

D.R. No. 2011-14

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

In the Matter of

TOWNSHIP OF HOPEWELL,

Public Employer,

-and-

Docket No. CU-2010-017

COMMUNICATION WORKERS OF AMERICA,  
AFL-CIO, LOCAL 1036,

Petitioner.

SYNOPSIS

The Deputy Director of Representation clarifies a non-supervisory unit to include the title, municipal housing liaison. The Deputy Director finds that the municipal housing liaison does not formulate policy and does not have any involvement in the collective negotiations process. Accordingly, the title is neither a managerial executive nor a confidential employee, and is appropriate for inclusion in the unit.

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Appearances:

For the Public Employer,  
Knapp, Trimboli & Prusinowski, LLC, attorneys  
(Fredric Knapp, of counsel)

For the Petitioner,  
Adam Liebttag, President

**DECISION**

On January 4, 2010, the Communication Workers of America, AFL-CIO, Local 1036 (CWA), filed a Petition for Unit Clarification seeking to clarify its collective negotiations unit of non-supervisory, white collar employees of Hopewell Township (Township) to add the title, municipal housing liaison.<sup>1/</sup>

The Township opposes the petition, asserting that the disputed title is a managerial executive and a confidential employee within the meaning of the New Jersey Employer-Employee

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<sup>1/</sup> The municipal housing liaison was formerly the affordable housing coordinator. The parties used both terms in their submissions.

Relations Act, N.J.S.A. 34:13A-1.1 et seq., rendering it ineligible for representation in any unit.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:1-2.2. By letter dated May 13, 2011, I advised the parties of my tentative findings and conclusions and invited responses. No response was filed. The disposition of the petition is properly based upon our administrative investigation. No substantial material facts in dispute require us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following facts:

CWA and the Township signed a collective negotiations agreement extending from January 1, 2010 through December 31, 2012. The agreement was signed on March 8, 2010.

The municipal housing liaison acts as the central information source on the Township's affordable housing issues. The responsibilities of the position include: serving as the point of contact with the State, affordable housing providers, administrative agents, and interested households; monitoring the status of all housing units in the Township's affordable housing plan; compiling, verifying, and submitting reports to the State's Council on Affordable Housing (COAH); and, attending any continuing education or training that COAH requires.

The municipal housing liaison is also charged with certifying households for affordable housing purposes. The certification process includes soliciting and interviewing interested households; interviewing and collecting income data to determine income eligibility for affordable housing; informing applicants of their eligibility; ensuring that applicants complete required paperwork; and creating and maintaining a list of those eligible for affordable housing. The position is also responsible for marketing affordable housing, and furnishing deed restrictions and mortgages to attorneys and closing agents.

No employees report to the municipal housing liaison. The Township plans to hire staff to report to the liaison at an undetermined, future date. The municipal liaison officer currently has no involvement with collective negotiations, grievance processing, contract administration, or access to confidential labor relations materials. The Township anticipates that the position will involve labor relations duties upon the hiring of subordinates.

The municipal housing liaison reports directly to the Township Administrator. It also reports to the Township's Affordable Housing Committee and the Hopewell Township Non-Profit Housing Corporation. The municipal housing liaison provides regular reports to both entities. The Township certifies that the municipal housing liaison:

makes management recommendations to [the Township's Affordable Housing Committee and the Hopewell Township Non-Profit Housing Corporation];

advise[s] the Affordable Housing Committee and the Hopewell Township Non-Profit Housing Corporation on policy and decisions are based on upon her recommendations;

advises the Affordable Housing Committee and the Hopewell Township Non-Profit Housing Corporation on significant purchases and they are made based on her recommendation; [and]

manages the Affordable Housing Trust Account.

The municipal housing liaison attends meetings of the Township's Affordable Housing Committee, updating its members about the status of various housing issues. At the January 13, 2010 meeting, the municipal housing liaison brought a requested hardship waiver to the attention of the Committee. The minutes provide in a pertinent part: "It was the unanimous consensus of the [Committee] not to grant the waiver . . ." At the March 9, 2010 meeting, the municipal housing liaison discussed the clean-up required at a property, informing the members of received bids to complete the work. The minutes provide that the Township wished to use funds from the Affordable Housing Trust Fund to pay for the work. A motion to use funds from the Trust was made and seconded by members of the Committee. The Committee then unanimously approved the motion. The meeting minutes of May 11, June 8, and October 12, 2010 also include the Committee's

approval of actions that the municipal housing liaison would pursue.

The municipal housing liaison advised the Township on the status of the Affordable Housing Trust Fund. The Committee discussed an outline of the presentation on June 21, 2010, and approved the format of the presentation at its September 8, 2010 meeting. The presentation included the projected salary for the municipal housing liaison through 2014. It also provided the Township's long-term and short-term strategies to reduce costs, including the reduction of "management scope" and "staffing burden" and exploring shared services.

#### ANALYSIS

N.J.S.A. 34:13A-5.3 grants public employees the right to organize and collectively negotiate but specifically exempts managerial executives from that right. 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. . . .

In New Jersey Turnpike Authority v. AFSCME Council 73, 150 N.J. 331 (1997), our Supreme Court adopted this test to determine managerial authority:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment 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 of 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 Auth., 150 N.J. at 356]

I find that the municipal housing liaison does not meet this definition.

The municipal housing liaison does not "formulate policy" for the Township. The meeting minutes of the Township's Affordable Housing Committee and the Township's description of the municipal liaison officer's relationship with the Affordable Housing Committee indicate that the title recommends alternatives or actions to the Township's governing body, and then the governing body - rather than the municipal housing liaison - makes the decisions. The Township's submissions concede that recommendations from the municipal liaison officer are the basis of the Township's decisions regarding affordable housing policy and significant purchases.

The municipal housing liaison also does not "direct the effectuation of policy." Although she manages the Affordable Housing Trust Fund, the March 9, 2010 meeting minutes demonstrate

that the Affordable Housing Committee ultimately approves expenditures from the fund. The municipal housing liaison has no control over the budget; no authority on staffing decisions; and no ability to commit the employer's funds, indicating that she does not effectuate policy. See Camden Cty. Library Commission, D.R. No. 2008-4, 33 NJPER 298 (¶114 2007).

Lastly, the municipal liaison officer's "recommendations" are not "rubber-stamped" by management. The meeting minutes show that the Committee discusses issues brought before it, and ultimately votes to approve courses of action. Even if the Township's actions are based upon the recommendations of the municipal housing liaison, an employee's mere capacity to recommend management policies is not part of the statutory definition of a managerial executive, nor is it a criterion set forth in the State Supreme Court's test in NJ Turnpike Auth. Therefore, the municipal housing liaison's "input" into management policies does not make the title a manager under the Act. See N.J. Office of the Public Defender, P.E.R.C. No. 99-60, 25 NJPER 55 (¶30022 1998), req. for recon. den. P.E.R.C. No. 2000-35, 25 NJPER 462 (¶30201 1999) (chief investigators not managerial where they provided input into the employer's policy).

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).

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 N.J. Turnpike Auth., 150 N.J. 331, 358; 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 municipal housing liaison neither participates in the Township's collective negotiations process nor has knowledge of materials in the process. Although the Township expects that the municipal housing liaison will have duties related to collective negotiations and contract administration in the future, it has not demonstrated that these duties are to be assigned imminently. Cf. 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 found to be confidential because board planned to have her assist the accounts payable clerk in preparing scattergrams).

The Township contends that the liaison's presentation on the status of the affordable housing trust fund demonstrates that the title is confidential within the meaning of our Act. The

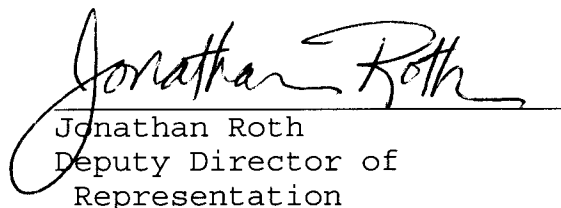
presentation included a projected salary for the municipal housing liaison through 2014, which is not negotiated with the CWA because the title is not currently within the unit. The presentation also included the Township's long-term and short-term strategies to reduce costs, including the reduction of "management scope" and "staffing burden." It also explored "shared services." Finally, the presentation provided no specific facts on how the staffing burden or management scope would be reduced, or how a shared services agreement would be implemented or what its effect would be.

I do not find that a disputed employee's presentation of options to employer representatives on how to reduce expenditures suffices (in and of itself) as a demonstration of confidential status. Accordingly, I find that the title is neither a managerial executive nor a confidential employee. I order that the CWA's unit be clarified to include the title, municipal housing liaison.

ORDER

The unit is clarified to include the title, municipal housing liaison, effective June 8, 2011.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Jonathan Roth  
Deputy Director of  
Representation

DATED: June 8, 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 June 17, 2011.