

D.R. NO. 91-33

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

In the Matter of

TOWNSHIP OF MINE HILL,

Public Employer,

-and-

Docket No. RO-91-127

TEAMSTERS LOCAL 102,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among all clerical employees employed by the Township of Mine Hill, pursuant to a petition filed by Teamsters Local 102. The Director found that the Court Clerk was not a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and should be included in the unit. The Director found that the Municipal Clerk is a confidential employee and must be excluded. Finally, he found that the custodian does not share sufficient community of interest with the other unit titles and must be excluded from the unit.

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Appearances:

For the Public Employer
Jeffrey E. Michelson, attorney

For the Petitioner
Richard A. Weinmann, attorney

DECISION AND DIRECTION OF ELECTION

On January 29, 1991, the Teamsters Union Local 102 ("Teamsters") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent all full-time and regular part-time clerical employees in the Township Administration Building employed by the Township of Mine Hill ("Township").

The Township will not consent to an election contending that the Court Clerk and Municipal Clerk are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and that the Municipal Clerk is also a confidential employee within the meaning of the Act. The Township argues that these titles are inappropriate for inclusion in

any negotiations unit. Additionally, the Township asserts that the title of custodian is a blue-collar position and is not appropriately included in the petitioned-for clerical unit.

There are nine employees in the petitioned-for unit, including the three employees in the titles in dispute. The petition is supported by an adequate showing of interest.

The Teamsters seek a secret ballot election among the petitioned-for employees. They argue that the Court Clerk and Municipal Clerk do not perform managerial or confidential duties and should be included in the petitioned-for unit. Additionally, they assert that the custodian is appropriately included in the petitioned-for unit of administration building employees.

No substantial and material facts appear to be in dispute which warrant convening a hearing. These facts appear.

N.J.S.A. 34:13A-3(f) defines managerial executives as:

...persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall only include the superintendent or other chief administrator, and the assistant superintendent of the district.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-509 (¶11259 1980), the Commission elaborated on the types of responsibilities necessary for a finding of managerial executive status:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he

selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Id. at 509.

N.J.S.A. 34:13A-3(g) defines confidential employees as those 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 Commission has narrowly construed the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); 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); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). 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 (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood.

The Act specifically excludes managerial executives and confidential employees from inclusion in any collective negotiations unit. N.J.S.A. 34:13A-3(d).

The Township states that the Court Clerk and the Municipal Clerk "formulate management policies and practices and are responsible for directing the effectuation of these management policies and practices." However, the Township has not provided specific facts and/or examples of the types of policies and practices developed and implemented by the employees in these positions. In the absence of such evidence, I find no basis for their exclusion from the petitioned-for unit as managerial employees. They are not managerial executives within the meaning of the Act.

The Township also asserts that the Municipal Clerk is a confidential employee since she is required to attend and to prepare the minutes of Township Council meetings, including closed meetings. Labor relations matters are discussed at those meetings. See Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977);

Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T1 (2/18/88).

Since the Municipal Clerk is privy to confidential labor relations discussions by Township officials and managers, I conclude that the Municipal Clerk is a confidential employee within the meaning of the Act and should be excluded from the petitioned-for unit.

I will also exclude the custodian title from the petitioned-for clerical unit. The petitioner has not provided any evidence or factual assertions which establish that a community of interest exists between the blue-collar custodial position and the clerical positions in the petitioned-for unit.

Accordingly, I find that the appropriate unit for collective negotiations is:

Included: All full-time and regular part-time clerical employees employed by the Township of Mine Hill.

Excluded: All managerial executives, confidential employees, supervisory employees within the meaning of the Act, police employees, craft employees, professional employees and all other employees employed by the Township of Mine Hill.

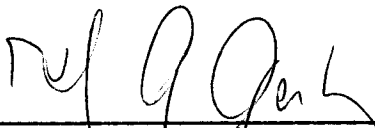
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding

the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber
Director of Unfair Practices

DATED: May 21, 1991
Trenton, New Jersey