

D.R. NO. 92-4

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

In the Matter of

CUMBERLAND COUNTY IMPROVEMENT AUTHORITY,

Public Employer,

-and-

Docket No. RO-91-201

AFSCME DISTRICT COUNCIL 71, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders that a challenged ballot be opened and counted in a final tally of a secret ballot election among blue collar and white collar employees at the Cumberland County Improvement Authority.

The Director dismissed AFSCME's argument that the account clerk was confidential under N.J.S.A. 34:13A-5.3.

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Appearances:

For the Public Employer
Genova, Burns & Schott, attorneys
(Nathanial L. Ellison, of counsel)

For the Petitioner
Robert C. Little, Staff Representative

DECISION

On September 26, 1991, we conducted a secret ballot election at the Cumberland County Improvement Authority ("Authority") so that a unit of blue collar and white collar employees could vote on whether they wished to be represented in collective negotiations by AFSCME, District Council 71 ("AFSCME") or by no representative. The parties had signed an Agreement for Consent Election. The tally is 9 votes in favor of AFSCME, 8 in favor of no representative and one challenged ballot. The disposition of the challenged ballot determines the result of the election.

At the election, the Commission election officer advised the parties that letters and documents must be filed within five working days on the issue of whether the challenged voter, the account clerk, is eligible or ineligible for inclusion in the petitioned-for unit.^{1/}

The Authority wants the account clerk included in the unit. Labelling its previous position on the eligibility of the account clerk to the unit as "speculative," the Authority now asserts that the title will not be used for the "preparation of any confidential material relating to collective negotiations" and will not be "exposed" to "negotiations strategy."

AFSCME also reversed its earlier view and now claims that the account clerk has been "cross-trained to perform the duties of the administrative assistant in her absence and continually will be involved with contract proposals presented to AFSCME...including advance knowledge of the Authority's budget." AFSCME now represents that the Authority's earlier position declaring the account clerk ineligible is accurate and wants the title excluded from the petitioned-for unit.

^{1/} In informal conferences preceeding the election, AFSCME maintained that the account clerk should be included in the unit and the Authority maintained that the title should be excluded because it is a "confidential" position. See N.J.S.A. 34:13A-3(g). The parties signed a memorandum of agreement stating in part that the account clerk is neither included in nor excluded from the petitioned-for unit, that the employee could vote subject to challenge and that the issue of eligibility may ultimately be resolved by the filing and processing of a clarification of unit petition.

On October 9, 1991, I issued a letter tentatively finding that the account clerk was not a confidential employee and was eligible for inclusion in the unit. I stated that I intend to open and count the ballot. AFSCME filed no response.

The Act defines confidential employees as those, ...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.

[N.J.S.A. 34:13A-3(g)]

The Commission narrowly defines the term, "confidential employee." See 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). "A determination that an employee is confidential and therefore excluded from the Act's protections, N.J.S.A. 34:13A-5.3, should not be based on speculation..." Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989). The Commission has frequently stated its inquiry:

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. [State of New Jersey, 11 NJPER 507]

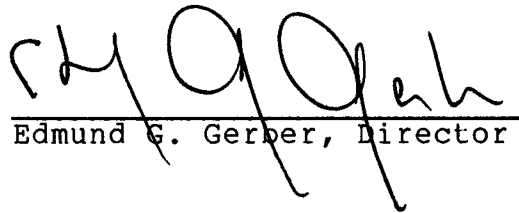
See also State of NJ (OER) and Council of NJ State College Locals, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd App. Div. Dkt. No. A-1445-89T1 (1/22/91); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App.Div. Dkt. No.

A-4297-87T1 (4/21/89); 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).

Even if the parties had an election day conversion, no facts suggest that the account clerk is a confidential employee. I agree that all representations about its confidential duties are speculative and do not dispose of the issue. No facts support the view that the title is confidential. The account clerk is appropriately included in the agreed-upon blue collar and white collar unit.

Accordingly, I order that the ballot be opened and counted and that a final tally and certification issue. This procedure will take place on November 13, 1991 at 10 a.m. in our Trenton office. See N.J.A.C. 19:11-7.4 and 19:11-8.1.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: October 25, 1991
Trenton, New Jersey