

D.R. NO. 96-20

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

In the Matter of

TOWN OF KEARNY,

Public Employer/Petitioner,

-and-

Docket No. CU-96-39

KEARNY COUNCIL 11, NJCSA,

Employee Representative.

SYNOPSIS

The Town of Kearny filed a clarification of unit petition to exclude the title of secretary to the town administrator from the negotiations unit represented by Kearny Council 11. Based upon the uncontested facts submitted by the Town, the Director of Representation finds that the secretary performs clerical support functions for the town administrator who is involved in the labor relations process. Accordingly, the secretary is a confidential employee and the Director clarifies the Kearny Council 11 unit to exclude the title immediately.

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Appearances:

For the Public Employer,
Shaljian, Cammarata & O'Connor, attorneys
(Thomas J. Cammarata, of counsel)

For the Employee Representative,
Courter, Kobert, Kaufer & Cohen, attorneys
(Fredric M. Knapp, of counsel)

DECISION

On April 12, 1996, the Town of Kearny filed a petition to clarify a unit of non-supervisory blue and white collar employees represented by the Kearny Council 11. The Town seeks to exclude the title of secretary to the Town Administrator. The Town asserts that the secretary, Doreen Cali, is a confidential employee. Kearny Council 11 does not consent to excluding the secretary's title.

We conducted an administrative investigation to determine the facts. See N.J.A.C. 19:11-2.2. Kearny Council 11 declined to provide information in support of its position. There are no factual issues in dispute. From the Town's proffer of evidence, these facts appear.

The Town recently appointed Robert Czech as Administrator, a position it created in July 1995. Czech is responsible for the Town's labor relations. He and the Town's attorney negotiate labor agreements with seven unions, including Kearny Council 11, that represent Town employees. Czech is presently in negotiations with three unions and preparing for negotiations with the other unions. Czech and the Town's attorney are in constant contact about negotiations matters, either through correspondence or by telephone.

In addition, Czech is the second step for all union grievances. The Town is a civil service jurisdiction. Czech acts as the Town's hearing officer for matters arising under the State civil service laws.

Czech has one secretary, Doreen Cali. Cali does Czech's typing, including grievance decisions and letters to the Town's attorney concerning negotiations strategies. Cali maintains the files and does research for Czech. She has gathered information used in preparing for negotiations and for deciding grievances. Cali takes the minutes of meetings conducted by Czech with other Town managers to discuss negotiations strategy.

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization." Confidential employees, however, 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" 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 narrowly construes the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of N.J. and CWA (successor to NJCSA/NJSEA), 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) app. disp. App. Div. Dkt. No. A-1375-85T (1/9/87); 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). 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 rests upon an employee's knowledge of and responsibility for performing work involving materials used in labor relations processes including contract negotiations, contract administration, grievance handling and assisting management in preparing for these activities. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

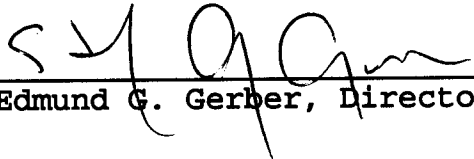
Clerical employees may be deemed confidential because of the clerical support functions they perform for a supervisor who is involved in the labor relations process. Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988). Access to negotiations and grievance documents, as well as typing and filing such documents, are indicative of confidential status. River Dell, supra.

Here, Cali performs duties for the Czech that are directly involved in the Town's preparation for negotiations, as well as the administration of its negotiated agreements. She types Czech's grievance decisions and prepares the minutes of negotiations strategy meetings. Cali's knowledge of this type of information could compromise the Town's position in the collective negotiations process if she were included in a negotiations unit. River Dell; Cliffside Park, supra. In addition, she is responsible for preparing information used in negotiations and grievance processing, as well as typing and filing correspondence between Czech and the Town's attorney concerning collective negotiations. All these duties indicate confidential status.

Based upon the foregoing, I find that the secretary to the Administrator of the Town of Kearny is a confidential employee within the meaning of the Act. Accordingly, the non-supervisory

unit represented by Kearny Council 11 is clarified to exclude the secretary to the Town's Administrator.^{1/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

Dated: June 4, 1996
Trenton, New Jersey

^{1/} See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).