

L.D. No. 90-3

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

In the Matter of

EGG HARBOR TOWNSHIP

Employer-Petitioner,

-and-

Docket No. CU-L-89-47

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1032.

Employee Representative.

Appearances:

For the Township
Ruderman & Glickman, Esqs.
(Steven S. Glickman, of counsel)

For CWA Local 1032
Paul Pologruto, Representative

DECISION

On July 28, 1989, Egg Harbor Township ("Township") and Communications Workers of America Local 1032 ("CWA") jointly requested that a dispute concerning the unit placement of the Township Treasurer be submitted to the Commission's Litigation Alternative Program. On September 6, 1989, I, as Commission designee, held an informal hearing to hear facts pertaining to the disputed issue. The parties each filed a post-hearing letter brief by September 18, 1989. The parties have agreed that this decision is binding and resolves the Clarification of Unit petition filed before the Commission.

CWA represents a collective negotiation unit of the Township's supervisory employees, including department heads. Charlene Canale, the Township Treasurer, is presently included in CWA's supervisors unit. The Township asserts that the Treasurer is a confidential employee and seeks her removal from the unit. CWA contends that Canale's responsibilities do not expose her to confidential labor-related information with regard to the supervisors unit and therefore, she should remain in the CWA unit.

CWA was certified to represent the Township's supervisory employees in November, 1988. The Treasurer position has been included in the unit since its inception.

Canale has been the Township Treasurer since about 1980. As Treasurer, she is involved in the preparation of the Township's budget. She reviews budget requests received from each department head and assembles their requests into a proposed budget. She meets with the Township Council budget committee to review the proposed budget parameters. Canale attends the Council's budget workshop sessions and the budget hearings where the proposed budget is adopted. The budget includes specific amounts for salary increases. Once adopted, the budget is a public document.

As Treasurer, Canale has participated as a member of the Township's negotiations team in negotiations with IBEW, the representative of Township's non-supervisory staff. The Township has not asked Canale to participate on the management negotiations team for CWA negotiations because she was part of the negotiations unit.

During negotiations with both CWA and the IBEW for the 1989-91 contracts, the Township sought to limit the salary increases in the first year to the budgeted amount---five percent. IBEW accepted the five percent increase for 1989; CWA demanded nine percent. When it became apparent to the Township negotiations team that CWA would not settle the contract for the budgeted amount, Township Negotiator Steven Glickman met with Canale to learn whether the budget could sustain a greater increase for supervisors. Glickman asked Canale to cost out a six percent and a seven percent increase. Glickman told Canale he wanted to offer CWA seven percent if the money could be "found" in the budget. Canale advised Glickman that the budget could, in fact, be manipulated to support the seven percent increase. Glickman then reported the information to the governing body and sought their approval to increase the Township's counterproposal. The Mayor and Committee gave Glickman permission to increase the offer to seven percent, and the contract was eventually settled on that basis.

In June, 1989, the Township hired a new Township Administrator. Canale is presently assisting him in collecting information in preparation for negotiations with PBA for the police unit. The Township has not decided whether Canale will be asked to participate on the negotiations team again or whether her role in negotiations will change.

ANALYSIS

N.J.S.A. 34:13A-3(g) defines a confidential employee:

'Confidential employees' of a public employer means 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained how we determine whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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. [Id. at 510]

The policy surrounding confidential status exists to protect both employees and the public employer from inherent conflicts of interest arising from duties which involve knowledge of the employer's positions in negotiations. The employer is entitled to have such knowledge kept from employee organizations prior to its scheduled release. Thus, the test for confidential status considers whether the employee's duties would put her in a position of compromising the employer's position in negotiations. Here, Canale has been a member of management negotiations team for another unit. She is intimately involved in formulating the budget. Thus, the Township relies on her to supply necessary information to formulate its negotiations positions.

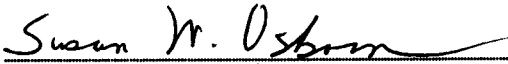
When the employee's role in the negotiations process involves more than supplying the employer with raw data, but rises to the level of involvement with formulating management's proposals and knowledge of such sensitive negotiations information as the employer's contemplated counterproposal, the employee must be found to be confidential. See Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). That is precisely what Canale's involvement in the negotiations process was here. It is clear that Canale's advance knowledge of and input into the formulation of the Township's counterproposal makes her a confidential employee.

CWA argues that Canale's involvement in the process is not regular enough to warrant her removal from the unit. A pattern of continuous involvement in negotiations is not necessary to a finding of confidential status. Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979). The very nature of contract negotiations is not continuous. Although her responsibilities involving negotiations input are infrequently performed, they create such a conflict of interest -- between her loyalty to the CWA supervisors unit and performance of her duties for the Township -- as to warrant her removal from the unit.

CWA has asked the Canale's unit inclusion continue in anticipation of a reduction of her negotiations involvement now that the Township has appointed a Township Administrator. Canale was previously involved in the negotiations for the IBEW unit and she recently participated in management discussions concerning its

counterproposal to the CWA. She has begun preparatory work for the upcoming PBA negotiations. Therefore, I am not prepared to speculate that her involvement in negotiations will be substantially diminished by the appointment of the Township Administrator. If, however, changes in circumstances result in an evaporation of Canale's confidential duties, the CWA may file a new Petition to seek to have her position placed back into the supervisors unit. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

The Township Treasurer is hereby removed from the CWA supervisors unit, effective immediately.



Susan Wood Osborn
Commission Designee

DATED: October 30, 1989
Trenton, New Jersey