

D.R. No. 2013-3

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

In the Matter of

TOWNSHIP OF BRANCBURG,

Public Employer,

-and-

Docket No. CU-2012-003

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 469,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a non-supervisory unit to include the title, systems administrator. The Director finds that the systems administrator's day-to-day duties do not involve him with labor relations matters or give him advance knowledge of the Township's labor relations strategies; the Township's non-specific future plans to hire additional IT staff which the systems administrator would supervise were insufficient to support a finding of supervisory status; and the systems administrator's lack of authority to independently access employee computer/electronic activity was insufficient to support a finding of an actual or potential substantial conflict of interest with other unit members under Board of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). Accordingly, the title is neither a confidential employee nor a supervisor, and is appropriate for inclusion in the unit.

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Petitioner.

Appearances:

For the Public Employer,
DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis &
Lehrer, attorneys
(Richard Flaum, of counsel

For the Petitioner,
Michael Broderick, Vice President

DECISION

On July 27, 2011, the Township of Branchburg (Township) filed a clarification of unit petition seeking to clarify a collective negotiations unit of non-supervisory white collar employees to exclude the systems administrator because the employee is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The negotiations unit is represented by International Brotherhood of Teamsters, Local 469 (IBT). IBT opposes the petition, claiming that the title is not confidential within the meaning of the Act.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. On August 2, 2012, I wrote to the parties, advising of my tentative findings and conclusions and inviting responses. The Township was provided an extension of time until August 24, 2012 to file its response. No response has been filed. The disposition of the petition is properly based upon our administrative investigation. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts:

On May 23, 2011, IBT Local 469 filed a representation petition (Dkt. No. RO-2011-073) seeking a card check certification for a proposed unit of non-supervisory white collar employees of the Township. The parties signed a Stipulation of Appropriate Unit form for the following unit:

Included: All full-time and part-time white collar employees employed by the Township of Branchburg.

Excluded: All managerial executives, confidential employees and supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.; all police employees, all professional employees, craft employees, casual employees, all Township employees in other collective negotiations units, and all other employees of the Township of Branchburg, including the employees in the following titles: Recreation Director, Tax Assessor, Court Administrator, Fire Official, Executive Secretary to the Administrator, Deputy Township Clerk,

Construction Official, Tax Collector and
Secretary to the Township Clerk.

A sidebar agreement to the stipulation provides:

After the issuance of the Certification of Representative in the above captioned matter, the parties agree to submit to the Commission the question of whether or not the title of Systems Administrator shall be included in the certified unit in the above captioned matter. This question shall be submitted to the Commission through the filing of a Petition for Clarification of Unit by one or both of the parties.

On July 27, 2011, the Director of Representation issued a Certification of Representative for the stipulated unit. On the same date, the Township filed the above-captioned petition.

John Hitchcock is employed as the systems administrator. Township Administrator Greg Bonin certifies that the systems administrator is considered part of the "administration department" which includes the Township administrator, assistant administrator, and executive secretary to the administrator, all of whom are "confidential" employees. Bonin certifies that Hitchcock, along with other administration department staff, is ". . . privy to all executive minutes, police records and e-mail accounts of every Township employee." Hitchcock is also assertedly privy to minutes of Township Executive Board meetings which include discussions of labor negotiations.

Bonin certifies that Hitchcock is the Township administration's sole resource for tracking employee behavior

through the Township's electronic systems, including monitoring e-mails to ensure the employees' compliance with the Township's policies. The Township has used such information (forwarded by Hitchcock) in connection with the termination of employees.

The Township asserts that Hitchcock's job duties place him in direct conflict with other members of the bargaining unit. His title assertedly lacks a community of interest with other negotiations unit members and poses a substantial actual or potential conflict of interest under Bd. of Ed. of W. Orange v. Wilton, 57 N.J. 404 (1971).

Hitchcock supervises the Information Technology (IT) department. Currently, no one reports to him. The Township has however, from time-to-time, assigned personnel from the department of public works to assist Hitchcock in performing IT functions under his direct supervision, most recently in October 2011.

IBT asserts that Hitchcock performs common IT functions to maintain the Township's computer system and assists the administrator only when problems arise or when new programs are introduced. His access to confidential information is limited to instances when an employee gives him permission. The tracking of employee behavior patterns is assertedly not a daily function; it is implemented by a formal request of the Administrator or his assistant. If Hitchcock released any such information without

appropriate authorization, he would be subject to discipline. The Administrator has directed Hitchcock to monitor one or more specified employee's behavior on the Township's electronic systems. Hitchcock's participation in an employee's termination is limited to verifying or retrieving information sought by the Administrator or governing body. Hitchcock's authority over "management policies" is assertedly limited to making recommendations to the governing body concerning IT equipment and programs. He has no greater authority over such policies than any other Township employee.

ANALYSIS

I find that the systems administrator is not a confidential employee.

N.J.S.A. 34:13A-3(g) defines confidential employees of a public employer other than the State of New Jersey as:

[e]mployees 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.

In deciding confidential status, the Commission has used the approach described in 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):

We scrutinize the facts of each case to find for whom each employee works, what [the employee] does or 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 was included in a negotiating unit. [11 NJPER at 510]

In New Jersey Turnpike Authority v. American Federation of State, County and Municipal Employees, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey. The Court 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, 11 NJPER 507, 510 (¶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]

The Commission narrowly construes the term, confidential employee. State of New Jersey, 11 NJPER at 514. A finding of confidential status is based upon what the employee actually does, and not duties which may be assigned or reassigned to him or her. State of N.J. (Office of Employee Relations) and Council of N.J. State College Locals, NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989) aff'd NJPER Supp. 2d 246 (¶206 App. Div. 1991); 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). However, the future job functions are clear and implementation is certain, then future circumstances may be considered in the evaluation of confidential status. Montgomery Tp. Bd. of Ed., D.R. No. 93-12, 19 NJPER 96 (¶24044 1993).

When the Legislature initially adopted the definition of "confidential employee", it rejected a broader definition which would have excluded employees with "access to confidential personnel files or information concerning the administrative operations of the public employer." Bloomfield Public Library, D.R. No. 2011-9, 37 NJPER 153 (¶47 2011); citing State of New Jersey.

Mere access to confidential information does not render an employee confidential under the Act. Camden Cty. Library, P.E.R.C. No. 2008-35, 33 NJPER 319 (¶121 2007). Similarly, mere access to budgetary information is insufficient to warrant a finding of confidential status. New Jersey Turnpike Auth.

The Commission has held that mere access to personnel files, or advance knowledge of employee personnel information unrelated to management's handling of grievances or the negotiations process, does not render an employee confidential, as that term is defined by our Act. Bloomfield Public Library; See also Camden Bd. of Ed., D.R. No 2007-6, 3; 32 NJPER 383 (¶159 2006) (clerk's mere access to background information they gathered in support of grievances and their mere access to sensitive information in the office did not establish that employees had advanced knowledge of the decisions management rendered); Downe Tp. Bd. of Ed., D.R. No 2005-3, 30 NJPER 388 (¶125 2004) (technology trainer's mere access to all computer files in the district was insufficient to make her a confidential employee within the meaning of the Act); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986).

In Camden Cty. Library, the Commission denied a request for review of the Director's decision that the library's IT manager was not a confidential employee. The IT manager's job duties

included prioritizing the information technology needs of the library system; keeping the library's electronic system working and up to date; overseeing the department workflow; assigning tasks, monitoring progress and following up as needed. The public employer asserted that the manager and the entire IT staff could access any computer in the library system in-person or remotely. It contended that its computer system stored "confidential" information, such as disciplinary actions, employee medical information, employee investigations, and claims of sexual harassment, and that the IT manager had "unfettered access" to any e-mails or electronically transmitted memoranda between the Director and the Library board or the County freeholders. However, the IT manager had never accessed a computer without permission.

In Bloomfield Public Library, the Director found that a senior accountant with physical access to cabinets containing personnel records and correspondence between Library administration and its attorney was not a confidential employee. The Director also found that although the senior accountant's findings might be used during the processing of a hypothetical grievance, the employee would not have advanced knowledge of the Library's actions or strategies. See also, State of New Jersey, D.R. No. 2007-14, 33 NJPER 177 (¶62 2007). Finally, no facts supported the notion that the potential conflict of interest

between the senior accountant and his potential fellow unit members was substantial, thereby warranting exclusion from the negotiations unit.

In the instant matter, Hitchcock's access to executive minutes setting forth notes of negotiations discussions among Township representatives does not appear to warrant his exclusion from the unit, in the absence of any facts specifying at least some content of those minutes in the overall context of collective negotiations. For example, a summary which only provided cursory information about dates and duration of meetings, rather than actual summaries of deliberations and strategies would not support a finding of confidential status of this employee. Hitchcock performs duties similar to those of the IT manager in Camden Cty. Library. Hitchcock's access to the minutes does not appear to intersect with his day-to-day responsibilities. No other facts support the proposition that Hitchcock's job duties involve him with labor relations matters or give him advance knowledge of the Township's labor relations strategies.

In Teaneck Tp., D.R. No. 2009-3, 34 NJPER 268 (¶96 2008), aff'd P.E.R.C. No. 2009-25, 34 NJPER 379 (¶122 2008), the management information systems specialist provided data directly to the Township manager on personnel costs, health benefits costs, costs of providing additional vacation or sick days in

negotiations proposals, and formulated responses to negotiations demands from each of the various Township unions. The Director found that inclusion of that title in a unit would compromise the Township in negotiations and in administering the contract if that data was shared with employee representatives.

Hitchcock's duties do not include access to or preparation of similar data regarding either the formulation of or responses to negotiations proposals. Nor does he provide such data to Township representatives in grievance processing.

The Act contemplates restrictions upon the inclusion of personnel in a negotiations unit who have a "actual or potential substantial conflict" of interest with other unit members. See, Wilton, 57 N.J. at 426 (1971). The Court noted that each case must be examined on its own facts. Id.

The Township has not provided any specific examples of Hitchcock's access to information which supports a finding of an actual or potential conflict of interest with employees in the broad-based white collar negotiations unit. Moreover, Hitchcock has no apparent authority to independently access records of employee computer/electronic activity.

Finally, the Township asserts that Hitchcock is a supervisor. The Act generally prohibits supervisors from being included in the same negotiations unit as non-supervisory employees. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-6(d).

The negotiations unit is comprised of non-supervisory employees. The Township asserts that it intends at some future unspecified time, to hire additional IT staff whom Hitchcock will supervise. At this time, such supervisory duties are merely speculative. Accordingly, no facts support a finding of supervisory status.

Under all the circumstances, I find that the negotiations unit of non-supervisory white collar employees is clarified to include the systems administrator.

ORDER

The unit is clarified to include the title, systems administrator, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco

DATED: September 25, 2012
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by October 5, 2012.