

Are They “Confidential” Or “CSEA Bargaining Unit” Employees?

Until 2004 the definition of a “confidential” employee was broad, stating that a confidential employee was any employee who, in the regular course of his or her duties, had access to his or her employer’s employer-employee relations.

On January 1, 2004 the definition of a confidential employee under the Educational Employment Relations Act {EERA} 3540.1 (c) was amended to define “confidential” employee as any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

The new, more narrowly defined language creates a higher standard of participation and involvement of “confidential” employees in employer-employee relations.

First, the new language requires the *development or presentation* of management positions. This presents a higher threshold in terms of analysis of actual duties to be performed by confidential employees.

Second, the information to which the employee has access has been qualified to be “...information that is *used to significantly contribute to the development of management positions.*”

As you can see, the revised definition of a “confidential” employee contains more complex levels of employee involvement than the prior language. This language should make it easier for your CSEA chapter to conduct an investigation of your school districts’ current confidential employees duties and make effective arguments that certain “confidential” employees are not in fact confidential pursuant to the amended 3540.1 (c) and should become part of the CSEA bargaining unit.