

D.R. NO. 84-11

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

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-82-68

UNION COUNCIL NO. 8, NJCSA,

Employee Organization.

SYNOPSIS

The Director of Representation determines that the Senior Bookkeeping Machine Operator and the Bookkeeping Machine Operator have access and exposure to confidential labor relations material and are confidential employees within the meaning of the Act. These employees are excluded from a negotiations unit of clerical employees.

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

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-82-68

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Employee Organization.

Appearances:

For the Public Employer-Petitioner
Aron, Till & Salsberg, attorneys
(Richard M. Salsberg, of counsel)

For the Employee Organization
Fox & Fox, attorneys
(Richard H. Greenstein, of counsel)

DECISION

On March 29, 1982, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the Township of Scotch Plains ("Township") seeking the removal of employees in two titles, Senior Bookkeeping Machine Operator and Bookkeeping Machine Operator, from the collective negotiations unit of all white collar and clerical employees of the Township, represented by Union Council No. 8, New Jersey Civil Service Association ("Council 8"), allegedly because they are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") ^{1/}

^{1/} In addition to the two bookkeeping titles the Township also petitioned for the removal of the Engineering Aide title from the unit but not on the basis of confidentiality. However, the parties subsequently stipulated at hearing that said title was appropriate for continued inclusion in the Council 8 unit. Consequently, the decision herein is limited to the two bookkeeping titles.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Judith E. Mollinger, on October 29, 1982 in Newark, New Jersey. All parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The Hearing Officer submitted her Report and Recommendations on May 19, 1983, a copy of which is attached hereto and made a part hereof. The Hearing Officer found that both the Senior Bookkeeping Machine Operator and the Bookkeeping Machine Operator handled, prepared and had knowledge of negotiations material, and thus concluded that they were confidential employees within the meaning of the Act. She therefore recommended that they be removed from the Council 8 unit.

Council 8 filed exceptions to the Hearing Officer's Report and Recommendations by June 2, 1983. The Township responded to those exceptions by June 21, 1983. In its exceptions Council 8 argues that (1) even though the Bookkeeping Machine Operator may have prepared certain negotiations material for the last negotiations, that work was not part of her normal job responsibilities and does not require a finding of confidentiality, and (2) in a small negotiations unit setting, a public employer should not be able simply to assign some confidential responsibilities to employees and thus cause their removal from negotiations units unless the facts and circumstances require those employees to engage in confidential duties as a regular part of their work. Council 8 did not raise any specific exceptions to the finding that the Senior Bookkeeping Machine Operator was a confidential employee.

The undersigned has carefully considered the entire record herein, including the transcript, exhibits, the Hearing Officer's Report

and Recommendations, and the exceptions thereto, and finds and determines as follows:

1. The Township of Scotch Plains is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. Council 8, N.J.C.S.A. is an employee representative within the meaning of the Act and is subject to its provisions.

Council 8 is currently the exclusive representative of all clerical employees employed by the Township.

3. The Township seeks the exclusion of two employees, the Senior Bookkeeping Machine Operator and the Bookkeeping Machine Operator, from the Council 8 unit allegedly because these employees are confidential within the meaning of the Act. Council 8 opposes the Petition, asserting that the employees holding the above titles are not confidential and that even if the Bookkeeping Machine Operator prepared negotiations material for a particular negotiations, that was not a sufficient reason to exclude her from the negotiations unit on the basis of confidentiality.

4. The Act, at N.J.S.A. 34:13A-3(g), defines confidential employees as individuals

...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 record reveals that the Senior Bookkeeping Machine Operator's duties include a wide range of budget related responsibil-

ities including preparing financial work sheets for salaries and benefits upon request for use by the Township during contract negotiations. In particular, the individual holding that title, Rosemarie Cerritto, in the course of performing her duties, was actually aware of the Township's final negotiations position regarding salary and benefits for Council 8's unit in the last round of negotiations.

Council 8 has not raised any specific exceptions to the Hearing Officer's factual findings with respect to the Senior Bookkeeping Machine Operator. Cerritto's preparation of work sheets and salaries and benefits for use by the Township during negotiations is a regular part of her job responsibilities.

It is obvious that Cerritto's preparation of negotiations material and knowledge of the Township's negotiations positions prior to their presentation at negotiations sessions makes her membership in Council 8's unit, or any other unit, incompatible with her official duties. See In re Old Bridge Twp. Bd. of Ed., D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981) and In re Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981).

The duties of the Bookkeeping Machine Operator, Regina Iaione, include doing most of the Township's payroll work, and doing the calculations and work sheets for the Township for its use in negotiations with the police unit. As the result of the performance of her assigned duties, Iaione has had advance knowledge of the Township's negotiations position for both the police and clerical units.

With respect to the Bookkeeping Machine Operator, Council 8 has not disputed that Iaione actually performed certain confidential

functions. Rather, it alleges that since those duties were not a normal part of her overall responsibilities they should not be considered. This argument has been advanced, and rejected, in previous decisions. The Act does not require that the assignment of duties of a confidential nature be regular and continuous as a condition for finding an employee to be confidential. In In re Township of Dover, D.R. No. 79-19, 5 NJPER 61 (§ 10040 1979), the undersigned held:

Although the record may not conclusively demonstrate a continuous pattern of exposure to the collective negotiations process, the statutory definition does not make confidential status dependent upon regular involvement in labor relations. 5 NJPER at p 62.

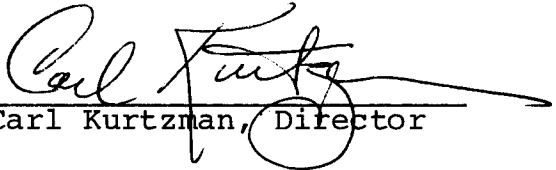
There is no question that Iaione was exposed to confidential material concerning negotiations for both the police and clerical units, and that she was expected to pay attention to that material, and in fact work with that material, in order to perform her job function. See, In re River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (§ 14084 1983), note 2.

Council 8 argues that these functions need not have been assigned by the Township to Iaione, and that in a small negotiations unit an employer, by dispersing such assignments, could vitiate the composition of a negotiations unit. As the Hearing Officer correctly noted these arguments are not properly the subject of a representation proceeding. The wisdom or the legality of the motivation of a management assignment decision cannot be attacked in a representation proceeding.

Accordingly, for the above stated reasons the undersigned finds that both Cerritto and Iaione are confidential employees within

the meaning of the Act and therefore must be excluded from Council 8's negotiations unit. The instant determination is effective immediately. In re Clearview Reg. H.S. District Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). ^{2/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 5, 1983
Trenton, New Jersey

^{2/} The within determination as to confidentiality, however, does not foreclose a reexamination of an employee's continued confidential status in any future proceeding which may be filed after a reasonable period of time if the employee, who would otherwise be expected to exercise a confidential function, no longer exercises confidential duties.

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

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Public Employer-Petitioner,

-and-

Docket No. CU-82-68

UNION COUNCIL NO. 8, NJCSA,

Employee Organization.

SYNOPSIS

In a Clarification of Unit Petition filed by the Township of Scotch Plains, a Hearing Officer of the Public Employment Relations Commission finds that the Senior Bookkeeping Machine Operator and the Bookkeeping Machine Operator in the Township Treasury Division, Department of Finance, are confidential positions within the meaning of the Act and are not included within the collective negotiations unit. The employees in these two positions generate financial data and negotiation work sheets for Township labor contract proposals on salaries and fringe benefits, prepare extensive financial material used for budget preparation by the Township Manager, and are privy to the Township's collective negotiations policy, positions, and proposals.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions 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. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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

In the Matter of

TOWNSHIP OF SCOTCH PLAINS,

Public Employer-Petitioner,

-and-

Docket No. CU-82-68

UNION COUNCIL NO. 8, NJCSA,

Employee Organization.

Appearances:

For the Public Employer-Petitioner
Aron, Till & Salsberg
(Richard M. Salsberg, of counsel)

For the Employee Organization
Fox & Fox
(Richard H. Greenstein, of counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On March 29, 1982, the Township of Scotch Plains ("Township") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") (C-1) ^{1/} seeking to exclude the title of Engineering Aide and two titles in the Department of Finance, VIZ., Senior Bookkeeping Machine Operator and Bookkeeping Machine Operator, from a unit of all white collar and clerical employees employed by the Township and represented by the Union Council No. 8, N.J.C.S.A. ("Council 8"). ^{2/}

^{1/} Commission Exhibits will be designated C- , Joint Exhibits J- , Township Exhibits P- ; no exhibits were submitted by Council 8.

^{2/} Unit certified December 4, 1981; Docket Number RO-82-55.

The Township objects to the inclusion of the positions in the unit, contending they are confidential as defined by the New Jersey Employer-Employee Relations Act 34:13A-1, et seq. ("Act") and thereby not appropriate for inclusion in any collective negotiations unit.

Pursuant to a Notice of Hearing issued on August 20, 1982, by the Director of Representation (C-1) a hearing was held Friday, October 29, 1982, at which time the parties were afforded an opportunity to examine and cross-examine witnesses, to present evidence and argue orally. At the hearing, the parties stipulated that the title of Engineering Aide was properly included in the negotiations unit (T 4). ^{3/}

Both parties filed post-hearing briefs on January 17, 1983. The Township filed a reply brief on January 31, 1983. The record was closed January 31, 1983.

The issue before the Hearing Officer, then, is whether the titles of Senior Bookkeeping Machine Operator and Bookkeeping Machine Operator are appropriate for inclusion in the collective negotiations unit represented by Council 8.

FINDINGS OF FACT

Based on the entire record in this proceeding the Hearing Officer makes the following findings of fact:

1. The Township of Scotch Plains is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding. (T 3).

2. Union Council No. 8, N.J.C.S.A., is an employee repre-

^{3/} Transcript references are as follows: (T).

sentative within the meaning of the Act and is subject to its provisions (T 3).

3. In light of the parties' stipulation that the Engineering Aide position is appropriately within the collective negotiations unit, the only titles now in dispute are the Senior Bookkeeping Machine Operator and Bookkeeping Machine Operator in the Treasury Division Finance Department (T 4).

4. Council 8 asserts that the titles in dispute are clerical positions and properly included within the unit (C-2).

5. The Township objects to the inclusion of these two titles in the collective negotiations unit contending the employees are "confidential" within the meaning of the Act. (C-1).

6. A question exists concerning the composition of the collective negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

7. The Township of Scotch Plains is approximately 9.1 square miles in area with a population of 20,752 (T 14, 15). The Township employs 110 full-time employees (T 15), 83 of whom are included in three collective negotiations units as follows: 39 Police Department employees, in the ranks of patrol officer through captain, are represented by the Police Benevolent Association (PBA); 24 maintenance employees, in the Recreation and Public Property Departments, are represented by Union Council No. 8 (T 15) and 20 white collar and clerical employees, in the instant unit, are also represented by Council No. 8 (T 16).

The Township has a Council-Manager form of government pursuant to N.J.S.A. 40:69A-1 thru 210 as Amended, ("Faulkner Act") (T 18; P 4).

The Manager, Thomas Atkins, appointed by the Council, is the Township's Chief Executive (T 18; P-4). His primary responsibilities include, inter alia, preparation of an operating budget, general direction and supervision of all municipal departments, personnel management and negotiation on behalf of the Township for all contracts made by the Township (T 19; P-4).

8. Delores B. Burnes, C.P.A., has served as Township Treasurer and Director of the Finance Department (T 19) since January 1978 (T 47). She supervises all three divisions of the Finance Department which are: Tax Collection, Tax Assessment, Treasury (T 48; J-13). As a member of the Township's labor negotiations team (T 48) for negotiations with the PBA and Council 8 (T 19) she serves as a resource person to the chief spokesperson on finances and as general advisor on other matters. (T 20, 48).

The two employees whose titles are currently in dispute work in the Finance Department, Treasury Division (T 20) under the direct supervision of Burnes (T 20, 49) on payroll and budget matters (T 50). Each of these employees has been trained to perform all duties of both jobs (T 40, 51). They periodically alternate jobs to keep abreast of new developments and changes (T 51).

At the time Burnes commenced employment with the Township, the Treasury Division was staffed by five employees: the Director, an Administrative Clerk, two Bookkeeping Machine Operators and one part-time typist (T 53). Burnes directly supervised only the Administrative Clerk (Mitchell) who was a confidential employee and therefore outside the negotiations unit (T 42, 139). The Administrative Clerk supervised the other three employees. All work products were essentially the same then as now (T 54) but work methods have since changed. The

Administrative Clerk was responsible for preparation of negotiations work sheets (T 46,47) regarding salary and fringe benefit proposals, offers made by the Township in collective negotiations with the PBA and Council 8, and budget proposals (T 45) for submission to Township Council, all of which were prepared by her (T 139-142). Both Machine Operators at that time did budget postings, and payroll input (T 54).

In 1981 Burnes became directly involved in the day-to-day supervision of the Department activities and as a consequence some work assignment changes were introduced (T 61) to effectuate greater economy and assure timely production of financial data (T 54-57, 146, 148). Among these work assignment changes was the transfer, from the Administrative Clerk to the two Machine Operators, of responsibility for preparation of the Township's negotiation work sheets for the PBA contract negotiations (T 21-25, 33-39, 43, 86; P-2, P-3, P-4), compilation of budget proposal material in October of each year (T 27, 32, 44, 62, 69, 73, 74, 76) and computer postings relating to fund transfers in November 1981 (T 45, 70, 81; P-7). Both Machine Operators were also trained to operate the Department's Burroughs L 9500 series mini-computer (T 93).

In May 1982, Mitchell, the Administrative Clerk, was transferred to the Police Department. Following her transfer (T 62, 63, 139) additional duties were assigned to each Machine Operator to enable them to perform all functions in the Treasury Division (T 148). Generally, information concerning account balances and the Township budget (T 82-84) is available to the Machine Operators before it becomes public. These employees, however, do not see memos between Burnes and Atkins regarding fund transfers or budget cuts, although this information is available

to them in the course of their regular duties (T 45, 68, 80). The combination to the department safe is available to these two employees and all files in the department are open and available to them (T 81). Memos from Burnes to Atkins concerning the Township's collective negotiation positions are typed by one of Atkins' two confidential secretaries (T 98, 99).

In September 1981, Burnes initially requested new civil service job descriptions for the Machine Operators (which would reflect the proposed duties) (T 61; P-5, P-6) and more recently, since the existing descriptions are no longer accurate, she has requested civil service job audits (T 87; J-13).

9. Rosemarie Cerritto, Senior Bookkeeping Machine Operator in the Treasury Division has held her current position since October 1980 (T 112). From May 1976 until October 1980, she held the position of Bookkeeping Machine Operator (T 112). Originally, her duties as Senior Bookkeeping Machine Operator related to payroll data (J-6) but beginning the summer of 1981 her duties primarily related to budget data (T 113). Presently her duties include inter alia, picking-up, opening, sorting and distributing all the Director's mail (T 102); posting all credits and debits on all account ledger cards (T 102); certifying funds available for voucher payments (T 102); filing vouchers and account encumbrances (T 103); maintaining all ledger cards and setting up new account cards on the final yearly budget (T 103, 107, 108); balancing account reports against cash book balances each month (T 105, 106); and preparing financial work sheets for salaries and fringe benefits upon request for use by the Manager during labor contract negotiations (T 119, 120; P-6).

For six months in 1981, she worked as the payroll machine

operator to learn all the duties and functions attendant to that position (T 106) and now occasionally alternates with Mrs. Iaione, Bookkeeping Machine Operator (Payroll).

Most recently, during the week of October 25, 1982, Cerritto prepared the financial work sheets for the clerical unit collective negotiations with Council 8 (T 121). She is also responsible to set up account cards for the Township's temporary budget by allocating 25 percent of the previous year's budget for each account as the amount of operating funds available until the regular budget is approved by the Township Council and State (T 116, 122). She is thereby aware of account surpluses, deficiencies and the need for fund transfers between accounts which may be made November 1st of each year (T 113-115).

Cerritto knew the settlement amount the Township allowed for the PBA contract and factored in funds for retroactive payments in the 1982 budget proposal (T 39). In October 1982 she was aware of the Township's final position regarding salary and fringe benefits for Council 8's clerical unit in the current negotiations (T 43) as well as the amount necessary for fund transfers in November 1982 (T 40, 70, 81; P-7).

10. Regina Iaione, has been employed in the capacity of Bookkeeping Machine Operator, Treasury Division since March 1979 (T 132). She originally was trained for the budgetary function but since the summer of 1981 has done all the payroll work except for the actual check printing which is sent to an independent processing company (T 132). Primarily her duties include, inter alia, preparing payroll work sheets from time sheets (T 131, 132) for approximately 163-180 employees (T 131, 132), making the payroll deductions and pension calculations (T 133), preparing cash disbursement sheets (T 125),

maintaining payroll files, overseeing check distribution and making any corrections required (T 132).

In the summer of 1981 she prepared the Township's final work sheets for PBA negotiations and is aware of the Township's final salary position for the current negotiations with Council 8 (T 123). In preparation for labor negotiations with PBA she did either the initial calculations or checked the calculations on several different salary proposal work sheets during 1981 (T 129). As a consequence of this work, in November 1981 she had advance knowledge of the Township's offer to PBA of 8 percent in each of two years (1981 and 1982) long before the proposal was offered and the contract finally settled in January 1982 (T 135, 136).

CONCLUSIONS OF LAW AND ANALYSIS

1. Conclusions of Law

Confidential employees are not eligible for inclusion in a collective negotiations unit with other public employees. Section N.J.S.A. 34:13A-3(d) reads in relevant part:

The term "employee" ...shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer except elected officials, members of boards and commissions, managerial executives and confidential employees.

The Act defines confidential employees in Section 3(g) as those

...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 In re River Dell Regional Board of Education, D.R. No. 83-21, 9 NJPER ____ (¶ ____ 1983), the Director of Representation reaffirmed that an inquiry to determine employee confidential status in each case must focus on the evidence concerning the extent of that employee's "access and exposure to confidential information involved in the collective negotiations process in the course of their functional responsibilities." (slip opinion page 5). ^{4/}

In that case, the Director found both the second Secretary to the Superintendent and the Secretary to the Assistant Superintendent confidential employees where their work on a daily basis required exposure to material concerning Board negotiation proposals, public and nonpublic Board meetings, budget proposals, staffing matters and access to locked files containing these materials. It is noted that River Dell concerned the status of secretaries who assist and act in a confidential capacity to persons who formulate, determine and effectuate

^{4/} In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980); (determination be made on a case by case basis), In re Township of Parsippany-Troy Hills Board of Education, D.R. 80-35, 6 NJPER 276 (¶ 11131 1980); In re Little Ferry Board of Education, D.R. No. 80-19, 6 NJPER 59 (¶ 11033 1980); see also, In re Passaic County Regional High School District No. 1, Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976) affirming H.E. No. 77-3, 2 NJPER 268 (1976); In re Board of Education of Township of West Milford, P.E.R.C. No. 56 (1970); In re Woodbridge Township Board of Fire Commissioners District No. 1, P.E.R.C. No. 51 (1974); In re Springfield Board of Education, E.D. No. 52 (1974); In re Plainfield Board of Education, E.D. No. 1 (1970); In re Jersey City Board of Education, D.R. No. 80-15, 5 NJPER 533 (¶ 10273 1979); In re Rahway Board of Education, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979); In re Brookdale Community College, D.R. No. 78-10 4 NJPER 32 (¶ 4018 1977) affm'g H.E. No. 77-7, 3 NJPER 108 (1977). (definition of confidential shall be narrowly construed) See also, Lullo v. Int'l Assn of Firefighters, 55 NJ 409 (1970); Hendricks County Rural Electric Membership Corp., ____ US ____, 108 LRRM 3105 (1981).

management policy in the field of labor relations. Additionally, the designation of "confidential" includes those persons who have access to confidential information concerning management collective negotiations policies, positions and policy changes which may result from collective negotiations. ^{5/}

In, In re Bd. of Ed. of West Milford, P.E.R.C. No. 56 (1971) ^{6/} the Commission was faced with determining whether a large number of employees were confidential. In declaring three of the nineteen employees confidential, the Commission noted:

"It may be that the lowest level clerk would, as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collection function should disqualify one from the possibility of representation. Mere knowledge of raw information acquired in this process would not ordinarily tend to compromise management's right to con-

^{5/} In re Jersey City, D.R. No. 80-36, supra footnote number 4, (Director and Assistant Director of Nursing Services, not confidential employees); In re Old Bridge Township Board of Education, D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981) (Research Assistant to the Assistant Superintendent for Personnel/Educational Services and Curriculum Instruction is a confidential employee); In re Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981) (Principal Account Clerk is a confidential employee); cf. Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977), (Computer personnel who process and assemble raw data are not confidential; College's Chief Accountant who assists College negotiating team as its principle resource person for pricing labor contracts, wage and budget proposals is a confidential employee); Orange Board of Education, D.R. No. 78-28, 4 NJPER 1 (¶ 4001 1977) (Bookkeepers included in unit as they are not privy to contract proposals.)

^{6/} Decided, pursuant to N.J.A.C. 19:10-1.1 definition of a confidential employee, not inconsistent with the definition found in N.J.S.A. 34:13A-3(g).

fidentiality in matters of policy affecting negotiations or contract administration. at p. 5

In conformity with the above-cited decision, the Director of Representation, in Brookdale Community College, supra, found nine computer titles not confidential and, the Chief Accountant, who worked closely with the Comptroller, who was deeply involved in collective negotiations matters, budget matters and was the College's principle source of financial data, was found to be confidential. The Chief Accountant was required to determine costs for the budget and labor agreement.

Similarly, in Old Bridge Township, supra, the Director deemed confidential a Research Assistant who reported to the Assistant Superintendent for Personnel, who was involved in the process of hiring, staff evaluation, second step grievances and collective negotiations. The Assistant evaluated Association contract proposals, assisted in developing initial Board contract proposals, kept status records, gathered data for second level grievance responses, and was generally aware of Board contract proposals, negotiation strategy, and salary offers to be made to the employee representative.

Recently, the Director, in Linden Free Public Library, supra, determined as confidential a Principal Account Clerk who maintained financial account books, prepared financial reports for the Board, prepared and paid bills, invested library funds and compiled data for preparation of the annual budget.

It is important to note that in each case the employees found to be confidential were those who had access to labor relations

materials and did more than assemble data which may have been used in determining labor policy.

The Township, in support of its position that the disputed employees are confidential, relies on several decisions of the Director. ^{7/}

Council 8 argues to the contrary, that public employees should only be excluded as confidential where their duties and the surrounding circumstances unequivocally require them, without viable alternatives, to engage in confidential functions. ^{8/}

In the instant case, the relevant consideration is whether the individuals in question have access and exposure to confidential information in the exercise of their duties. ^{9/}

II Analysis:

Both of the Bookkeeping Machine Operators report directly to the Township Finance Director for assignments and daily supervision. The Finance Director, as a member of the Township negotiating team, is intimately involved in labor negotiations, serving as a financial

^{7/} East Windsor Reg. School District, D.R. No. 82-9, 7 NJPER 524 (¶ 12231 1981); Jersey City Bd. of Ed., D.R. No. 80-15, 5 NJPER 533 (¶ 10273 1979); Old Bridge Township, supra; Linden Free Public Library, supra, and Township of Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979).

^{8/} The question of viable alternatives to distribution of confidential work is not appropriately raised in a Clarification of Unit proceeding to determine the status of employees based on their current duties and responsibilities.

^{9/} In Dover, supra, the Director determined that confidential status is not dependent upon regular involvement in labor relations. Additionally, the Director said, in River Dell, supra, footnote 2, "...The element of exposure, is in itself sufficient to ascribe confidentiality if the employee is in any way expected to pay attention to the contents of the material in order to perform the job function."

expert and generally advising on other collective negotiation matters. Financial data generated by the Bookkeeping Machine Operators is used by them, the Finance Director and the Manager to cost out both the Township's and the employee organizations' labor contract proposals. Many of the functions now performed by the Bookkeeping Machine Operators were previously the responsibility of the confidential Administrative Clerk. Each Bookkeeping Machine Operator has worked extensively during the past year on financial material used by the Manager in budget preparation and for labor contract negotiations. Each employee is aware of the nature of the material and its intended use.

Copious work sheets are prepared by them for use in labor contract negotiations and for budget preparation and analysis. ^{10/} Each of these employees is currently aware of the Township's negotiations position vis-a-vis the white collar unit and were previously privy to the same advance information regarding the PBA and Council 8 maintenance unit. They know the Township's fiscal status and have information in advance of any publication.

Based on the foregoing, I find that the positions of Senior Bookkeeping Machine Operator and Bookkeeping Machine Operator are confidential.

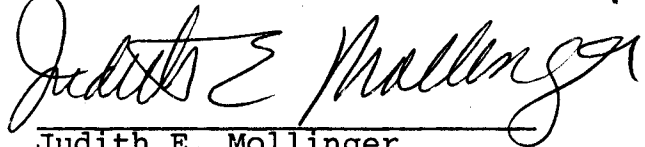
RECOMMENDATIONS

The positions of Senior Bookkeeping Machine Operator and

^{10/} Recently, a Commission Hearing Examiner found no unfair practice where the City of Union City refused to provide the Union City FMBA, Local 12 with the City's budget "work sheets." The Hearing Examiner determined that the work sheets were either confidential material or privileged as the "work product" of the City in the budget preparation process. In re City of Union City, H.O. No. 83-24, 9 NJPER _____ (¶ _____ 1983).

Bookkeeping Machine Operator in the Department of Finance are confidential within the meaning of the Act and should not be included in the collective negotiations unit represented by Union Council No. 8, NJCSA.

Respectfully submitted,

A handwritten signature in cursive script, reading "Judith E. Mollinger". The signature is written in black ink and is positioned above a horizontal line.

Judith E. Mollinger
Hearing Officer

DATED: May 19, 1983
Trenton, New Jersey