P.E.R.C. NO. 2014-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Respondent,

-and-

Docket No. CU-2012-019

GLOUCESTER COUNTY COLLEGE
DIRECTORS' ASSOCIATION, NJEA,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Gloucester County College Directors' Association, NJEA for review of a Director of Representation decision. The Director denied the Association's petition to clarify a negotiations unit to include the newly-created title of Director of Business Services. The Commission finds no compelling reason warranting review of the Director's decision, noting that the Director thoroughly examined the duties of the position and determined that the new title is confidential under N.J.S.A. 34:13A-3(g) and therefore excluded from the unit under N.J.S.A. 34:13A-3(d).

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.

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Appearances:

For the Respondent, Archer & Greiner, attorneys (David A. Rapuano, of counsel)

For the Petitioner, Selikoff & Cohen, attorneys (Keith Waldman, of counsel)

DECISION

On July 15, 2013, the Gloucester County College Directors' Association, NJEA, requested review of D.R. 2014-1, __ NJPER __ (__ 2013). In that decision, the director of Representation denied a petition of the Association seeking to clarify a negotiations unit to include the newly-created title of Director of Business Services. On July 22, the College filed a response opposing review. We deny the Association's request.

Under N.J.A.C. 19:11-8.2, review of a Director's decision clarifying a negotiations unit 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.

Section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained our approach in determining whether an employee is confidential:

> We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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. [Id. at 510]

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988).

The Association argues that the Director erred in finding the Director of Business Services title confidential because the unit description includes the title of Director and the College could have given the position an executive director title which is specifically excluded from the unit. The Association also objects to the Director's reliance on a revised job description that added the duty: "prepares confidential materials for development of a strategic management position for the collective bargaining process." Finally, the Association asserts the Director's decision is not based on substantial credible evidence because the employee has not yet performed any confidential duties.

There is no compelling reason warranting review of the Director's determination. The Director thoroughly examined the duties of the position and determined that implementation of the confidential duties is certain. 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). After an appropriate period of time, if the duties do not materialize in the next negotiations session, the Association is not barred from filing a clarification of unit petition seeking to clarify the instant unit to include the Director of Business Services.

ORDER

The Gloucester County College Directors' Association's request for review is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Voos was not present.

ISSUED: September 26, 2013

Trenton, New Jersey