

D.R. NO. 99-4

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

In the Matter of

EVESHAM TOWNSHIP FIRE DISTRICT #1,

Public Employer,

-and-

Docket No. RO-98-119

EVESHAM FIRE-RESCUE CLERK'S ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director of Representation directs an election in a unit comprised of the fire district's clerk and deputy clerk. The Director rejects the employer's argument that the two employees are confidential within the meaning of the Act. While the employer alleged that the clerks handle negotiations documents, distribute packets to Board members containing confidential labor relations materials, and potentially type minutes of closed session meetings, no evidence was submitted to show that such job duties were actually performed.

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Appearances:

For the Public Employer  
Parker, McCay & Criscuolo, attorneys  
(Stephen J. Mushinski, of counsel)

For the Petitioner  
Luane Hayden, President

DECISION AND DIRECTION OF ELECTION

On April 24, 1998, the Evesham Fire-Rescue Clerk's Association filed a representation petition seeking to represent two clerical employees employed by Evesham Township Fire District #1, Board of Fire Commissioners ("Board"). The Board opposes the petition, claiming that the two petitioned-for titles--clerk to the Board of Fire Commissioners ("clerk") and administrative clerk/deputy district clerk ("deputy clerk")--are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and thus cannot properly be included in any negotiating unit.

We have conducted an administrative investigation and gathered the information stated below. See N.J.A.C. 19:11-2.2 and 2.6.

Luane Hayden and Barbara McDonald hold the titles of clerk and deputy clerk, respectively. They are responsible for handling and maintaining the confidentiality of personnel records for the District's career employees and volunteer firefighters. In July 1997, the Board approved job descriptions for their titles.

The Board submitted job descriptions for the titles which appear to be in draft, rather than final, form. The draft job descriptions submitted specify that they are required to type collective negotiations proposals, strategy minutes and memoranda of both open and closed session Board meetings. According to the Board, any item discussed in closed session pertaining to negotiations may be typed and made available to the fire commissioners, by either of these individuals.

Also, the Board claims these titles have access to and are trusted with highly confidential labor relations and collective negotiations information. It asserts that the clerk and deputy clerk are the conduit for information received by the Board, and that they prepare and distribute Board informational packets which contain personnel and collective negotiations materials.

The Association disagrees that the clerk and deputy clerk are confidential employees. According to the Association, these

individuals do not type, copy, distribute, review or know information about labor relations matters, the negotiations process, or collective negotiations agreements. The Association claims that the employees' only responsibility is to maintain an executed copy of the agreement for payroll/benefits administration.

The job descriptions submitted by the Association appear to be in final form and differ in content from those submitted by the Board. The Association's job descriptions do not state that the clerk or deputy clerk type negotiations proposals, strategy minutes and memoranda of both open and closed session Board minutes. The job description submitted by the Association for the clerk only indicates that the clerk ensures the integrity of confidential material and that the deputy clerk assumes the clerk's duties in the clerk's absence.

Further, the Association explains that confidential labor relations information bypasses the clerks' office and goes directly from the Chief's office to labor counsel. Finally, according to the Association, the clerk and deputy clerk do not attend executive sessions where labor matters are discussed. The Association notes that minutes of executive sessions are not even kept.

#### ANALYSIS

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

employees 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 applying this test, the Commission has used the approach outlined in State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985):

We scrutinize the facts of each case to find for whom each employee works, what [the employee] does or what [the employee] 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.

[11 NJPER at 510.]

In New Jersey Turnpike Authority v. American Federation of State, County and Municipal Employees, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey. The Court explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge "would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g); see also State of New Jersey, supra, 11 [NJPER] ¶16179 (holding that final determination is '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.') Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or

implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358.]

The Commission narrowly construes the term confidential employee. State of New Jersey 11 NJPER at 514. A finding of confidential status is based on what the employee actually does, not potential duties that may be reassigned to him or her. State of N.J. (Office of Employee Relations) and Council of N.J. State College Locals, NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989) aff'd NJPER Supp.2d 246 (¶206 App. Div. 1991); Ringwood Bd. of Ed. and Ringwood Ed. Office Personnel Ass'n., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988).

Here, the Board has failed to submit materials in support of its claim that the clerk and deputy clerk are confidential employees within the meaning of the Act. While the Board claims that the titles are responsible for typing negotiations proposals, strategy minutes and minutes of closed sessions pertaining to negotiations, no work samples were submitted to support that such job duties were actually performed. Further, and most significantly, although the Board submitted an affidavit from one of its members attesting that these are the duties of these

individuals, it failed to provide any documentation or examples demonstrating that said duties are actually performed.

Further, even if the clerk and deputy clerk have access to confidential labor relations and collective negotiations materials as the Board claims, mere access is insufficient to warrant a finding of confidential status. New Jersey Turnpike Authority; State of New Jersey. In any event, no confidential labor relations and collective negotiations materials to which the employees were claimed to have had access have been proffered. Further, while the Board asserts that the clerk and deputy clerk prepare and distribute Board informational packets containing personnel and collective negotiations materials, actual examples of such materials have not been submitted.

Finally, our investigation has failed to disclose any documentary support for the claim that the clerk and deputy clerk may type closed session minutes pertaining to negotiations. The fact that these individuals may potentially perform such a duty does not warrant a finding of confidential status at this time. State of New Jersey (Office of Employee Relations); Ringwood Bd. of Ed.

Based on the foregoing, I find that the clerk and deputy clerk are not confidential employees within the meaning of the Act. Accordingly, I direct a mail ballot election in the petitioned-for unit as follows:

Included: All clerical employees, including the clerk to the Board of Fire Commissioners and administrative clerk/deputy

district clerk, employed by Evesham Township Fire District #1, Board of Fire Commissioners.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees and all other employees.

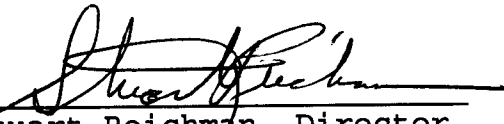
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. 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. 19:11-10.1, 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

  
Stuart Reichman, Director

DATED: October 21, 1998  
Trenton, New Jersey