

D.R. No. 2006-5

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

In the Matter of

BURLINGTON COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-2005-014

BURLINGTON COUNTY COLLEGE
SUPPORTIVE STAFF ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that three titles: 1) International Program Specialist (IPS); 2) Student Services Specialist-Military Education (SSS-ME); 3) Administrative Assistant - NJ Statewide Transfer are neither managerial executives nor confidential employees within the meaning of the Act and should be included in the Association's unit. But the Director also concluded that the title "Executive Secretary to the Vice President of Student Services" is a confidential employee within the meaning of the Act and shall not be included in any negotiations unit.

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Appearances:

For the Public Employer,
Capehart & Scatchard, attorneys
(Alan Schmoll, of counsel)

For the Petitioner,
Julie Brenner, Field Representative

DECISION

On October 26, 2004, the Burlington County College Supportive Staff Association/NJEA (Association) filed a Clarification of Unit Petition with the Public Employment Relations Commission. The Association seeks to add the titles of: 1) International Program Specialist (IPS); 2) Student Services Specialist-Military Education (SSS-ME); 3) Administrative Assistant - NJ Statewide Transfer; and 4) Executive Secretary to the Vice President of Student Services to its existing unit of full and part-time permanent support staff employed by Burlington

County College (College).^{1/} The Association claims that the petitioned-for titles are substantially similar or equivalent to some current unit titles and thus are now appropriate for inclusion in the unit through the instant petition.

Specifically, according to the Association, the job functions of the IPS and SSS-ME titles are substantially similar to the bargaining unit titles of Recruitment Advisor and Enrollment Specialist, respectively; the position of Administrative Assistant-NJ Statewide Transfer is equivalent to the unit title of Administrative Assistant; and the Executive Secretary to the Vice President of Student Services title is equivalent to the unit title of Secretary to the Dean of Student Services.

The College opposes the petition. It claims that the IPS and SSS-ME positions are managerial executives within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) and are not equivalent to any unit titles. The College notes that both positions require a Bachelor's Degree while the Recruitment Advisor title does not. Moreover, according to the College, the IPS is responsible for establishing plans to further the College's relationship with international students and the SSS-ME is responsible for developing and

^{1/} The petition labeled the fourth title as "Secretary to the Vice President of Student Services", but the job description for the position was "Executive Secretary to the Vice President of Student Services."

implementing a marketing plan for the College. The College, therefore, asserts that the duties of the IPS and the SSS-ME make them managerial executives under the Act, alleging these titles formulate and effectuate College policy and practice.

The College further claims that the Administrative Assistant to the Director of the New Jersey Statewide Transfer Program (Administrative Assistant) is both a managerial executive and a confidential employee within the meaning of the Act and, thus, is also not appropriate for inclusion in the unit. The College argues that this employee has access to confidential information related to staff performance and disciplinary issues of unit members, as well as confidential information relating to developing salary increases and health benefit items. Further, according to the College, the title has access to confidential information related to 43 New Jersey College Presidents.

Finally, the College asserts that the position of Executive Secretary to the Vice President of Student Services (Executive Secretary) is also a confidential employee and thus should be excluded from the unit. According to the College, she has access to the evaluations and disciplinary matters involving unit members, and she types and processes information and decisions related to the grievance procedure.

The Association disputes that the petitioned-for titles are either confidential employees and/or managerial executives under the Act.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2 and 2.6. On February 9, 2005, a Commission staff agent conducted an informal investigatory conference. By June 17, 2005, the parties submitted position statements along with supporting documents, including job descriptions, in support of their respective positions. On November 4, 2005, I wrote to the parties informing them of my findings and intended decision. The College requested and was granted an extension of time to file a response to my intended decision, however, no responses were received from either party. Based on our investigation, these facts appear:

Findings of Fact

1. The Association and the College are parties to a collective negotiations agreement effective from July 1, 1998 through June 30, 2004. That agreement was signed by the parties on June 19, 1998. The recognition clause of the agreement, Article 3, states in pertinent part that the College recognizes the Association as the exclusive representative "for all those full-time permanent employee positions and part-time permanent (minimum of twenty (20) working hours per week) employee positions of the College enumerated in Appendix I (Positions

represented by the Association with Assigned Titles and Grades)."

Appendix I contains a broad list of supportive staff titles.

Negotiations for a successor agreement are continuing.

International Program Specialist (IPS)

2. The IPS position requires a Bachelor's Degree. As stated in its June 11, 2003 job description, the IPS is responsible for planning, coordinating and administering the compliance reporting, recruitment and retention of international students at the College, and is further responsible for implementing programs and policies designed to assist international students in participating in academic programs and pursuing degrees at the College. The position was last advertised on March 4, 2004 and has been held by Adrienne Kekec since April 5, 2004.

The IPS is primarily responsible for administering the Student and Exchange Visitor Information System (SEVIS), a federal program which requires colleges to provide information on international students. The program is designed to enable the federal government to potentially identify terrorists who use educational institutions as a way to enter the United States. In particular, the IPS is responsible for ensuring the accurate reporting of international students' status, including the processing of SEVIS system forms, and monitoring students' progress to verify that they maintain their status. The IPS is

required to make decisions regarding foreign students who are in the United States under an F-1 visa, including whether or not the student is complying with the law governing his/her F-1 status. In this regard, the IPS has the unfettered discretion to determine whether or not a foreign student continues to meet the requirements of the F-1 visa and, if not, to terminate that status and report the termination, per SEVIS.

Previously, the Director of Recruitment had been responsible for the SEVIS program, but workload concerns resulted in the creation of the IPS position. Approximately 90% of the IPS's work is related to SEVIS.

3. The IPS also interacts and cooperates with the U.S. Citizenship and Immigration Service under the U.S. Department of Homeland Security. Specifically, the IPS has duties involving the National Security Entry-Exit Registration System. Under this program, international students from certain countries must register with the Department of Homeland Security and keep the government informed of their whereabouts. The IPS is the designated official at the College who is required to ensure that foreign students comply with the program.

4. Additionally, the duties of the IPS involve student testing relating to English as a second language and student placement. Specifically, the IPS reviews transcripts of courses taken by international students to determine whether or not they

warrant College credit, and further acts as a liaison between the students and their foreign schools. Moreover, the IPS assists international students who are preparing to transfer to other institutions and further provides enrollment verification letters to international students as necessary, including letters to Social Security, the Division of Motor Vehicles and diplomatic representatives of their native countries, and prepares reports for College offices requesting such information.

In addition, the IPS makes presentations to community groups; assists in preparing the College catalogue, course schedule brochure and international student packet; and assists in maintaining the College's international website. Finally, the IPS assists at the front counter and answers telephones.

Student Services Specialist-Military Education (SSS-ME)

6. The SSS-ME title requires a Bachelors Degree and is internally referred to as the Military Education Specialist. The position was first advertised on October 21, 2003 and has been held by Teresa Burke since November 10, 2003.

According to its September 29, 2004 job description, the SSS-ME is responsible for supporting all aspects of the Student Services unit of the College. Her duties include establishing and maintaining accurate student records; providing friendly and knowledgeable student services; appropriately applying College policies, rules, and procedures; protecting student privacy

rights under federal law and college policy; and engaging in continuous service improvement.

The SSS-ME is primarily responsible for marketing and appropriately operating the military education program at the College. She recommends and compiles the course offerings for the military education program, and coordinates the courses offered with the requirements of certain other institutions. Further, the SSS-ME creates and forwards surveys to students from McGuire Air Base and Fort Dix to evaluate the College's course selections. She also develops and markets the military education program by recruiting prospective students, through conducting open houses, advertising in appropriate publications and distributing flyers. Moreover, she processes applications, registers new and continuing students, processes student drop/adds and withdrawals, and counsels students on degree and course requirements.

7. The SSS-ME is also a member of the Military Base Planning and Advising Committee; this Committee reviews course selection issues, schedules, and considers other matters relating to the military education program; Burke exercises unfettered discretion while participating in the Committee's decisions. Further, she coordinates the Air Force Community College, as well as other on-base universities, on general education requirements needed for transferring to the College. Moreover,

the SSE-ME assists the McGuire and Fort Dix Education Center on students' grades, applications, registrations and withdrawal refunds. In addition, the SSS-ME conducts a resume writing workshop at Fort Dix, and when there proctors the weekly Basic Skills Assessment.

8. The SSS-ME's duties also include advertising for adjunct instructors and she is the College's first contact with those instructors. Further, the SSS-ME is the primary link with the College's 15 adjunct instructors during the semester and works with them to resolve any issues. In addition, the SSE-ME handles student complaints about any adjunct instructors.

Finally, the SSS-ME is responsible for developing staff and student procedures regarding equipment, weather issues, and program contact phone numbers.

Administrative Assistant to the Director of the New Jersey Statewide Transfer System Program

9. The Administrative Assistant position was advertised on March 16, 2001 and has been held by Lynne Devericks since June 18, 2001. According to its May 10, 2001 job description, this title is responsible for managing the overall office operation of New Jersey's new Statewide Transfer Initiative, including areas such as budget, field staff, student workers, data entry personnel and administration of partnerships with 57 New Jersey colleges and universities to offer a web-based data information and electronic transfer system.

The Administrative Assistant creates office policies and procedures concerning issues such as time and expense reporting, budget, events, public information and part-time staff, which are then submitted to the Director for his approval. The Administrative Assistant also manages the administrative functions of the New Jersey Transfer Marketing/Public Information campaign. Specifically, she selects the appropriate direct mail house for segmented labels/e-addresses; develops job descriptions for and hires temporary staff to package one million promotional pieces; negotiates with vendors for public relations items; and manages the public relations/advertising budget and determines expenditures accordingly.

10. The Administrative Assistant also creates systems and policies for N.J. Transfer's Budget Management, inventory control, invoices, and Commission on Higher Education contract oversight. She also manages equipment and furniture purchases and leases, and further manages and develops administrative policies and systems for over 100 yearly events, including registrations, equipment leasing, exhibits, materials distribution and site preparation.

In addition, the Administrative Assistant oversees a part-time clerical employee, student workers, outside temporary staff and volunteers. She also develops administrative policies for listing college and university recruitment events on the

"Recruitment Events" page on the N.J. Transfer web site and manages this page containing over 900 listings. She also communicates with college and university deans, directors and counselors about requests to list recruitment events on the site.

11. Moreover, when the Director is unavailable, the Administrative Assistant reads and responds to e-mails and confidential matters needing immediate attention. Further, Devericks has access to matters related to staff performance, disciplinary issues of unit employees, and budget issues involving developing salary increases and health benefits items. Finally, according to the job description provided by the College, the Administrative Assistant handles "confidential information to include payroll, employee contracts, confidential contracts with the Commission office, and correspondence with all [43] New Jersey college presidents."

Executive Secretary to the Vice President of Student Services

12. The Executive Secretary position is currently held by Joanne Pennisi. By memorandum of March 19, 2004, the College redesignated the title as a confidential employee.

According to its August 2004 job description, the Executive Secretary performs a variety of complex, confidential and executive secretarial duties requiring a thorough knowledge of organizational procedure and precedents. Specifically, she types and processes information and decisions involving activities

under the jurisdiction of the Vice President of Student Services, including the second step of the contractual grievance procedure; she also prepares, types and files evaluations of unit members, and is privy to their disciplinary matters.

13. The Executive Secretary also deals with salary and budget information for College employees, as well as employment actions initiated or conducted by the Vice President of Student Services, including preparation of documents related to hiring, disciplinary actions, staffing plans, promotions, terminations and/or investigations of potential employee misconduct relating to students and/or student services. She is also involved with projects pertaining to the Executive Staff, Office of the President, and/or Board of Trustees, prepared by the Dean or Vice President of Student Services; further, she deals with student code of conduct investigations, including preparation of documents for hearings and for review and/or action by outside legal counsel.

14. The Executive Secretary also prepares, types and distributes various correspondence, including the issuance and interpretation of operation procedures; maintains an appointment calendar; handles scheduling of conferences and meetings; prepares materials for review and types recommendations. Further, she maintains a record of Student Services staff attendance and records leave requests, and also assists in

monitoring divisional and departmental budgets under the supervision of the Vice-President of Student Services. In addition, Pennisi opens, sorts, and distributes mail, keeps a record of and maintains office supplies, and supervises student workers.

Finally, the Executive Secretary maintains a file system for administrative files, procurement requisitions and memo invoices; coordinates the commencement ceremony; and answers phones, responding sensitively to questions or redirecting them if appropriate.

ANALYSIS

A clarification of unit petition is used to resolve a question concerning the scope of a collective negotiations unit described in a Commission certification and present in a contractual recognition clause. It is appropriately filed where the majority representative has identified and petitioned-for personnel in newly-created titles during the contract period in which the new title is established, and prior to the execution of the next successor agreement. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); see also, Morris Cty. Voc. Tech. Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992); Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987); Rutgers Univ., D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); County of Bergen (Bergen Pines Hospital), D.R. No. 80-20, 6 NJPER

61 (¶11034 1980); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977).

Here, it appears the four petitioned-for titles were created during the contract period which began on July 1, 1998 and expired on June 30, 2004. Specifically, it appears that the International Program Specialist title was created on or about June 11, 2003; the Student Services Specialist-Military Education title was created in or around October 2003; the Administrative Assistant was created in or around March 2001, and the Executive Secretary was created in May 2004. The instant petition was filed on October 26, 2004. The parties have not yet executed a successor contract; therefore, the petition is timely filed. Morris Cty Voc-Tech Bd. of Ed., D.R. No. 93-4, 18 NJPER 483 (¶23220 1992).

N.J.S.A. 34:13A-3(f) defines managerial executives as:

...persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall only include the superintendent or other chief administrator, and the assistant superintendent of the district.

The Commission established the standards for determination of managerial executive status in Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1981). In New Jersey Turnpike Authority v. American Federation of State, County and Municipal Employees, Council 73, 150 N.J. 331 (1997), the Supreme Court

reviewed the Montvale standard. It excised the requirement that an employee must exercise organization-wide power in order to fit within the managerial executive exception and approved the following test as formulated in Montvale and restated by the Supreme Court:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. . . . Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. N.J. Turnpike Authority, 150 N.J. at 356.

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

. . . whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.

The Commission has narrowly construed the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); 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); 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);

Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and the preparation for these processes. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), aff'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood. Knowledge of information which is confidential because it concerns security or personal matters but is unrelated to the negotiation process is not the type of confidential duties covered by the Act.

The College claims that the IPS and SSS-ME titles are managerial executives under the Act. The College notes that the IPS is responsible for establishing and implementing plans to further the College's relationship with international students. Further, the College claims the SSE-ME is a managerial executive because she makes policy within the sphere of the military education program and regularly exercises discretion concerning that program. For example, she effectively recommends course offerings for the program, is responsible for developing procedures

for staff regarding equipment, weather issues and contact phone numbers, and is a member of the Military Base Planning and Advising Committee and exercises discretion with regard to its decisions.

(See Findings of Fact Nos. 6-8.)

Having considered all the facts, however, I do not find the duties of the IPS and the SSS-ME make them managerial executives under the Act. The IPS does not possess and exercise a level of authority and independent judgment sufficient to affect broadly the College's purposes or means of effectuation of these purposes. Rather, it appears the title possesses authority in a specific, limited area involving the College's dealings with international students. The discretion exercised by the IPS is within the parameters established by the federal government under the SEVIS and National Security Entry-Exit Registration System programs. Under these circumstances, I find that the IPS is not a managerial executive. Ensuring enforcement or compliance with existing guidelines without independent discretion does not constitute effectuating management policies. N.J. Turnpike Authority, 150 N.J. 331, 356; see also Washington Township, D.R. No. 2003-16, 29 NJPER 44 (¶44 2003) (where their authority with respect to most standard operating procedures, administrative policies and personnel policies was circumscribed by sets of written policies, fire captains lacked sufficient independent authority to qualify as managers).

Likewise, I do not find that the SSS-ME formulates management policies and practices or directs the effectuation of such management policies and practices, warranting a finding of managerial executive status. Rather, it appears her duties, like those of the IPS, are within a confined realm, involving the student services unit of the College and, particularly, its military education program. While she does have some authority and discretion with regard to the Military Base Planning and Advisory Committee, wherein she develops some procedures for staff and students, this authority and discretion is within a limited area. She simply does not possess and exercise a level of authority and independent judgment to affect broadly the College's purposes or means of effectuation of these purposes. Thus, I find that the SSS-ME is not a managerial executive under the Act and, therefore, is appropriate for inclusion in the unit.

The College further asserts that the Administrative Assistant, Lynne Devericks, is both a managerial executive and a confidential employee under the Act. According to the College, she is a managerial executive because she develops and administers policies in the areas of budget, public information, time and expense reporting, events, workshops and recruitment, and manages equipment leases and supervises certain individuals.

The College further claims that the title is also a confidential employee, because Devericks has access to confidential

information from 43 New Jersey College presidents, along with confidential information regarding performance, disciplinary matters, and developing salary increase and health benefit issues for unit employees.

Having considered the facts, however, I find that her duties do not make her a managerial executive or a confidential employee under the Act. Devericks does not possess and exercise a level of authority and independent judgment sufficient to affect broadly the College's purposes or means of effectuation of these purposes, so as to warrant a finding of managerial executive status. Rather, her duties are within the limited area of the operation of New Jersey's Statewide Transfer Initiative. Further, although her duties include creating and administering office policies and procedures for items such as time and expense reporting, budget, events, public information and part-time staff, these policies and procedures must ultimately be submitted to the Director for his approval. (See Findings of Fact Nos. 9-10.) Thus, the title lacks the authority and discretion of a managerial executive under the Act; instead it appears that Devericks' duties are essentially administrative functions not indicative of managerial executive status. See e.g. Borough of Edgewater, D.R. No. 92-27, 18 NJPER 230 (¶23103 1992).

Further, I find that the Administrative Assistant is also not a confidential employee under the Act. While the College claims that she has access to certain confidential budgetary issues involving developing salary increases and health benefits issues, and further has access to disciplinary information regarding bargaining unit employees, no examples of such confidential information were provided. Nonetheless, even if she has physical access to such information, the employer has not shown how this access would compromise its position in the collective negotiations and/or grievance processing process. See River Dell Reg. Bd. of Ed. Specifically, it does not appear that the Administrative Assistant is privy to any of the College's strategies or proposals before their disclosure to the unions or that she has other direct involvement in the College's conduct of negotiations. Mere access to budget information not specifically relevant to the employer's bargaining position does not indicate confidential status. Monmouth Regional Bd. of Ed.; Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985). Moreover, knowledge of personnel matters unrelated to advance knowledge of grievance or contract strategies is not sufficient to designate a position confidential. Cliffside Park. Access to sensitive information, such as that involving the 43 New Jersey college presidents, does not warrant a finding of confidential status. State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985).

Thus, in the absence of specific facts which would support a finding of confidential status, it appears that the Administrative Assistant is not a confidential employee within the meaning of the Act and is appropriate for inclusion in the unit.

Finally, the College asserts that the Executive Secretary, Joanne Pennisi, is also a confidential employee and should be excluded from the unit. I have reviewed her duties and find that the title should be excluded since she appears to be a confidential employee under the Act.

Specifically, Pennisi types and processes information and decisions coming under the jurisdiction of the Vice President of Student Services, which includes the second step of the contractual grievance procedure. (See Finding of Fact No. 12.) Advance knowledge of such information related to the College's grievance handling strategy and its decision is sufficient to label her position confidential. Cliffside Park. Moreover, she prepares documents relating to employment actions initiated or conducted by the Vice President of Student Services such as hiring, discipline, staffing, promotions, termination and potential employee misconduct. Further, she prepares, types and files evaluations of bargaining unit members. (See Finding of Fact No. 13.) Access to and knowledge of this information could compromise the College's position in the labor relations process. River Dell; Ringwood. Accordingly, it appears Pennisi's functional responsibilities or

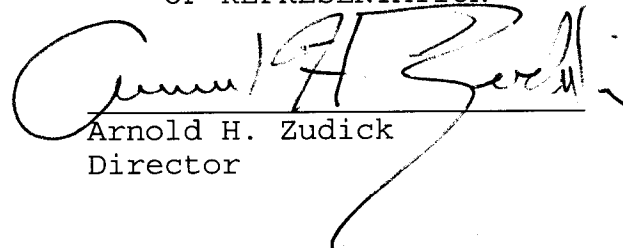
knowledge in connection with issues involved in the collective negotiations process would make her membership in any appropriate negotiations unit incompatible with her official duties.

Accordingly, I find she is a confidential employee within the meaning of the Act and thus should be excluded from the unit.

ORDER

Effective immediately, the Association's unit is clarified to include the International Program Specialist, the Student Services Specialist-Military Education, and the Administrative Assistant to the Director of the New Jersey Statewide Transfer System Program; and to exclude the Executive Secretary to the Vice President of Student Services.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director

DATED: November 30, 2005
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 13, 2005.