

D.R. NO. 87-18

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

In the Matter of

CITY OF PLEASANTVILLE
BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-87-10

PLEASANTVILLE ADMINISTRATORS ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation determines that the position of Assistant Administrator to the Superintendent is a confidential, but not a managerial executive position and excludes it from the Pleasantville Administrators Association. The Assistant Administrator to the Superintendent negotiates and handles grievances on behalf of the Superintendent and the Pleasantville Board of Education.

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Appearances:

For the Petitioner
Donio, Bertman, Johnson, Sahli & Greco
(James L. Jackson, of counsel)

For the Employee Representative
Wayne J. Oppito, Esq.

DECISION

On September 26, 1986, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission ("Commission") by the City of Pleasantville Board of Education ("Board"). The Board seeks to exclude the position of assistant administrator to the superintendent from a collective negotiations unit of administrators on the grounds that the employee is a managerial executive within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

("Act")^{1/} and a confidential employee within the meaning of the Act.^{2/} The unit is currently represented by the Pleasantville Administrator's Association ("Association").

We have conducted an administrative investigation in this matter. (N.J.A.C. 19:11-2.6) The administrative investigation reveals the following:

1. The City of Pleasantville Board of Education is public employer within the meaning of the New Jersey Employer-Employee Relations Act, is the employer of the disputed employees, and is subject to the Act's provisions.

2. The Pleasantville Administrators Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the majority representative of a negotiations unit comprised of principals, directors, supervisors, assistant principals, department chairpersons and the assistant administrator to the superintendent.

3. The Board presented factual assertions in the form of a letter signed by the Board's counsel in support of its position that the assistant administrator to the superintendent is a managerial executive and a confidential employee. The Board also presented documentary evidence to support its assertions.

^{1/} See, N.J.S.A. 34:13A-3(f), which defines managerial executives.

^{2/} See, N.J.S.A. 34:13A-3(g), which defines confidential employees.

Specifically, the position of assistant administrator to the superintendent is currently held by Skender Avrami. Avrami is directly responsible to the Superintendent. The Board asserts that the position is on the same level on the district's organizational chart as that of assistant superintendent. Duties listed on the job description for the position include:

Assumes responsibility for operation of Personnel Office, including areas such as recruitment and selection of staff and implementation of affirmative action policies.

Prepares for and participates in employee negotiations.

Reviews, researches and prepares appropriate responses to employee grievances.

Assists in budget preparation through the collection and coordination of pertinent information.

4. The Board asserts that Avrami fulfills his duties as required by the job description as follows. With John Garrity, the Acting Superintendent and Edna Thompson, the Business Administrator, Assistant Administrator Avrami negotiates with the district's support staff on behalf of the Board. The current agreement between the Board and the support staff unit was signed by Avrami, Garrity and Thompson on behalf of the Board.

The Board alleges that Avrami also responds to employee grievances at the superintendent's level, in consultation with the superintendent. The Board offers Avrami's memo denying a staff member's request for temporary leave for frivolous personal reasons as evidence of his authority to grant or deny requests for leave.

It asserts that Avrami's participation in hiring decisions brings him into conflict with the teacher's unit, as evidenced by a letter from Charlotte London^{3/} to the Board complaining about Avrami's actions.

The Board alleges that Avrami participates in consultations between the superintendent and the Board's labor relations consultant. He serves as the Board's contact person between the support staff negotiation unit and the Board, the Board's labor relations consultant and the Board, and the teachers negotiations unit and the Board. The Board asserts that he prepares background materials for negotiations between the Board and the teachers' unit and the support staff unit. Finally, the Board asserts that Avrami does not perform these functions for the administrators' unit due to the potential for a conflict of interest. The Board asserts that the Superintendent wishes to assign tasks concerning grievance handling and negotiations with the administrators to Avrami.

The Association has not submitted specific factual allegations in response to the Board's proffer.

N.J.S.A. 34:13A-3(f) provides that managerial executive employees are:

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

^{3/} London's position with respect to the Association is unclear from the letter. The letter, however, clearly demonstrates Avrami's involvement in the hiring process.

that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

The position at issue is not that of superintendent or other chief executive officer of the district or the assistant superintendent. Therefore, despite the fact that Avrami is on the same level of the district's organizational table as the assistant superintendent, we find that he is not, by the plain language of N.J.S.A. 34:13A-3(f), a managerial executive.

However, it appears that Assistant Administrator Avrami is a confidential employee within the Act and thus should be excluded from the administrators' unit. 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 the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

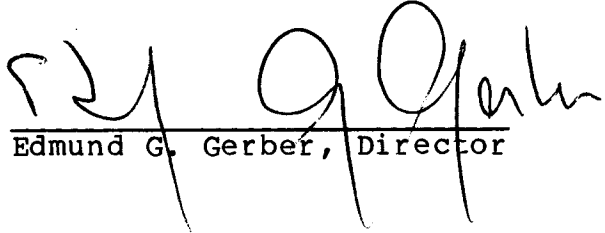
The key to confidential status is an employee's access to and knowledge of the issues involved in the labor relations process including negotiations, contract administration, grievance handling and the preparation for these functions on management's behalf. State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983); County of Essex, D.R. No. 84-7, 9 NJPER 574 (¶14239 1983). It appears that Avrami, as assistant administrator to the superintendent, is required to prepare for and to participate in collective negotiations on the Board's behalf and to handle grievances for the Superintendent. Accordingly, we are inclined to conclude that Avrami is a confidential employee.

The Association argues that even if Avrami is found to be a confidential employee with respect to certain employees, he is not confidential with respect to the administrators and should continue to be included in the administrators' unit.

However, confidential employees are not eligible for inclusion in any collective negotiations unit with other public employees. See N.J.S.A. 34:13A-3(g), Board of Education of the Township of Willingboro, D.R. No. 84-4, 9 NJPER 527 (¶14215 1983); Passaic County Regional High School District No. 1 Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

Based upon the foregoing, it appears that Avrami, as assistant administrator to the superintendent, is a confidential employee within the meaning of the Act, and therefore is inappropriate for inclusion in any negotiations unit. Accordingly, I clarify the Administrators' unit to exclude the position of assistant administrator to the superintendent. Clearview Regional High School Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 3, 1987
Trenton, New Jersey