

D.R. NO. 93-19

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

In the Matter of

BOROUGH OF RINGWOOD,

Public Employer,

-and-

Docket No. RO-92-190

RINGWOOD EMPLOYEE GUILD,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among administrative employees employed by the Borough of Ringwood. The Director finds that the Ringwood Employee Guild sought an appropriate unit, but found that the dispatchers, deputy borough clerk, personal secretary to the borough administrator and personnel/payroll clerk are inappropriate for inclusion in the proposed unit.

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Appearances:

For the Public Employer
D'Angelo & Clemack, attorneys
(Richard J. Clemack, of counsel)

For the Petitioner
Loccke & Correia, attorneys
(Michael J. Rappa, of counsel)

DECISION AND DIRECTION OF ELECTION

On May 22, 1992, the Ringwood Employee Guild filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The Guild seeks to represent a unit of "all regular and part-time employees" employed by the Borough of Ringwood. However, it does not wish to represent employees presently included in the blue collar employee and clerical employee units,^{1/} which are currently represented by

^{1/} Nor does it wish to represent employees of the police department, supervisors, managerial executives, confidential employees or employees in the following positions:

Footnote Continued on Next Page

Teamsters Local 97.^{2/}

In its petitioned-for unit, the Guild is seeking to represent, among others, all police dispatchers. The Ringwood Police Dispatchers Association currently represents the dispatchers. It objects to the petition and wishes to retain its separate negotiations unit.

The Borough has agreed to a secret ballot election.^{3/}

1/ Footnote Continued From Previous Page

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|-----------------------------|----------------------|
| 1. clerk/typist | Rosemarie Ferralasco |
| 2. board/comm'n secretary | Janice Rokoszak |
| 3. water meter reader | Monika Hilperath |
| 4. water meter reader | Jean Stark |
| 5. recycling aide | Paul Grosinger |
| 6. Director of Public Works | Harold McDowell |

2/ Local 97 does not object to this petition as long as its unit employees are not included in the proposed unit.

3/ The parties agree that the proposed unit is appropriate and would include the following titles:

1. private secretary (to the Borough Administrator)
2. personnel/payroll clerk
3. deputy borough clerk
4. tax collector/assistant treasurer
5. chief financial officer/treasurer
6. tax assessor
7. court administrator
8. deputy court administrator
9. board/commission secretary
10. fire prevention specialist
11. administrative secretary, DPW
12. administrative secretary, Health Dept.

Footnote Continued on Next Page

However, the unit status of the following 14 titles is in dispute. The Borough claims these are confidential employees, managerial executives and/or supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"):

1. private secretary (to the Borough Administrator) (Ryan)
2. personnel/payroll clerk (Scangarella)
3. deputy borough clerk (Wyman)
4. tax collector/assistant treasurer (Bado)
5. chief financial officer/treasurer (Wolons)
6. tax assessor (Farrell)
7. court administrator (Conway)
8. administrative secretary, DPW (Schwesinger)

3/ Footnote Continued From Previous Page

13. public works supervisor, DPW (Beaulieu)
14. public works supervisor, DPW (DeGroat)
15. asst. public works superintendent
16. recycling coordinator
17. health officer
18. sanitary inspector
19. public health nurse
20. building inspector/fire code official/construction zoning officer
21. welfare director/director of social services
22. clerk typist (Motta)
23. recreation aide
24. recreation director
25. school traffic guard -- Corrado
26. DiPillo
27. Donnerhack
28. Edler
29. Gallo
30. Goodwin
31. Harlan
32. Saum
33. Schmidt
34. Thompson
35. dispatcher
36. dispatcher
37. dispatcher
38. dispatcher
39. dispatcher
40. secretary in the Sewerage Authority, Sharon Fleck

9. administrative secretary, Health Dept. (Ewasko)
10. public works supervisor, DPW (Beaulieu)
11. public works supervisor, DPW (DeGroat)
12. asst. public works superintendent (Bierwas)
13. health officer (Chapman)
14. public health nurse (Wogisch)

The Borough also asserts that a clerk typist position, occupied by Motta and petitioned for by the Guild, is excluded from the Teamsters unit because the employee in the position works fewer than 20 hours per week.

The Borough also asserts that the secretary in the Ringwood Municipal Sewerage Authority (Fleck) is employed by a separate public employer, the independent Ringwood Municipal Sewerage Authority and not by the Borough. It claims that the Authority hired her, pays her and regulates her job duties. It notes that Ms. Fleck does not report to any Borough employee and accordingly, should be excluded from the unit.

I find that the Guild seeks a generally appropriate unit of professional and administrative employees, except as discussed below.

The existing dispatchers unit is excluded from the proposed unit. Although the Commission favors broad-based units, that policy must be balanced against the maintenance of long standing, stable negotiations units. Here, the dispatchers have opposed the merger of their unit into a larger unit with other titles, and have stated their desire to remain in a separate unit. There is no reason to disturb this stable relationship between the Borough and the Dispatchers' Association. Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

The standards to be followed in analyzing whether the other disputed positions should be included in or excluded from the petitioned-for unit are well established. N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization..." However, under the Act, managerial executives and confidential employees do not have the statutory right to organize and negotiate collectively. N.J.S.A. 34:13A-5.3.

The statutory definition of managerial executive is:

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....
N.J.S.A. 34:13A-3(f)

See Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977), where a lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the workweek, added lifeguards to the payroll in emergencies, participated in management meetings, influenced the Borough's and Mayor's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis. The Commission stated:

[T]he term "managerial executive" shall be narrowly construed, and...the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by [the lifeguard captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives --excluded from coverage-- from supervisors--eligible to be represented in appropriate units.
Id. at 374. (Emphasis added).

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), the Commission stated:

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 broadly affect 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. (Emphasis added)

In Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), three titles were found not to be managerial although they were on the fourth step of the chain of command. The positions had only department-wide authority, not hospital-wide authority.

Confidential employees, like managerial executives, are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). The Commission has narrowly construed the term confidential employee.^{4/} A finding of

^{4/} See Brookdale Comm. College, D.R. No.78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

confidential status requires a case-by-case examination of an employee's knowledge and use of information which could compromise the employer's position in the collective negotiations process.^{5/}

N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

employees 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.

There must be more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Here, the clerk-typist position occupied by the part-time employee, Paulette Motta, is covered by the terms in the agreement between Teamsters Local 866 and the Borough. This title is listed in Appendix A of the Teamster's agreement. The issue now before us is not whether Motta's position is properly excludable from the

^{5/} See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), aff'g. D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

Teamsters' unit on the basis of its part time status;^{6/} rather, the issue is whether Motta's position, which has duties which would otherwise place it in the Teamsters' unit, be placed in the unit petitioned-for by the Guild. Motta's title is presently included in the Teamsters' unit and shares a community of interest with that unit. Accordingly, the Motta clerk-typist position is excluded from the petitioned-for unit.

The secretary in the Sewerage Authority, Sharon Fleck, should not be included in the proposed unit. The independent Ringwood Municipal Sewerage Authority, not the Borough, controls her terms and conditions of employment, the Authority hired her, pays her and regulates her job duties; she is an employee of the Sewerage Authority, not the Borough.

The private secretary to the Borough Administrator (Ryan) is a confidential employee and should be excluded from the unit. This secretary prepares all correspondence for the Borough Administrator, including the Administrator's positions on negotiations matters which are sent to the Borough Council. Also, this secretary has taken notes of meetings between the Borough Administrator and the Borough's labor attorney concerning negotiations matters. The Association does not dispute these

^{6/} Where a part-time employee's work hours are less than one-sixth of the hours of regular full-time employees, the community of interest between the part-time employee and the rest of the unit may be so slight as to warrant exclusion. See Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13141 1982).

assertions. Accord, Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985).

The personnel/payroll clerk (Scangarella) prepares cost-impact analyses of different negotiations proposals and recently sat-in on various confidential meetings and discussions about negotiations proposals. The Guild has not presented evidence refuting these assertions. Accordingly, this employee is confidential within the meaning of the Act and is excluded from the proposed unit.

The deputy borough clerk (Wyman) is a confidential employee and is therefore ineligible for inclusion in the proposed unit. Wyman would assume full authority for the Borough Clerk in the latter's absence and has recorded minutes of Borough Council meetings, including closed sessions where collective negotiations strategies were discussed. The fact that the deputy borough clerk was present at and recorded minutes of such meetings in the Borough Clerk's absence is a sufficient basis to find that she is confidential within the meaning of the Act.

The Borough's chief financial officer/treasurer is neither a confidential employee nor a managerial executive within the meaning of the Act. The Borough has not provided sufficient examples of what the employee in this position does to warrant a finding of confidential or managerial status. The Borough cites the statutes stating the chief financial officer's duties; but this alone does not support a finding that she exercises the scope of

managerial authority or independence required by the Act or under Montvale. She has responsibilities for the Borough's lending and investment strategies; however, without more, these assertions are not a sufficient basis for concluding that she is a managerial executive; in fact, she may be simply an advisor to other decision makers or managerial executives. Finally, the Borough's statements do not make clear that the chief financial officer's costing and advisory functions give her pertinent, strategically useful knowledge of the Borough's collective negotiations strategies before they are known to the union. Borough of Fair Lawn, D.R. No. 91-15, 17 NJPER 50 (¶22018 1991) is inapposite; there, the parties agreed to exclude the treasurer. But cf., Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1989), where the hearing officer found that the Town's treasurer had knowledge of the Town's negotiations strategies before they were public and hence found her to be confidential.

The tax collector/assistant treasurer (Bado) is not a confidential employee and is appropriate for inclusion in the proposed unit. The Borough asserts that because we have previously found similar positions confidential, this one must also be held to be confidential. However, confidential status determinations are made on an individual basis and require close scrutiny of the actual duties performed. Here, there are no examples of work actually performed which support a finding of confidential status. Accord, Borough of Clayton, D.R. No. 89-26, 15 NJPER 223 (¶20093 1989).

Further, since I have determined that the treasurer is not confidential, there is little basis for concluding that the assistant treasurer is confidential.

As to the administrative secretaries in the health and public works departments, the record does not support a finding of confidential status. The Borough asserts that "these individuals are privy to the same confidential information relevant to collective bargaining as the heads of the departments." First, I note that we have not found that department heads are confidential employees or managerial executives within the meaning of the Act. Second, access to confidential information, without more, is insufficient to establish confidential status. Little Ferry. No other facts were presented about these secretaries' duties. Accordingly, these positions are included in the proposed unit.

The Borough asserts that the assistant superintendent of public works assists the superintendent, takes the superintendent's place in his absence, and advises the personnel manager about collective negotiations matters concerning the Borough's rank-and-file DPW unit. Standing alone, these assertions do not support a finding of managerial executive status -- there is no evidence that these duties require the assistant superintendent to exercise the level of authority and independent judgment contemplated by the Act for a finding of managerial status. It is not clear that he can independently make decisions affecting the organization's purposes, nor does his position generally appear to

be high enough in the Borough's hierarchy to warrant a finding of managerial executive status. See Montvale. Accordingly, this position is included in the petitioned-for unit.

It is also not clear what role the assistant superintendent plays in collective negotiations -- e.g., does he give strategic negotiations advice or is he merely asked about current conditions? There is nothing in the record before me to indicate that the assistant superintendent knows the Borough's negotiations strategies or the positions which the Borough will take in negotiations in advance of their being revealed to the union. Accordingly, this position is appropriate for inclusion in the unit.

No facts were presented by the Borough concerning the duties performed by the tax assessor, the Court Administrator, public works supervisors, the health officer or the public health nurse. The Borough analogizes these titles to similar titles in other jurisdictions which have been the subjects of prior Commission decisions. However, title similarity is not controlling. Our decisions concerning managerial and confidential status are fact-specific and are determined on a case-by-case basis. Accordingly, the positions of tax assessor, Court Administrator, public works supervisors, health officer and public health nurse are appropriate for inclusion in the proposed unit.

Finally, the Borough objects to the inclusion of the construction code official in the petitioned-for unit because it alleges that he is a managerial executive. The Borough contends

that in performing duties relating to the interpretation of the administrative code, the construction code official is not subject to the control of any municipal official. Without more, these duties do not meet the Act's test for managerial executive status. A managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes or means of effectuation of these purposes. Montvale at 509. Here, the construction code official is the administrative head of one narrow function performed by municipality. His authority is accordingly narrow. He cannot be said to be one who "broadly affects" the municipality's mission. His judgment is circumscribed by a set of specific administrative rules and guidelines. He is bound to administer this function according to the Code as it has been previously interpreted. In this sense, his discretion is limited. Accordingly, the construction code official is eligible for inclusion in the proposed unit.

Therefore, I order that an election be conducted to determine whether a majority of the following unit desires to be represented for collective negotiations by the Ringwood Employee Guild:

Included: All administrative employees employed by the Borough of Ringwood, including the tax collector/assistant treasurer, chief financial officer/treasurer, tax assessor, court administrator, deputy court administrator, board/commission secretary, fire prevention specialist, administrative secretary-DPW, administrative secretary-health dept., public

works supervisor-DPW, assistant public works superintendent, recycling coordinator, health officer, sanitary inspector, public health nurse, construction code official, welfare director/director of social services, recreation aide, recreation director and school traffic guards.

Excluded: All other employees, all employees represented in other negotiations units, deputy borough clerk, dispatchers, personal secretary to the Borough Administrator, personnel/payroll clerk, managerial executives, confidential employees, craft employees, police, firefighters and supervisors within the meaning of the Act.


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

DATED: March 25, 1993
Trenton, New Jersey