

D.R. NO. 78-47

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

In the Matter of

GLOUCESTER COUNTY COLLEGE,

Public Employer,

-and-

DOCKET NO. CU-77-53

INTERNATIONAL UNION OF ELECTRICAL,
RADIO & MACHINE WORKERS, AFL-CIO,
LOCAL 440,

Petitioner.

SYNOPSIS

The Director of Representation, in agreement with the Hearing Officer's Report and Recommendation in a Clarification of Unit proceeding, finds that the Secretary to the Associate Dean of Community Services and the Secretary to the Associate Dean of Student Services are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act and accordingly, are inappropriate for inclusion in any negotiations unit.

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Appearances:

For the Public Employer
Metzler Associates
(Daniel Brandon, Negotiator)

For the Petitioner
Florio & Maloney, Esqs.
(Michael McCafferty, of Counsel)
(Arthur Dorst, International Representative, IUERMW)

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of a collective negotiations unit represented by International Union of Electrical, Radio & Machine Workers, AFL-CIO, Local 440 (the "Union"), a hearing was held before Commission Hearing Officer Arnold H. Zudick, on January 5, 1978, at which time all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Neither party filed a post-hearing brief, and the Hearing

Officer issued his Report and Recommendations on March 2, 1978. A copy is annexed hereto and made a part hereof. No exceptions to the Hearing Officer's Report and Recommendations have been filed.

The undersigned has considered the entire record including the Hearing Officer's Report and Recommendations and the transcript and on the basis thereof finds and determines as follows:

1. The Gloucester County College (the "College") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), the employer of the employees involved herein, and is subject to the provisions of the Act.

2. The International Union of Electrical, Radio & Machine Workers, AFL-CIO, Local 440, is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Union is the exclusive representative of a collective negotiations unit consisting of all secretarial, clerical and telephone operator employees. The Union seeks a determination herein that the Secretary to the Associate Dean of Community Services and the Secretary to the Associate Dean of Student Services are includable in its negotiations unit. ^{1/} These

^{1/} Initially, the Union also sought a determination as to several other titles. Subsequent to the opening of the hearing, however, the parties stipulated that the Secretary to the Director of Budget and Clerical Services and the Secretary to the Dean of Academic Services are confidential employees. The parties further stipulated that the titles of Bookkeeper and Security Guard (a clerical position) are appropriate for inclusion in the negotiations unit since they are not confidential positions. The Union thereafter amended its Petition to exclude the employment categories enumerated above from consideration herein, and accordingly, there is no dispute as to these employees.

employees have previously been deemed to be confidential employees by the parties, and, therefore, have been excluded from the negotiations unit. However, the Union in its Petition contends that these titles no longer hold a confidential status and, consequently, are includable in its negotiations unit. The College claims that these titles are still confidential and inappropriate for inclusion in any unit. ^{2/} Accordingly, a Clarification of Unit Petition having been filed and there existing a question concerning the composition of a negotiations unit, the matter is appropriately before the undersigned for determination.

4. The Hearing Officer found that the Associate Dean of Community Services and Associate Dean of Student Services are integral members of the President's cabinet, attend cabinet meetings and assist in the formulation of negotiations proposals. Further, in performing these labor relations functions, the Deans maintain labor relations materials including negotiations proposals, nego-

^{2/} N.J.S.A. 34:13A-3(d) provides, in relevant part:

"...This term 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 and commissions, managerial executives and confidential employees."

N.J.S.A. 34:13A-3(g) contains the following definition:

"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."

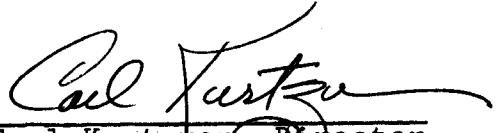
tiations notes, and cabinet minutes in their offices. He further found that, in performing secretarial duties for the two Deans, the secretaries type the negotiations proposals, memoranda, and minutes of cabinet meetings. Accordingly, the Hearing Officer recommended that the Secretary to the Associate Dean of Community Services and the Secretary to the Associate Dean of Student Services be designated as confidential employees and excluded from the unit of secretaries, clericals and telephone operators.

5. Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and noting the absence of any exceptions thereto, the undersigned finds that there is ample evidence to support the Hearing Officer's findings, and these are specifically adopted. Moreover, the Hearing Officer's conclusion and recommendation, that the Secretary to the Associate Dean of Student Services and the Secretary to the Associate Dean of Community Services are confidential employees, is consistent with and in accordance with prior standards enumerated by the Commission in previous decisions involving confidential employees. ^{3/} The record reveals that the Deans' secretaries, in the regular exercise of their duties, have access to and handle confidential labor relations materials and would be expected to continue to have access to and knowledge of such materials in the regular exercise of their secretarial duties in the future.

3/ In re Board of Education of West Milford, P.E.R.C. No. 56 (1971); In re Bloomfield Board of Education, E.D. No. 76-40 (1976); In re Brookdale Community College, D.R. No. 78-10, 4 NJPER _____ (1977); In re Springfield Board of Education, E.D. No. 52 (1974).

Accordingly, the undersigned finds that the Secretary to the Associate Dean of Community Services and the Secretary to the Associate Dean of Student Services are confidential employees within the meaning of the Act. Inasmuch as these employees are confidential employees, they may not be included in the Union's negotiations unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: June 22 , 1978
Trenton, New Jersey

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SYNOPSIS

A Commission Hearing Officer, in a Clarification of Unit proceeding, recommends that the Secretary to the Associate Dean of Community Services, and the Secretary to the Associate Dean of Student Services be found to be confidential employees within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

The Hearing Officer also recommends that pursuant to the parties stipulation, the Secretary to the Director of Budget and Clerical Services, and the Secretary to the Dean of Academic Services be found to be confidential employees and inappropriate for inclusion, but that the positions of bookkeeper and security guard (clerical position) be found to be appropriate for inclusion in the Union's unit.

A Hearing Officer's Report and Recommendations is not final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, 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. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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(Michael McCafferty, of Counsel)
Arthur Dorst, International Representative, IUERMW

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") on February 28, 1977 by the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 440 (the "Union") and amended on July 12, 1977, seeking a clarification regarding the composition of a unit of employees employed by the Gloucester County College (the "College") and represented by the Union. The Petitioner seeks a determination which would add to the existing

unit of secretarial, clerical, and telephone operator employees ^{1/} the following secretarial and clerical titles heretofore excluded: the Secretary to the Dean of Academic Services, Secretary to the Director of Budget and Clerical Services, Secretary to the Associate Dean of Community Services, Secretary to the Associate Dean of Student Services, the bookkeeper title, and, the security guard. ^{2/} The College argued that the titles in question were confidential employees within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") ^{3/} and were therefore inappropriate for inclusion in any negotiations unit. ^{4/}

Pursuant to a Notice of Hearing dated November 17, 1977, a hearing was held before the undersigned Hearing Officer on January 5, 1978 in Trenton, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Both parties elected not to file briefs in this matter. Upon the entire record in this proceeding, the Hearing Officer finds:

^{1/} The parties Recognition clause is contained in their collective agreement. See Exhibit J-1.

^{2/} The Petitioner originally petitioned for the titles of Secretary to the Director of Budget and Clerical Services; Secretary to the Controller; Secretary in the President's office, and, the bookkeeper. However, the Petitioner amended its Petition on July 12, 1977 to reflect only the titles listed above.

^{3/} N.J.S.A. 34:13A-1 et seq.

^{4/} The Act at 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 collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

1. The Gloucester County College is a Public Employer within the meaning of the Act, is subject to its provisions, and is the employer of the employees involved in this proceeding.

2. The International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 440, is an Employee Representative within the meaning of the Act and is subject to its provisions.

3. The Union filed the instant Petition seeking to include the above-named secretarial and clerical titles to the existing unit arguing that any previous confidential status held by the instant titles had changed and no longer existed. The College, however, maintained that the titles in question were still confidential and inappropriate for inclusion in any unit. Accordingly, there is a question concerning the composition of the negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

4. At the commencement of the hearing, the parties stipulated that the titles in question were the six titles listed above, and that the only issue herein was whether those titles were confidential employees within the meaning of the Act. ^{5/} However, midway through the hearing the parties caucused and agreed to amend the above stipulation. The Union amended the Petition to exclude from consideration herein the titles of Secretary to the Director of Budget and Clerical Services, and the Secretary to the Dean of Academic Services. The parties

^{5/} Transcript pp. 9-10.

then stipulated that those titles were confidential employees within the meaning of the Act and therefore inappropriate for inclusion in any negotiations unit. The parties further stipulated that the titles of bookkeeper and security guard (clerical position) were appropriate for inclusion in the Union's unit.

Therefore, the parties stipulated that the only titles and issue remaining herein was whether the Secretary to the Associate Dean of Community Services, and the Secretary to the Associate Dean of Student Services were confidential employees within the meaning of the Act. ^{6/}

ANALYSIS

The College and the Union are parties to a collective agreement effective July 1, 1976 through June 30, 1978. ^{7/} The Union argues that over a period of time the nature of the two secretaries positions has changed and that they no longer perform confidential work. The College argued, however, that the secretaries in question were frequently involved with confidential work such as typing and preparing various proposals to be used by the College in certain contract negotiations.

The College supported its position with a substantial amount of evidence from various College officials. Mr. Vernon Huston, the Assistant to the President, testified that the positions of Associate Dean of Community Services, and Associate

^{6/} Transcript pp. 97-98.

^{7/} Joint Exhibit - J-1.

Dean of Student Services, are an integral part of the President's cabinet, and that the individuals holding those positions frequently are involved in confidential work such as assisting in the formulation of negotiations proposals. ^{8/} Moreover, Mr. Huston testified that, on occasion, the two secretaries in question have typed cabinet meeting minutes for him, and that some of those minutes contained negotiations material. ^{9/}

The College also presented the testimony of the two Associate Deans. Dr. Richard Jones, Associate Dean of Student Services, testified that his secretary has access to labor relations material kept in his office, that she has typed negotiations proposals, and that he could not get along without a confidential secretary. ^{10/} Similarly, Mr. Charles Homan, Associate Dean of Community Services, testified that his secretary had access to negotiations notes, and that she types such material into various memorandum. ^{11/}

After the College presented its witnesses, the Union, having had an opportunity to cross-examine the above witnesses, decided against presenting any witnesses of its own.

The undersigned has considered the record herein and concludes that all of the evidence presented at the hearing

^{8/} Transcript pp. 15-26.

^{9/} Transcript p. 34.

^{10/} Transcript pp. 99-103.

^{11/} Transcript pp. 106-110.

establishes that the two secretaries in question perform confidential work. Although subject to an extensive cross-examination, all of the College's witnesses clearly testified that the secretaries in question frequently come in contact with, and perform, confidential work. There being no evidence to the contrary, the undersigned must recommend to the Director of Representation that the two secretarial titles in question be found confidential within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

RECOMMENDATION

Based upon the entire record the undersigned Hearing Officer recommends the following:


1. That pursuant to the parties stipulation, the positions of Secretary to the Director of Budget and Clerical Services, and the Secretary to the Dean of Academic Services be found to be confidential employees within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

2. That pursuant to the parties stipulation, the positions of bookkeeper and security guard (clerical position) be found to be appropriate for inclusion in the Petitioner's unit. 12/

12/ It is important to note that the security guard title concerned in this matter is not a "guard" in the traditional sense. The testimony herein established that the instant security guard performs a clerical and not a police type function. With that important clarification the Hearing Officer's recommendation remains the same.

3. That based upon the entire record herein and the foregoing discussion, the Secretary to the Associate Dean of Community Services, and the Secretary to the Associate Dean of Student Services be found to be confidential employees within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

Respectfully submitted,


Arnold H. Zudick
Hearing Officer

DATED: March 2, 1978
Trenton, New Jersey