

L.D. NO. 96-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

TOWNSHIP OF MANCHESTER,

Public Employer/Petitioner,

-and-

Docket No. CU-L-96-16

OPEIU LOCAL 32-14,

Employee Representative.

Appearances:

For the Employer/Petitioner,
Russo, Secare, Ford & Delanoy, attorneys
(Steven Secare, of counsel)

For the Employee Representative,
Thom P. Kirwan, Business Agent

LAP DECISION

On December 8, 1995, Manchester Township filed an amended Clarification of Unit Petition seeking to remove the Deputy Municipal Clerk from a unit of supervisory employees represented by Office and Professional Employees Union Local 32-14. I conducted an informal conference for this matter on February 1, 1996. The Township and OPEIU jointly requested that the dispute be decided through the Commission's Litigation Alternative Program. The parties requested that the LAP decision be based on information provided at the conference and the parties' submissions. The parties also agreed that this decision is binding and resolves the Clarification of Unit Petition filed before the Commission.

OPEIU represents units of supervisory and non-supervisory Township employees. Before affiliating with OPEIU, Township employees were represented by the Manchester Township Municipal Employees Association and the Manchester Township Municipal Supervisors Association. In 1989, both Associations and the Township requested that the Public Employment Relations Commission conduct a hearing through the LAP program to clarify whether certain titles should be included in the Associations' negotiations units. There was no deputy clerk position at the time the 1989 LAP hearing was conducted nor was there a job description for the position. However, the Township anticipated creation of a deputy clerk position in 1989. Based upon the information before him, the Commission Designee issued a decision (L.D.-90-4) finding that "...the Deputy Clerk will apparently be shielded from any confidential labor relations matter (sic) and therefore would not be a confidential employee." OPEIU points to this 1989 LAP decision in support of its contention that the Deputy Clerk is not a confidential employee and is eligible for unit inclusion.

In mid-1995, the Township promoted Elaine Anderson to the Deputy Clerk position upon her attaining certification in the title. Anderson had previously held a clerical position that was covered by OPEIU's non-supervisory unit. There was no deputy clerk prior Anderson's appointment. The job description for Deputy Municipal Clerk provides that the Deputy possesses all the powers and authority of the Municipal Clerk in the Clerk's absence,

including attendance at all meetings of the governing body, both public and executive sessions. The Deputy Clerk may be required to handle confidential correspondence on behalf of the governing body and may assist in typing minutes of the council meetings, including executive sessions if the Deputy attends them.

Municipal Clerk Marie Pellecchia and Deputy Clerk Anderson work in the clerk's office. Pellecchia supervises four employees who are members of OPEIU's non-supervisory bargaining unit^{1/} she handles contract administration and grievance administration for these employees. Pellecchia also sits in on interviews for employees in her office and completes their performance evaluations.

Pellecchia attends council meetings, including executive sessions where negotiations are discussed. Pellecchia takes and transcribes minutes of the council's executive sessions. Pellecchia is also privy to financial information used in negotiations, such as salary and wage proposals, the financial condition of the Township and how it would affect the bargaining process. Access to such information has been restricted to previously designated confidential employees. Pellecchia also attends employee disciplinary hearings, takes and transcribes those hearing minutes and maintains them in specially designated confidential files.

^{1/} The parties agreed that if Anderson is not found to be confidential, that she would appropriately be placed OPEIU's supervisory unit.

Since she assumed the Deputy Clerk position, Anderson has only filled in for Pellecchia in the performance of non-confidential clerical-type duties. The Township has not assigned Anderson any confidential duties pending our determination on her confidential status. The Township anticipates assigning Anderson all the duties of the Deputy Clerk pursuant to the job description. Those duties would include filling in for Pellecchia in taking and transcribing minutes of the council's executive sessions, attending employee disciplinary hearings, taking, transcribing and maintaining the minutes of those hearings, maintaining confidential correspondence and data related to negotiations and assisting Pellecchia with evaluations, grievance processing and contract administration for the four employees under Pellecchia's supervision.

Confidential status is determined by 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 close working relationship with another confidential employee, including employees substituting for each other or providing "back up" support may indicate confidential status. See 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); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311

(¶16112 1985); 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 190 (¶14084 1983); Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); and W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 56 (1971). Employees in clerical positions can also be deemed confidential due to their supervisor's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell; W. Milford.

The functional responsibility of attending, recording and participating in executive sessions of a governing body also makes an employee's membership in a negotiations unit incompatible with her official duties. Borough of Brooklawn, P.E.R.C. No. 94-37, 19 NJPER 570 (¶24267 1993); Tp. of Mine Hill, D.R. No. 91-33, 17 NJPER 315 (¶22139 1991); Tp. of Commercial, D.R. No. 91-9, 16 NJPER 511 (¶21223 1990); Tp. of Mullica, D.R. No. 90-1, 15 NJPER 455 (¶20185 1989); 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).

The Township contends that the Deputy Clerk should be excluded from the unit based upon her impending performance of confidential functions including attendance at executive sessions of the council and employee disciplinary hearings, contract administration and knowledge of and access to confidential labor relations materials. The Commission is cautious when excluding an employee from the protections of the Act. Where a confidential

status determination relies upon "speculation or conjecture as to job function," the Commission has concluded that such circumstances are insufficient to warrant excluding an employee from a negotiations unit. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). However, where future job functions are clear and the implementation of changes is certain, then future contingencies may be acceptable. Commercial Tp.; Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); West Paterson Bd. of Ed., NJPER Supp. 333 (¶77 1973)

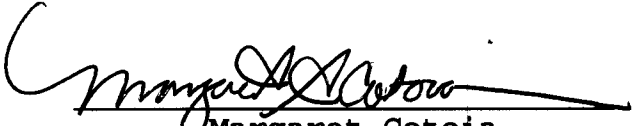
Township Clerk Pellecchia has consistently attended executive sessions of the council, where she has taken and transcribed minutes. She has handled contract and grievance administration for employees under her supervision and has attended disciplinary hearings. Pellecchia is also privy to confidential information that is used by the Township in the negotiations process. Deputy Clerk Anderson's job description states that she "...possesses all the powers and authority of the Municipal Clerk in the Clerk's absence...". The Township had not filled the position of Deputy Clerk prior to Anderson's certification, but now that the position is filled, it desires to use the Deputy Clerk to perform the all of the Clerk's functions in Pellecchia's absence, including attendance at executive sessions of the Council. When Council members discuss collective negotiations and personnel matters in executive session, the Deputy Clerk will have potentially inappropriate involvement in the Township's collective negotiations

process. At that time, the Deputy Clerk will be directly involved in the collective negotiations process. Since an employee's access to and knowledge of materials used in labor relations processes is the key to confidential status, based upon the foregoing, the Deputy Clerk must be excluded from the proposed unit. Brooklawn; Mt. Olive; Bor. of Ringwood, D.R. No. 93-19, 19 NJPER 196 (¶24093 1993); State of New Jersey (Division of State Police).

After an appropriate period of time under this arrangement, if the Deputy Clerk is not performing duties which give her access to and knowledge of confidential labor relations materials, OPEIU may file a clarification of unit petition seeking to place the Deputy Clerk in its supervisory unit.

Conclusion

Deputy Clerk Elaine Anderson is a confidential employee within the meaning of the Act. I therefore ORDER that she be removed from the unit represented by OPEIU Local 14-32 immediately. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).


Margaret Cotoia
Commission Designee

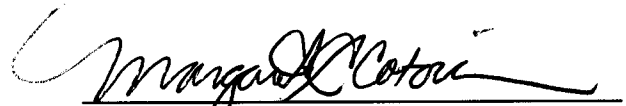
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Margaret Cotoia
LAP Umpire

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