

D.R. NO. 94-28

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

In the Matter of

WASHINGTON BOROUGH BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-94-100

WASHINGTON BOROUGH EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among all non-supervisory support staff employed by the Washington Borough Board of Education. The Board opposed a representation petition filed by the Washington Borough Education Association because it objected to the inclusion of certain secretarial titles and a custodian. The Director found that none of the secretaries were confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g). He also found that the custodian was not a supervisor within the meaning of the Act. Accordingly, he ordered the disputed titles to be included in the proposed unit.

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Appearances:

For the Public Employer
Broscious, Cooke & Glynn, attorneys
(Raene K. Manton, of counsel)

For the Petitioner
Michael Mulkeen, Field Representative

DECISION AND DIRECTION OF ELECTION

On January 14, 1994, the Washington Borough Education Association, NJEA, filed a filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission, seeking to represent a separate unit of all non-supervisory support service personnel employed by the Washington Borough Board of Education. The petition was timely filed and supported by an adequate showing of interest. The Township opposes the petition and refuses to consent to a secret ballot election; it alleges that 4 of the 10 petitioned-for titles are either supervisory or confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and are thus ineligible for unit membership.

We have conducted an administrative investigation into the petition and make the following findings. N.J.A.C. 19:11-2.2.

The Association seeks to represent an appropriate unit of support staff positions consisting of secretaries, custodians and paraprofessional employees. The Board and Association agreed to the inclusion of two classroom aides/special education, two assistant school secretaries and one custodian. They agreed to exclude the executive secretary to the superintendent, maintenance supervisor and assistant to the board secretary because they are either confidential or supervisory employees. The parties disagree about the eligibility of the custodian, Alvah Latourette; the assistant school secretary, Alda Mattison; the secretary to the child study team, Barbara Miller; and the executive secretary to a principal, Diane Tolotta.

Custodian (Alvah Latourette)

The school district employs 4 custodial maintenance employees, including a maintenance supervisor who has authority over the Memorial and Taylor Street schools. Custodian Alvah Latourette acts as a lead custodian at the Taylor Street school, overseeing other custodial staff there. He has not taken part in the interview or hiring of any other district custodial/maintenance employees. He has not recommended any discipline of other employees. The Board argues that as lead custodian at the Taylor School, he has supervisory authority.

Assistant School Secretary (Alda Mattison)

Alda Mattison is assistant school secretary at the Memorial school; she reports to the superintendent's secretary.^{1/} The Board asserts that Mattison "regularly assists [the executive secretary to the superintendent] with matters regarding grievances and/or negotiations." The Board argues Mattison must be classified confidential because in a small school district such as Washington Township, the employer must have flexibility to allow the superintendent or his secretary to call upon any other staff to assist in the handling of confidential labor relations materials and that Mattison is asked to handle these materials. However, no examples of Mattison's handling of negotiations materials or grievances were provided. The Board admitted at the conference that its most recent negotiations, two years earlier, had gone quickly and there were no grievances filed in the District.

Secretary to the Child Study Team (Barbara Miller)

Miller is the sole secretary to the Board's child study team. Miller reports to the superintendent. The Board did not cite any examples of Miller's processing, handling or discussing the merits of any of the team's grievances. However, it argues that there was a realistic possibility that Miller would handle or see grievances from child study team members and that this would place

^{1/} The parties agreed that the Superintendent's secretary is confidential within the meaning of the Act.

her in an impermissible conflict of interest. The Association argues that Miller is too remote from and uninvolved in the Board's negotiations or grievance processing to be considered a confidential employee.

Executive Secretary to a Principal (Diane Tolotta)

Tolotta is secretary to the principal of the Taylor Street school. The principal is a step on the grievance procedure for his school and Tolotta would receive and file any grievance considered by the principal and may gather information related to such grievances. The Board argues that Tolotta should be confidential because she has access to all Taylor School grievances and information sent by the principal to the superintendent. The Board did not cite any specific examples of how or when Tolotta has handled or processed grievances or confidential labor relations reports.

* * * * *

The Board argues that the custodian is a supervisor and must be excluded from the proposed unit. N.J.S.A. 34:13A-5.3 provides:

Nor, except where established practice, prior agreement or special circumstances dictate to the contrary shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

Determination of supervisory status requires more than a job description or bald assertion that an employee has the authority to hire, discharge, discipline or effectively recommend such action. The Commission requires evidence that the authority is regularly exercised. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status." Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

Custodian Alvah Latourette has never disciplined, discharged, or recommended such action be taken against any other employee. He has not participated in nor effectively recommended the hiring of any other employee. Applying the above standard here, I find that the custodian Alvah Latourette is not a supervisory employee within the meaning of the Act because he has not regularly exercised supervisory authority, as required by the Act. Accord, Somerset County.

The Board contends that the assistant school secretary (Mattison), child study team secretary (Miller) and principal's secretary (Tolotta) are confidential employees. N.J.S.A. 34:13A-3(g) defines "confidential employees" as those:

[W]hose 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.

Confidential employees are excluded from the Act's definition of "employee" and do not enjoy the Act's protections.

N.J.S.A. 34:13A-3(d). The Commission has narrowly construed the term confidential employee.^{2/} A finding of confidential status requires a case-by-case examination of an employee's knowledge and use of information which could compromise the employer's position in the collective negotiations process.

There must be more than simple "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. den., P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), app. disp. App. Div. Dkt. No. A-1375-85T1 (1/9/87). Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Here, Alda Mattison is an assistant school secretary who reports to a confidential position, the superintendent's executive secretary. Mattison is said to regularly assist this position with matters regarding grievances and/or negotiations. However, the Board did not provide any specific examples of Mattison's handling of confidential labor relations materials or information in a manner or at a time which would compromise the Board's position in

^{2/} See Brookdale Comm. College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

negotiations or other labor relations processes. Further, the Board admitted that its most recent negotiations, two years earlier, had "gone quickly" and that there were not many grievances filed in this district. Although the Board argues that the district's small size should permit greater flexibility in the use of assistants to handle and work on confidential information, the experience of this district is that there are relatively few grievances and relatively smooth negotiations; thus, the experience belies that perceived need.

The Board argues that the principal's secretary, Diane Tolotta, has complete access to all step one grievances at the Taylor Street School and all reports from the principal to the superintendent or Board. However, there is no evidence that shows that Tolotta has participated in the processing of grievances or preparation of reports which would place her in a conflict of interest position. As noted above, access to information alone, does not render a position confidential. Little Ferry Bd. of Ed.

Finally, the child study team secretary, Barbara Miller, does not have any role in the Board's conduct of collective negotiations. She reports to the superintendent, and would have access to grievances which may come from child study team members to the superintendent. However, there is no evidence that Miller has handled any grievances in any manner.

Since a finding of confidential status denies an employee any protections under the Act, we are constrained to carefully and

closely scrutinize the facts of each case in making a confidential status determination. Here, there is no direct and specific evidence that these three secretaries have handled confidential labor relations materials in a context which presents the type of conflict that the Act seeks to avoid. Accordingly, I find that the assistant school secretary (Mattison), child study team secretary (Miller), and principal's secretary (Tolotta) are not confidential within the meaning of the Act and are included in the proposed unit.

Based upon all of the above, I order that an election be conducted in the unit described below:

Included: all support service personnel employed by the Washington Township Board of Education as secretaries, custodians and paraprofessionals .

Excluded: all other employees, all employees represented by other negotiations units, managerial executives, confidential employees, craft employees, police, firefighters, professional employees, supervisors within the meaning of the Act, the executive secretary to the superintendent, maintenance supervisor, and assistant to the board secretary.

Employees will vote on whether they wish to be represented for purposes of collective negotiations by the Washington Borough Education Association, NJEA.

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. Employees must appear

in person at the polls in order to be eligible to vote. 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 certified unit described above, 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 petitioner and to Local 115, 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. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: June 7, 1994
Trenton, New Jersey