

P.E.R.C. NO. 85-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT OLIVE TOWNSHIP,

Public Employer,

-and-

Docket No. CU-84-88

MOUNT OLIVE TOWNSHIP PUBLIC
EMPLOYEES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit composed of permanent employees of Mount Olive Township and represented by the Mount Olive Township Employees Association to exclude the deputy clerk. The Commission finds, in agreement with the Hearing Officer, that the deputy clerk is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act.

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Employee Representative.

Appearances:

For the Public Employer, Young, Dorsey & Fisher,
Esqs. (John H. Dorsey, Of Counsel)

For the Employee Representative, Schwartz, Pisano &
Simon, Esqs. (Anthony P. Sciarrillo, Of Counsel)

DECISION AND ORDER

On April 9, 1984, the Township of Mount Olive ("Township") filed a Clarification of Unit Petition with the Public Employment Relations Commission. The petition seeks the removal of the deputy clerk from a collective bargaining unit represented by the Mount Olive Township Employees Association ("Association").

The negotiations unit represented by the Association consists of the Township's "permanent employees except for police officers, supervisors, department directors, and confidential or otherwise exempt employees of the Administration." The Township alleges that the deputy clerk is a "confidential employee" within the meaning of subsection 3(g) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Association denies that the position of deputy clerk is confidential.

On September 5, 1984, Hearing Officer Richard Gwin conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On February 20, 1985, the Hearing Officer issued his report and recommended decision. H.O. No. 85-11, 11 NJPER ____ (Par ____ 1985) (copy attached). He found that the deputy clerk was a confidential employee and therefore recommended her removal from the Association's negotiations unit.

On March 1, 1985, the Association filed its exceptions. The Association contends that the deputy clerk is not responsible for collective negotiations and that her role with respect to personnel decisions is quite limited. Additionally, the Association claims that the "functional responsibilities of the Deputy Clerk do not render her incompatible with the bargaining unit" because her role as deputy is not equal to that of the Township Clerk. The Association further contends that mere access should not require this position be removed from the negotiations unit. The Township has filed a reply to the exceptions urging adoption of the Hearing Officer's report.

We have reviewed the record. The Hearing Officer's findings of fact are accurate (pp. 2-5). We adopt and incorporate them here.

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

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

We are satisfied that the deputy clerk is a "confidential" employee within the above definition. We agree with the Hearing Officer that:


The deputy's confidential status is firmly supported by the record. She is required, as part of her daily responsibilities, to open and read all correspondence that comes into the clerk's office. Included in that correspondence are materials pertaining to collective negotiations. The deputy copies and files the materials. She and the clerk have access to the materials after they are filed. Additionally, the deputy is vested by Township ordinance with the authority to perform all the clerk's responsibilities and is required to do so in the clerk's absence. This authority has been exercised and resulted in the deputy's presence at a Council executive session meeting at which the collective negotiations agreement with the Association to which she belongs was adopted. It is apparent from the record that the deputy will again be called on to fill in for the clerk.
[Slip opinion at 6]

It is apparent from the foregoing that her "functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make her membership in any appropriate negotiating unit incompatible with her official duties." N.J.S.A. 34:13A-3(g) See, e.g., River Dell Regional Board of Education, D.R. No. 83-21, 9 NJPER 180, 181 (Parl4084 1983); In re Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (Parl0040 1979).

ORDER

The deputy clerk is a confidential employee and is removed from the negotiations unit which the Mount Olive Township Public Employees Association represents.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey
April 25, 1985
ISSUED: April 26, 1985

H. O. No. 85-11

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT OLIVE TOWNSHIP,

Public Employer,

-and-

Docket No. CU-84-88

MOUNT OLIVE TOWNSHIP PUBLIC
EMPLOYEES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Hearing Officer recommends that a unit consisting of Mount Olive Township's permanent employees be clarified to exclude the deputy clerk because she is a confidential employee. The deputy opens, reads, copies and files materials pertaining to labor relations. Pursuant to Township ordinance she must fill in for the Township Clerk when the Clerk is absent. While filling in for the Clerk, the deputy has attended (and recorded) a Township Council executive session at which the latest collective negotiations agreement with the employees association was adopted.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Employee Representative.

Docket No. CU-84-88

Appearances:

For the Public Employer
John H. Dorsey, Esq.

For the Employee Representative
Schwartz, Pisano & Simon
(Anthony P. Sciarrallo, Esq.)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

On April 9, 1984 the Township of Mount Olive ("Township") filed a Clarification of Unit petition with the Public Employment Relations Commission ("Commission") seeking the removal of the deputy clerk from a collective negotiations unit represented by the Mount Olive Township Employees' Association ("Association"). The Association's unit consists of the Township's permanent employees.

The Township asserts that the deputy clerk is a confidential employee within the meaning of subsection 13A-3(g) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association denies that the title is confidential.

On September 5, 1984 the Administrator of Representation issued a Notice of Hearing.

On November 20, 1984 I conducted a hearing. The parties were given the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Both parties waived oral argument and filed post-hearing briefs, the last of which was received on January 28, 1985.^{1/}

^{1/} The original filing date for post-hearing briefs was January 9, 1985. The Association requested and received a one-week extension. The Association's brief was postmarked prior to the January 16, 1985 filing date. My receipt was delayed because the Commission moved its offices and the brief had to be forwarded.

Based on the entire record I make the following:

FINDINGS OF FACT

1. The Township is a public employer within the meaning of the Act, is subject to its provisions, and is the employer of the deputy clerk ("deputy"). (Transcript "T". p. 3).
2. The Association is an employee representative within the meaning of the Act, is subject to its provisions, and represents the deputy in a collective negotiations unit consisting of all permanent Township employees except police officers, supervisors, department directors and confidential employees. (T. pp. 3,4; J-1, J-2).
3. The Association has represented the Township's permanent employees since approximately 1976. There are currently approximately sixty employees in the unit. The deputy has been in the unit since its inception. (T. p. 103; C-1).
4. The Township operates under a Faulkner Type-E form of government. A mayor and seven council members are elected to four-year terms. The mayor is in charge of Township administration. Below the mayor is a business administrator, who is largely responsible for daily operations. Reporting to the business administrator are department heads, who are responsible for the six Township departments: finance; health; planning; public works;

building, grounds and recreation; and public safety. Council is the legislative, policy-making body of the Township. While Council is not directly involved in Township administration, there is interaction and coordination between the two governing bodies. Only two Township employees work full time for Council: the Township Clerk ("clerk") and the deputy (T. pp.9, 91).

5. Collective negotiations involves both the Township administration and Council. The business administrator does the actual negotiating but lacks the authority either to offer or accept proposals without first obtaining the approval of Council. Contract administration is the responsibility of the Township administration. Council does not get involved in grievance, hiring or disciplinary matters unless a question of funding arises. (T. pp. 91-94, 100, 101).

6. The clerk is appointed by Council to serve a three-year term. The clerk's duties include: keeping minutes and records of Council proceedings, including executive sessions; providing secretarial and clerical services to members of Council; maintaining custody of the Township's seal and certain documents; administering dog licensing; and publishing ordinances. The clerk, with the deputy's assistance, prepares three budgets: Elections, Township Clerk, and Council. They also assist Council in preparing an overall budget to submit to the mayor for consideration. (T. pp. 13, 14, 47, 61; J-3, J-4)

In her capacity as Clerk to Council, the clerk has recorded executive sessions at which collective negotiations proposals have been discussed. As Council secretary, she transmits memoranda to the administration on behalf of Council dealing with collective negotiations. When requested, she does research related to collective negotiations. She receives collective negotiations materials from the mayor, business administrator or his confidential secretary, which she reads and transmits to Council. (T.pp. 14-19, 28).

8. The deputy shares a small office, phones and filing cabinets with the clerk. A file containing all Township collective negotiations materials is kept in one cabinet drawer in the their office. Both have access to the file. The deputy unlocks the filing cabinets in the morning and locks them at night. (T. pp. 20,21, 38, 70).

By ordinance the deputy possesses all the powers of the clerk and is required to perform the clerk's functions during any absence or disability. In July, 1984, while the clerk was on vacation, the deputy recorded an executive session at which Council approved a collective negotiations agreement with the Association. Council meets approximately seventy-two times yearly. In 1985 the clerk can take up to six weeks of vacation. It is likely that the deputy will have to attend at least six Council meetings. The deputy does not attend Council meetings when the clerk is present. (T. pp. 22-24, 64; J-4, J-5).

The deputy opens and reads all correspondence that comes into the clerks' office. She presents the opened correspondence to the clerk, who routes it. The deputy then copies all correspondence and files it. The correspondence that is opened, read, copied and filed by the deputy includes collective negotiations materials. The deputy testified that she has, on occasion, been privy to advanced knowledge of collective negotiations proposals. (T. pp., 43, 63, 64, 72, 80).

ANALYSIS

Based on the entire record I conclude that the deputy is a confidential employee within the meaning of the Act.

The Act defines confidential employees as follows:

"Confidential employees" of a public employer means employees 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. N.J.S.A. 34:13A-3(g).

The Act bars confidential employees from the right to join, form or be represented by an employee organization. N.J.S.A. 34:13A-5.3. Due to the statutory exclusion, the term "confidential employee" has been narrowly construed. In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (para. 4018 1977), adopting

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H.O. No. 77-7, 3 NJPER 108 (1977). A finding of confidential status requires a case-by-case, close examination of an employee's access and exposure to information involved in the collective negotiations process. In re River Dell Regional Board of Education, D.R. No. 83-21, 9 NJPER 180 (para. 14084 1983); In re Parsippany--Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (para. 11131 1980); In re Jersey City Board of Education, D.R. No. 78-35, 4 NJPER 139 (para. 4065 1978).

The deputy's confidential status is firmly supported by the record. She is required, as part of her daily responsibilities, to open and read all correspondence that comes into the clerk's office. Included in that correspondence are materials pertaining to collective negotiations. The deputy copies and files the materials. She and the clerk have access to the materials after they are filed. Additionally, the deputy is vested by Township ordinance with the authority to perform all the clerk's responsibilities and is required to do so in the clerk's absence. This authority has been exercised and resulted in the deputy's presence at a Council executive session meeting at which the collective negotiations agreement with the Association to which she belongs was adopted. It is apparent from the record that the deputy will again be called on to fill in for the clerk. I conclude that the deputy's access and exposure to collective negotiations


materials in the course of her functional responsibilities makes her membership in the Association incompatible with her official duties. [compare: In re River Dell Regional Board of Education, PERC No. 84-95, 10 NJPER 148 (para. 15073 1984); In re Western Monmouth Utilities Authority, D.R. No. 83-36, 8 NJPER 140 (para. 13061 1982); Parsippany-Troy Hills, supra.; In re Cranford Board of Education, D.R. No. 78-20, 3 NJPER 352 (1977); In re West Milford, PERC No. 56 (1971); In re Plainfield Board of Education, E.D. No. 1 (1970).]

Accordingly, I make the following:

RECOMMENDATIONS

1. That the deputy be found to be a confidential employee within the meaning of the Act; and
2. That the Commission order that the Association's unit be clarified to exclude the deputy.

Trenton, New Jersey
February 20, 1985


Richard Gwin
Hearing Officer