

D.R. NO. 99-9

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

In the Matter of

OAKLAND BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-98-31 and  
CU-98-33

OAKLAND EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation determines that the newly created position of secretary to the superintendent's office is confidential. Many of the secretary's duties give her access to knowledge of confidential labor relations matters which could compromise the Board's position in negotiations if she remained in the Association's unit. The Director further determines that the positions of executive secretary and secretary to the superintendent of schools remain confidential and dismisses the Association's petition to clarify these positions into its unit.

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OAKLAND EDUCATION ASSOCIATION,

Petitioner,

Appearances:

For the Public Employer  
Fogarty & Hara, attorneys  
(Jonathan Goldin, of counsel)

For the Petitioner  
Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION

On January 16, 1998, the Oakland Board of Education ("Board") filed a Petition for Clarification of Unit (Docket No. CU-98-31) with the Public Employment Relations Commission ("Commission") seeking to exclude the newly created position of secretary to the superintendent's office from the negotiations unit represented by the Oakland Education Association ("Association"). The Board asserts that this position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13-3(g) ("Act") and should be excluded from the unit.

The Association objects to the Petition. The Association asserts that the Board has failed to establish that the secretary to

the superintendent's office performs confidential duties. It argues that the Board has deliberately assigned confidential responsibilities to the new secretary to keep the position out of the collective negotiations unit. On February 4, 1998, the Association filed a Clarification of Unit Petition (CU-98-33) seeking to include the executive secretary and the secretary to the superintendent of schools in its unit. The Association asks that we determine which, if any, confidential duties are being performed by these employees in light of the Board's creation of a third, allegedly confidential position.

In response to the Association's petition, the Board reiterates that the duties performed by each secretary in the superintendent's office are necessarily confidential, and that the sole motivation behind the creation of the position secretary to the superintendent's office was to improve the overall efficiency of the operation of the new superintendent's office.

An administrative investigation was conducted to determine the facts, in accordance with N.J.A.C. 19:11-2.2(a). On November 23, 1998, I sent a letter to the parties setting forth the facts as they appeared and indicated that I was inclined to conclude that the titles at issue in this case should be excluded from the collective negotiations unit on the ground that they were confidential within the meaning of the Act. I provided the parties an opportunity to file a response. Neither party responded. Based upon the investigation, I find the following facts:

The Oakland Education Association is the result of a merger and voluntary recognition between the Oakland Education Association and the Oakland Educational Secretaries Association on January 8, 1998. The unit now includes 131 certificated employees and 15 educational secretaries.

Although the secretary to the superintendent's office was included in the unit, the recognition agreement further provided:

It is the understanding of the parties that subsequent to the approval and signing of this Agreement by the parties, the Board intends to file a petition for unit clarification with PERC seeking the exclusion of the position Secretary to the Superintendent's Office from the negotiations unit represented by the Association.

The secretary to the superintendent's office is one of an integrated, three-person secretarial team which services and reports to the superintendent. The position of secretary to the superintendent's office was created in August and posted on September 4, 1997. Karen E. Martin was appointed to the position on or about September 22, 1997. The other two secretaries in the team are Maureen Burns, executive secretary and Theresa Martens, secretary to the superintendent of schools. Both of these employees are now excluded from the negotiations unit because of their current status as confidential employees.<sup>1/</sup>

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<sup>1/</sup> Martens' position, formerly titled assistant secretary to the superintendent, was previously clarified out of the secretaries' unit. Oakland Bd. of Ed., D.R. 91-8, 16 NJPER 500 (¶21219 1990).

Dr. Richard Heflich became Superintendent of the Oakland Board of Education on February 1, 1997.<sup>2/</sup> Heflich decided to take a more active role in contract negotiations than had his predecessor. He is a member of the Board's negotiations team, and as a result, his secretarial staff comes into contact with negotiations materials and documents, including draft negotiations proposals, research on negotiations topics, correspondence with Board attorneys, and summaries of Board discussions concerning negotiations issues and strategies.

Since the superintendent's office represents a step in the grievance process, Heflich also assigns any available secretary to assist him by taking dictation and typing, sending, and filing correspondence or final grievance decisions. If the superintendent seeks legal advice from Board counsel concerning grievances, correspondence regarding those issues will be forwarded via mail or facsimile and picked up or distributed by any one of the secretaries. In this manner, any of the three secretaries may have advance knowledge of grievance decisions, as well as options considered by Heflich prior to his final decision.

Heflich has also implemented a supplemental filing system using binders in which all information related to grievances, personnel matters, and contract negotiations is kept. The

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<sup>2/</sup> Facts concerning the organizational structure of the superintendent's office were described in affidavits provided by Heflich, Burns, Martens and Martin.

secretaries are responsible for maintaining these binders and keeping them updated with correspondence and other documents. The Board submits that, in the absence of an assistant superintendent, human resources office, personnel office or any other support division to assist the superintendent's office, it would be impossible for Heflich to run the office without the benefit of the three-person confidential secretarial team.

The three secretaries share a single large room where their desks, phones, computers and filing cabinets are located. They have access to one another's computers, and all have equal access to filing cabinets containing personnel, grievance and negotiations files.

In addition to the general duties of the office, each secretary is assigned specific tasks, e.g. Executive Secretary Burns handles agendas and minutes; Secretary to the Superintendent of Schools Martens handles attendance; and Secretary to the Superintendent's Office Martin handles transportation issues. However, each secretary is aware of the responsibilities of each of the three jobs, as each is required to cover for another secretary in the event of her absence. For example, when Martens was absent, Martin stayed late and worked closely with Burns on the agenda for a Board meeting that evening.

All three secretaries are involved in the creation of the superintendent's "Weekend Reading". This is an update and summary of the week's events which the superintendent sends to Board members

every Friday. The subjects may include grievances, contract negotiations issues and proposals, strategies, personnel issues, and budget matters. For example, the packet recently included a comparison of Oakland's collective negotiations agreement with other school districts', including budget, salaries and leave issues, which the Board intended to use in developing its negotiations priorities and strategies. Each secretary assists in the preparation of one or more sections of the Weekend Reading by taking dictation from the superintendent, typing and/or preparing the information for inclusion in the document. The superintendent mandates that each secretary read the entire packet each week both as a proofreader and to keep them informed of the District's business.

Martin arrives at 8:00 A.M. each morning and is solely responsible for the office until the other secretaries arrive at about 8:30 A.M.

During the current negotiations, Martin has handled faxes and letters from Board attorneys concerning the Board's actual proposals; she has typed a lengthy negotiations update memo to the Board, and she has proofread, photocopied and filed Board minutes, including executive session, where negotiations strategies and other personnel matters are discussed. She has seen scattergrams and other salary and budgetary information related to negotiations. She has knowledge of the Board's proposals and strategies and their significance in the negotiations process. She transcribes and types

grievance updates or the superintendent's final grievance decisions, and, therefore, has access to and knowledge of final grievance decisions before they are released.

Martens is responsible for typing the Board minutes of executive sessions which contain confidential personnel issues and negotiations strategies.

The Association asserts that the Board has attempted to manipulate facts and responsibilities for the purpose of creating an additional confidential secretarial position in the superintendent's office. The Association submits that there is no logical reason for Martin's work hours to commence at 8:00 A.M. except to expose her to confidential materials for the sole purpose of alleging confidential status; that the superintendent's office functioned for years with only two confidential secretaries covering for each other, without the need to have an additional employee involved in the process; that the duties cited by the Board in support of its claim of confidential status are duplicated for the purpose of inventing confidential status and not linked to confidential labor relations information; that the claim that Ms. Martin "often takes dictation" on grievance matters is contradicted by the fact that there have been perhaps three grievances filed since September 1997; that the requirement that all three secretaries read the "Weekend Reading" is designed to expose a secretary to allegedly confidential materials in a wholly unnecessary manner; and that the present superintendent is no more involved in the negotiations process than any prior



superintendent; therefore, there is no basis for alleging an expansion of duties justifying increased need for confidential secretarial support.

The Board submits that the fact that a new superintendent has been appointed represents, in itself, a change of circumstances due to the amount of work generated by Heflich's approach to the job of superintendent which can only be completed with three confidential secretaries.

#### ANALYSIS

N.J.S.A. 34:13A-3(g) defines confidential employees as:

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 policy of this Commission is to narrowly construe the term confidential employee. Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977); State of New Jersey, 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); Cliffside Park Bd. of Ed., H.O. No. 87-19, 13 NJPER 473 (¶18175 1987), adopted, P.E.R.C. 88-108, 14 NJPER ¶19128 (1988).

In State of New Jersey, the Commission explained the approach taken in determining whether an employee is confidential. The Commission stated:

We scrutinize the facts of each case to find for whom each employee works, what [the employee]

does, and what [the employee] knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee [were] included in a negotiating unit. [Id. at 510.]

A finding of confidential status requires a case-by-case examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983), adopted P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984). 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 the preparation for these processes. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

Employees in clerical positions are often deemed confidential due to their superior's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971); Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell. An employee who performs such tasks will be determined to be confidential within the meaning of the Act.

Access to negotiations and grievance documents through typing and photocopying them and maintaining files containing them

may indicate confidential status. See River Dell; Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd NJPER Supp.2d 207 (¶182 App. Div. 1989); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); and Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986). Gathering and collecting materials for Board meetings and preparing the meeting agenda have been found to be confidential duties. See E. Rutherford Bd. of Ed., D.R. No. 90-9, 15 NJPER 665 (¶20271 1989); Cliffside Park.

Here, many of Martin's duties as the secretary to the superintendent's office give her access to and knowledge of confidential labor relations matters which could compromise the Board's position in negotiations. She has handled correspondence from Board attorneys concerning the Board's actual negotiations proposals; she has typed a lengthy negotiations update memo to the Board, and she has proofread, photocopied and filed Board minutes, including executive session, where negotiations strategies and other labor related matters are discussed. She has seen scattergrams and other salary and budgetary information related to negotiations. She has knowledge of the Board's proposals and strategies and their significance in the negotiations process. See W. Milford; Salem Comm. Coll.; River Dell. She transcribes and types grievance updates or the superintendent's final grievance decisions, and, therefore, has access to and knowledge of final grievance decisions before they are released. She learns of management personnel decisions before

they are announced to the Association or the affected employee(s).  
See River Dell; Sayreville; Mt. Olive; Montague. She is called upon to assist the other secretaries with duties such as the preparation of the Board meeting agenda. See E. Rutherford Bd. of Ed.; Cliffside Park.

If Martin were to remain in the Association's unit, the employer's ability to maintain confidentiality with regard to the collective negotiations process would be compromised. Therefore, it appears that Martin is a confidential employee and the Board's petition to remove the title of confidential secretary to the superintendent's office from the existing unit is granted.

The Association's petition seeks to clarify Burns and Martens into its existing unit. In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977), the Commission stated:

The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act....

[This] statutory framework renders certain negotiations relationships improper. Persons identified as managerial executives and confidential employees are not employees under the Act....

Where the clarification of unit determination is that a particular employee is a managerial executive or a confidential employee, the clarification of unit determination shall be effective immediately.

Occasionally, a change in circumstances has occurred, a new title may have been created, or the employer may have created a new operation or opened a new facility which would make a clarification

of unit proceeding appropriate. Ibid. Here, the Association has alleged a change in circumstances of the type contemplated by Clearview which permits the filing of its Unit Clarification petition.

However, in view of the structure and the overlapping nature of the support staffs' duties in the superintendent's office, it appears that the Board has demonstrated the continuing confidential status of Burns and Martens. These employees open the superintendent's mail, retrieve and file faxes, and type his correspondence - including grievance decisions and mail to the Board's labor counsel concerning grievance decisions and negotiations proposals and strategies. Additionally, Martens types the minutes of Board executive sessions containing confidential negotiations strategies. Martens' and Burns' duties give them actual knowledge of confidential negotiations information warranting their continued exclusion from the unit.

A close working relationship with another confidential employee, such as where employees substitute for each other or provide "back up" support may indicate confidential status. See Cliffside Park; Montague; Mt. Olive; River Dell; Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); W. Milford. In some situations where employees share an office with a confidential employee and are thus exposed to information related to the negotiations process, the Commission has determined such employees are confidential. See Salem; River Dell; Sayreville; Mt. Olive; Montague.

The Board has established that all three secretaries are required to fill in for one another when one is absent or

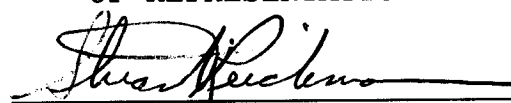
unavailable. The Board is within its rights to use a "team" structure of confidential secretaries in the superintendent's office in order to maximize the efficiency of its operations. Finally, the facts do not suggest that the Board assigned the various duties for the purpose of excluding employees from the Act's coverage. In any event, such a claim of illegal motive would be more appropriately resolved in an unfair practice proceeding. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984).

Accordingly, I find that the secretary to the superintendent's office is a confidential employee within the meaning of the Act, and I exclude that position from the unit, effective immediately.<sup>3/</sup> Further, I also find that the executive secretary and the secretary to the superintendent of schools remain confidential employees within the meaning of the Act.

ORDER

Secretary to the superintendent's office is a confidential employee within the meaning of the Act and is removed from the collective negotiations unit currently represented by Oakland Education Association, effective immediately. Executive secretary and secretary to the superintendent of schools continue to be confidential employees and remain excluded from the unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: December 23, 1998  
Trenton, New Jersey

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<sup>3/</sup> Clearview Reg. Bd. of Ed.