

P.E.R.C. NO. 2006-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-2005-014

BURLINGTON COUNTY COLLEGE
SUPPORTIVE STAFF ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of Burlington County College for review of a portion of D.R. No. 2006-5, 31 NJPER 382 (¶150 2006). In that decision, the Director of Representation determined, in part, that the Administrative Assistant - N.J. Statewide Transfer, represented by the Burlington County College Supportive Staff Association is not a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act. The College seeks to have that ruling overturned or in the alternative that a plenary hearing be scheduled. The Commission concludes that the statutory standard was properly applied. The Commission denies the College's request for an evidentiary hearing since the College did not respond to the Director's notice to the parties of his intended decision in this matter, nor has the College identified any material facts in dispute.

_____This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2006-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-2005-014

BURLINGTON COUNTY COLLEGE
SUPPORTIVE STAFF ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer, Capehart & Scatchard,
attorneys (Michael E. Heston, on the brief)

For the Petitioner, Julie Giordano, Field
Representative

DECISION

On December 13, 2005, Burlington County College requested review of a portion of D.R. No. 2006-5, 31 NJPER 382 (¶150 2006). In that decision, the Director of Representation determined, in part, that the Administrative Assistant - N.J. Statewide Transfer is not a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The College asks us to overturn that ruling. In the alternative, the College requests that a plenary hearing be scheduled. On February 24, 2006, after an extension of time, the Association filed a response opposing the request for review.

Under N.J.A.C. 19:11-8.2(a), review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

The College argues that review should be granted under (a)4 because:

a compelling reason exists for the Commission to reconsider its policy of narrowly construing the term confidential employee, as defined in N.J.S.A. 34:13A-3(g), when, as here, the position under review has access to all manner of confidential information flowing from the senior decision maker of the governmental unit, and from that of other similarly situated decision makers, including sensitive and confidential matters as well as proprietary and executive information.

The College does not argue that the Director misapplied the applicable tests, but asks that those tests be changed.

The Legislature has established the baseline inquiry in determining confidential status: we must determine whether an employee's "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." N.J.S.A. 34:13A-3(g); New Jersey Turnpike Auth. v. AFSCME, Council 73, 150 N.J. 331 (1997). We are not free to change that statutorily-mandated definition. Under that test, mere access to information is not enough. The Supreme Court has specifically approved our approach narrowly construing the statutory exclusion for confidential employees. Id. at 349, 357. We deny the College's request that we reconsider that well-established approach.

As for the request for an evidentiary hearing, we note that after conducting an investigation, the Director informed the parties of his findings and intended decision. The College requested and received an extension of time to file a response to the intended decision, but did not do so. Nor has the College identified any material facts in dispute. Thus, there is no reason to conduct a hearing.

As for the Director's decision, it was predicated on the lack of any specific evidence of responsibilities or knowledge in connection with the collective negotiations process. Access to information that is confidential for other purposes, but not related to collective negotiations, is not a basis for excluding an employee from the protections of the Act. 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).

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: March 30, 2006

Trenton, New Jersey