

D.R. NO. 92-33

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

In the Matter of

TOWNSHIP OF BELLEVILLE,

Public Employer-Petitioner,

-and-

Docket No. CU-91-49

OPEIU LOCAL 32,

Employee Representative.

SYNOPSIS

The Director of Representation determines that the Public Works Director's secretary is a confidential employee within the meaning of the Act. The position's duties include typing and filing the Director's confidential recommendations for negotiations strategies and proposals. While the Commission will not decide confidential status based upon speculation, the employer in this matter would have assigned the employee specific confidential duties, but for her union involvement. Accordingly, the position is excluded from the unit of nonsupervisory municipal employees, effective immediately.

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Appearances:

For the Public Employer-Petitioner
Lorber, Schneider, Nuzzi, Vichness & Bilinkas, attorneys
(Douglas R. Cabana, of counsel)

For the Employee Representative
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

DECISION

On April 29, 1991, the Township of Belleville ("Township") filed a Petition for Unit Clarification with the Public Employment Relations Commission ("Commission"). The Township seeks to remove the secretary to the Public Works Director from the collective negotiations unit represented by Office and Professional Employees International Union Local 32, AFL-CIO ("OPEIU"). The Township asserts that the position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A (Act), and should be excluded from the unit.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2 and 2.6. A Commission staff agent solicited

position statements and specific factual assertions from the parties at an investigatory conference. The Township submitted a detailed statement of facts along with affidavits from Public Works Director Stanley Stires. OPEIU does not dispute the Township's factual assertions. It appears there are no material facts in dispute which would require an evidentiary hearing. Based upon our administrative investigation, I find these facts:

The Commission certified the Belleville Municipal Employees Association ("MEA"), affiliated with Essex Council No. 1, New Jersey Civil Service Association, on July 22, 1988, as the majority representative of a unit of non-supervisory employees employed by the Township.^{1/} Thereafter, the MEA affiliated with OPEIU Local 32.

There is a current contract in effect between the MEA/OPEIU and the Township covering the Township's approximately 180 non-supervisory employees.

Stanley Stires is the Director of the Department of Public Works, in which about 58 unit employees are assigned. Stires prepares the Public Works Department's annual budget request and submits it to the Township Administrator. The budget process includes Stires' recommendations concerning the allocation of

^{1/} The MEA had been recognized as the exclusive majority representative of this unit for many years. The 1988 certification issued as the result of an unsuccessful representation challenge by the International Longshoremen's Association.

positions in each division, the creation or removal of certain positions, the subcontracting of certain department operations, employee compensation and promotions, as well as materials and equipment.

Stires is a member of Township's committee for negotiations with OPEIU. As part of the management negotiations team, Stires participated at the table in some negotiations sessions with the OPEIU for the most recent contract. When he was not actually at the table, he was used as a resource person. He is included in discussions with the Township Manager and other members of the team to discuss negotiations proposals and plan negotiations strategy.

Stires is the employer's representative at the first step in Local 32's contractual grievance procedure. He has the authority to adjust grievances.

Stires' secretary is responsible for typing, filing, copying, handling correspondence and memoranda, telephone calls, and other clerical duties. Certain of the position's duties involve confidential, labor-sensitive matters, including the typing and filing of confidential memoranda from Stires to the Township Administrator concerning personnel matters such as hiring, proposed employee discipline, proposals and strategies concerning the handling of employee grievances, and suggested formulation of departmental policies and procedures. Stires' secretary will be assisting in the preparation of the Department's annual budget and is also responsible for maintaining all personnel and payroll

records. She is responsible for typing Stires' responses to employee and union grievances, which are eventually given to the employee and/or the union.

Stires' former secretary left the Township in 1991. The Township asserts that she was aware of certain confidential labor relations information because of the nature of her position and that the information was "leaked" to the union. Accordingly, Stires did not permit her to perform the confidential duties described above because she was an active participant in Local 32. The Township is now recruiting to fill the position of Stires' secretary. The Township wishes to exclude the position from the unit before it assigns the confidential duties to the new employee.

Generally, the Commission will not decide the confidential status of positions based upon speculation. Here, however, we are presented with a set of existing duties that would have been assigned to Stires' secretary but for her union involvement. See Sterling Bd. of Ed., P.E.R.C. No. 80, NJPER Supp. 80 (1974).^{2/} Deciding the issue at this juncture is appropriate and preferable to the Township acting unilaterally to remove the position from the unit. See Passaic Cty. Reg. HS Dist. #1, P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

^{2/} In Sterling, the Commission decided the unit status of employees based upon a definitive set of duties that were to be assigned imminently. Compare Tp. of Wayne, P.E.R.C. No. 87-82, 13 NJPER 77 (18035 1986), where the Commission refused to consider confidential status based upon speculative duties.

* * *

N.J.S.A. 34:13A-3(g) defines confidential employees as those: "...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." Confidential employees may not appropriately be included in any negotiations unit. N.J.S.A. 34:13A-5.3.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission explained that in determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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 was included in a negotiating unit [Id. at 510].

The secretary's responsibility for typing and filing correspondence and memoranda involving Stires' recommendations for negotiations strategies and proposals gives her access to and knowledge about confidential labor relations issues and makes her confidential within the meaning of the Act. Monroe Tp., D.R. No. 87-15, 13 NJPER 87 (¶18039 1986). See also, Tp. of Aberdeen, P.E.R.C. No. 88-95, 14 NJPER 315 (¶19114 1988); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Parsippany-Troy Hills Tp. Bd. of Ed.,

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D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979). Additionally, her involvement in the preparation of the Department's budget renders her confidential as those functions result in her knowledge of sensitive budget or personnel information, such as the department's fiscal status as it impacts contemplated layoffs or hiring. Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); Scotch Plains Tp., D.R. No. 84-11, 9 NJPER 632 (¶14270 1983).

Based upon the foregoing, I find that the secretary to the Director of Public Works is a confidential employee within the meaning of the Act. Accordingly, the non-supervisory unit represented by the Belleville Municipal Employees' Association/Local 32, OPEIU, is clarified as excluding the secretary to the Director of Public Works, effective immediately.^{3/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: May 29, 1992
Trenton, New Jersey

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