

D.R. NO. 92-23

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Public Employer,

-and-

Docket No. CU-91-46

EAST BRUNSWICK PROFESSIONAL
MANAGERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of primary level supervisors represented by East Brunswick Professional Managers Association to include the title of comptroller. The Director finds that the comptroller is not a confidential employee and includes the title in the negotiations unit effective immediately.

D.R. NO. 92-23

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Public Employer,

-and-

Docket No. CU-91-46

EAST BRUNSWICK PROFESSIONAL
MANAGERS ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Petitioner
Steve Williams, President

DECISION

On April 5, 1991, the East Brunswick Professional Managers Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to include the title of comptroller in the recently certified collective negotiations unit of primary level supervisors employed by the Township of East Brunswick ("Township"). The Township objects to the inclusion asserting that the title is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g) ("Act").

On February 5, 1992, I sent a letter to the parties indicating my inclination to include the comptroller in the bargaining unit. The Township submitted a reply on February 24, 1992. Based upon an administrative investigation into the issues raised by this petition, the following facts appear. N.J.A.C. 19:11-2.2.

A representation election was conducted for the collective negotiations unit of primary level supervisors on March 22, 1991, as directed in D.R. No. 91-26, 17 NJPER 177 (¶22076 1991). The comptroller voted subject to challenge by the Commission. A Certification of Representative issued on April 2, 1991, certifying the Association as the majority representative, this petition was filed.

The Township's department of finance is made up of the divisions of finance/treasury, with 4 employees, and revenue collection with 22 employees. The finance/treasury division is headed by the comptroller, Carol Nemeth ("Nemeth"). Nemeth reports directly to the finance director along with the collector of revenue, an accounts control clerk and a payroll clerk. Nemeth supervises a senior clerk and a secretary.

According to Nemeth's job description, she is generally responsible for maintaining all of the Township's revenue and debt retirement records. Examples of her duties include posting receipts and disbursements from all fund accounts such as current funds, capital funds, utilities, library and trust account; monitoring bank

balances for all funds and making deposits to them necessary to maintain fund levels sufficient for disbursements; investing surplus funds from all funds for revenue enhancement; preparing vouchers for payment of debt service; managing petty cash accounts; and assisting Township auditors in preparing financial statements.

In addition Nemeth prepares a monthly revenue report for the Director based upon data submitted by the division of revenue collections. The revenue report compares the projected or anticipated balances with the actual collected revenues for all fund accounts, indicating whether there is a surplus or deficit. The Director combines the revenue report with the expenditure or appropriations report completed by the accounts control clerk. Both reports are submitted to the Township council.^{1/}

Each November, near the end of the fiscal year, Nemeth works with the accounts control clerk and the finance director in preparing the next year's budget. She prepares the debt service figures and makes any lump sum adjustments or transfers to current accounts, such as to the salary adjustment fund. The finance director reviews this information together with any special reports prepared by his secretary and makes the final budgetary recommendations to the Township council.

^{1/} The expenditure report indicates the free balance in all fund accounts (regular appropriation minus encumbrances and expenses). The expenditure report is distributed to all departments.

Nemeth is also responsible for any special projects assigned to her by the finance director. Her current assignment is to provide a weekly update to the director on medical insurance claim payouts.

The Township argues that Nemeth is confidential because she is in a unique position to determine the Township's bargaining posture. Because Nemeth works directly with the revenue figures for the Township's budget, she is capable of determining the Township's salary proposals.

The Township also claims that Nemeth attends meetings for the finance director and is therefore privy to the same information as the director.

The Association denies that Nemeth is in a position to know what the Township can offer in negotiations. It argues that Nemeth only works with total amounts in general revenue funds. In addition, the Association asserts that the information Nemeth knows becomes part of the public record as soon as the finance director submits the revenue and the expenditure reports to the Township council. The Association claims that Nemeth has never been asked to provide information related to negotiations, therefore, she lacks necessary additional information to interpret the data she provides to the finance director.

Finally the Association asserts that Nemeth has not been delegated to act for the finance director. The only meetings Nemeth has been asked to attend for the finance director are

executive staff meetings conducted by the business administrator. These meetings are open to primary and higher level supervisors. The collector of revenues and the chief construction official, both of whom are included in the bargaining unit, have also been designated by the finance director to sit in on these meetings. Nemeth and other primary level supervisors leave the meetings whenever labor relations matters are discussed.

This petition is appropriate to determine the unit placement of the title in question. The Association acted promptly after the unit was certified and petitioned for the unrepresented title. Clearview Reg. Bd. of Ed., D.R. No 78-2, 3 NJPER 248 (1977); Wayne Bd. of Ed., D.R. No. 80-6, 5 NJPER 422 (¶10221 1979).

Confidential employees may not be included in any negotiations unit. N.J.S.A. 34:13A-5.3. N.J.S.A. 34:13A-3(g) defines confidential employees 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.

The Commission's policy narrowly construes the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); 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); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER

339 (¶19128 1988). The burden of demonstrating confidentiality is placed on the party seeking to remove an employee from the Act's protection. See State of New Jersey; State v. Professional Ass'n of New Jersey Dept. of Ed., 64 N.J. 231, 253 (1974), N.J. Const. Art. I ¶19. A finding of confidential status requires a case-by-case examination of each alleged confidential employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood.

The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and assisting management in preparing for these functions. See 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); City of Orange Township, D.R. No 85-23, 11 NJPER 317 (¶16115 1985).

The Township argues that Nemeth can determine the amount of money available for negotiations by analyzing the Township's revenue cash flow, including projected interest revenues earned on surplus funds she is responsible for investing. However, there is no evidence that Nemeth can deduce the Township's proposals or its negotiations strategies from just the surplus revenue side of the budget. The Township may rely on surpluses in general revenue

accounts in addition to monies carried in the salary account to fund negotiations settlements. Knowing whether or not these surpluses exist does not mean that Nemeth can interpret how much of the funds are available for negotiations and then determine what the Township's salary proposals will be.

The Township does not allege that Nemeth is asked to collect or analyze comparative labor relations data or prepare documents such as cost projections of salary and benefit proposals or spread sheets. Knowledge of general information would not tend to compromise the Township's position in negotiations. Northern Highland Bd. of Ed., D.R. No. 88-2, 13 NJPER 629 (¶18234 1987) and West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp 218 (¶56 1971); Orange Tp. Moreover, any revenue information to which Nemeth has access the Association may readily obtain, as well as budget expenditures, once the information becomes part of the public record.

There is no evidence that Nemeth knows of the Township's final negotiations position prior to its presentation at negotiations sessions. Nemeth's input to a proposed budget is limited to a comparison of all revenue account balances which the finance director reviews along with other information before he makes a final recommendation. Once a budget is adopted, Nemeth knows only the lump sum amounts transferred into the salary and wages account. She does not work with the line items in the salary adjustment account. Knowledge of what the Township's general financial capability without specific knowlege of negotiations

strategies is insufficient to establish confidential status. Linden Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Tp. of Scotch Plains, D.R. No. 84-11, 9 NJPER 632 (¶14270 1983); Cty. of Union, P.E.R.C. No. 48, NJPER Supp 166 (¶48 1970); Cliffside. Based upon the above, I find that the comptroller does not have access to and actual knowledge of confidential information.

Accordingly, I find that the title comptroller be included in the primary level supervisors unit effective immediately. See Clearview Bd. of Ed., D.R. No. 78-21, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: March 6, 1992
Trenton, New Jersey