

L.D. NO. 95-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

RAMAPO STATE COLLEGE

-and-

Professional Services Specialist I
Computing and Information Systems Unit

COMMUNICATIONS WORKERS OF AMERICA

Appearances:

For Ramapo State College
Edwin C. Evans, Employee Relations Coordinator

For Communications Workers of America
Abbey Demel-Brown, Staff Representative

DECISION

The above-named parties are engaged in a dispute over whether the position Professional Services Specialist I in the Computing and Information Systems Unit at Ramapo State College should be a position included in CWA's professional unit. The parties have requested that this dispute be heard before the Commission's Litigation Alternative Program.

At the informal hearing before me on April 21, 1995, the parties presented facts and arguments in favor of their respective positions and presented the job descriptions. The parties have agreed that I will decide whether the position should be placed in CWA's professional unit, and have further agreed that this decision is final and binding upon the parties.

The State contends that the newly created Professional Services Specialist I position will be a confidential employee as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A, and must therefore be excluded from the CWA unit.

The College recently created the position Professional Services Specialist I in its Computing Support Unit. The position is not yet filled, but the College is interviewing candidates. This new position in Network Systems Management replaces a position previously held by Systems Programmer I Jackie Owen, a CWA unit employee. However, since Owens left the position, the College has decided to expand the position's responsibilities. John Sloan, Director of the Computing Support Unit, explained the College's intentions with regard to the position.

The Professional Services Specialist I will report to the Computing Support Unit Director through the Associate Director. The position is a programmer level position.

The College is in the process of creating a campus-wide computer network structure tying together all 12 area networks. Beginning in 1992, students were given access to the internet and electronic mail capabilities. This capacity has now expanded to administrative staff, up to the College President. By late Spring, all staff will have electronic mail capabilities. The Professional Services Specialist I will have custody of a master list of passwords of everyone on the system. Serving as "systems manager," the Professional Services Specialist I will install and modify software, monitor overall usage and performance, and develop and monitor a security system. Part of the employee's job will be to identify "holes" in the security of the College's computer systems. The employee will therefore have access to the electronic mail transmissions of all staff. Additionally, as part of his responsibility to provide one-on-one assistance to staff, including administrative staff, with electronic mail transmission difficulties, he will have occasion to read confidential electronic mail transmissions.

The College is moving towards "paperless" processes. It is encouraging all intra-college communications to be done through electronic mail rather than memoranda on paper. Messages transmitted via electronic mail include confidential communications, which

involve personnel-related issues, such as hiring decisions, potential disciplinary problems, and staffing. Further, discussions concerning negotiations issues, such as on-going negotiations with the faculty union, will be conducted through electronic mail rather than paper memoranda. For example, the Human Resources Department recently solicited and received input from each academic department for faculty negotiations issues by electronic mail. Discussions were also recently transmitted through electronic mail between Human Resources Director Demas and the Vice-President for Administration and Finance over the settlement of a grievance. Strategies for specific negotiations issues will be similarly discussed through computer channels.

Additionally, there will soon be a link between the College and the Governor's Office of Employee Relations as well as the assigned Deputy Attorney General, which will be used to discuss contract negotiations and administration strategies, as well as other legal matters.

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

'Confidential employees' are those whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incompatible with their official duties.

An employee is confidential if his or her knowledge about the employer's strategies concerning the negotiation and administration of collective negotiations agreements could compromise the employer's right to confidentiality concerning these issues if the employee was included in a unit. State of New Jersey, P.E.R.C. No. 86-18 (1985).

In Tp. of Wayne, 220 N.J. Super. 340 (App. Div. 1987), the Appellate Division found that an employee with access to sensitive confidential information regarding the employer's negotiations or contract administration strategies is a confidential employee, even where the employee has no direct responsibility for the information

as part of his regular duties. This is the case here. The Professional Services Specialist I's responsibilities in assisting administrative personnel with computer documents and electronic mail, as well as his responsibilities for monitoring transmissions and identifying breaches in the system's security, will give that person access to, and therefore knowledge of, the College's sensitive labor relations information. In effect, the employee will have the "keys" to the "file cabinet" containing the confidential information, and the specific responsibility to access the "files."

Accordingly, I find that the Professional Services Specialist I in the Computer Support Unit is a confidential position and must be excluded from the CWA unit.

Susan Osborn, LAP Hearing Officer
Public Employment Relations

Commission
DATED: May 1, 1995
Trenton, New Jersey