

D.R. No. 2009-7

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

In the Matter of

DENNIS TOWNSHIP BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. CU-2008-012

DENNIS TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Dennis Township Board of Education filed a clarification of unit petition seeking to clarify a broad-based negotiations unit of teachers and support personnel to exclude the title, officer of district technologies. The Board asserts that the officer of district technologies is a confidential employee within the meaning of the Act. The Director of Representation found that the Board's intention to use the officer of district technologies to prepare scattergram projections specifying the parameters of the Board's negotiations positions and to maintain the negotiations portal of the Board's website for use during negotiations with the Association, which are set to begin in September 2009, warrants a finding of confidential status.

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Appearances:

For the Public Employer/Petitioner,  
Parker McKay P.A.  
(James F. Schwerin, of counsel)

For the Respondent,  
Thomas G. Myers, UniServ Field Representative

DECISION

On November 23, 2007, the Dennis Township Board of Education (Board) filed a clarification of unit petition seeking to clarify a broad-based negotiations unit of teachers and support personnel to exclude the title, officer of district technologies. The unit is represented by the Dennis Township Education Association (Association). The Board asserts that the officer of district technologies is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association objects to the petition, and disputes that the title is confidential.

We have conducted an administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. The parties have filed letters and briefs supporting their respective positions. On October 14, 2008, I wrote to the parties, advising that I was inclined to find that the Board's intention to use the officer of district technologies to prepare collective negotiations scattergram projections was speculative and did not warrant a finding of confidential status. The parties were provided an opportunity to respond. On November 13, 2008, the Board filed affidavits of the business administrator and the officer of district technologies. On November 24, the Association filed a reply. The following facts appear.

The Board and Association signed a collective negotiations agreement which expires on June 30, 2010. The recognition provision of the agreement sets forth this unit:

All regularly employed teachers, speech pathologists, social workers, school nurses, guidance counselors, librarians, bus drivers, instructional aides, non-instructional aides, bus aides, bus mechanic, custodians, maintenance employees, PC network specialists, and non-confidential secretaries and clerks.

On October 18, 2007, the parties signed a settlement agreement on an unfair practice charge (Dkt. No. CO-2008-007). A provision of the agreement required the Board to file a clarification of unit petition contesting the "PC tech position" by November 18, 2007. The petition was filed on November 23,

2007, five days after the 30-day period ended. It is understood by the parties that the "PC tech position" actually refers to the officer of district technologies title. The parties dispute whether the title is presently included in the unit.

John W. Murphy currently holds the title of officer of district technologies. He reports to the director of curriculum and instruction. The job description for the disputed title provides that the goal of the officer of district technologies is to work cooperatively with all administrators, faculty and staff in the planning, installation, and maintenance of the Board's maintenance, security, communication, administrative and instructional technologies. The job description also provides that the officer of district technologies will work with the business administrator in formatting and/or transferring or transmitting negotiations materials such as salary or benefits projections, spreadsheets detailing salary guides, and salary percentage computations.

Murphy also maintains the negotiations portal of the Board's website, which began operating in late October 2008. The portal will contain all of the Board's negotiations strategies, calculations, communications, and updates. Murphy certified that the purpose of the portal is to provide open communication between the Board's negotiations committee and the entire Board.

Murphy also certified that he will be responsible for placing confidential labor relations data into the website portal for access limited to the negotiations committee. For example, Murphy certified that he will input the dollar limits within which the Board will remain during negotiations; the give-backs the Board will seek; and concessions the Board will consider.

The Board submitted printouts from its website that show how the Board members will navigate through the website to access the negotiations materials. They must first log-in with a username and password. Several choices then appear on a drop-down menu, one of which is "negotiations committee." When the negotiations committee choice is selected, another drop-down menu appears with the following choices: 1) legal correspondence; 2) DTEA communications & documentation; 3) DTAA [Dennis Township Administrators Association] communications and documentation; 4) committee proposals; and 5) current contracts.

The Board noted that out of its concern that the unit may be clarified to include the disputed title, it refrained from assigning Mr. Murphy any tasks during the recent negotiations between the Board and the Dennis Township Administrators Association. Those negotiations are now completed. Preparations for negotiations with the Association are scheduled to begin in September 2009.

ANALYSIS

The Board asserts that the officer of district technologies is a confidential employee within the meaning of the Act because he will be working with the business administrator to prepare scattergram projections of the Board's negotiations positions, and he will maintain the negotiations portal of the Board's website.

The Association asserts that the job description for the officer of district technologies demonstrates that the employee working in the title would only have a "passing familiarity" with negotiations materials. It avers that his job is only to maintain the hardware, and not to determine Board strategy or its negotiations positions. The Association also contends that the current holder of the officer of district technologies title, formerly a district custodian, raises doubts about the new title's involvement in the negotiations process and of his understanding of negotiations materials.

A clarification of unit petition is appropriate to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition written in a Commission certification, or set forth in the parties' recognition agreement. A petition seeking to exclude assertedly confidential employees is appropriate at any time. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251

(1977). Accordingly, I find that the petition is procedurally appropriate. I also find that the officer of district technologies is a confidential employee.

N.J.S.A. 34:13A-3(g) defines confidential employees as those ". . . 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's policy is to narrowly construe the term, confidential employee. Ringwood Bd. of Ed. P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988); 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). In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

[W]e scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and 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 [were] included in a negotiating unit.  
[Id. at 510]

In New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997) (N.J. Turnpike Auth.), our Supreme Court approved the standards articulated in State of New Jersey and 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 507 (¶16179 1985) (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.]

See also River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983), req. for rev. den. P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984)).

The key to confidential status is an employee's knowledge of materials used in the labor relations process including contract negotiations, contract administration, grievance handling, and



the preparation for these processes. See State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). Employees may be found to be confidential where their supervisor's role in the labor relations process and their own duties expose them to confidential matters. See W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971); Salem Comm Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell.

The Commission is cautious in finding confidential status because the disputed employee will be exempt from the rights and protections of the Act. N.J.S.A. 34:13A-5.3. Where such a determination relies upon "speculation or conjecture as to job function," the Commission will not exclude the disputed employee from the unit. See Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989); Wayne Tp., P.E.R.C. No. 87-82, 13 NJPER 77 (¶18035 1986). And, an employee's mere access to information is not a sufficient reason for finding confidential status. See N.J. Turnpike Auth.; Downe Tp. Bd. of Ed., D.R. No. 2005-3, 30 NJPER 388 (¶125 2004); Evesham Tp. Fire District No. 1, D.R. No. 99-4, 24 NJPER 503 (¶29233 1998); Ringwood Bor., D.R. No. 93-19, 19 NJPER 196 (¶24093 1993); Little Ferry Bd. Of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980); Cf. Oakland Bd. Of Ed., D.R. No. 99-9, 25 NJPER 66 (¶30025 1998).

The Commission has found confidential status when the employer intends to use an employee in the labor relations process and the performance of confidential duties is imminent. Mt. Laurel Bd. of Fire Commissioners District One, P.E.R.C. No. 2001-50, 27 NJPER 132 (¶32050 2001) (business manager found to be confidential on employer's representation that he would be involved in future negotiations); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988) (bookkeeper was confidential because board planned to have her assist the accounts payable clerk in preparing scattergrams).

In High Bridge Bd. of Ed., D.R. No. 2002-13, 28 NJPER 247 (¶33093 2002), the Director determined that the newly-created title, secretary to superintendent/middle school principal was confidential, although she had not yet handled negotiations-related materials. She was expected to be involved with contract negotiations and administration.

The officer of district technologies position has been included in the Association's unit since November 19, 2007, the day after the date by which the Board had agreed to file a clarification of unit petition, under the terms of the parties' settlement agreement.

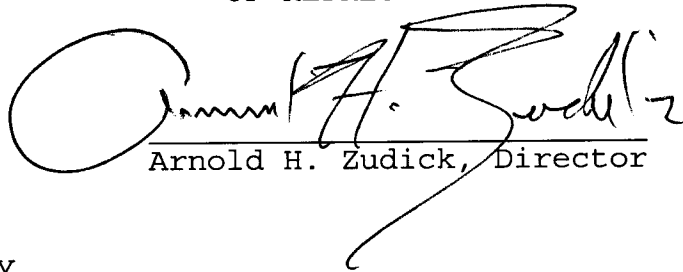
Applying confidential employee standards to this case, I find that the Board's intention to use the officer of district technologies to prepare scattergram projections specifying the

parameters of the Board's negotiations positions and to maintain the negotiations portal of the Board's website for use during negotiations with the Association, which are set to begin in September 2009, warrants a finding of confidential status.

ORDER

The unit is clarified to exclude the officer of district technologies.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick, Director

DATED: February 5, 2009  
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 February 17, 2009.