

D.R. NO. 2014-6

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

In the Matter of

PARAMUS BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2013-022

PARAMUS EDUCATIONAL SECRETARIES ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a broad-based unit of clarification of secretarial/clerical personnel employed by the Paramus Board of Education to exclude the title payroll coordinator. The Director found that the payroll coordinator is a confidential employee under the Act as she does more than just prepare raw data for use in negotiations. She is also advised in advance of negotiation positions and strategies of the Board and prepares scattergrams in connection with the negotiations process.

D.R. NO. 2014-6

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

In the Matter of

PARAMUS BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2013-022

PARAMUS EDUCATIONAL SECRETARIES ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer,
Adams, Stern, Gutierrez & Lattiboudere, LLC, attorneys
(Cherie L. Adams, of counsel)

For the Petitioner,
Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION

On February 11, 2013, the Paramus Association of Education Secretaries (Association) filed a clarification of unit petition seeking to clarify a broad-based negotiations unit of secretarial/clerical personnel employed by the Paramus Board of Education (Board) to include the title payroll coordinator. The Board opposes the petition, asserting that the title is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., and thus inappropriate for inclusion in the negotiations unit.

We have conducted an administrative investigation. N.J.A.C. 19:11-2.2 and 2.6. Specifically, on May 15, 2013, a Commission staff agent conducted an informal investigatory conference to gather information. The Board submitted a position statement, letter and supporting documents including job descriptions and certifications. On July 12, 2013, I wrote to the parties, advising that we were inclined to clarify the unit represented by the Association to exclude the title payroll coordinator. The parties were provided an opportunity to reply. Neither party filed a response. Our review of all the submissions reveals the following facts.

The Board and Association signed a collective negotiations agreement that is effective from July 1, 2011 through June 30, 2014. The recognition provision of that agreement defines the unit as:

. . . all secretarial/clerical personnel,
under contract, employed by the Board during
the term of [the] Agreement, but excluding:

The Secretary to the Superintendent

The Secretary to the Assistant
Superintendent/Administration/Curriculum

The Secretary to the Business Administrator/
Board Secretary

On December 17, 2012, the Board authorized the title payroll coordinator and on or about January 1, 2013 the position was

filled by Lois Larro (Larro). The parties dispute whether the title is presently included in the unit.

The payroll coordinator reports to the business administrator/board secretary. Larro certifies that her responsibilities include, among other things, ". . . preparing reports and analysis to support negotiations and other contract related requests by administration." Business Administrator Steven Cea (Cea) certifies that the payroll coordinator, along with the assistant business administrator/board secretary and himself, has "unrestricted access to the Board's budget system." According to Cea, ". . . the payroll coordinator is to use the budget system for the verification process to ensure, along with the Human Resources Coordinator, that the proposed budget will cover projected salaries, and as such has access to the amount budgeted for salary adjustments on unsettled contracts." Further Cea certifies that "Ms. Larro has created Projected Salary Reports and scattergrams which will be relied upon by the Board in its negotiations with the teachers' union and the administrators' union. The reports and data compilations address salary increases at a range of percentage points determined by the Board to be within their fiscal ability to provide. These are directly reflective of negotiation positions and strategies of the Board." Cea certifies that Ms. Larro is made aware of the Board's negotiation position on salary increases when she is

advised of what percentage range to insert in order to create these reports and scattergrams. Cea asserts that "[i]t is necessary that the payroll coordinator continue to be a confidential employee due to her role in creating the data and reports relied upon by the Board in its collective bargaining negotiations."

ANALYSIS

A clarification of unit petition is appropriately filed where the majority representative has identified and petitioned for newly-created titles or positions during the contract period in which the new title was established and prior to the execution of the next succeeding contract. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370 (¶30160 1999); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980) Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). Here, the Board abolished the bookkeeper/payroll title and created the new position of payroll coordinator. This occurred during the period of the Association's 2011-2014 collective agreement. By its petition filed February 11, 2013, the Association seeks to include the payroll coordinator title in its unit. Therefore, this petition is appropriate and timely filed. Bor. of Somerville, D.R. No. 2005-17, 31 NJPER 132 (¶57 2005); Burlington Cty. College, D.R. No. 2006-5, 31 NJPER 382 (¶150 2005).

The Board opposes the Association's petition, asserting that the payroll coordinator is a confidential employee within the meaning of the Act. The Board explains that the payroll coordinator works with the board administrator/board secretary and assistant business administrator/board secretary to prepare projected salary reports, data compilations and scattergrams directly reflective of the Board's confidential negotiation positions and strategies. They assert that the payroll coordinator's job duties place her in direct conflict with other members of the negotiations unit. They suggest that if she were to be placed in the negotiations unit, she would assertedly "be tasked with having to choose between the Board's interests and [her] own self-interests as a member of an employee organization."

The Association asserts that the Board changed the job description of the bookkeeper/payroll title to payroll coordinator to "give the appearance of the creation of a confidential position that is ostensibly the same."

N.J.S.A. 34:13A-3(g) defines confidential employees of public employers other than the State of New Jersey 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), our Supreme Court approved the standards articulated in State of New Jersey and explained:

. . . 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. [Id. at 358.]

Accordingly, the test in each instance is employee-specific. 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 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). 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.

For instance, 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).

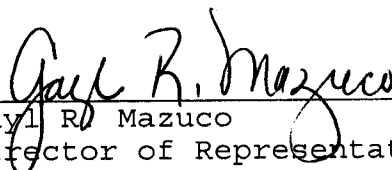
In Tp. of Vernon, D.R. No. 2002-3, 27 NJPER 354 (¶32126 2001), the Director found the secretary to the police chief was a confidential employee - even in the absence of collective negotiations - following her appointment to the position. Her predecessor had assisted the chief in negotiations and in the processing of grievances. The secretary was found to be confidential because the Township planned on employing her in the same capacity as her predecessor.

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.

I disagree with the Association's position that the payroll coordinator title is ostensibly the same as the bookkeeper/payroll title, which is included in the recognition clause of the parties' collective agreement. Pursuant to the job

descriptions and certifications provided, it is apparent that, unlike the bookkeeper/payroll title, the payroll coordinator is responsible for assisting with collective negotiations. The payroll coordinator "prepares reports and analyses to support negotiations and other contract related requests by administration." Conversely, the bookkeeper/payroll title has no responsibility for assisting with negotiations or negotiations preparation.

The certifications provided by the Board show that the payroll coordinator does not only prepare raw data for use in negotiations; she is advised in advance of negotiation positions and strategies of the Board and prepares scattergrams in connection with the negotiations process. I agree with the Board that if the payroll coordinator was included in the unit, it would place her in an untenable position of divided loyalties. I therefore find that the payroll coordinator is a confidential employee within the meaning of the Act and is excluded from the unit represented by the Association.


Gayl R. Mazuco
Director of Representation

DATED: September 5, 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 September 16, 2013.