

P.E.R.C. NO. 84-147

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY,

Public Employer-Petitioner,

-and-

Docket No. CU-83-69

N.J.C.S.A., COUNCIL #7,

Employee Representative.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission and in agreement with a Commission Hearing Officer, finds that the Secretary to the Superintendent of Parks is a confidential employee within the meaning of the Act and should be removed from the unit represented by N.J.C.S.A., Council #7. Neither party filed exceptions to the Hearing Officer's report.

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Appearances:

For the Public Employer-Petitioner, Rafano & Wood,
Esqs. (Robert Rafano, Of Counsel)

For the Employee Representative, Borrus, Goldin &
Foley, Esqs. (James F. Clarkin, III, Of Counsel)

DECISION AND ORDER

On May 5, 1983, Middlesex County ("County") filed a Clarification of Unit petition with the Public Employment Relations Commission. The County seeks to have the position of Secretary to the Superintendent of Parks removed from a negotiations unit of all the County's nonprofessional blue and white collar employees which NJCSA, Council #7 ("Council #7") represents. The County alleges that this secretary is a confidential employee within the meaning of subsection 3(g)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On June 30, 1983, the Director of Representation issued a Notice of Hearing.

1/ This subsection provides: "'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."

On December 19, 1983, Commission Hearing Officer Lawrence Henderson conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On April 23, 1984, Commission Hearing Officer Judith E. Mollinger issued a report and recommended decision. H.O. No. 84-13, 10 NJPER ____ (¶ ____ 1984).^{2/} She found that the secretary was a confidential employee and recommended the removal of her position from Council #7's negotiations unit.


The Hearing Officer served a copy of her report on the parties and informed them that exceptions, if any, had to be filed with the Commission on or before May 7, 1984. Neither party filed exceptions or asked for an extension of time.

Pursuant to N.J.A.C. 19:11-8.8 and N.J.S.A. 34:13A-6(f), the full Commission, in the absence of exceptions, has transferred this case to itself and has delegated authority to me to issue a decision. I have reviewed the record. The Hearing Officer's findings of fact (pp. 2-7) are accurate. I adopt and incorporate them here. Based on these findings, and in the absence of exceptions, I agree with the Hearing Officer's conclusion that the secretary is a confidential employee and her position must be removed from the negotiations unit which Council #7 represents.

^{2/} After Hearing Officer Henderson left the Commission's employ, Hearing Officer Mollinger was designated to issue a report pursuant to N.J.A.C. 19:11-6.4.

ORDER

The Secretary to the Middlesex County Superintendent of Parks is a confidential employee and her position must be removed from the negotiations unit which NJCSA, Council #7 represents.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
June 14, 1984

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

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-and-

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N.J.C.S.A., COUNCIL #7,

Employee Representative.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission determines that the Secretary to the Superintendent of Parks is a confidential position within the meaning of the Act and should be excluded from the collective negotiations unit.

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 exceptions 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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Docket No. CU-83-69

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Employee Representative.

Appearances:

For the Public Employer-Petitioner
Rafano & Wood, Esqs.
(Robert Rafano, Of Counsel)

For the Employee Representative
Borrus, Goldin & Foley, Esqs.
(James F. Clarkin, III, Of Counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

Statement of Case

On May 5, 1983 (as amended May 11, 1983) Middlesex County ("County") filed a Clarification of Unit petition with the Public Employment Relations Commission ("Commission") (C-1). ^{1/} The County seeks to exclude the position of Secretary to the Superintendent of Parks from a collective negotiations unit of all nonprofessional blue and white collar employees of the County because the position is a confidential one. This unit is represented by New Jersey Civil Service Association, Council #7 ("Council 7"). ^{2/}

Pursuant to a Notice of Hearing issued June 30, 1983, a hearing was held December 19, 1983, before Hearing Officer Lawrence

Henderson. At the hearing, the parties were given an opportunity to examine witnesses, to present evidence and to argue orally. The parties waived oral argument and both submitted post-hearing briefs by March 13, 1984. The record was closed.

The County contends that the Secretary is a confidential position within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Conversely, Council 7 maintains that the position of Secretary is not a confidential one because the Secretary's access to management labor relations material is at best de minimis, and that in any case, mere access to labor relations material, by itself, is not sufficient to render the position confidential.

Therefore, a dispute exists concerning the composition of a collective negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations. ^{3/}

Issue

Is the Secretary to the Superintendent of Parks a confidential position within the meaning of the Act?

The key question is whether the employee has responsibility for or knowledge of collective negotiations information of the employer?

I find that the answer is yes.

Findings of Fact

Based on the entire record of these proceedings, the Hearing Officer makes the following findings of fact:

1. Middlesex County is a public employer within the meaning of the Act; it is subject to the provisions of the Act.

The County is the employer of the employee who is the subject of this proceeding (T 6). ^{4/}

2. Council 7 is an employee representative within the meaning of the Act and is subject to its provisions (T 6).

3. The County is governed by an elected Board of Freeholders; one of the freeholders is designated chairperson of the County Parks Committee. Currently, that is Vincent Martino (T 14, 190) who is responsible for the management of the Parks and Recreation Department and who is the immediate superior to the Superintendent of Parks and Recreation, David R. Campion (T 14, 21, 190).

Both Martino and Campion have offices in the Park Administration Building (T 17, 19).

4. In collective negotiations with Council 7, (negotiations which are county-wide [T 157]) negotiators for the County are the Personnel Director and two Labor Relations Specialists (T 156, 180). The County controller is also present for financial discussions (T 156). Sometimes Council 7 negotiates informally with the Freeholders (T 181). Agreements made by the County management team are subject to ratification by the Freeholders (T 181).

5. Campion has been Parks and Recreation Superintendent for four and one-half years (T 14). He is responsible for 210 employees (T 15), including 15 foremen (T 189): 48 are Park Police; 100 are salaried - eight of whom serve in the Park Administrative Office; the rest are hourly laborers (T 15-16). The Chief of the Park Police and the 15 foremen from the County's nine parks report directly to Campion (T 16). He devotes approximately twenty percent of his time to the Park Police operations (T 48).

Campion participates neither in the formulation of County labor policy and strategy nor in labor negotiations with Council 7 (T 32). He has not attended any negotiation sessions with Council 7 for at least two years (T 34). ^{5/} However, he does cost out (T 35) and review Council 7's contract proposals with his superior, Martino (T 33).

Campion participates in the formulation of the Park Department's budget (T 36, 38). The County regularly forwards final budget information for the Park Department, as well as for other departments, to Council 7 prior to negotiations and throughout the year, as it is public information (T 157). He collects raw data, reviews expenditures, reviews anticipated changes in personnel or working conditions which impact on expenses, and submits his proposed budget to the County Controller (T 37) and County Finance Director (T 37, 38, 182).

Campion is the management representative at level two of a grievance arbitration procedure included in Council 7's contract with the County (EE-1, T 39). He investigates grievances, reviews the contract, and meets with lower level supervisors and the union, in an effort to resolve grievances (T 39-41). He may consult with the County labor relations office and County Counsel (T 41).

Campion also maintains files containing information on investigations of park employees (T 70), on discipline and memos of his thoughts and ideas for employee promotions or raises (T 80). These files are kept in a locked cabinet in Campion's office. Only Campion and his secretary have access to the files (T 92, 110) -- both use the same key (T 23, 112). Campion, along with the foremen

and the County Freeholder, evaluates unit employees (T 94); Campion has also disciplined some employees (T 84, 90).

After Campion determines that a department vacancy needs to be filled (T 89), he interviews applicants (T 81, 88) and hires employees subject only to final approval by the Board of Freeholders (T 89).

6. Arlene Stevens, who is secretary to Campion, the Superintendent of Parks, has held her position for approximately two years (T 18, 96); she serves as Campion's only secretary (T 19), although there is one other typist in the office (T 107). Stevens has been employed by the County and assigned to work for Campion in the County Parks Department for a total of five years (T 18, 95, 97). For the first three years she worked as a laborer (T 96), thereafter as a senior clerk typist (T 97), and as a senior clerk stenographer (T 97). As she became more involved in Campion's day-to-day work her title was changed to Administrative Secretary (T 50).

Her desk is located immediately outside Campion's private office (T 20). She takes his dictation, types all his correspondence (T 20, 91), opens and sorts all his mail (T 29) - including any legal opinions sent by the attorney (T 136); she also answers his calls (T 20) and maintains his files (T 23) - including Campion's personnel files kept in the locked cabinet (T 25). Although these files are not the "official" personnel files (T 144, 146, 148) [those are maintained by the County Personnel Office (EE-1, T 49)], they do contain information of employee investigations (T 27, 134, 135, 141), grievances (T 28), work procedures, contract information and research (T 27).

Stevens assists Campion in formulating the department's budget proposal (T 30); she assists with computations (T 109), costing-out various projects (T 138, 140) and typing proposals (T 100, 109). Additionally, she attends budget meetings between Campion and his superior, Martino (T 31, 37, 108, 110). These discussions may concern policy or personnel changes as well as budget matters (T 55). Final approval of the budget rests with the Board of Freeholders.

Stevens does not attend negotiation sessions or strategy meetings, since Campion does not attend these (T 37).

Stevens also assists Campion in grievance handling: she researches civil service rules and the contract (T 30); she interviews first-level supervisors and employees concerning particular grievances, gathering facts and recording this information in the file (T 42, 101, 144). At times, she drafts Campion's grievance responses, which he then signs (T 43, 44, 46, 133), she types all of the grievance answers (T 30).

When employees are hired or fired, Stevens completes the required paperwork (T 83) including civil service forms (T 151) and the medical and pension plan forms (T 149). Copies of some forms are forwarded to employees as a matter of right pursuant to the contract or civil service regulations (EE-1, 49; T 178, 179). She also performs background checks on job applicants (T 83).

As Campion's secretary, Stevens is privy to certain information concerning proposed personnel actions before employees or the union are notified; this includes advance information on the numbers, names and titles of employees to be laid off (T 51, 56,

62, 110). 6/

Stevens also serves as secretary to Freeholder Martino (T 19). His office is located in the same area as Campion's and Stevens'. He has office hours approximately one day each week (T 98, 99), but calls in daily to give work instructions (T 20, 21, 98).

Stevens prepares all Martino's correspondence: she types letters to citizens, department heads, other Freeholders, County Counsel, and legislators; these letters concern department budget policy matters (T 99) (T 100-101) and policy changes affecting employees (T 119) (not grievances) (T 118); she also maintains his files which are kept in a special cabinet in Campion's office (T 99).

Only about ten percent of Stevens' time is devoted to work for persons other than Campion, or Martino (T 132). During this time, she performs secretarial services for the park planner, the county purchasing agent, the bookkeeper (T 132) and the police chief (T 52). She also conducts interviews of employees who are the subjects of internal investigation by the police or by the park police (T 76, 85).

Applicable Law

Confidential employees are excluded from the protections and rights afforded other public employees under the Act and consequently they are not eligible for inclusion in a collective negotiations unit. Section 34:13A-3(d) defines "employee" as follows:

This term [employee] shall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer except elected

officials, members of boards or commissions, managerial executives and confidential employees.

Section 3(g) of the Act 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 negotiating unit incompatible with their official duties.

Necessary to a determination of confidential status is a finding that the employee has access and exposure to information that has a direct bearing on collective negotiations and the labor relations function of the public employer. The analysis is two-fold. First, we must determine the managerial and labor relations functions of the immediate supervisor to the secretary. Second, we must determine whether the secretary acts in a confidential capacity to a member of management's team.

The Act does not require a regular or continuous pattern of involvement with the collective negotiations process. Rather, it requires that the extent of involvement is such as to render the alleged confidential employee's membership in any collective negotiations unit incompatible with his or her job duties. In re Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979). 7/

Analysis and Conclusion

Freeholder Martino, as a member of the Board of Freeholders is clearly involved in the overall management of the County and in determining its direction, program and labor relations policies. Additionally, he exercises the power of approval on labor contracts

and other County management matters. As a consequence of his oversight responsibilities for the Department of Parks, he is intimately involved in the management and direction of park programs and personnel policy. It cannot be disputed that Martino is a "managerial executive" of the County. ^{8/}

Campion, as Superintendent of Parks, has less responsibility for overall County programs and policies. However, he is responsible for the overall operation of a large department with 210 employees. Consequently, he exercises substantial authority for personnel matters in that department subject only to approval by the Board of Freeholders. These are labor-related matters which include hiring, firing, furloughing, and disciplining personnel; also included is the formulation of an overall department budget proposal following review of program and personnel needs. Budget proposals prepared by Campion are not public information. ^{9/} Again, this budget is subject to final approval by the Board of Freeholders. Campion and Martino also determine the department services and operations. As a result of these responsibilities, Campion is privy to information concerning labor relations, except in the context of actual direct collective negotiations. Additionally, he works closely with Freeholder Martino regarding decisions in the budget, personnel complement and the Park Department's programs and services. As a result, Campion can be considered as part of the County's management team.

Stevens, Campion's secretary, renders secretarial services directly to both Campion and Martino. She serves as their only secretary. As such, she is privy to advanced information on the department's budget, county programs and policies, and changes

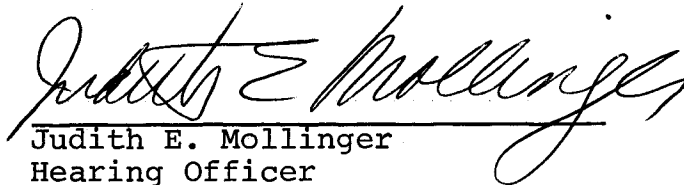
or proposed personnel policy changes directly affecting the terms and conditions of employment of other parks department employees. She has access to this information well in advance of any notification to the union, other employees, or the public. Moreover, she has knowledge of grievance answers, and employee discipline actions before the affected employees receive notice. She participates directly in formulating grievance responses at management's level two. Based on the foregoing, there is sufficient evidence to support a finding that as a regular part of her job duties, Stevens has access and exposure to information that directly bears on the collective negotiations and the labor relations function of the employer.

Recommendations

Based on the foregoing, I recommend a finding that:

The position of Secretary to the Superintendent of Parks is confidential within the meaning of the Act and should be excluded from the collective negotiations unit.

Respectfully submitted,


Judith E. Mollinger
Hearing Officer

Dated: April 23, 1984
Trenton, New Jersey

FOOTNOTES

1. Commission exhibits will be designated C- ; County exhibits as P- ; Council #7 exhibits as EE- .
2. Commission certification issued March 10, 1971, RO-86. This unit includes supervisors.
3. Hearing Officer Lawrence Henderson left the employ of the Commission and therefore the undersigned has been designated to issue a Report and Recommendations on the record pursuant to N.J.A.C. 19:11-6.4.
4. Reference to the Transcript of Proceedings on December 19, 1983 is (T).
5. Campion testified that he last attended a negotiations session with Council 7 approximately two years ago (T 34). However, Council 7 President Montanti, who has participated in negotiations for the last three years, testified that Campion had not attended any negotiations sessions (T 155). Clearly, in the past two years Campion has not participated in collective negotiations.
6. In March, 1982, Stevens knew in advance of employee notification the names of employees to be laid off (T 27, 28). She also attends meetings between Campion and Martino concerning department actions only contemplated by the County.
7. Several decisions established the contours of legal analysis for a finding of confidential status, River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); In re Western Monmouth Utilities Authority, D.R. No. 82-36, 8 NJPER 140 (¶13061 1982); In re Passaic Cty. Reg. H.S. Dist.

No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976);
In re Woodbridge Twp. Bd. of Fire Commissioners Dist. No. 1,
P.E.R.C. No. 51 (1974); Willingboro Bd. of Ed., D.R. No. 84-4,
9 NJPER 527 (¶14215 1983); Linden Free Public Library Bd. of
Trustees, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); Old Bridge
Twp., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); In re Jersey
City, D.R. No. 80-36, 6 NJPER 278 (¶11132 1980); In re Twp.
of Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER
276 (¶11131 1980); In re Little Ferry Bd. of Ed., D.R. No.
80-19, 6 NJPER 59 (¶11033 1980); In re Dover, D.R. No. 79-19,
5 NJPER 61 (¶10040 1979); In re Jersey City Bd. of Ed., D.R.
No. 80-15, 5 NJPER 533 (¶10273 1979); In re Rahway Bd. of Ed.,
D.R. No. 80-12, 5 NJPER 506 (¶10261 1979); Mercer County Com-
munity College, D.R. No. 80-13, 5 NJPER 507 (¶10262 1979);
Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018
1977); In re Jersey City, D.R. No. 78-35, 4 NJPER 139 (¶4065
1978); Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001
1977); Cranford Bd. of Ed., D.R. No. 78-20, 3 NJPER 352 (1977);
In re Springfield Bd. of Ed., E.D. No. 52 (1974); In re Plain-
field Bd. of Ed., E.D. No. 1 (1970).

8. N.J.S.A. 34:13A-3 Definitions

* * *

(f) "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

9. Cf. City of Union City, P.E.R.C. No. 83-162, 9 NJPER 394 (¶14179 1983).