

Nassau County

SUPREME COURT

Justice Wilkes

MATTER OF WOOL (Abate)—This is an application by the petitioner to compel the respondent to furnish him with a list of names and addresses of the employees of the Town of Hempstead whose salaries were subject to deduction for union membership dues payable to the Civil Service Employees Association as of April 1, 1977.

The petitioner is the attorney for one, Doris Kasner, who was a candidate for office in the CSEA and who has challenged its election process in a proceeding entitled *Kasner v. Abbatiello*.

The petitioner appears to seek relief pursuant to Public Officers Law section 88. Such an examination must be made pursuant to CPLR, Article 78. However, the papers submitted do not conform to the requirements of CPLR section 7804.

The petitioner also requests the court, in the alternative, to issue a subpoena duces tecum pursuant to CPLR section 2302. The respondent properly asserts that the adverse party in the *Kasner v. Abbatiello* matter is a necessary and proper party to this application for a subpoena duces tecum to compel a department of a municipality to produce its books and records. CPLR section 2307. CPLR section 2301 states that "a subpoena requires the attendance of a person to give testimony. A subpoena duces tecum requires production of books, papers and other things." There is no authority to issue a subpoena duces tecum directing attendance with the records at the Nassau County Board of Elections while the parties to a pending litigation examine ballots.

Since the respondent has failed to raise the procedural objection to the petitioner's request under Public Officers Law, section 88, the court will view the matter as an Article 78 Proceeding and examine, as well as determine, the substantive issues presented to it.

Article 8 of the Public Officers Law establishes the right of the public to access to public records. A citizen is not required to show any special need for any information. "... government is the public's business and that the public, individually and collectively, and represented by a free news media should have unimpaired access to the records of government." Public Officers Law sec. 85.

The Petitioner has chosen the Freedom of Information Law as his vehicle to obtain information. Therefore, his special circumstance or need is irrelevant. Access to a record is available to anyone unless it would result in an "unwarranted invasion of personal privacy" as enumerated in Public Officers Law section 88[3] if the records "are not relevant or essential to the ordinary work of the agency and municipality." [supra bid]

The Respondent, in compliance with the Freedom of Information Law, maintains a list containing the employees' names, titles, addresses and annual salaries. The Respondent also maintains in a payroll register which contains the names and titles of the employees, absent their addresses, but which has columns reflecting the deductions made by the employer from paychecks including union dues where applicable.

The specific issue before the Court is whether union membership is a record which should be made available to the public and, if so, should the sole list in the possession of the Respondent which reflects such membership and is being specifically requested be released, or is such information a matter of personal privacy. The "Freedom of Information Law" established a Committee on Public Access to Records for the stated purpose of promulgating "guidelines for the deletion of identifying details for specified records which are to be made available." In the absence of such guidelines, an agency or municipality may delete identifying details when it makes records available to prevent an "unwarranted invasion of personal privacy." Public Officers Law section 88[3].

Subdivision [3] of section 88 provides the standards to be applied when deleting specified records although the exercise of discretion is not limited thereto:

a. disclosure of such personal matters as may have been reported in confidence to an agency or municipality and which are not relevant or essential to the ordinary work of the agency or municipality;

b. disclosure of employment, medical or credit histories of personal references of applicants for employment, except such records as may be disclosed when the applicant has provided a written release permitting such disclosure;

c. disclosure of items involving the medical or personal records of a client or patient in a hospital or medical facility;

d. the sale or release of lists of names and addresses in the possession of any agency or municipality if such lists would be used for private, commercial or fund-raising purposes;

e. disclosure of items of a personal nature when disclosure would result in economic or personal hardship to the subject party and such records are not relevant or essential to the ordinary work of the agency or municipality.

In the considered view of this court, the Legislature has established a scale to be used by a governmental body subject to the "Freedom of Information Law" and to be utilized as well by the Court in reviewing the granting or denial of access to records of each governmental body. At one extreme lies records which are "relevant or essential to the ordinary work of the agency or municipality" and in such event, regardless of their personal nature or contents, must be disclosed in toto. At the other extremity are those records which are not "relevant or essential"—which contain personal matters—and should accordingly be withheld. Between the two extremes are the virtually countless combinations of matters wherein the right of the public to know must be delicately balanced against the right of the individual to privacy and confidentiality.

The facts before this Court clearly are weighted in favor of individual rights. Membership or non-membership of a municipal employee in the CSEA is hardly necessary or essential to the ordinary work of a municipality. "Public employees have the right to form, join and participate in, or to refrain from forming, joining or participating in any employee organization of their choosing." Civil Service Law section 202. Membership in the CSEA has no relevance to an employee's on-the-job performance or to the functioning of his or her employer.

The specific record sought herein is the payroll register containing a list of an employee's gross bi-weekly salary as well as an itemization of the deductions made by the employer resulting in a net paycheck. A copy of part of the requested record is annexed to the Respondent's papers and is clearly demonstrative of the private nature of the contents thereof.

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