

D.R. NO. 89-11

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

In the Matter of

ATLANTIC COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. CU-H-89-2

ATLANTIC COMMUNITY COLLEGE  
ORGANIZATION OF SUPERVISORY AND  
ADMINISTRATIVE PERSONNEL, NJEA,

Petitioner.

SYNOPSIS

The Director of Representation grants Atlantic County College's Motion for Summary Judgment and dismisses ACCOSAP's Petition to include the director of public relations in a unit of full time professional, supervisory and administrative personnel. The director of public relations prepared a strike plan in anticipation of a job action. The Director finds the position confidential.

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Appearances:

For the Public Employer  
Louis J. Greco, Esq.

For the Petitioner  
N.J.E.A.-Higher Education  
(Jerry Veldof, Field Rep.)

DECISION

On July 15, 1988, the Atlantic Community College Organization of Supervisory & Administrative Personnel/NJEA ("ACCOSAP") filed a clarification of unit petition with the Public Employment Relations Commission ("Commission") seeking to include the director of public relations in a collective negotiations unit of all full time professional, supervisory and administrative personnel employed by Atlantic Community College ("College").

A Commission staff attorney asked the parties to submit statements and documents in support of their position at an August 15, 1988 conference. Neither party responded. We concluded that

substantial and material factual issues existed which would more appropriately be resolved following an evidentiary hearing. See N.J.A.C. 19:11-1.6. Accordingly, a Notice of Hearing was issued on November 17, 1988.

On December 8, 1988, the College submitted a Motion for Summary Judgment with supporting documentation. The College contends that it is entitled to summary judgment because the director of public relations is a confidential employee and does not possess the right of collective representation. ACCOSAP did not file a response.

A motion for summary judgment may be granted if it appears from the pleadings, together with briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant is entitled to its requested relief as a matter of law. A motion for summary judgment, however, is to be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion; all doubts are to be resolved against the movant and the summary judgment procedure is not to be used as a substitute for plenary trial. Baer v. Sorbello, 177 N.J. Super 182, 185 (App. Div. 1981); Essex Cty. Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

The parties entered into a collective negotiations agreement effective from July 1, 1984 through June 30, 1987. On August 22, 1985, the parties agreed to exclude supervisory and

administrative members of the president's staff, including Kathy Corbalis, the director of public relations. On April 18, 1988, the College reorganized the chain of command so that Corbalis reports to the dean of institutional development.

Since Corbalis is no longer a member of the president's staff, ACCOSAP maintains that she should be included in its unit. The College asserts that she is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g).

Corbalis has been the director of public relations for five years. Her duties include: writing and editing news releases and other college publications; speaking to media representatives about college activities; providing media coverage of college events; coordinating radio and TV appearances of College personnel; establishing procedures for regularly scheduled printing production of informational materials; participating in College planning and marketing activities; preparing departmental bids and quotes and performing other related duties as assigned by the president.

Corbalis handles all College communications with the media, general public and College community, including those involving labor relations. She represents the College to the media. She meets with Dr. William Orth, the college president, to outline College statements to the media and to discuss communications strategies. Corbalis advises Orth before he prepares public responses to bargaining unit statements and other labor issues.

Anticipating a strike during the spring of 1988, Orth asked Corbalis to make a strike plan. Corbalis created a crisis plan providing for communications with the public, staff and students during a strike. It details the chain of communications as well as how to speak to the press.

N.J.S.A. 34:13A-3(g) defines confidential employees as:

...employees 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 key to confidential status is an employee's access to and knowledge of the issues involved in labor relations processes, including negotiations, contract administration, grievance handling and the preparation for these functions on management's behalf.

State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983); County of Essex, D.R. No. 84-7, 9 NJPER 574 (¶14239 1983).

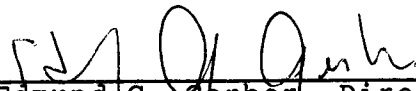
In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission explained how it determines whether an employee is confidential:

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]

The strike plan necessarily contains the College's strategies in the event of a strike. If Corbalis was included in the negotiations unit, her knowledge of the strike plan would compromise the College's right to confidentiality concerning its strategies in the collective negotiations process.

Under all of the circumstances of this case, we find the director of public relations is a confidential employee within the meaning of the Act. We grant the College's motion for summary judgment and dismiss ACCOSAP's petition to include the director of public relations in its negotiations unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director  
of Representation

DATED: January 12, 1989  
Trenton, New Jersey