

D.R. No. 2011-11

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

In the Matter of

TOWNSHIP OF HOWELL,

Public Employer,

-and-

Docket No. CU-2011-008

TWU LOCAL 225 BRANCH 4,

Petitioner.

SYNOPSIS

The Deputy Director of Representation dismisses a clarification of unit petition filed by Transport Workers Union of America, Local 225 seeking to include the newly created "payroll administrator" title in an existing unit of full-time and regular part-time employees of the Township of Howell. The Deputy Director finds that the payroll administrator is a confidential employee under the Act and therefore must remain outside the certified negotiations unit.

D.R. No. 2011-11

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

In the Matter of

TOWNSHIP OF HOWELL,

Public Employer,

-and-

Docket No. CU-2011-008

TWU LOCAL 225 BRANCH 4,

Petitioner.

Appearances:

For the Public Employer,
Cleary, Giacobbe, Alfieri and Jacobs, attorneys
(Adam Abramson, of counsel)

For the Petitioner,
O'Brian, Belland and Bushinsky, attorneys
(Jeffrey Caccese, of counsel)

DECISION

On September 28, 2010, the Transport Workers Union of America Local 225, Branch 4 (TWU or Local 225) filed a clarification of unit petition seeking to clarify its unit of full-time and regular part-time employees of the Township of Howell (Township) to include the title, payroll administrator.

The Township opposes the petition, arguing that the payroll administrator is a newly created confidential title within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), rendering it ineligible for inclusion in any negotiations unit.

The TWU asserts that the job duties of the payroll administrator are the same as those assigned to a former unit title, "senior payroll clerk" demonstrating that the payroll administrator is not a confidential employee.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. By letter dated March 28, 2011, I advised the parties of my tentative findings and conclusions and invited responses. Neither party filed additional submissions. The disposition of the petition is properly based upon our administrative investigation. No disputed substantial material facts require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. I find the following facts:

The TWU and the Township signed a collective negotiations agreement extending from January 1, 2008 through December 31, 2010. The recognition provision defines the negotiations unit as ". . . all regular full-time and all regular part-time employees working twenty (20) hours or more, employed by the Township," excluding among others, confidential employees. The senior payroll clerk title is included in the negotiations agreement at Appendix B.

The parties agree that in about June, 2010, the person holding the senior payroll clerk title retired and the position has been left vacant. Soon after the June retirement, the

Township posted a notice seeking applicants for the title, "payroll administrator." The parties agree that the title had not previously existed. In or about August 2010, the Township hired Jeanine Burness, a non-employee applicant, for the payroll administrator title.

The senior payroll clerk worked for and reported directly to the Township's Chief Financial Officer. The payroll administrator works for and reports directly to Township Manager Schlegel, who is responsible for all labor negotiations, arbitration, settlements and grievances.

Both titles require: gathering and checking information from each Township department's payroll, data collection, calculation of payroll, maintaining records regarding employee time sheets, payroll and benefits data input, transfer of data to computer records, processing employee requests for beneficiary changes, retirement, and loan applications, among other record maintenance and reporting tasks related to employees' compensation and benefits.

The payroll administrator is required, under the job description, to assist the Township Manager in "creating, analyzing and/or collecting payroll data for collective negotiations and grievances and providing administrative studies and recommendations related to employee benefits." The senior payroll clerk description does not include these functions.

The payroll administrator, under the job description, is also responsible for providing "logistical support for issues related to negotiations" and communicates directly with the Township's labor counsel in preparing for collective negotiations and grievances. The senior payroll clerk description does not set forth similar responsibilities.

The payroll administrator job description requires the employee holding the title to assist in maintaining and ensuring the confidentiality of records and files, to assist the Township Manager with the responsibility of contract negotiations, drafting proposals and collecting and analyzing all data regarding contracts and negotiations (including salaries, health benefits, vacation, etc.) The payroll administrator also assists the Township Manager with the responsibility of contract settlement payments and arbitrations, administration of the Township contracts and developing and maintaining highly confidential documents of the Township about financial and personnel matters. These functions are not part of those required in the senior payroll clerk position.

The job description for senior payroll clerk does not set forth any experience or educational requirements. The payroll administrator description requires, "a minimum of three (3) years full-time experience in preparing, analyzing and controlling a local government payroll function and knowledge of personnel

rules and regulations and applicable collective bargaining agreements related to personnel and other related records, and their application to specific concepts and situations and [knowledge] of statistical and research theory, practices and procedures." The payroll administrator is located in the same office as the human resource administrator and as such, she is privy to conversations between the human resources administrator and Township Manager regarding all matters concerning Township employees (Burness certification). No other Township employees occupy the same office as the human resources administrator and payroll administrator. The senior payroll clerk was not located in the human resources office.

The payroll administrator is a new title with duties added to those of the former senior payroll clerk. These duties include direct assistance to the Township Manager in developing the Township's position in negotiations, using specific information such as employee compensation, health and benefit contributions and applying this information to develop the Township's proposals regarding layoffs and/or furloughs before any final determination is made and before the unions are notified. Since in or about November 2010, Burness has provided reports and documents to the Township Manager and Human Resources Administrator, and has strategized with both managers concerning

negotiations proposals, layoffs and furloughs for unit members (Schlegel certification; Burness certification).

Ms. Burness was told when she was interviewed for the payroll administrator title that she would be performing functions beyond the general duties of processing payroll. Those duties involve working directly with the Township's human resource administrator during negotiations, including attending negotiations sessions between the Township and TWU and Teamsters and assisting with developing the Township's negotiations proposals and/or grievance processing, including settlement proposals from the Township (Burness certification).

Since, August 9, 2010, when Burness was hired as the payroll administrator, she has reviewed the TWU and Teamsters negotiation agreements, along with the human resources administrator to determine which provisions of the agreements the Township would seek to modify or remove during negotiations. Based upon their review, the Township developed, with Burness's assistance, its first set of proposals. She was aware of these proposals prior to their January 18, 2011 presentation to TWU and Teamsters. She has also worked with the human resources administrator and the Township labor attorney to draft monetary proposals for grievance settlements (Burness certification). Two TWU grievances have been filed since Burgess began her payroll administrator functions.

Ms. Burness provided financial reports/guides to the Township Manager during late February 2010 regarding proposed voluntary furloughs and their possible impact on the Township budget. These reports were completed and submitted before the TWU or any unit employee knew of proposed furloughs. Burness attended two negotiations sessions along with the Township Manager and human resource administrator in December 2010 and January 2011, and was scheduled to attend the February 9, 2011 session (Burness certification). The TWU does not dispute that Burness has attended current negotiations sessions on behalf of the Township along with the Township Manager and human resources administrator. At these sessions, she has provided information to the Township Manager, enabling her to formulate the Township's response and strategy regarding union proposals presented during negotiations.

ANALYSIS

TWU asserts that the payroll administrator's duties are the same as those of the former unit employee, senior payroll clerk, whose duties were not "confidential" within the meaning of the Act.

The Township argues that even if some of the tasks performed by the payroll administrator are similar to those previously performed by the senior payroll clerk, the payroll administrator

has new responsibilities and knowledge related to the collective negotiations process.

The Act 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. 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), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), the Commission explained the approach taken 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), our Supreme Court approved the standards articulated in State of New Jersey. The Court 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 the 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 the 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. [N.J. Turnpike Auth., 150 N.J. at 358]

The key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract administration, grievance handling and preparation for these processes. See Pompton Lakes Bd of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); State of New Jersey (Div. Of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14261 1983).

The Commission is cautious in finding confidential status because the subject employee is not afforded the rights and protections of the Act. The Commission will not base such a

finding on speculation or conjecture of job functions and responsibilities. Pompton Lakes Bd. Of Ed.; Lacey Tp. Bd. Of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20261 1989). It will find confidential status where the duties are clear and the implementation of those duties is certain.

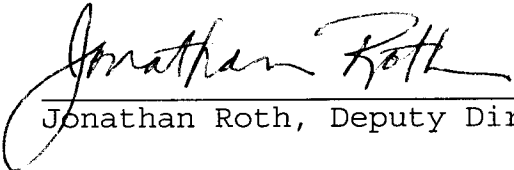
In this case, the payroll administrator performs some of the payroll preparation duties performed by the senior payroll clerk, a former unit title. The Township has demonstrated however, that the payroll administrator performs duties directly associated with the negotiations process and with grievance processing. This conclusion is not speculative; Burness has performed, and will continue to perform functions directly related to collective negotiations with knowledge of the Township's strategies and negotiations proposals before their presentation to TWU or the Teamsters unit.

If the payroll administrator were to be placed into the TWU's unit, the Township's ability to maintain confidentiality with regard to collective negotiations and grievances would be compromised. Accordingly, I find the Township has provided sufficient facts showing that the payroll administrator is a confidential employee within the meaning of the Act and that the TWU collective negotiations unit should be clarified to exclude that title. Accordingly, I dismiss the petition.

ORDER

The unit clarification petition is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Jonathan Roth, Deputy Director

DATED: April 21, 2011
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 May 2, 2011.