

D.R. NO. 91-9

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

In the Matter of

TOWNSHIP OF COMMERCIAL,

Public Employer,

-and-

Docket No. RO-90-135

AFSCME, DISTRICT COUNCIL #71,

Petitioner.

SYNOPSIS

The Director of Representation directs an election in a unit consisting of all blue collar employees and white collar employees employed by the Township. The Director finds that the statutorily mandated duties of the tax collector, tax assessor, construction official and the court clerk do not qualify these titles as managerial executives or supervisors within the meaning of the Act and therefore, they are included in the unit. Although the Township is not yet involved in collective negotiations, the township clerk is determined to be a confidential employee based upon the projected continuation of her present job duties.

D.R. NO. 91-9

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

In the Matter of

TOWNSHIP OF COMMERCIAL,

Public Employer,

-and-

Docket No. RO-90-135

AFSCME, DISTRICT COUNCIL #71,

Petitioner.

Appearances:

For the Public Employer
James J. Seeley, attorney

For the Petitioner
Robert C. Little, Staff Rep.

DECISION AND DIRECTION OF ELECTION

On March 7, 1990, AFSCME, District Council #71 ("AFSCME") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission") seeking to represent a negotiations unit of all blue collar employees and white collar employees employed by the Township of Commercial ("Township"). The petition is supported by an adequate showing of interest. N.J.A.C. 19:11-1.2(a)8. These employees are currently unrepresented.

On March 29, 1990, a Commission staff agent conducted an informal investigatory conference.

The Township will not consent to an election. It contends that some of the petitioned-for employees are inappropriate for

inclusion in the proposed unit. In its May 2, 1990 position statement, the Township argued that the township clerk is a confidential employee and the municipal court clerk, tax collector, tax assessor, construction code official and road supervisor (public works foreman) are managerial executives; accordingly, it contends these employees are inappropriate for inclusion in the proposed unit. AFSCME claims that the petitioned-for unit is appropriate.

Our administrative investigation reveals the following facts:

The Township is a public employer and AFSCME is a public employee representative within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34-13A-1.1 et seq. ("Act").

There are no existing collective negotiations units in the Township.

The Township agrees that the unit of fifteen blue collar and white collar employees sought by this petition is appropriate on its face. The Township, however, will not consent to the inclusion of the township clerk because it alleges she will be intimately involved in the collective negotiation process when the Township and AFSCME begin to negotiate their first contract. The township clerk presently takes the minutes at both open and closed council meetings. She and a secretary are the only full-time employees in the municipal offices. The township clerk performs all the clerical duties for the council such as opening, distributing and filing the mail.

The Township also contends that the court clerk, tax collector, tax assessor, construction official and the road supervisor should be excluded from the proposed unit because they are managerial executives within the meaning of the Act.

The Township asserts that the tax collector formulates and implements policy based upon her statutory authority as the Township's revenue officer. She calculates how much revenue will be collected each year at the tax rates set by the Township Council. The tax collector prepares revenue reports which are submitted to the township treasurer for certification before final review by the Township Council. The tax collector supervises a deputy tax collector and any temporary employees hired to assist him at the end of the fiscal year.

Similarly, the Township contends that the tax assessor and the construction official act independently of the Township Council in carrying out their statutory duties. The assessor prepares reports for the Township Council on the tax base and anticipated tax revenues. The construction official administers and enforces the State Uniform Construction Code within the Township (N.J.S.A. 52:27D-126). To this end, he coordinates and directs the activities of third party inspectors with whom the Township contracts for subcode inspections.

One full-time secretary works for the tax collector, the tax assessor and the construction official.

The Township argues that the court clerk, under the direction of a municipal judge, oversees the administrative

functions of the municipal court and directs the work of the deputy court clerk. The Township contends that because the court clerk has the discretion to determine how to accomplish her duties, she is a managerial executive.

The Township also contends that the road supervisor is a managerial executive; however, the Township has not submitted any information in support of its position.

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."

It is the policy of the Commission to narrowly construe 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). 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

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. 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).

The Township argues that the township clerk should be excluded from the unit based upon her future involvement in labor relations. The Commission is cautious when excluding an employee from the protections of the Act. Where a confidential status determination relies upon "speculation or conjecture as to job function," the Commission has concluded that such circumstances are insufficient to warrant excluding an employee from a negotiations unit. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). However, where future job functions are clear and the implementation of changes is certain, then future contingencies may be acceptable. Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); West Paterson Bd. of Ed., NJPER Supp. 333 (¶77 1973)

Here, the township clerk has consistently attended all sessions of the township council -- both closed and open -- to take notes. She also opens, distributes and files the incoming mail for the council. These job functions will not change when the council is engaged in collective labor negotiations. The council asserts it

will directly negotiate with the union, If, during closed session meetings of the Township Council, Council members discuss collective negotiations, the Township Clerk will have potentially inappropriate involvement in the employer's collective negotiations process. At that time, the township clerk will be directly involved in the collective negotiations process. Since an employee's access to and knowledge of materials used in labor relations processes is the key to confidential status, based upon the foregoing, we exclude the township clerk from the proposed unit. State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). After an appropriate period of time under this arrangement, if the township clerk is not performing duties which give her access to and knowledge of confidential labor relations materials, AFSCME may file a clarification petition seeking to place the township clerk in the instant unit.

N.J.S.A. 34:13A-3(f) defines managerial executives as those employees of a public employer "...who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices..." Pursuant to N.J.S.A. 34:13A-5.3, managerial executives do not have the right to form, join and assist a majority representative.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980), the Commission, set forth the following standard for determining whether a person formulates policy or directs its

effectuation and therefore, is a managerial executive as defined by the Act:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possess this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises 6 NJPER at 508-509.

The Commission narrowly construes the term "managerial executive" and determinations of managerial executive status are made on a case-by-case basis. Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977).

The statutorily mandated responsibilities of the tax collector, tax assessor and the construction official do not qualify any of these titles as managerial executives within the meaning of the Act. In Borough of Clayton, D.R. No. 89-26, 15 NJPER 223 (¶20093 1989), we determined that the tax collector was not a managerial executive because he was a revenue officer without policy-making authority. In Town of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988), the Commission found that the tax assessor

was not a managerial executive because he had no policy-making authority and he was not involved in the effectuation of policy objectives. In Township of Clark, P.E.R.C. 85-105, 11 NJPER 283 (¶16104 1985), the Commission found that the construction official was not a managerial executive because the legislatively mandated objectives of the construction code preempted the construction official from formulating policy.

Additionally, we conclude that the court clerk is not a managerial executive. Exercising limited discretion in carrying out the directives of the municipal judge is not an exercise of managerial authority.

The Township submitted no information concerning the road supervisor, so there is no basis to conclude that this employee is a managerial executive.

Accordingly, we conclude that the township clerk is a confidential employee and that the tax collector, tax assessor, construction official, court clerk and the road supervisor are not managerial executives within the meaning of the Act.

The Township made certain allegations concerning the supervisory responsibilities of the tax collector, tax assessor, construction official and the court clerk. A determination of supervisory status must be based on specific instances indicating the exercise of authority to "...hire, discharge, discipline or to effectively recommend the same..." N.J.S.A. 34:13A-5.3. Tp. of Cherry Hill, P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970) and Somerset Cty Guidance Center. The record indicates no specific instances of

the exercise of such authority. Therefore, we cannot determine that these positions are supervisors within the meaning of the Act.

In conclusion, we find that the township clerk is a confidential employee and we exclude this position from the petitioned-for blue collar employee/white collar employee unit. Further, we conclude that the tax collector, tax assessor, construction official and the court clerk are neither managerial executives nor supervisors within the meaning of the Act and we include these titles in the petitioned-for unit.

Accordingly, we direct that a secret ballot election be conducted in a unit described as follows:

Included: All blue collar employees and white collar employees employed by the Township of Commercial, including the tax collector, tax assessor, construction official and court clerk.

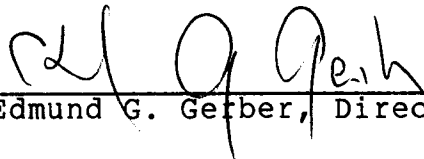
Excluded: All professional employees, craft employees, police employees, firefighters, confidential employees, managerial executives and supervisors within the meaning of the Act; the township clerk and all other employees of the Township of Commercial.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 10, 1990
Trenton, New Jersey