

D.R. NO. 2018-19

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

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Public Employer,

-and-

Docket No. CU-2015-007

BRIDGEWATER MUNICIPAL EMPLOYEES
ASSOCIATION,

Petitioner.

SYNOPSIS

The Acting Director of Representation clarifies a collective negotiations unit of employees of the Township of Bridgewater (Township) to include confidential secretary I to Director of Human Services. The Bridgewater Municipal Employees Association (Association) filed a unit clarification petition to include this title in a unit of white collar non-supervisory employees. The Township objected to the petition, arguing that the petitioned-for title was confidential. Based on the administrative record, the Acting Director rejected the Township's position and found the petitioned-for title's inclusion in the Association's unit was appropriate.

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Appearances:

For the Public Employer,
Eric M. Bernstein & Associates, LLC, attorneys
(Eric M. Bernstein, of counsel)

For the Petitioner,
Mets, Schiro & McGovern, attorneys
(Leonard Schiro, of counsel)

DECISION

On September 23, 2014, the Bridgewater Municipal Employees Association (Association) filed a clarification of unit petition seeking to clarify its collective negotiations unit of white collar non-supervisory employees of the Township of Bridgewater (Township) to include the title, confidential secretary I to Director of Human Services. The Association claims that the Township unilaterally removed the title from its unit by asserting that it is "confidential." The Township opposes the petition, contending that the title is confidential within the meaning of the New Jersey Employer-Employee Relations Act (Act),

N.J.S.A. 34:13A-1 et seq., and therefore, ineligible for inclusion in any negotiations unit.

We conducted conferences on December 8, 2014, December 10, 2014, and March 10, 2015. The parties were unable to reach a voluntary resolution. By letter dated April 14, 2015, we requested both parties to provide certifications or sworn affidavits in support of their respective positions. N.J.A.C. 19:11-2.2.

The parties timely responded. The Township provided an affidavit of James T. Naples, the Township's Business Administrator.^{1/} The Association submitted a certification of its President Nadine Carr, a registered health and environmental specialist employed by the Township. Based upon our administrative investigation, I find the following facts.

On September 25, 1986, we issued a Certification of Representative for the following unit: "All white collar professional and non-professional non-supervisory employees employed by the Township of Bridgewater." The most recent

^{1/} Although some of the Township's submissions refer to this title as Township Administrator, Naples identifies himself as the Township's Business Administrator. Thus, I will refer to this title as Business Administrator, as well. The Township's initial responses to our requests for information, dated June 3 and 5, 2015, did not include certifications. On September 11, 2015, the Township filed Naples' affidavit, in which Naples wrote that he had reviewed the Township's June 3 and 5, 2015 submissions, and certified, ". . . the accuracy of the answers/exhibits" in those submissions.

collective negotiations agreement extends from January 1, 2015 through December 31, 2018. The recognition provision in that agreement and in the predecessor agreement describes the unit as ". . . all employees now employed by the Township, excluding the police department, public works and the department of parks and recreation, maintenance personnel, department heads and other supervisory personnel, confidential employees and seasonal and temporary employees." It appears that approximately thirty employees are included in the negotiations unit.

The Township has a popularly elected mayor-council form of government, pursuant to the Faulkner Act, N.J.S.A. 40:69A-31 et seq. The Mayor is vested with executive power, including control over the Township's daily operations. The Council is the Township's legislative body and oversees the Township Clerk.

The Business Administrator reports to the Mayor. All departments report to the Business Administrator, except the police department. Since February 1, 2012, James T. Naples has served as the Township's Business Administrator. He also served in this role from January 19, 2004 until January 1, 2011. The Business Administrator and the Mayor each have a confidential secretary. The Township claims that thirty-six (36) of its

employees are confidential,^{2/} including the petitioned-for title, and that six others are confidential secretaries.

The Business Administrator heads the Township's table of organization. Beneath the Business Administrator sits the Township Clerk, the legal department, the Economic Development Officer, Director of Municipal Services, the Chief Financial Officer, the Human Resources Officer, the Director of Human Services, and the Chief of Police.

The Township's table of organization also indicates that the Director of Human Services oversees the Township's Health and Recreation divisions, as well as its senior center. The Township filed as an exhibit a copy of its June 2004 job posting for the Director of Human Services/Health Officer. According to the posting, qualified applicants are required to possess a master's degree from an accredited institution of higher education, where the "major course of study must [have] [been] in a health-related field such as public health, environmental science, health administration, social work, nursing or health education." The Director's responsibilities are described as follows:

^{2/} Some of the titles that the Township considers confidential include: superintendent of public works, director of municipal services, zoning officer, human resources specialist, chief of police, tax assessor, township clerk, public works administrative safety coordinator, deputy director of municipal services, paymaster, health officer, court administrator, supervisor-public works, information technology specialist, engineering manager, recreation superintendent, and qualified purchasing agent.

Supervise departmental activities with general direction from the Township Administrator. Serve as the administrative officer of the local Division of Health. Evaluate community health issues and develop programs to address community needs for the prevention and control of health and/or environmental concerns. Coordinate all programs within the guidelines of the Public Health Practice Standards of Performance for Local Boards of Health in NJ. Utilize the Assessment Protocol for Excellence in Public Health to assess the organization and management for the Division of Health. Supervise the administration of the Divisions of Public Assistance, Affordable Housing, Sr. Services, Recreation, Vital Statistics Registry and Environmental Enforcement.

The posting omits any reference to labor relations, contract preparation, administration or negotiations, or grievance preparation, administration or processing.

Rita Seborowski currently holds the petitioned-for title of confidential secretary I to Director of Human Services. She reports to the Director of Human Services. The Township has provided a copy of its August, 2014 posting for the disputed title. The posting provides that the title is a "non-union position." It sets forth this description of the disputed title's responsibilities:

Under the Director of Human Services, the employee performs responsible and varied secretarial and clerical services with above average expertise and competence, records management and filing, exercise judgment in connection with handling office work which involves contact with confidential welfare and health related matters . . . and at all times maintains a high level of

confidentiality. The incumbent assists as necessary in the coordination of the Director's schedule, provides administrative support and keeps related business matter and correspondence personal and confidential. The incumbent will also fill in for the confidential secretary to the Township Administrator. . .

Like the posting for the Director of Human Services, nothing in the job description for "confidential secretary" refers to labor relations, contract preparation, administration or negotiations, or grievance preparation, administration or processing.

Seborowski shares an office with the Director of Human Services, the Health Officer, the Director of Health and Affordable Housing, and the Register of Vital Statistics/Environmental Specialist. Association President Carr holds the latter title, consequently sharing office space with the petitioned-for title.

The Association contends that the petitioned-for title is not confidential and is properly within the scope of its unit. Association President Carr certifies that before the Association became a majority representative of Township employees, Mary Ellen Ianniello was hired as the secretary in the Township's Health Department in 1981. Ianniello performed secretarial duties for the then-Director of the Health Department. She continued to hold that title while she served as Association President. Carr certifies that when the Director of the Health Department retired, the Township restructured this position and

created the title of Director of Human Services. Carr further certifies that Ianniello continued to perform the same secretarial duties for the Human Services Department as she did when it was the Health Department.

Carr certifies that the job duties of the newly created confidential secretary position are the same as the job duties previously performed by Ianniello as the secretary for the Human Services Department. She also certifies that neither the petitioned-for title, nor the Director of Human Services, are involved in contract administration, contract negotiations, grievance administration, preparations for negotiations, and preparations for grievance processing and/or arbitration. She certifies that the petitioned-for title does not prepare documents or data to be used in negotiations, nor does the title attend negotiations sessions, as only the Business Administrator attends negotiations on behalf of the Township.

Carr certifies that the petitioned-for title answers the telephone for the Mayor's and the Business Administrator's confidential secretaries when they are taking lunch breaks. Carr also certifies that that assistance does not include use of the computers nor the scheduling of meetings for either the Mayor or Business Administrator. Moreover, when Seborowski is unavailable to assist during lunch breaks, the Township uses its finance

account clerks to fulfill that role. Carr certifies that the title of finance account clerk is represented by the Association.

The Township asserts that the petitioned-for title should be excluded from the Association's unit. The Township has not submitted a certification from its Director of Human Services. Business Administrator Naples (indirectly) certified that the petitioned-for title has access to confidential labor relations information regarding contract administration and grievance processing, as the title "may be typing documents relating to contract proposals and grievances," and "has access to union correspondence, Township labor relations correspondence and strategy." Specifically, the Township asserts that this title has this type of access to labor relations information because it regularly fills in for the confidential secretaries to the Mayor and Business Administrator during those secretaries' lunch periods or other brief absences or leaves.

The Township argues that the petitioned-for title is confidential because the employee's immediate supervisor, the Director of Human Services, is involved in contract administration, grievance processing, and arbitration. The Township asserts that the Director of Human Services is also involved in the budget formation and adoption process because he is involved with "determining future promotions, salaries and related issues."

The Township concedes that the petitioned-for title's duties do not include attending negotiations sessions or preparing documents related to those sessions. Instead, the Township asserts that the Business Administrator and Human Resources Officer attend negotiations sessions on behalf of the Township.

The Township denies that it removed the petitioned-for title from the Association's unit. It contends that the title was created following the retirement of the Township's Registrar. The Township contends that the Registrar was a "non-union" title, and one of its primary duties was to provide administrative support when the administration's confidential secretaries were unavailable. Therefore, the Township submits that it merely added this former duty of the Registrar to the petitioned-for title's regular responsibility of providing administrative support to the Director of Human Services.

ANALYSIS

I find that the petitioned-for title is not confidential within the meaning of the Act and falls within the scope of the Association's collective negotiations unit. N.J.S.A. 34:13A-3(g) defines confidential employees of public employers, other than the State, 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 510 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), the Commission explained the approach taken 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 was included in a negotiating unit.

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. The Court explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties N.J.S.A. 34:13A-3(g); see also State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (holding that final determination is "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"). Obviously an employee's access to confidential information may be significant in determining whether the 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. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [New Jersey Turnpike Authority, 150 N.J. at 358]

"The key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract administration, grievance handling and preparation for these processes." Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73, 75 (¶33 2005); State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). The Commission is cautious in finding confidential status because the subject employee is not afforded the Act's protections and, therefore, speculation or conjecture about job functions cannot provide the basis for such a determination. Pompton Lakes Bd. of Ed. 31 NJPER at 75; Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989). The burden of demonstrating confidentiality is therefore placed on the party seeking to remove an employee from the Act's protection. See State of New Jersey and CWA, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985); State v. Professional Ass'n of New Jersey Dept. of Ed., 64 N.J. 231, 253 (1974). However, if the

future job functions to be performed are clear and implementation is certain, then future circumstances may be considered in the evaluation of confidential status. Montgomery Tp. Bd. of Ed., D.R. No. 93-12, 19 NJPER 96, 97 (¶24044 1993).

The Township has not provided sufficient facts demonstrating that the title, confidential secretary I to Director of Human Services, is confidential within the Act's meaning. The Township's core contention is that Seborowski has access to labor relations materials when she periodically performs typing duties while substituting for the "confidential secretaries" to the Mayor and Business Administrator during their lunch breaks or personal leaves, and has access to labor relations material because of her immediate supervisor's involvement in contract, grievance and salary matters.

We have long-recognized that access alone is insufficient to support a finding of confidential status. New Jersey Turnpike Authority, 150 N.J. at 358. The Township does not explain how Seborowski's access provides her any specific knowledge of materials used in confidential labor relations processes. Moreover, her access appears to be limited to the irregular, unspecified number of occasions she substitutes for the "confidential secretaries" to the Mayor and Business Administrator. She does not appear to regularly share the same office space as administration employees.

The only specific information that the Township provides regarding the petitioned-for title's particular duties is that the title "may be typing documents relating to contract proposals and grievances" in the absence of either of the administration's confidential secretaries, which may occur during those confidential secretaries' lunch breaks or leaves. I find that this potential duty is too vague and speculative to satisfy the Township's burden of demonstrating confidential status. Her possible preparation of documents "relating to contract proposals" is of little probative value. See Montgomery Tp. Bd. of Ed., 19 NJPER at 97.

Even assuming that the Director of Human Services participates in collective negotiations agreement administration, and grievance response "preparation," I glean no facts indicating that secretary Seborowski has been tasked with preparing, recording or otherwise administering to labor relations matters or materials in advance of their disclosure to the majority representative.

For all of these reasons, I find that the confidential secretary I to the Director of Human Services is not a confidential employee within the meaning of the Act.

ORDER

The Township's broad-based white collar non-supervisory unit is clarified to include the confidential secretary I to the Director of Human Services, effective immediately.

By Order of the Acting
Director of Representation

Jonathan Roth
Acting Director of Representation

DATED: May 22, 2018
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 June 6, 2018.