

D.R. NO. 2014-11

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

In the Matter of

MANCHESTER TOWNSHIP,

Public Employer,

-and-

Docket No. CU-2013-032

OFFICE AND PROFESSIONAL EMPLOYEE
INTERNATIONAL UNION LOCAL 32,

Respondent.

SYNOPSIS

Manchester Township filed a clarification of unit petition seeking to clarify a broad-based negotiations unit of all regularly employed white collar personnel to exclude the title, executive secretary to the chief of police. The Township asserts that the executive secretary to the chief of police is a confidential employee within the meaning of the Act. The Director of Representation found no evidence to suggest the executive secretary to the chief of police performs duties that can be classified as confidential. The executive secretary to the chief of police does not have access to or knowledge of confidential labor relations matters which could compromise the Township's position in negotiations, nor does she type any communications involving the disposition of grievances in advance of disclosure to the majority representative.

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Appearances:

For the Public Employer,
Secare, Ryan & Hensel, attorneys
(Steven Secare, of counsel)

For the Respondent,
Mets Schiro and McGovern, attorneys
(Kevin P. McGovern, of counsel)

DECISION

On May 3, 2013, Manchester Township (Township) filed a clarification of unit petition seeking to clarify a broad-based collective negotiations unit of all regularly employed white collar personnel to exclude the title, Executive Secretary to the Chief of Police. The unit is represented for purposes of collective negotiations by the Office and Professional Employees International Association, Local 32 (Association). The Township contends that the Executive Secretary to the Chief of Police 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 opposes the petition, claiming that the title has always been in the unit, and nothing has changed to warrant its exclusion.

The parties' current collective negotiations agreement extends from January 1, 2012 through December 31, 2014. The disputed title has existed for decades and has always been included in the unit. We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2.

On May 21, 2013, a Commission staff agent issued a letter to the parties requesting detailed facts about the functions and responsibilities of the Executive Secretary to the Chief of Police, as well as the functions and responsibilities of the Chief of Police.

On May 30, 2013, the Township submitted a response to our May 21 letter, which was not accompanied by certifications or sworn affidavits. On May 31, 2013, the Association filed a response that included a certification from Sharon Eastwick (Eastwick), Business Manager for OPEIU, Local 32. Eastwick certifies that "...neither the police chief nor his secretary is privy to confidential personnel or labor relations information relating to the bargaining unit represented by OPEIU Local 32." She certifies that "it is [her] belief that the secretary to the

police chief is not involved in the preparation of the budget and does not have access to the budget until after it is adopted."

On June 10, 2013, following an investigatory conference among the parties and a staff attorney, it was agreed that the petition would be held in abeyance for thirty days to provide them with an opportunity to resolve the matter. On July 12, 2013, the Township requested that the petition be held an additional sixty (60) days while the parties continued their efforts to resolve the matter. The request was granted. On September 13, 2013, the Township advised that the parties were unable to resolve the matter. The parties were then given a final opportunity to submit additional information to support their positions.

On October 2, 2013, the Township submitted a certification from Amanda Jensen (Jensen), the Executive Secretary to the Chief of Police. Jensen certifies that she is responsible for "...formulating budget and expense policies by preparing budget spreadsheets and calculating both operating expenses, capital expenditure projections and salary and wage projections." She also certifies that among other administrative tasks, her duties include "[r]eviewing the PBA contract and making recommendations for changes and amendments that will impact personnel policies."

On October 7, OPEIU submitted a certification from Pat Mongiardini (Mongiardini), the former Executive Secretary to the Chief of Police. Mongiardini certifies that during her tenure as Executive Secretary to the Chief of Police, she "...did not have any access to confidential labor relations materials because all labor relations matters were handled by and through the Business Administrator's office." She also certifies that she "...did not have advance knowledge of the Township's negotiations strategy, its proposals, or its tactics." She also certifies that she "...had no involvement in the grievance process."

On November 25, 2013, we issued a letter to the Township requesting specific examples of PBA contract provision changes Jensen recommended to the Chief of Police, and when those recommendations were made. The letter also requested Jensen's date of hire and the date that the PBA contract expires. On the same date, the Township filed a letter advising that Jensen's date of hire was July 29, 2013 and that the PBA contract expires on December 31, 2014. The letter did not respond to the request for specific examples of contract language changes Jensen has recommended.

Jensen reports to the Chief of Police. The job description for the disputed title reveals that her responsibilities include but are not limited to, "...typ[ing] confidential matters for the Division's administrative staff;" "attending departmental

hearings...and maintain[ing] disciplinary files...;" "receiv[ing] incoming calls;" "schedul[ing] appointments and meetings...;" "assist[ing] and analyz[ing] financial and personnel information for budget preparation and related personnel matters;" "preparation of biweekly payroll;" and "prepar[ing] a variety of letters, memos, forms, and reports."

Confidential employees are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). N.J.S.A. 34:13A-3(g) defines "confidential employees" of public employers other than the State as:

[E]mployees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating 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 (¶166 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, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained our approach in determining whether an employee is confidential:

We scrutinize 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. [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), adopted 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).

In addition, the Commission has held that mere access to personnel files, or advance knowledge of employee personnel information unrelated to management's handling of grievances or the negotiations process, does not render an employee confidential, as that term is defined by our Act. Bloomfield Public Library, D.R. No. 2011-9, 37 NJPER 153 (¶47 2011); See also Camden Bd. of Ed., D.R. No 2007-6, 32 NJPER 383 (¶159 2006) (clerks' mere access to background information they gathered in support of grievances and their mere access to sensitive information in the office did not establish that employees had advanced knowledge of the decisions management rendered); Downe Tp. Bd. of Ed., D.R. No 2005-3, 30 NJPER 388 (¶125 2004) (technology trainer's mere access to all computer files in the district was insufficient to make her a confidential employee within the meaning of the Act).

Applying the facts in this matter to the standards set forth above, I find that the Executive Secretary to the Chief of Police is not a confidential employee within the meaning of the Act. The facts do not show that Jensen performs duties that can be classified as confidential. There have been no collective negotiations since Jensen was appointed to the position and, thus, there has been no opportunity to handle materials related to negotiations. Although the Commission has found confidential status based upon a public employer's intention to assign

confidential duties, no facts suggest that the Township intends to have Jensen perform such tasks, imminently. See Cliffside Pk. Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988) (bookkeeper also found to be confidential because employer planned to have her assist the accounts payable clerk in preparing scattergrams); High Bridge Bd. of Ed., D.R. No. 2002-13, 28 NJPER 247 (¶33093 2002) (secretary to board superintendent/middle school principal found to be confidential based upon expectation that holder of title will type confidential memoranda, etc., in advance of disclosure to majority representative).

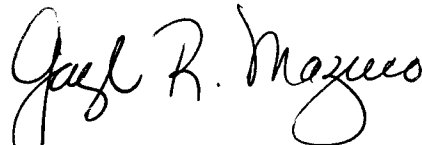
Jensen's job description provides that she is responsible for assisting in the analysis of budget and expense information, and assists and analyzes financial and personnel information for budget preparation and related personnel matters. However, we will not find confidential status when an employer fails to specifically identify facts demonstrating that the employee's budget participation results in that employee knowing confidential negotiations strategies. Evesham Tp. Fire Dist #1, D.R. No. 99-4, 24 NJPER 503 (¶29233 1998); Monmouth Reg. Bd. of Ed., D.R. No. 94-10, 20 NJPER 16 (¶25009 1993). Here, the Township has not submitted any specific facts demonstrating that Jensen's budget involvement, if any, results in her knowledge of the Board's confidential negotiations strategies.

Furthermore, no facts suggest that any of Jensen's duties give her access to or knowledge of confidential labor relations matters which could compromise the Township's position in negotiations. No evidence suggests that Jensen will be responsible for typing proposals for negotiations or typing communications involving the disposition of grievances in advance of disclosure to a majority representative.

The Township submitted a letter on December 23, 2013 advising that Jensen is also responsible for typing responses to union grievances, disciplinary charges, and the results of internal affairs investigations. The letter further states that Jensen's duties relating to grievances and discipline are performed prior to the individual employee or union receiving notice. However, the letter was unaccompanied by certifications, sworn affidavits, or written examples.

Applying our statute and case law under the circumstances presented in this case, I find that the title, executive secretary to the chief of police is not confidential within the meaning of the Act. The petition is dismissed. If, after a reasonable period of time, the Township believes that the duties

Jensen actually performs renders her confidential in the collective negotiations process, it may file another clarification of unit petition.



Gayl R. Mazuco
Director of Representation

DATED: December 27, 2013
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 January 9, 2014.