

D.R. NO. 2015-3

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

In the Matter of

PASSAIC COUNTY,

Public Employer,

-and-

Docket No. CU-2014-004

AMERICAN FEDERATION STATE COUNTY
MUNICIPAL EMPLOYEES, COUNCIL 52
LOCAL 2273,

Petitioner.

SYNOPSIS

The Director grants the clarification of unit petition filed by A.F.S.C.M.E. Council 52, Local 2273 (Local) seeking to restore two clerks to its unit of non-supervisory employees staffing Preakness Healthcare Center (Preakness), which is owned and operated by the County of Passaic (County). The County closed the personnel department at Preakness, in which the clerks had previously worked, and transferred them to the County's human resource office. The Director concludes that the petitioned-for clerks are not confidential employees because the County did not establish how, as a result of their transfer, they possessed functional responsibility or knowledge that would compromise the County's right to confidentiality in the collective negotiations process. The Director declines to exclude the petitioned-for clerks based on the County's allegation that they no longer share a community of interest with the Local's unit. The Director explains that the County did not demonstrate a sufficient change in circumstance to permit reconsideration of the community of interest in the context of a clarification of unit petition. Finally, the Director concludes that the parties' recognition clause does not prevent the petitioned-for clerks' inclusion in the Local's unit. The Director reasons that the policies underlying the Act favor limiting the Local's representation to those County employees who primarily assist Preakness in its governmental mission, rather than those who remain physically located at Preakness.

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Appearances:

For the Respondent,
Genova Burns & Giantomasi, attorneys
(Jennifer Roselle, of counsel)

For the Petitioner,
Zazali, Fagella, Nowak, Kleinbaum & Friedman, attorneys
(Paul Kleinbaum, of counsel)

DECISION

On August 22, 2013, A.F.S.C.M.E. Council 52, Local 2273 (Local or Union) filed a clarification of unit petition seeking to restore two clerks to its unit of non-supervisory employees staffing Preakness Healthcare Center (Preakness), which is owned and operated by the County of Passaic (County or Employer). The two clerks previously worked in the personnel department at Preakness until May 2013, when the County closed that office, transferred the two clerks to the County's human resources office and removed the clerks from the Local's unit.

The County opposes the petition. It contends that the clerks are confidential within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., rendering them ineligible for inclusion in any negotiations unit. Alternatively, the County argues that the transferred clerks no longer share a community of interest with the Local's unit and no longer meet the express terms of the parties' contractual recognition provision. The Local denies that the clerks are confidential; contends that their transfer does not outweigh all the other relevant factors that establish a community of interest; and maintains that the recognition provision does not restrict the unit's scope to employees physically located at Preakness.

On October 23, 2013, we conducted an exploratory conference with the parties concerning the proposed clarification. The parties were unable to reach a voluntary resolution at the conference. We investigated the facts concerning this petition. N.J.A.C. 19:11-2.2. By letter dated December 18, 2013, we requested both parties to provide certifications or sworn affidavits in support of their respective positions on the issue of whether the transferred employees are confidential. The parties timely filed responses on February 14, 2014. The County in part argued that the petitioned-for employees lack a community of interest with the Local's unit. In response, we asked the

Local to submit a position statement regarding the community of interest. Its letter was filed on May 19, 2014, together with additional certifications.

The County provided the certification of its Human Resources Director, Barbara De Spirito. The Local provided the certifications of Staff Representative Terry Woodrow, as well as the two transferred clerks, Adelaide Fernandes and Francine Wood.

By letter dated December 12, 2014, I advised the parties of my tentative findings and conclusions. I invited the parties to respond in writing by the close of business on December 23, 2014, if they believed my tentative determinations were incorrect or that there were new material facts that should be brought to my attention. The Local's timely response expressed its agreement with our analysis and tentative findings. As of the date of this decision, the County did not submit a response.

The disposition of this petition is properly based upon our administrative investigation. No substantial material factual disputes exist that would require an evidentiary hearing.

N.J.A.C. 19:11-2.6. I find the following facts.

On November March 18, 1974, the Commission issued a Certification of Representative to the Local after a contested election in the following unit: "All blue and white collar employees employed by the Board of Managers of Preakness Hospital and the Board of Chosen Freeholders of Passaic County, but

excluding professional and craft employees, policemen, and supervisors within the meaning of the Act."

The parties' current negotiations agreement extends from July 1, 2012 through June 30, 2016. Article III, "Recognition" defines "employee" as follows: "any person holding a position by appointment or contract or employment in the service of the public employer, at Preakness Healthcare Center, Passaic County, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions." According to the certification of Staff Representative Terry Woodrow, about 325 employees comprise the Local's unit.

Barbara De Spirito has been employed as the County's Human Resources Director since February 25, 2009. Francine Wood and Adelaide Fernandes began working for the County at Preakness in December 1999 and April 2001, respectively. Both employees have held clerical positions only. The County promoted both to the title of Keyboard Clerk 2 on April 9, 2011.

On or around May 6, 2013, both Wood and Fernandes were transferred from Preakness' personnel office to the County Human Resources Department. Human Resources Director De Spirito certifies that their transfer was a result of the County's effort to consolidate all human resources functions in the County's main human resources office. De Spirito certifies that the goals of the consolidation were to provide a centralized location for all

County employees to receive information and to increase the consistency of the information provided.

The County's human resources office is located on the fourth floor of the building at 401 Grand Street, Paterson, New Jersey. Director De Spirito and the senior employee benefits clerk have separate offices. Wood and Fernandes and the remaining staff members sit at desks in an open floor plan space. A gate separates the employees' work area from a small waiting area.

The remaining human resources staff members include one part-time keyboarding clerk I, one full-time keyboarding clerk II, one employee in the title administrative secretary, and another in the supervisory title, keyboarding clerk IV. Director De Spirito sits at the apex of the County's organizational chart for the Human Resources Department. The administrative secretary, keyboarding clerk IV and senior employee benefits clerk sit directly beneath De Spirito. The rest of the clerks, including Wood and Morales, are at the bottom of the chart.

The County deems all employees in the human resources office to be "confidential" as that term is defined by the Act. All of the human resources employees are unrepresented for purposes of collective negotiations.

Director De Spirito certifies that she oversees all leaves of absence, personnel actions, benefit entitlements and staffing levels for the County. She certifies that Ms. Peterman,

keyboarding clerk IV, is responsible for daily oversight of the human resources staff. Although there is no formal evaluation system, Peterman is responsible for bringing performance issues to De Spirito's attention. Peterman also recommends office appointments and terminations to De Spirito. De Spirito certifies that she and Peterman can impose discipline on the human resources staff. De Spirito certifies that Peterman is the immediate supervisor of Wood, Fernandes, and the rest of the human resources clerks. Wood and Fernandes certify however, that De Spirito is their immediate supervisor, evaluates their work performance, and has the authority to impose discipline on the human resources employees. When Wood and Fernandes worked at Preakness, the assistant nursing home administrator had the authority to evaluate their job performance and to impose discipline.

The business hours for the human resources office are 8:30 a.m. to 4:30 p.m., Monday through Friday. While at Preakness, Wood and Fernandes worked 8:00 a.m. to 4:00 p.m. and 9:00 a.m. to 5:00 p.m., respectively. The human resources staff receives a one-hour lunch break. Before their transfer, Wood and Fernandes received a thirty minute lunch break, and a fifteen minute break period.

The salaries of Wood and Fernandes did not change when they were transferred. Their removal from the unit resulted in a loss

of a \$500 yearly educational stipend and a 2% salary increase in January, 2014. Excepting the Director, the senior benefits clerk and the part-time clerk, the salaries of the human resources staff fall in the low 30K to high 40K range.

The civil service job specification for Wood's and Fernandes' title, keyboarding clerk 2, provides a detailed description of the title in the definition section. It explains that the title of keyboarding clerk 2, "[u]nder limited supervision, performs moderately complex and non-routine clerical work involving the processing of documents in a variety of functions . . . requiring the utilization of keyboarding or typing skills" and "other duties as required." The job specification also provides a non-exhaustive list of work examples, such as the following: "operates a computer console . . . or other key entry device to key, enter or type a variety of documents, maintain memory files of them, and provide necessary corrections and adjustments in the prepared text;" "receives, screens, reviews and verifies documents;" "compiles information and/or numerical data;" "provides information in person or over the telephone;" and "maintains records and files." The title requires one year of clerical experience, which may be substituted for successful completion of a clerical training program in an accredited school, as well as demonstrated proficiency in keyboarding or typing.

The County characterizes the work of Wood and Fernandes as confidential, and asserts that they are responsible for processing all personnel matters for all County employees as a result of their transfer from Preakness. De Spirito certifies that Wood is responsible for FMLA processing, medical leave, workers' compensation leave, military leave and nurse licensing. De Spirito explains that these duties are similar to Wood's previous job duties at Preakness. De Spirito certifies that Wood is also responsible for processing terminations and resignations. De Spirito certifies that Fernandes is responsible for conducting new-hire orientations and promulgating documents in civil service discipline matters, including terminations. According to De Spirito, Fernandes continues to process education reimbursements and license renewals, as she did at Preakness.

The Local characterizes the work of Wood and Fernandes as primarily clerical, and disputes that their job duties substantially changed after their transfer from Preakness. Wood certifies that while she was assigned at Preakness, she was responsible for processing leave application, workers' compensation reports, resignations, retirements, terminations, address changes, disability applications, nurse licensing, employee attendance cards and OSHA reports. She certifies that her job duties at the County office are the same as those at Preakness, except she no longer processes attendance cards or

OSHA reports. After the transfer, Wood was trained on E-Verify systems and to enter license and leave of absence paperwork in the ADP system for county-wide employees. Fernandes certifies that at Preakness she was responsible for processing new hires' interview applications and evaluations, disciplinary notices, salary changes, full-time/part-time employee status changes and certification reimbursement for nurses' aides. Fernandes certifies that her job duties have remained the same as those at Preakness. After the transfer, Fernandes also enters new hire information into the ADP system and was trained to cover the office's administrative secretary on the finance and board meeting report.

Wood and Fernandes continue to interact with employees who work at Preakness. De Spirito certifies that interaction occurs when Preakness employees require the assistance of the human resources office and when the office provides in-house support to Preakness employees on a rotating basis. Wood and Fernandes certify that all of their work duties before the transfer focused on Preakness employees, and after the transfer, Preakness employees comprise an estimated 85% and 90% of their work duties, respectively. They further certify that as a result of the transfer, their primary form of interaction with Preakness employees has changed to telephone communications, but the frequency of the interaction has remained the same. Fernandes

certifies that she travels to Preakness at least four days per month to assist its employees. Wood and Fernandes certify that to the best of their knowledge, they are the only clerks in the County office that handle Preakness employee issues. Both certify that their current work duties are predominantly in the service of Preakness employees.

Both the County and the Local agree that Wood and Fernandes are not involved in any aspect of collective negotiations, contract administration, grievance administration, negotiations preparation, grievance processing or arbitration. Both parties agree that Wood and Fernandes do not have access to and knowledge of confidential labor relations information. De Spirito certifies that Fernandes is responsible for compiling supporting documents related to disciplinary action and Commission matters, such as unfair practice proceedings.

Director De Spirito certifies that the County Administrator, Deputy County Administrator and department heads generally represent the County in collective negotiations. De Spirito also certifies that Wood and Fernandes, as clerks, are not involved in contract administration, contract negotiations, grievance processing, preparation for negotiations or arbitration. De Spirito certifies that Wood and Fernandes do not create budgeting strategies for the human resources office, but assist her in compiling supporting documentation to justify the

expenditures in a proposed budget. De Spirito explains that her administrative secretary is instrumental in developing the initial budget draft.

The remaining clerks in the human resources staff appear to support a wide variety of personnel matters. Another employee, who shares the same title as Wood and Fernandes (keyboarding clerk II), is responsible for employment eligibility verification and record-keeping, Medicare Part B retiree reimbursements, distributing pension and benefit documents to payroll, and logging certain civil service information such as disciplinary actions and leaves. The senior benefits clerk is responsible for processing all medical, prescription, dental, social security, retiree and COBRA benefits to County employees. She testifies on behalf of the County regarding rights to benefits in grievance arbitrations and participates in the development of strategies for those matters. Finally, she conducts exit interviews for County employees. Another employee in the title of keyboarding clerk I audits retiree health benefits on a part-time basis for the human resources office. All of the clerks, including Wood and Fernandes, conduct routine office tasks, such as answering phones and filing.

ANALYSIS

A. Confidential Status

The County asserts that the petitioned-for clerks should be excluded from the Local's unit because they are confidential within the Act's meaning. The County contends that Wood and Fernandes are confidential employees as a result of their transfer because they are privy to all information that passes through the main human resources office. There is no limit to their access. Wood and Fernandes work in the main office in an open floor plan alongside the other human resources employees, who have all been deemed confidential by the County. The staff participates in all aspects of the human resources function for the County, and works with documents related to unfair practice charges, grievances, budgetary information and employee discipline.

The Local asserts that the petitioned-for titles should be clarified to remain in its unit. It contends that Wood and Fernandes do not have any responsibilities or knowledge that would compromise the County's right to confidentiality in the collective negotiations process. They are essentially clerical employees. The Local notes that it is undisputed that they were not confidential employees at Preakness and maintains that their transfer to the human resources department did not significantly alter their job duties. The Local denies that Wood and Fernandes

have access to confidential labor relations information. Citing Camden Bd. of Ed., D.R. No. 2007-6, 32 NJPER 383 (¶159 2006), the Local also notes that mere access to confidential information is generally insufficient standing alone to establish confidential status and that sensitive personnel information is not necessarily confidential for the purposes of our Act.

The Act defines confidential employees of public employers other than the State, 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. N.J.S.A. 34:13A-3(g).^{1/}

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 510 (¶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

^{1/} Effective January 18, 2010, the New Jersey legislature modified the statutory definition of confidential employee for State of New Jersey employees only by creating a more stringent test to establish confidential status. That standard does not apply to County employees.

right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit.

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 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. [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." Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); see also State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). This type of knowledge must be distinguished from "knowledge of information which is confidential in the traditional sense or definition because it concerns security or personal matters" since the latter understanding on its own "is not sufficient to remove employees based upon the definition of a confidential employee within the meaning of the Act." Camden Bd. of Ed., D.R. No. 2007-6, 32 NJPER 383 (¶159 2006) (citing Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988); State of New Jersey, 11 NJPER at 510).

The Commission is cautious in finding confidential status because the subject employee is not afforded the Act's protections and, therefore, speculation or conjecture about job functions cannot provide the basis for such a determination. Pompton Lakes Bd. of Ed., 31 NJPER at 75 (citing Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989)). However, confidential status will be found where the employee has the potential of coming in contact with confidential information,

even though the she has not actually performed the duty. Twp. of Wayne v. AFSCME, 220 N.J. Super. 340, 345-46 (App. Div. 1987).

The Act does not "require that the assignment of duties of a confidential nature be regular and continuous as a condition for finding an employee to be confidential." Scotch Plains Tp., D.R. No. 84-11, 5, 9 NJPER 632, 633 (¶14270 1983) (citing Dover Tp., D.R. No. 79-19, 5 NJPER 61, 62 (¶10040 1979)). Finally, if the future job functions to be performed are clear and implementation is certain, then future circumstances may be considered in the evaluation of confidential status. Montgomery Tp. Bd. of Ed., D.R. No. 93-12, 19 NJPER 96, 97 (¶24044 1993).

I find that the County did not meet its burden of providing facts demonstrating that the disputed clerk titles are confidential within the meaning of our Act. The certifications from both the human resources director and the employees concur that Wood and Fernandes, as clerks, have no access to or knowledge of confidential labor relations information and have no role in the preparation of confidential labor relations material to be used in negotiations. Other than Director De Spirito's certification that Fernandes compiles supporting documents for disciplinary and Commission matters, all agree that Wood and Fernandes are not involved in contract administration, contract negotiations, grievance administration, negotiations preparation, or arbitration. Therefore, no facts demonstrate that Wood and

Fernandes, as clerks in the human resources department, have access to or knowledge of confidential labor relations information to warrant their exclusion from the unit.

In essence, the County's argument centers on the access that Wood and Fernandes now have as a result of their transfer to the information flowing through the human resources office. I find this reasoning unpersuasive.

We have consistently held that mere access to confidential information is insufficient to establish confidential status, absent some showing such access reveals how an employer will assess or use the information in connection with issues involved in the collective negotiations process. See e.g., Manchester Tp., D.R. No. 2014-11, 40 NJPER 304 (¶116 2013) (citing Bloomfield Public Library, D.R. No. 2011-9, 37 NJPER 153 (¶47 2011); Camden Bd. of Ed., D.R. No 2007-6, 32 NJPER 383 (¶159 2006); Downe Tp. Bd. of Ed., D.R. No 2005-3, 30 NJPER 388 (¶125 2004). Thus, the human resources department's open floor plan and the lack of limits placed on the staff's right of access to information do not warrant the clerks' exclusion from the unit.

Additionally, the type of information accessible to Wood and Fernandes as clerks is not confidential within the meaning of the Act. Both the County's and the Local's certifications show that Wood and Fernandes are currently responsible for various personnel matters, including leave requests, workers'

compensation, resignations, retirements, address changes, licensing, educational reimbursement, new-hire orientations and discipline. The rest of the human resources staff also handles typical personnel matters, such as employment eligibility verification, retiree reimbursements, pension and other benefits processing. As discussed above, our case law recognizes that this information, while sensitive, is not presumptively confidential under our Act. See Camden Bd. of Ed., 32 NJPER at 387-88; Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339, 340 (¶19128 1988). The County does not explain how Woods' and Fernandes' access to such sensitive information demonstrates that these employees have functional responsibilities or knowledge that would compromise the County's right to confidentiality concerning collective negotiations process, such as advance knowledge of the employer's grievance or negotiations strategies.

Accordingly, I find that the County has not provided sufficient facts to establish that the petitioned-for clerks are confidential within the meaning of the Act.

B. Community of Interest

The County next argues that the petitioned-for employees should remain excluded because they no longer share a community of interest with the Local's unit as a result of their transfer from Preakness. The County asserts that although their general

duties may be similar to those they performed at Preakness, all other aspects of their employment at the human resources office separate them from the Local's unit. Specifically, the County contends that the focus and goals of Wood and Fernandes have changed due to the transfer because they are now attuned to the personnel policies and procedures for all County employees, not just those at Preakness. Consequently, they are privy to all information that flows through the human resources office. It notes that the transfer changed the employees' work hours. Wood and Fernandes currently work from 8:30am to 4:30 pm with a one hour lunch break, whereas at Preakness, they worked from 8:00am to 4:00 pm and 9:00 am to 5:00 pm with a half hour lunch break, respectively. They also no longer share a similar supervisor with the Preakness employees represented by the Local.

The Local contends that the petitioned-for employees continue to share a community of interest with the Local's unit, despite their transfer from Preakness. The Local emphasizes that community of interest determinations involve a multi-factor inquiry, and location is merely one consideration. Wood and Fernandes have similar job duties at the human resources office as they did at Preakness. Their work and goals continue to be centered on the personnel needs of Preakness employees. They both continue to regularly interact with Preakness employees, and Fernandes visits the facility several times per month. They have

the same salary, eight hour workday, employer, and ultimate supervisor (the board of freeholders), as they did when they were assigned to Preakness. Therefore, the Local submits that the effect of the employees' transfer on the unit's community of interest is de minimis.

A clarification of unit petition seeks to determine whether a particular title falls within the scope of an existing unit with an established representational status. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) (distinguishing clarification of unit petitions from other representation petitions). In such cases, the Commission will examine the particular job duties of each petitioned-for title to determine whether the title is within the scope of the unit definition. Id. at 251. "[I]t is inappropriate to utilize a clarification of unit petition to enlarge or diminish the scope of the negotiations unit." Id. at 251.

Our caselaw disfavors disturbing established negotiations units through clarification petitions based on an asserted lack of community of interest, absent changed circumstances. Univ. of Med. and Dentistry of New Jersey, D.R. 96-6, 22 NJPER 49, 50 (¶27025 1995); Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986) (dismissing board's clarification of unit petition seeking to remove classroom aides from a unit of bus drivers and aides, and place them into the teachers' unit). For

example, in University of Medicine and Dentistry of New Jersey, the University filed a clarification of unit petition, seeking to remove librarians from their current faculty unit and place them into recently certified units for professional employees. The University contended that the librarians should be included with the recently certified professional units because they have a greater community of interest with other professional employees than with the faculty. No facts demonstrated changed circumstances or a substantial change in job duties. The Director dismissed the University's petition, reasoning that an alleged "lack of community of interest is not sufficient to alter a title's unit placement." Id. at 50. To permit otherwise, would enable changes to a titles' majority representative through a clarification petition, rather than the filing of a representation petition as required. Id. at 51 (citing Clearview Reg'l Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977)).

"Changed circumstances" under our caselaw contemplates a specific meaning, such as the creation of a new title, new operation, or new facility. See Clearview Reg. Bd. of Ed., 3 NJPER at 251. Substantial alteration of an employee's job duties has also been recognized as a sufficient change in circumstance for purposes of a clarification of unit petition. Univ. of Med. and Dentistry of New Jersey, 22 NJPER at 50; Belleville Bd. of

Ed., 12 NJPER at 483; West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973).

However, not every change in working condition amounts to a changed circumstance. See e.g., Passaic Cty. Bd. of Social Services, D.R. No. 98-1, 23 NJPER 438, 440 (¶28201 1997) (discovery of titles' personnel classification not a sufficient change in circumstances); Belleville Bd. of Ed., 12 NJPER at 51 (subsequent creation of other appropriate negotiations unit not a sufficient change in circumstances). While a reorganization could potentially satisfy the threshold requirement of a changed circumstance, our caselaw typically has recognized reorganizations when they occur in tandem with other major changes in working conditions. See Essex Cty., H.O. No. 2003-1, 28 NJPER 438 (¶33162 2002) (analogizing the county's transfer of nearly forty county welfare division employees to its restructured and renamed economic development department and its retitling of the transferred employees as "employment specialist" to a "new operation" for purposes of the clarification of unit petition); Fair Lawn Bd. of Ed., D.R. No. 78-22, 3 NJPER 389 (1977) (explaining petitioner did not waive its right to clarify twenty newly hired "support teachers" into its unit of certificated personnel, where the support teacher program was a new operation that resulted in a reorganization of the entire district's elementary reading and mathematics programs and

reflected the board's written educational policy decision to provide individualized instruction); c.f. Park Ridge Bor., D.R. No. 86-6, 12 NJPER 37 (¶17014 1985) (clarified building maintenance worker out of white collar unit and into blue collar unit as a result of a departmental reorganization).

I find that the County has not established changed circumstances. The clerk title is not new, nor is the human resources office a new operation or facility. The clerks' change in work location from Preakness to the main human resources office, absent more, does not demonstrate sufficient change in circumstances, based on our precedent. The only remaining potential basis for demonstrating changed circumstances is whether the clerks' transfer from Preakness substantially altered their job duties. Both the Local's and the County's certifications show that the petitioned-for clerks' job duties are similar to their duties when they worked at Preakness. After the transfer, Wood continues to process a variety of leave requests, workers' compensation matters, and nurse licensing. After the transfer, Fernandes continues to process education reimbursements for nurses aides and regularly provides on-site assistance to Preakness staff. Although Wood and Fernandes have some added duties and training as a result of the transfer, their primary focus continues to be to support the personnel needs of the Preakness staff. Therefore, I find that the County has not

met its burden of producing sufficient facts to demonstrate a substantial change in job duties. Acknowledging that the clerks' transfer to the main office makes them privy to information that passes through it, I find that the County has not shown how such access substantially changes their job duties.

Given that the County has not provided sufficient facts to establish the threshold requirement of changed circumstances, the County's "community of interest" argument cannot be considered. Our caselaw prohibits the County from removing the clerks from the Local's otherwise appropriate unit, to which the disputed titles had belonged.

C. Recognition Clause

Finally, the County asserts that the recognition provision in the collective negotiations agreement entitles the Local to represent only those employees who happen to be assigned at Preakness. It contends that this definition is consistent with the general bargaining history in the County, inasmuch as the County has multiple, smaller units specific to locations and interests, rather than broad-based units. The Local maintains however, that the County's reading is too restrictive and that the provision instead describes unit employees as those ". . . in the service of the public employer, at Preakness Healthcare Center."

As noted above, Article III, "Recognition" of the parties' contract defines "employee" as follows: "any person holding a position by appointment or contract or employment in the service of the public employer, at Preakness Healthcare Center, Passaic County, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions." There are essentially two possible interpretations of the parties' recognition clause. The first would limit the Local to representing those County employees who are physically located at Preakness. The second would limit the Local to representing those County employees who primarily assist Preakness in its governmental mission.

I conclude that the County's interpretation is too narrow of a standard for determining the proper scope of the Local's unit. Under the County's favored approach, a title's inclusion or exclusion from a unit depends solely on work location. Therefore, the Local could potentially seek to include a non-supervisory employee in an unrepresented title to its unit, whose job duties are wholly unrelated to serving Preakness, merely because the employee has an office at Preakness. If we would not read the parties' recognition clause to support the inclusion of a title on such a narrow basis, then it is also an insufficient basis to justify a title's exclusion. The County could abrogate a unit employee's rights under the Act merely by transferring

that employee to another building. Such a result does not comport with the clarification of unit process, which is "to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition contained in a Commission certification, or as set forth in the parties recognition agreement." Clearview Reg. Bd. of Ed., 3 NJPER 251 (1977). Nor does it provide a sufficient modicum of predictability that is fundamental to the negotiations relationship.

The description of the negotiations unit that we certified about forty years ago varies somewhat from the recognition provision in the parties' existing agreement; the former not susceptible to the location-restrictive interpretation now advanced by the County. Moreover, the County did not provide in its certifications examples of negotiations units that are specifically restricted to locations, a concept of which we have been critical. See Fair Lawn Bor., P.E.R.C. No. 2013-50, 39 NJPER 300 (¶100 2013) (describing our policy preference for broad-based units over those structured along occupational or departmental lines as a "well settled principle of law" citing State of N.J. and Professional Ass'n of N.J. Dept. of Ed., P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972), rev'd NJPER Supp. 2d 14 (¶7 App. Div. 1973), rev'd 64 N.J. 231 (1974).

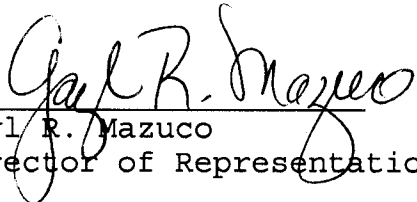
Even if the County had provided certified examples, we would decline to sustain its argument under the facts of this case. The two disputed employees are not confidential within the meaning of the Act, and are entitled to be represented for the purposes of collective negotiations, as they had been for years. The lack of alternative negotiations units available to these clerks also weighs in favor of their continued inclusion in the Local's unit. See e.g., West New York, D.R. No. 2002-1, 27 NJPER 339 (¶32121 2001) (explaining "[t]he Act favors collective representation for public employees who so desire it.")

Therefore, the second interpretation provides the more workable standard for defining the scope of the Local's unit. The Local's 1974 certification for "all blue and white collar" employees demonstrates that the original unit included all of Preakness' non-supervisory, nonprofessional staff, and the disputed clerk titles continue to fit this description. The petitioned-for clerks have long been represented by the Local. Despite their transfer, the petitioned-for clerks primarily provide support for Preakness employees, and interact frequently and predominantly with them.

In short, I find that the County has not provided any statutory basis, changed circumstances or contract language that would prevent the petitioned-for titles' inclusion in the Local's unit.

ORDER

The unit is clarified to include the petitioned-for title of clerk, effective immediately.



Gayl R. Mazuco
Director of Representation

DATED: January 2, 2015
 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 16, 2015.