

D.R. NO. 89-14

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

In the Matter of

COUNTY OF PASSAIC,

Public Employer-Petitioner,

-and-

Docket No. CU-87-77

LOCAL 153, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Employee Representative.

SYNOPSIS

The Director of Representation finds that a principal clerk stenographer assigned to the County Administrator and a principal legal stenographer assigned to the Assistant County Counsel for Labor Relations are confidential employees within the meaning of the Act. Accordingly, the Director clarifies a collective negotiations unit of clerical employees to exclude the two secretaries, effective immediately.

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Appearances:

For the Employer-Petitioner
Raymond P. Vivino, County Counsel
(Thomas F. Portelli, Asst. County Counsel)

For the Employee Representative
Schneider, Cohen, Solomon, Leder & Montalbano
(Bruce D. Leder, of counsel)

DECISION

On June 15, 1987,^{1/} the County of Passaic ("County")
filed a Petition for Clarification of Unit with the Public
Employment Relations Commission ("Commission"). By its

^{1/} At the request of the OPEIU and with the consent of the
County, this matter was held in abeyance from October 1987 to
October 1988 while the parties attempted to voluntarily
resolved this dispute.

petition,^{2/} the County seeks to clarify the collective negotiations unit of clerical employees represented by Local 153, Office and Professional Employees' International Union ("OPEIU")^{3/} to exclude two secretaries. The County argues that the employees should be removed from the unit on the basis of their alleged confidential status. OPEIU asserts that the employees are not confidential and does not consent to their exclusion from the unit.

We have conducted an administrative investigation to determine the facts. The County has asserted, and OPEIU has not disputed, the following facts:

June Elliot is the Principal Legal Stenographer in the County Counsel's office. She is primarily assigned to the Assistant County Counsel for Labor Relations, Thomas Portelli.

Portelli advises the County in all labor relations matters. As a member of the County's negotiations team, he frequently attends negotiations sessions as well as strategy meetings in preparation for negotiations including negotiations with OPEIU. He acts as the County Administrator's designee on certain grievances and sits as a hearing officer on some disciplinary

^{2/} The County originally sought the exclusion of ten positions from the clerical unit. By letter dated October 28, 1988, the County advised us that it seeks a determination with regard to only two positions of those positions.

^{3/} OPEIU also represents a unit of supervisory white-collar employees. Initially, the County also sought to clarify the supervisory unit to exclude certain alleged confidentials. However, that dispute is not now before us and the only remaining disputed titles are in the nonsupervisory unit.

hearings. He represents the County at grievance arbitrations and proceedings before the Public Employment Relations Commission.

As his secretary, Elliot has regular access to labor relations, negotiations and arbitration files maintained in the Offices of the County Counsel. She types memoranda concerning negotiations and potential contractual settlements. Thus, she frequently has advance knowledge of the County's position on negotiations and other labor matters.

Alberta Kuipers is a principal clerk stenographer in the County Administrator's office. Nicola DiDonna, the County Administrator, is head of the County's negotiations team for all negotiations. As the second secretary assigned to DiDonna, she transcribes the minutes of the Freeholder's executive session meetings wherein personnel and labor matters are discussed. She also transcribes notes of caucus sessions of the County's negotiations team.

Kuipers has advance knowledge of budgeted salary allocations, as well as the County's negotiations positions. She also has advance knowledge of planned creation or abolition of County departments, titles and positions.

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." 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]

See also Ringwood Bd. of Ed. v. Ringwood Educational Office Personnel Ass'n, NJEA, App. Div. Dkt. No. A-4740-8677 (2/18/88), aff'g P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987).

Elliot and Kuipers are each assigned to a County representative who is intimately involved in the County's labor relations process. Elliot and Kuipers, as a result of their responsibilities, have advance knowledge of the County's negotiations positions and other sensitive, labor-related matters which could significantly compromise the County's ability to maintain confidentiality. Therefore, we find that Elliot and Kuipers are confidential employees within the meaning of the Act.

The clerical unit is hereby clarified to exclude the Principal Legal Stenographer assigned to the Assistant County Counsel for Labor Relations and the Secretary assigned to the County Administrator.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 25, 1989
Trenton, New Jersey