

D.R. NO. 2003-7

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

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Public Employer/Petitioner,

-and-

Docket Nos. CU-2001-34
CU-2001-35, CU-2001-36
and CU-2001-37

IUE LOCAL 417,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a white collar unit represented by Local 417, IUE, CWA, to exclude the deputy municipal clerk, payroll assistant, supervisor of crossing guards and purchasing agent. The Director finds that the deputy municipal clerk is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), in that she has attended and transcribed tapes of Council meetings at which labor relations matters are discussed, including the Township's confidential negotiations strategies. The Director further finds that the payroll assistant, supervisor of crossing guards and purchasing agent are supervisors within the meaning of the Act and have effectively recommended the hiring, firing or discipline of other unit employees. The petitions were filed prior to the time that a collective agreement was in effect and, therefore, these positions are removed from the unit effective immediately.

D.R. NO. 2003-7

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

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Public Employer/Petitioner,

-and-

Docket Nos. CU-2001-34
CU-2001-35, CU-2001-36
and CU-2001-37

IUE LOCAL 417,

Employee Organization.

Appearances:

For the Public Employer/Petitioner
Robert M. Czech, Administrator

For the Employee Organization
Barry D. Isanuk, attorney

DECISION

On May 18, 2001, Middletown Township filed four Clarification of Unit Petitions with the Public Employment Relations Commission (Commission) seeking to clarify the white-collar, non-supervisory negotiations unit to exclude four positions. The unit is represented by Communications Workers of America, Local 1034, AFL-CIO, (CWA). In Docket No. CU-2001-34, the Township seeks to have the deputy municipal clerk excluded from the white-collar unit because it alleges that this position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). In Docket Nos. CU-2001-35, 36 and 37 the Township seeks to exclude the payroll supervisor, supervisor

of crossing guards and purchasing agent, respectively, from the white-collar unit because it alleges these positions are supervisors within the meaning of the Act. CWA opposes the petitions and argues that the deputy clerk is not confidential, and that the payroll supervisor, supervisor of crossing guards and purchasing agent are not supervisors within the meaning of the Act.

We have conducted an administrative investigation concerning this matter. N.J.A.C. 19:11-2.2 and 2.6. By letter dated September 13, 2002, I summarized the parties' positions and accompanying submissions and explained the rationale supporting my intention to find the deputy municipal clerk a confidential employee and to find payroll supervisor, supervisor of crossing guards, and purchasing agent supervisors within the meaning of the Act and remove them from the collective negotiations unit. I provided the parties with the opportunity to respond and submit additional materials and argument by September 23, 2002. Neither party filed a response. Therefore, there being no substantial and material factual issues in dispute, the petition is properly based on our administrative investigation which has established the following:

FINDINGS OF FACT

On December 28, 1999, the Commission certified the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers Union, AFL-CIO, Local 417 as the majority representative of three negotiations units in Middletown. These are

the white collar unit, blue collar unit and a mixed blue and white collar supervisory unit. In 2000-2001, IUE Local 417 merged with CWA Local 1034, AFL-CIO and CWA became the recognized majority representative of the three units. The titles at issue here are included in the white collar unit. The supervisory unit is represented by a supervisory branch of the CWA.

The collective negotiations agreements between the Township and CWA's white collar and blue collar units are each effective from January 1, 2001 through December 31, 2004. The parties ratified these agreements on or about May 21, 2001. The supervisory unit agreement is effective from January 1, 2001 through December 31, 2003.

Deputy Municipal Clerk

Deputy Municipal Clerk Diane Santarseri has been in her position for five years and is a member of CWA's white collar unit. Santarseri reports to Township Clerk Rosa Garcia and fills in when Garcia is absent or unavailable. Garcia is not included in any negotiations unit. Garcia attends and tapes or takes notes of all Township Council meetings, including meetings where sensitive personnel or labor relations matters are discussed. Santarseri regularly transcribes the minutes Garcia takes, including those of closed executive sessions where labor relations matters such as negotiations strategies, contract interpretation and discipline are discussed. The Council holds closed executive sessions twice a month. In 1999, the Township was ordered by the Superior Court to

begin completing the transcription of the minutes of its meetings within a three-week period from the meeting date. Santarseri and Garcia work together with the Township's attorney to meet this deadline. They jointly review and decide what topics must be redacted from the minutes because of their confidential nature. On or about September 17, 2001, Santarseri substituted for Garcia at a closed executive session at which the Township's attorney reported on the progress made in negotiations with the blue-collar unit, and discussed the Township's negotiations strategies with the Council members.

Payroll Supervisor

Helen Alfano is the Township's payroll supervisor and is included in the white collar unit. Alfano reports to Assistant Township Administrator Ed Dunn and to Finance Director Robert Roth. Alfano supervises a payroll clerk and a principal payroll clerk, who are in the same negotiations unit. She assigns their work and has authority to effectively recommend discipline. Generally, neither Dunn nor Roth independently investigates any discipline Alfano recommends; they adopt her recommendations.

Supervisor of Crossing Guards

Supervisor of Crossing Guards Yvette Comancho is presently included in the white collar unit. She supervises approximately 66 crossing guards who are in a separate unit and she reports to a lieutenant in the police department. Comancho has the authority to recommend discipline of these guards and assigns their positions.

In the past, Comancho has made effective recommendations regarding discipline of guards. Further, Comancho participates in the Township's decision-making process as to the renewal or rehiring of crossing guards. Her recommendations are key because she is the Township employee who knows about the guards' day-to-day performance.

Purchasing Agent

Michael Herbek is the purchasing agent. Herbek reports to Finance Director Robert Roth and manages the accounts payable function. He supervises two clerk-typists and a purchasing clerk/expediter. He assigns their work, approves their leaves and conducts their performance evaluations once or twice per year. These employees' evaluations are not independently evaluated by Finance Director Roth. Herbek's evaluations have been relied upon in the past to determine promotions and merit pay increases. Herbek has the authority to recommend discipline. He has made effective recommendations to promote these employees in the past. Herbek is presently in the white collar unit, the same unit as the employees he supervises.

ANALYSIS

The Act covers all public employees except for elected officials, members of boards and commissions, managerial executives and confidential employees. 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.

The test is employee-specific and its focus is on whether the employee's functional responsibilities and understanding of the significance of information to which s/he is exposed makes her/his responsibilities incompatible with membership in a negotiations unit. New Jersey Turnpike Auth. V. AFSCME Council 73, 50 N.J. 331, 358 (1997); Mt. Laurel Board of Fire Commissioners, District One, P.E.R.C. No. 2001-50, 27 NJPER 132 (¶32050 2001). I find that the facts of this case show that the Township relies on the deputy municipal clerk to transcribe tapes of meetings at which labor relations matters are discussed, including the Township's negotiations strategies, and that the deputy municipal clerk has personally attended and taken minutes of such meetings. I find that Santarseri is exposed to the Township's negotiations strategies before they are disclosed to CWA. Such exposure places Santarseri in a conflict of loyalties between her employer and any majority representative. See Oakland Bd. of Ed., D.R. No. 99-9, 25 NJPER 66 (¶30025 1998). The policies of the Act are designed to avoid such conflicts of interest. Accordingly, I find that the employee serving in the deputy municipal clerk position is a confidential employee within the meaning of the Act.

N.J.S.A. 34:13A-5.3 provides that, except for unusual circumstances not relevant here, supervisors are prohibited from representation by an organization with non-supervisory employees as

members. Tp. of Cherry Hill, P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970). Supervisors are defined as those employees having the authority to hire, fire or discipline other employees, or effectively recommend the same. N.J.S.A. 34:13A-5.3. Evaluations which lead to effective recommendations of other personnel actions such as renewals and promotions can create conflicts of interest sufficient to exclude the evaluator from the non-supervisory unit. N.J. Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1999).

I find that the payroll supervisor, supervisor of crossing guards and purchasing agent are supervisors within the meaning of the Act in that they each possess and has exercised the authority to effectively recommend discipline, hiring, promotions and other personnel actions of subordinates. In all cases, their recommendations are given significant weight or are adopted by management with only a cursory review. The Act's requirement that supervisors not be included in negotiations units with non-supervisory employees would be best served by removing these positions from the non-supervisory white collar unit.

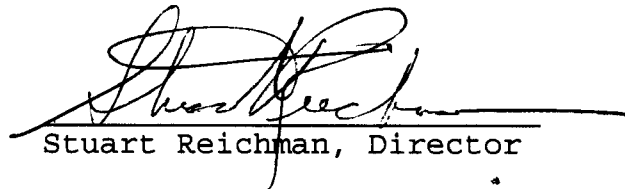
Accordingly, based upon all the above, I clarify the non-supervisory white collar unit to exclude the deputy municipal clerk, payroll assistant, supervisor of crossing guards and purchasing agent, effective immediately.^{1/}

^{1/} Since the clarification of unit petitions were filed prior to the time that a collective agreement was in effect, the titles are immediately removed from the unit. See Clearview, 3 NJPER at 252.

ORDER

The deputy municipal clerk, payroll assistant, supervisor of crossing guards and purchasing agent are removed from the white-collar non-supervisory unit immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Stuart Reichman, Director

DATED: September 27, 2002
Trenton, New Jersey

