chief has historically been excluded from the unit as confidential and should continue to be so excluded. It asserts that Fantuzzi's continuation of the confidential duties previously

performed by Schroeder justifies the position's continued exclusion from the unit.

The UAW contends that the chief's former secretary, Schroeder, had been excluded from the unit based upon her title, administrative secretary, while Fantuzzi holds the title senior clerk typist. The UAW also disputes that Fantuzzi has performed any confidential duties.

A clarification of unit petition is used to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification or set forth in the parties' recognition agreement. In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977), the Director noted that a clarification of unit petition is appropriate when there are changed circumstances such as changes in the duties attendant to a title or position. However, the employee representative must seek the unit clarification of the disputed title (or else preserve the dispute by written agreement with the employer) before executing a successor contract. Atlantic Cty. College, P.E.R.C. No. 85-64, 11 NJPER 30 (¶16015 1984); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984) (union waived its right to seek unit clarification of recently created titles by signing successor contract). Here, Fantuzzi was appointed as the secretary to the chief in January, 2000. The parties executed the 1999-2001 contract on June 20, 2000. Thereafter, on July 17, 2000, the UAW filed its unit

clarification petition. There is no indication that the UAW has preserved this dispute by entering into a written agreement with the Township. Therefore, I find that by executing the successor collective agreement, the UAW has waived its right to file this petition.

Moreover, the parties' contract recognition clause, even in the successor contract, specifically excludes the position of chief's secretary in whatever title that employee holds. Therefore, by the specific terms of the collective agreement, the parties have excluded Fantuzzi's position from the negotiations unit. A unit clarification petition is inappropriate to include titles the parties have mutually agreed to exclude from the unit. Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980). Based upon the foregoing, a unit clarification petition is not appropriate to add the secretary to the chief to the existing unit.

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Even if a unit clarification petition were appropriate, it appears that the secretary to the chief continues to be a confidential position. N.J.S.A. 34:13A-3(g) defines confidential employees as:

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.

The policy of this Commission is to narrowly construe the term confidential employee. Ringwood Bd. of Ed. and Ringwood Ed.

Office Personnel Ass'n, P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988); 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).

In State of New Jersey, the Commission explained the approach taken in determining whether an employee is confidential. The Commission stated:

We 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 [were] included in a negotiating unit. [Id. at 510.]

See also River Dell Req. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983), req. for rev. den. P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984).

The key to confidential status is 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 (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). Employees in clerical positions are often deemed confidential due to their superior's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971); Salem Comm. Coll.,



P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell. An employee who performs such tasks will be determined to be confidential within the meaning of the Act.

Access to negotiations and grievance documents through typing and photocopying them and maintaining files containing them may indicate confidential status. See Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd NJPER Supp.2d 207 (¶182 App. Div. 1989) (secretary who maintained grievance files and had advance knowledge of employer's grievance responses was confidential); River Dell. Thus, in New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey 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 that 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. [Id. at 358.]

UAW asserts that Fantuzzi has not yet performed any functions that would make her confidential within the meaning of the Act. The Commission has been cautious in finding confidential status, as such a finding exempts the employee from the protections of the Act. N.J.S.A. 34:13A-5.3. Where such a determination relies upon "speculation or conjecture as to job function," the Commission has found that such circumstances are insufficient to warrant excluding the employees from the unit. Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER (¶20263 1989); Wayne Tp., P.E.R.C. No. 87-82, 13 NJPER 77 (¶18035 1986). However, we will find confidential status where the duties are clear and their implementation is certain. Tp. of Belleville, D.R. No. 92-33, 18 NJPER 335 (¶23148 1992); Commercial Tp., D.R. No. 91-9, 16 NJPER 511 (¶21223 1990).

Applying the facts in this matter to the standards set forth above, I find that the secretary to the Township's police chief is a confidential employee within the meaning of the Act. There have been no collective negotiations since Fantuzzi's appointment to the position and, thus, there has been little opportunity for her to handle materials related to negotiations. However, Chief Wherry is clearly expected to be a member of the

Township's negotiations team, as was his predecessor. The new chief expects Fantuzzi to continue the role of the former secretary by typing his proposals for negotiations and handling other negotiations memoranda. Fantuzzi will be expected to type grievance responses and confidential memoranda on contract administration issues for the chief, as did Schroeder. Moreover, she has already had occasion to type documents pertaining to certain personnel matters which contain the chief's interpretation of one of the labor agreements and his investigation into a confidential personnel matter; therefore, she knew the Township's view of these matters prior to their disclosure to any employees or majority representatives. Performance of these types of duties give the chief's secretary advanced knowledge of the Township's labor strategies and, therefore, renders the employee confidential within the meaning of the Act. See W. Milford; Salem Comm. Coll; River Dell; Sayreville.

Based upon all of the foregoing, if Fantuzzi were to be placed into the UAW's unit, the Township's ability to maintain confidentiality with regard to the collective negotiations process would be compromised. Therefore, I find that Senior Clerk Typist Angie Fantuzzi, as secretary to the police chief, is a confidential employee within the meaning of the Act and, therefore, must be excluded from the existing unit since her functional responsibilities and knowledge of issues involved in the collective negotiations process make her membership in the negotiations unit incompatible with her official duties.

ORDER

The UAW's petition is dismissed. The secretary to the chief of police, remains excluded from the UAW's clerical negotiations unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

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Stuart Reichman, Director

DATED: August 24, 2001  
Trenton, New Jersey