

D.R. NO. 90-1

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

In the Matter of

TOWNSHIP OF MULLICA,

Public Employer-Petitioner,

-and-

Docket No. CU-89-51

MULLICA TOWNSHIP SUPERVISORY  
EMPLOYEES ASSOCIATION,

Employee Representative-Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of white collar supervisory employees to exclude the Township Clerk. He finds that the clerk is a confidential employee within the meaning of the Act.

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Appearances:

For the Public Employer-Petitioner  
Daniel E. Thoren, Mayor

For the Employee Representative-Petitioner  
William S. Cappuccio, Esq.

DECISION

On May 31, 1989, the Township of Mullica ("Township") and the Mullica Township Supervisory Employees Association ("Association") jointly filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The parties request that the Director of Representation determine whether Township Clerk Mary Lou Simon ("Simon") 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"). The Township

contends that Simon is a confidential employee. The Association disputes this and states that she is appropriately included in its unit. Both parties stipulated that the issue before us is whether Simon is a confidential employee within the meaning of the Act. They further agreed that if we determine that Simon is not a confidential employee, the Township Clerk position shall be added to the Mullica Township Supervisory Employees Association negotiations unit.

We conducted an administrative investigation in this matter. N.J.A.C. 19:11-2.2. The parties also submitted additional affidavits and documentation. The following facts appear.

Mary Lou Simon has been the Mullica Township Clerk since January 1, 1981. In 1981, Mullica was governed by a township committee. Simon was secretary to the Committee, a position which entailed attending all Township Committee meetings and recording the minutes of both regular and caucus sessions. In addition to the usual administrative functions of a township clerk, her duties included personnel administration, including hiring and firing, and preparation of the municipal budget.

In 1986, the Township changed its government to the mayor and council form. When the form of government changed, the Township Business Administrator assumed many of the Township Clerk's functions, including personnel administration and budget

preparation. Collective bargaining is handled by the Mayor and the Business Administrator. The Council's role in the bargaining process is to approve agreements negotiated by the Mayor and Business Administrator. The Clerk continues to act as secretary to the Council and attends all executive sessions. She transcribes taped executive session minutes and retains custody of the tapes.

The Association contends that the Business Administrator performs all confidential functions including collective bargaining and dispute resolution. It states that although the Clerk attends executive sessions of the Council, she does not discuss labor relations with the Mayor or Business Administrator and does not type any confidential labor relations materials. The Association also states that Simon does not have access to or knowledge of potential negotiations positions, and that all budget appropriations are discussed publicly and are accessible by the public. It states that the Township Solicitor has volunteered that if contract negotiations are discussed at executive sessions, the Clerk can be excused. The Association also notes that executive session minutes cannot be released until a matter has been resolved, so minutes do not have to be transcribed immediately.

The Township agrees that under its current "strong mayor/weak council" form of government, contract negotiations are conducted by the Mayor and Business Administrator. This includes

formulation of proposals and strategies as well as actual negotiations. The Council's function is limited to approval of contracts. The Township also concedes that the Council has no formal role in the dispute resolution process and is not a step in the negotiated grievance procedure of any bargaining unit. The Township bases its claim of confidentiality on Simon's attendance at executive sessions of the Council. It states that her executive session attendance and transcription and retention of executive session minutes give her access to and knowledge of confidential labor relations information.

The Township submitted copies of executive session minutes transcribed by Simon. Topics of these sessions included presentation, discussion and approval of a union contract by the Council, including the raise percentages to be offered to covered employees. Several sessions contained discussion of litigation involving Tax Assessor William Reeser's salary. Those discussions included the possibility and desirability of settlement, litigation costs, and an initial offer and a higher counter offer of raise percentages to be offered to Reeser. Reeser is a member of the recently recognized Mullica Township Supervisory Employees Association.

Discussion of a salary ordinance for non-contractual employees included debate on how raises would be allocated, amounts

of proposed raises and distribution by percentages or lump sums. The decision not to grant raises to part-time employees and the probable elimination of a position were discussed, as well as litigation involving the recycling coordinator. Topics involving the Township's blue-collar unit were addressed, including discussion of the possible firing of a unit member and advice from the Township Solicitor concerning how to handle the incident in the grievance procedure. A promotion and raise for another unit member was discussed, along with the possible union reaction to such changes. The Township contends that the minutes it submitted show that Simon's presence at executive sessions gives her access to and knowledge of confidential labor relations information and creates a conflict of interest that renders her membership in a collective negotiations unit inappropriate.

N.J.S.A. 34:13A-3(g) defines confidential employees as those employees of a public employer "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 Commission strictly construes the term confidential employee. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985); Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977). In State of New Jersey, the Commission stated what

it considers in determining employees' confidentiality:

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]

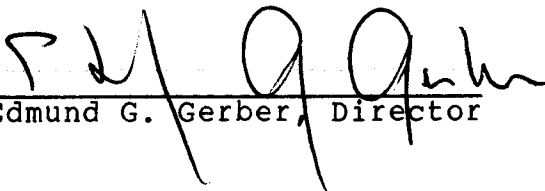
See also Sayreville Ed. Ass'n and Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19292 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

Although Simon does not participate in pre-collective negotiations discussions between the Mayor and the Business Administrator, her responsibilities as Township Clerk give her access to and knowledge of confidential labor relations information. As secretary to the Council, she has knowledge of the Council's labor relations positions. Minutes that she transcribed include discussions of firing and promotion of members of the Township's blue collar unit, as well as approval of raise percentages for unit members. Simon was also present at sessions where the Council discussed litigation involving Tax Assessor Reeser, including salary percentages that the Township was prepared to offer him. Reeser is a member of the bargaining unit that Simon

would be placed in if she were found not confidential. Her exposure to labor relations matters and her knowledge of the Township's positions on them before they are released to the bargaining units could significantly compromise the Township's ability to maintain confidentiality in its negotiations process. Sayreville, Ringwood, Cliffside Park Bd. of Ed., 14 NJPER 339 (119128 1988).

Based on the foregoing, I find that Township Clerk Mary Lou Simon is a confidential employee within the meaning of the Act and is ineligible for inclusion in any collective negotiations unit. Accordingly, the Mullica Township Supervisory Employees Association negotiations unit is clarified to exclude the Township Clerk position.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: July 11, 1989  
Trenton, New Jersey