

D.R. NO. 97-12

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

In the Matter of

TOWNSHIP OF WAYNE,

Public Employer/Petitioner,

-and-

Docket No. CU-97-19

WAYNE TOWNSHIP PRIMARY LEVEL
SUPERVISORS' ASSOCIATION,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies the Wayne Township primary supervisory negotiations unit to exclude the assistant financial officer. The Director found that that position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., because the incumbent is privy to negotiation strategies before their actual use.

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Appearances:

For the Public Employer/Petitioner
John J. McKniff, attorney

For the Employee Organization
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

DECISION

On December 12, 1996, Wayne Township filed a clarification of unit petition with the Public Employment Relations Commission, seeking to have the negotiations unit represented by the Wayne Township Primary Level Supervisors Association clarified to exclude the assistant financial officer Robert Miller. The Association was certified to represent the unit of primary level supervisors on December 27, 1995, and has not completed negotiations for its first collective negotiations agreement with the Township.

The Township did not object to the inclusion of Miller's position into the unit when it was certified, but now raises the issue that Miller is a confidential employee within the meaning of

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association opposes this petition.

The Township employs about 280 employees; it has six negotiations units: a police unit, a foremen's unit, a non-supervisory white collar unit, a non-supervisory blue collar unit, a department/division heads' unit and the primary level supervisory unit. Approximately ten employees are unrepresented. All negotiations agreements expired on December 31, 1996.

On December 27, 1995, the Commission certified the Association as the majority representative for the following primary level supervisory unit:

Included: All primary level supervisors employed by the Township of Wayne in the following job titles: Senior Pollution Operator, Programmer, Principal Engineer, Subcode Official/Plumbing, Director of Safety, Assistant Division Superintendent, Zoning Officer, Assistant Finance Director, Township Surveyor, Assistant Planner, Plant Maintenance Assistant, Chief Building Inspector, Senior Assistant Assessor, Senior Fire Inspector, Plant Maintenance Supervisor, Welfare Director, Electrical Subcode Official, Deputy Tax Collector, Systems Analyst, Housing Subcode Official, Supervisory Nurse, Senior Deputy Court Clerk, Assistant Building Official, Building Maintenance Supervisor, Deputy Fire Official, Chief Engineering Inspector, and Chief Sanitarian.

Excluded: Managerial executives, confidential employees, non-supervisory employees, supervisors represented by the Wayne Township Supervisors Association, police, craft employees and all other employees employed by the Township of Wayne.

Miller reports directly to John Akin, the chief financial officer and Treasurer. Akin's department includes three divisions: treasury, tax and management information systems. In addition to

Miller, Akin supervises the deputy Treasurer, Kitty Wilkin; two payroll clerks, three accounts payable clerks (one is half-time), the tax collector and the manager, management information systems. One of the payroll clerks is also Akin's personal secretary; the tax collector and the manager, MIS are division heads.

Miller's job description provides:

Assists in the planning, control and administration of a financial department including divisions of Treasury, Data Processing and Revenue Collection.

Assists in the preparation and analyzing of major financial components such as the Township budget, capital programs, payroll, fixed assets and the financial management system.

Acts as liaison of department with varied outside users and agencies including state and federal groups, auditors, financial community, legal bond counsel, political community and computer software support.

Miller became assistant financial officer in 1987. His position was unrepresented prior to 1995. He assists Akin in managing the department with particular responsibility for the payroll, accounts payable and budget preparation and analysis. Miller is familiar with all financial aspects of the Township and acts as Akin's back up on all financial matters. Miller knows the Township's current financial position. The Township's overall budget is around \$44 million, at least half of which is payroll costs.

Miller has been asked to cost-out negotiations proposals by Akin both prior to the beginning of negotiations between the

Township and its six negotiations units and as they are in progress. For example, Akin has asked Miller to cost-out a number of percentage increases at the start of negotiations and then again after several negotiations sessions had been completed. At this later point, Miller possessed information about the Township's position before it was disclosed to the union. Moreover, Miller has attended at least one meeting with Township officials where negotiation strategies were discussed.

The Commission narrowly construes the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).^{1/} In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

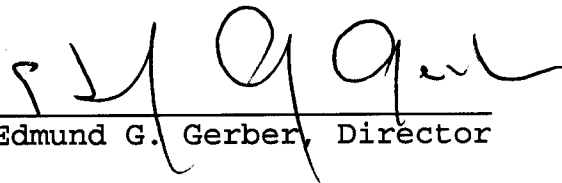
We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the collective negotiations process if the employee was included in a negotiating unit. 11 NJPER at 510

^{1/} See also 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).

A finding of confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position in the collective negotiations process, including contract administration. 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 180 (¶14084 1983); Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986).

Based upon the record in this matter, I find this title is privy to negotiation strategies before their actual use. Accordingly, I find that the assistant financial officer is a confidential employee within the meaning of the Act. The Wayne Township primary supervisory unit is hereby clarified to exclude the assistant financial officer.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 4, 1997
Trenton, New Jersey