

D.R. NO. 94-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

EASTAMPTON TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-93-50

EASTAMPTON TOWNSHIP EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among school secretaries to determine if they wish to be represented by the Eastampton Education Association in a mixed unit. The Board objected, asserting that the petition is untimely and that one employee is "confidential" within the meaning of the Act.

The Director determined that a hearing must resolve the issue of the disputed title's confidential status and that the other petitioned-for employees should be allowed to vote in an election. He dismissed the Board's objections about the timeliness of the petition.

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Appearances:

For the Public Employer
Barbour & Costa, attorneys
(John T. Barbour, of counsel)

For the Petitioner
Selikoff & Cohen, attorneys
(Kenneth A. Sandler, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 25 and October 16, 1992, the Eastampton Township Education Association filed a Petition for Certification of Public Employee Representative and an amended petition seeking to add three unrepresented secretaries to an existing negotiations unit of teachers, nurses, librarians and custodians represented by the Association and employed by the Eastampton Township Board of Education.^{1/} The petition was accompanied by an adequate showing of interest. N.J.A.C. 19:11-1.2.

^{1/} This matter was pended while the parties continued collective negotiations. The issues raised by the petition were not resolved in negotiations.

The Board opposes the petition, stating that it is untimely filed because the parties have been engaged in successor negotiations for at least 10 months. It argues that inclusion of the petitioned-for employees would "delay the resolution of negotiations." It also argues that the secretary to the superintendent is "confidential" and ineligible for inclusion in any unit.

The Board Superintendent, John Holcroft, certifies that he has been the Board's top school administrator for 22 years and has always been on the Board's negotiating committee in negotiating collective agreements with the Association. Holcroft "prepared negotiations suggestions and positions on behalf of the Board and has had the responsibility to interpret and administer" the successor agreements. He has been "directly involved" as Board representative in "disciplinary action" against unit employees.

Holcroft asserts he has one secretarial employee and "it is a function of that position to be involved...in the above functions...." He asserts that the position, "would have access to the material and files utilized by me in carrying out the above functions...." He states that this secretary "processes and has access to my mail from and to...board members, and the board attorney." He states that the secretary "would have access to minutes of board executive sessions...prior to public release...."

The Board did not assert that the other secretarial titles included in the petition were confidential.

The Association argues that the Commission has long recognized the sufficient community of interest among teachers and support staff and that the petitioned-for employees share an adequate community of interest with the existing combined, professional/non-professional unit.

The Association asserts that the secretary to the Board Superintendent, Sheila Oehler, is not a confidential employee and should be included in the petitioned-for unit. In the past two years she has had the additional title of secretary to the curriculum coordinator, a title which has no confidential duties. The Association denies that Oehler's typing of negotiations minutes compromises the Board's negotiations position and contends that she no longer performs the duty, it having been reassigned to the secretary to the Board Secretary. Finally, the Association denies that Oehler's mere access to Board executive session minutes make her confidential within the meaning of the Act.

Oehler by way of affidavit states that during her fifteen years as secretary to Holcroft, her duties included completing the school register, typing lunch subsidy records, substitute lists, State reports, purchase orders, certificates, correspondence, routine reports to the Board, etc. She specifically denies ever being "involved or present when the Board's negotiating proposals were discussed or formulated." [She denies seeing executive session minutes.] She states that at least twice before the 1991-92 term she typed the minutes of negotiations sessions attended by the Board

and Association. Since then, she maintains, that duty and others concerning collective negotiations were performed by the secretary to the Board Secretary.

The Commission has consistently found that in school districts teachers and support staff share a community of interest stemming from shared goals, central authority controlling working conditions and common working facilities. This community of interest generally warrants giving teachers and support staff the opportunity to choose unified representation in a single unit. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984).

The secretaries in this matter all work for Board administrative personnel in the same buildings in which negotiations unit personnel, including teachers and custodians, perform their duties. The facts show that the secretaries have the same goals, central authority controlling working conditions and generally work in the same areas as other unit personnel. Accordingly, I find that the petitioned-for unit is appropriate. Furthermore, the petition is timely filed. See N.J.A.C. 19:11-2.8.

Confidential employees may not be included in a any negotiations unit. N.J.S.A. 34:13A-5.3. N.J.S.A. 34:13A-3(g) defines confidential employees as those employees:

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

The Commission's policy narrowly construes the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of N.J. and CWA (successor to NJCSA/NJSEA), P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985) app. disp. App. Div. Dkt. No. A-1375-85T (1/9/87); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). The burden of demonstrating confidentiality is therefore placed on the party seeking to remove an employee from the Act's protection. See State of New Jersey and CWA; State v. Professional Ass'n of New Jersey Dept. of Ed., 64 N.J. 231, 253 (1974), N.J. Const. Art. I ¶19. A finding of confidential status requires a case-by-case examination of each alleged confidential employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood. The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and assisting management in preparing for these functions. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

The statements of position and certifications pose substantial material factual issues about the confidentiality of Oehler's position. Accordingly, I direct that a hearing be convened on whether the duties she performs render her position ineligible for inclusion in any unit.

No factual issues have been raised concerning the two other petitioned-for secretarial titles. Accordingly, I direct an election among them to determine their representational desires. The secretary to the Board Superintendent will be permitted to vote by challenged ballot. The secretaries shall vote on whether they wish to be represented by the Association in the petitioned-for unit or no representation.


The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the

unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. A mail ballot election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: September 15, 1993
Trenton, New Jersey