

P.E.R.C. NO. 88-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ABERDEEN,

Public Employer-Petitioner,

-and-

Docket No. CU-87-14

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 389,

Employee Organization.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, clarifies Service Employees International Union, Local 389, negotiations unit of Township of Aberdeen white-collar employees to exclude the principal personnel clerk/purchasing assistant. The Chairman, in agreement with a Commission Hearing Officer, finds that this position is confidential.

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Appearances:

For the Public Employer-Petitioner, Kenney & Kenney, Esqs.
(Malachi J. Kenney, Esq.)

For the Employee Organization, Reitman, Parsonnet, Maisel &
Duggan, Esqs. (Jesse H. Strauss, of counsel)

DECISION AND ORDER

On October 16, 1986, the Township of Aberdeen ("Township") filed a Petition for Clarification of Unit. The Township seeks to exclude the principal personnel clerk/purchasing assistant from the existing collective negotiations unit of white-collar employees represented by the Service Employees International Union, Local 389 ("Local 389"). The Township contends the position is "confidential" within the meaning of N.J.S.A. 34:13A-3(g). Local 389 contends the position is not.

On August 27, 1987, the Director of Representation issued a Notice of Hearing.

On September 22, 1987, Hearing Officer Joyce M. Klein conducted a hearing. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On February 1, 1988, the Hearing Officer issued her report recommending that the principal personnel clerk/purchasing assistant is "confidential" and therefore should be excluded from the existing unit. H.O. No. 88-5, 14 NJPER ____ (¶ 1988).

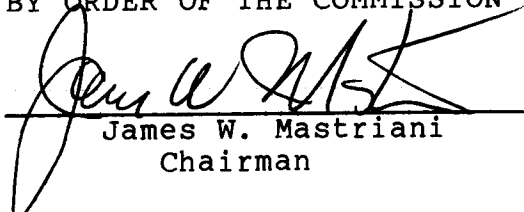
The Hearing Officer served her report on the parties and informed them that exceptions were due on or before February 16, 1988. Local 389 requested and received extensions until March 22, 1988 to file exceptions. It later advised that it would not file exceptions.

I have reviewed the record. The Hearing Officer's findings of fact (2-6) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission, I also agree with her conclusions of law.

ORDER

The collective negotiations unit of white collar employees of the Township of Aberdeen is clarified to exclude the principal personnel clerk/purchasing assistant.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 19, 1988

H.O. NO. 88-5

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ABERDEEN,

Public Employer-Petitioner,

-and-

Docket No. CU-87-14

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 389,

Employee Organization.

SYNOPSIS

A Hearing Officer recommends that the Commission remove the principal personnel clerk/purchasing assistant from a negotiations unit of all white collar employees employed by the Township of Aberdeen. The Hearing Officer recommends that the Commission find the employee confidential within the meaning of the Act.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
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SERVICE EMPLOYEES INTERNATIONAL UNION,
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Appearances:

For the Public Employer-Petitioner
Kenney & Kenney, Esqs.
(Malachi J. Kenney, Esq.)

For the Employee Organization
Max Wolf, Secretary-Treasurer

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On October 16, 1986, the Township of Aberdeen ("Township") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Township sought to exclude the principal personnel clerk/purchasing assistant from the existing collective negotiations unit of permanent full and part-time white collar employees represented by the Service Employees International Union, Local 389 ("Local 389"). ^{1/} The

^{1/} The Township also sought to exclude the municipal court clerk and the administrative assistant to the director of planning and zoning development. At the hearing, the Township withdrew its petition with respect to these positions.

Township asserts the principal personnel clerk/purchasing assistant 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"). Local 389 contends the position is not confidential.

On August 27, 1987, the Director of Representation issued a Notice of Hearing. I conducted a hearing on September 22, 1987. The parties examined witnesses and introduced exhibits. The parties waived oral argument and submitted briefs by December 24, 1987.

Based upon the entire record, I make the following:

Findings of Fact

1. The Township of Aberdeen is a public employer within the meaning of the Act and is subject to its provisions. It employs the principal personnel clerk/purchasing assistant, Jean Katz.

2. Local 389 is an employee organization within the meaning of the Act and is subject to its provisions. It represents a collective negotiations unit of the Township's permanent full and part-time white collar employees. The parties' most recent collective negotiations agreement expired December 31, 1986.

(J-1).^{2/}

3. Township manager Marc Coren is responsible for the Township's labor relations. He negotiates contracts with each of

^{2/} Exhibits are designated as follows: Joint exhibits are designated as "J", Township exhibits are designated as "P" and Union exhibits are designated as "R". Citations to the transcript of the September 22, 1987 hearing are designated as "T".

the Township's four negotiations units and controls its personnel and purchasing functions (T15, T18, J-1). He serves as the last step of the grievance procedure before arbitration for each unit (T16). Coren appoints and supervises his subordinates including the principal personnel clerk/purchasing assistant, N.J.S.A. 40:69A-95 (T19, P-1).

4. Jean Katz has worked for the town for sixteen years, starting as a clerk-typist. She was appointed principal personnel clerk in 1983 and assumed the purchasing assistant duties about a year later.^{3/} In January 1983, Katz completed a Civil Service duties questionnaire which formed the basis for the principal personnel clerk job description. These duties include the clerical work involved in processing personnel action requests. The principal personnel clerk is also required to maintain personnel files, process insurance and benefit forms, attend grievance and disciplinary hearings and type related forms, advertise and arrange interviews for vacancies, interview candidates for certain clerical positions, train new employees, assign duties and compile statistical, budgetary and other data (T24, P-2, J-4).

All of the township manager's files, including negotiations data and grievance files are available to Katz (T23, T77). She also administers and interprets the benefits and leave sections of labor agreements (T24).

^{3/} Only the duties involved with the principal personnel clerk component of the position are at issue.

5. When Katz became principal personnel clerk, Paul Gleason was the township manager. He knew Katz was enrolled in a business management program at Brookdale Community College. He was grooming Katz for management work and requested that she attend public works unit negotiations as a member of management (T27, T72, T84). As a member of management's negotiating committee, Katz knew its negotiations objectives. She also knew the Township's final offer on salary issues before negotiations (T73). At negotiations, she asked and answered questions, but did not actually negotiate (T85-86). She researched the cost of benefit proposals and knew, before the scheduled negotiations sessions, which benefits the Township would agree to and which it would oppose (T73-74). Under Gleason's authority, Katz attended grievance hearings, typed grievance responses and disciplinary notices and processed Civil Service disciplinary actions.

Katz was aware of all grievances filed by the Township's four collective negotiations units (T25). Department heads and Gleason consulted Katz before answering grievances. When confronted with a grievance, Gleason asked Katz what she thought was required by the contract, what had been done in the past and how it would effect other unit members (T75-76).

6. When Coren became township manager he perceived Katz's dual role presented a conflict of interest (i.e., her management duties and her inclusion in the unit) and he restricted her role in negotiations and grievance handling (T25-26, T80). After

discussions with Katz, Coren prohibited her from attending grievance meetings, interviewing personnel and making recommendations. He no longer gave her detailed information about management's position at negotiations (T80).

Now, Katz does not assist in grievance processing or type grievance response. She is not consulted by department heads regarding prior practice on grievances (T77). Coren's secretary (who is not in the unit) now types grievance responses and negotiations proposals (T61-62).

Coren seeks and often follows Katz's advise about grievances and other labor relations problems (T47). Katz usually makes a recommendation to Coren (T49). Some of her recommendations are interpretations of specific clauses of labor agreements (T50). Coren often follows her recommendations (T49, T99-100).

Previously, Katz researched and costed out the Township's negotiations proposals for units other than her own. Coren now does this himself (T58). Coren continues to ask Katz to assemble material and cost out benefit contracts for the other unions (T80-81). She still administers the benefits provisions of the Township's collective negotiations agreements and attends meetings of the management group. When Katz's decisions concerning benefits are disputed, the township manager resolves the problem (T77). While Coren does not tell everyone in management meetings how much is budgeted for salary increases, he usually gives some indication (T49, T99-100). Fringe benefits increases have been discussed in management meetings. Katz has been able to garner a sense of

direction as to Coren's position on benefits from these meetings, but she is not aware of specific details (T98).

Katz no longer performs all of the responsibilities set forth in her job description. The duties of the principal personnel clerk include typing grievance responses and costing out contract proposals (T62, T79). Discussing management's position with the township manager and providing him and the department heads with information and recommendations concerning grievance processing are also required (T78).

Coren does not give Katz information about the decision-making process. She now finds out only the result and her lack of information impairs her ability to do her job. In the past, typing grievance responses helped Katz administer the contract. Her knowledge of the responses and the history of contract administration resulted in the Township manager and the department heads using her as the Township's "institutional memory" (T82).^{4/} Though these questions are still asked, she is not always able to provide a complete answer because she is no longer involved in grievance processing.

^{4/} According to Coren, the Township's "institutional memory" is an informal structure where certain individuals know all of the subtleties and nuances of the Township and its decision-making process. This knowledge is gained through years of experience and participation in the decision-making process.

Analysis

N.J.S.A. 34:13A-5.3 gives public employees the right "to form, join and assist any employee organization." Confidential employees, however, are excluded from the Act's definition of "employee" and do not enjoy its protections. N.J.S.A. 34:13A-3(d).

N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

[E]mployees 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." 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) ("State of New Jersey"). 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 employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987) appeal pending App. Div. Dkt. No. A-4740-36-T7.

Under the former township manager, Katz participated in determining management's responses to grievances, typed all correspondence relating to grievances and disciplinary hearings, processed forms for all personnel actions and compiled budget

information. These responsibilities enabled Katz to know grievance responses before they were sent to the Union. Katz attended negotiations for management and knew the Township's "bottom line" on salary and benefit issues. That knowledge and responsibility compromises the Township's right to confidentiality during negotiations, State of New Jersey.^{5/}

When Coren became township manager, he restricted Katz's role in negotiations and grievance processing because he perceived a conflict between her membership in the negotiations unit and her knowledge about grievance and negotiations. As a result Coren now costs out negotiations proposals himself. His secretary now types those proposals and grievance responses. These duties are the responsibility of the principal personnel clerk and she is unable to perform her job properly with these restrictions.

The limits Coren placed on Katz restricted her duties and her exposure to information which would compromise the Township's position at negotiations. Those restrictions proved untenable and the Township wishes to restore Katz's full responsibilities.

^{5/} See N.J.S.A. 34:13A-3(d); N.J.S.A. 34:13A-5.3. River Dell Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Old Bridge Tp., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); Western Monmouth Utilities Auth., D.R. No. 82-38, 8 NJPER 140 (¶13061 1982); Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); East Windsor Reg. School Dist., D.R. No. 82-9, 7 NJPER 524 (¶12231 1981); Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980); Rahway Bd. of Ed., D.R. No. 80-12, 5 NJPER 506 (¶10261 1979).

The principal personnel clerk requires knowledge of both the grievance decision-making process and the contents of grievance files. The principal personnel clerk is also responsible for costing out negotiations proposals. Katz had these responsibilities in the past. The only reason Coren limited Katz's responsibilities is that he perceived a conflict between her knowledge of confidential information and her role as a member of the negotiations unit.


In a similar situation the Director of Representation found two secretaries confidential because they had handled confidential labor relations material in the past and were expected to do so in the future, Cranford Bd. of Ed., D.R. No. 78-20, 3 NJPER 352 (1977) aff'g H.O. No. 78-4, 3 NJPER 278 (1977). There, the Board sought to have two secretaries found confidential and removed from the unit. Since the employees had not yet been found confidential, the Board reassigned their confidential work to the remaining confidential secretaries, but found it too disruptive and filed a petition for clarification of unit.

Since Katz had knowledge of confidential information in the past and needs that information to do her job, I find that she is a confidential employee. See Plainfield Bd. of Ed., D.R. No. 87-6, 12 NJPER 724 (117270 1986),

CONCLUSIONS AND RECOMMENDATIONS

1. I conclude that the principal personnel clerk/purchasing assistant is a confidential employee within the

meaning of the Act. I recommend the position be removed from the collective negotiations unit immediately. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).



Joyce M. Klein, Hearing Officer

DATED: February 1, 1988
Trenton, New Jersey