

D.R. NO. 96-12

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

In the Matter of

TOWNSHIP OF LEBANON,

Public Employer-Petitioner,

-and-

Docket No. CU-94-60

C.W.A., LOCAL 1040, AFL-CIO,

Employee Representative.

SYNOPSIS

The Director of Representation clarifies a unit of full-time and regularly employed part-time blue collar and white collar employees employed by Lebanon Township to include the police secretary, head library clerk and the construction, zoning, plumbing and electrical inspectors. The Director did not find that the police secretary is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; that the head library clerk is a supervisor within the meaning of the Act; or that the four inspectors (construction, zoning, plumbing and electrical) are professional employees within the meaning of the Act. All of these employment categories are specifically excluded from the unit's definition.

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Appearances:

For the Public Employer  
James P. Granello, attorney

For the Employee Representative  
Lorenzo Canizares, Representative

DECISION

Lebanon Township filed a Petition for Clarification of Unit after the Commission conducted a representation election in June 1994. The election was conducted among the non-supervisory employees of Lebanon Township to determine if they wished to be represented by the Communication Workers of America, Local 1040, AFL-CIO.

At that time, the Township took the position that certain petitioned-for titles did not belong in the unit and these employees voted by challenged ballot.

CWA prevailed at the election and on June 22, 1994, was certified as the majority representative of all full-time and regularly employed part-time blue collar and white collar employees employed by Lebanon Township. The Certification excludes the township clerk, road supervisors, confidential employees, supervisory employees, police officers, firefighters, professional employees, craft employees and managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Township seeks to remove the following disputed titles from the unit: police secretary, head library clerk, and the construction, zoning, electrical and plumbing inspectors.

The Township contends that the police secretary is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; that the head library clerk is a supervisor within the meaning of the Act; and that the four inspectors (construction, zoning, plumbing and electrical) are professional employees within the meaning of the Act. All of these employment categories are specifically excluded from the unit's definition.

The CWA contends that these employees properly belong in the broad-based unit.

Based upon our investigation, these facts appear.

#### Police Secretary

In June 1994, the police secretary was Janice Nordfors, the sole secretarial employee in the police department. Nordfors was

terminated in August 1995, and a new employee, Gretchen Snyder, was hired in October 1995. Snyder's duties are similar to those performed by Nordfors. Snyder reports directly to the police chief and performs general office work. The police chief was appointed in August 1994 and has not yet been through the contractual collective negotiations process in Lebanon Township. The Township expects to rely on the chief as a resource person in their negotiations with police units; however, the chief's role in negotiations is not known at this time, i.e., what information he will have about the Township's strategies and proposals in advance of their disclosure to the union and what information he will be asked to secure for the Township.

The Township asserts that in the past, Nordfors prepared written data for use by the Township's negotiations committee. However, no specific evidence has been provided indicating what data was prepared or at what stage in the negotiations process Nordfors prepared the data. CWA provided a letter dated August 22, 1994, from Acting Police Chief Monahan stating that Nordfors "is not allowed to be, nor does she have any privilege of knowing any information or confidential matters of the P.B.A."

The policies underlying the Act favor the organization of all employees desiring representation; however, confidential employees are not afforded representation rights under the Act. Therefore, the Commission carefully scrutinizes assertions of confidential status. A confidential employee is defined as "one

whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make his or her membership in any appropriate negotiating unit incompatible with his or her official duties." N.J.S.A. 34:13A-3(g) In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission stated that it scrutinizes 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...(11 NJPER at 510).

The Commission will not exclude an employee as a confidential if the record is based upon speculation or conjecture about an employee's job function. See Commercial Tp., D.R. No. 91-9, 16 NJPER 511, 512 (¶21223 1990). Based on the information submitted here and applying this standard, I find that Snyder's position is not confidential within the meaning of the Act and clarify the unit to include the police secretary.

#### Head Library Clerk

The head library clerk, Patricia Ammon, oversees the work of two assistant library clerks who are members of CWA's unit. Ammon has not made any recommendations to the Township committee with respect to hiring or discipline of other employees in the library. The Township asserts that Ammon is authorized to recommend disciplinary action.

Under the Act, a supervisor may not be placed in the same negotiations unit with non-supervisory employees. N.J.S.A. 34:13A-5.3. A supervisor is one who has the authority to hire, discipline or terminate other employees or effectively recommend these actions. Cherry Hill Tp., P.E.R.C. No. 30, NJPER Supp 114 (¶30 1970). Determination of supervisory status requires more than the mere assertion that an employee has the authority to hire, discharge, discipline or effectively recommend such actions. The Commission requires evidence that the authority is regularly exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER at 360 (1976). Based on the fact that Ammon has not exercised statutory supervisory authority, I find that the head library clerk is not a supervisor within the meaning of the Act and clarify the unit to include the position of head library clerk.

#### Plumbing Subcode Official

The plumbing inspector reviews plumbing plans and conducts field inspections of residential buildings, small commercial buildings, high rise buildings, and hazardous and industrial structures during all phases of construction of such structures within the Township. These tasks are not routine and require ten years of experience in plumbing and inspections as well as the completion of technical course work beyond high school. Licenses and certifications requiring the passing of national certification tests are also required.

Construction Inspector

The construction inspector reviews all plans and construction permit applications, performs inspections and prepares reports in compliance with regulations. His duties require extensive construction experience, knowledge of the Uniform Construction Code and possession of several licenses. His duties are routine in nature.

Zoning Officer

The zoning officer reviews site plan applications for the construction of houses, sheds, pools, etc. for compliance with zoning codes; and performs site inspections to investigate residents' complaints of potential zoning violations. He also drafts correspondence informing violators and outlining corrective actions or required variances to the zoning code. The enforcement of the zoning code requires some specialized knowledge, and the ability to interpret drawings and plans, but the associated tasks are routine in nature.

Electrical Inspector

The electrical inspector conducts electrical inspections of homes, industrial and commercial structures to insure the work meets mandated standards. He reviews plans for accuracy of the wiring diagrams and for compliance with standards. Inspection procedures are routine, but the technical decisions vary from job to job. Decisions which are made on a daily basis are based on extensive

electrical experience and familiarity with the electrical codes.

N.J.A.C. 19:10-1.1. states:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

The Township argues that these positions are "professional" and are specifically excluded from the unit's definition. Based on the above, I find that these positions are technical in nature and, although they entail a high degree of responsibility, are not primarily intellectual in nature; therefore, they are not professional within the Act's meaning. The inspection work of all of these inspectors is standardized by the existence of codified engineering standards. Accordingly, I find that the zoning, construction, plumbing and electrical inspectors are not professional employees within the Act's definition and are eligible to be in CWA's unit.

The Township also asserts that because the inspectors' job duties and terms and conditions of employment are set by State laws,



it cannot control their work or negotiate over these statutorily preempted subjects. However, this is true only regarding license issuance and revocation and their general duties. With respect to other negotiable subjects such as hours, wages, fringe benefits and work rules, the Township retains discretion and could negotiate with a majority representative over these matters. A statute or regulation will preempt employee negotiation rights under the Act only when it sets terms and conditions of employment expressly, specifically and comprehensively. See Eastampton Tp., D.R. No. 94-1, 19 NJPER 404 (¶24178 1993); State of New Jersey v. State Supervisory Employees Ass'n., 78 N.J. 54, 80 (1978) and N.J. College Locals v. State Board of Higher Education, 91 N.J. 18, 30 (1982). The fact that certain employees' duties may be set by statute does not make them ineligible for representation. See Bergen Cty. Util. Auth., D.R. No. 91-20, 17 NJPER 130 (¶22052 1991); and Borough of Leonia, D.R. No. 86-24, modified P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986).

Finally, the Township asserts that the construction inspector's hours are part-time and he cannot be part of the unit. The fact that the construction inspector is employed part-time does not disqualify him from unit membership since regular part-time employees are included in the unit's definition. See also, Cranford Tp., D.R. No. 86-26, 12 NJPER 566 (¶17214 1986) and Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982).

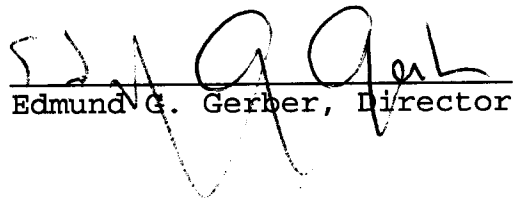
Based on all of the above, CWA's non-supervisory, white collar and blue collar employee unit is clarified to include the

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positions of police secretary, head library clerk and the construction, zoning, plumbing and electrical inspectors.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: March 29, 1996  
Trenton, New Jersey