

D.R. No. 2007-6

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

In the Matter of

CAMDEN BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2006-011

CAMDEN EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the Camden Education Association's negotiations unit to include the clerk III positions working in the Camden Board of Education's human resources office. The Board sought to exclude those positions arguing they were confidential employees within the meaning of the New Jersey Employer-Employee Relations Act. The Director found, however, that the employees gathering background information regarding grievances, and their mere access to other sensitive information in the office did not establish that these employees had advanced knowledge of the decisions management made as a result of the grievance and other information.

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Appearances:

For the Public Employer,  
Summers George, P.C., attorneys  
(Harold W. George, of counsel)

For the Petitioner,  
Selikoff & Cohen, attorneys  
(Keith Waldman, of counsel)

DECISION

On October 25, 2005, the Camden Education Association (Association) filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission). The Association seeks to add 12 human resource (HR) clerks and secretaries to its existing negotiations unit of secretarial and clerical employees employed by the Camden Board of Education (Board).

The Board opposes the petition, asserting that the petitioned-for titles are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-1 et seq., and thus are inappropriate for inclusion in the negotiations unit. In particular, the Board claims the employees at issue: 1) type, read and maintain internal memorandums relating to labor relations, as well as other confidential files; and 2) assist their supervisors in the handling of grievances, by providing information regarding unit employees.

We have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2 and 2.6. Specifically, on January 18, 2006, a Commission staff agent conducted an informal investigatory conference to gather information. The parties also submitted position statements, briefs and supporting documents including job descriptions and certifications, in support of their respective positions by May 10, 2006. By letter of September 7, 2006, I advised the parties that I was inclined to issue a decision finding the petitioned-for employees were not confidential employees within the meaning of the Act and were, therefore, appropriate for inclusion in the Association's unit. I gave the parties until September 18, 2006 to submit additional information. On September 18, 2006, the Board submitted additional information arguing that the titles in question were confidential employees. The Association responded to that information on October 4, 2006. Based on our investigation, these facts appear:

FINDINGS OF FACT

1. The Association and the Board are parties to a collective negotiations agreement effective from July 1, 2003 through June 30, 2006. The recognition clause of the agreement describes the unit represented by the Association as follows:

. . . all secretarial and clerical employees under contract with the Board, or on leave from the school district, but excluding all confidential secretarial and clerical employees. Confidential employees excluded from the unit include the following: Secretary to the Superintendent; Secretary to the Board Secretary; and the Secretaries to the Assistant Superintendents.

2. The Camden School District is the third largest school district in the state. Prior to June 2004, the unit included approximately 13 employees in the Board's human resources (HR) office employed in the job title "clerk III." During this period, duties in the HR office which were considered "confidential" labor relations duties were performed by a payroll specialist and one confidential clerical employee, both of whom were not included in the negotiations unit.

3. In June 2004, the Board adopted a proposal from its HR director that the entire sixth floor of the Board's Administration Building be considered "confidential." Accordingly, on or about June 14, 2004, the Board formally abolished the positions of clerk III in the HR department and placed each of the 13 clerks in the title of confidential HR

clerk. The Board considered these individuals to be confidential employees within the meaning of the Act and thus not included in the Association's unit.<sup>1/</sup>

4. The actual nature of the work performed at the Board's HR office has not changed during the past five years. The negotiations process has not changed radically from when the Board employed only two confidential employees; nor has the grievance process changed. Further, the number of grievances has diminished and, as always, grievances are not routed to the HR office. Rather, they are submitted to Assistant Superintendent Dr. Fred Reiss and Board Secretary/Business Administrator Amato.

According to the Association, the petitioned for employees perform job duties which are substantially identical to those previously performed by the clerk III's who were included in the unit. In support of its position, the Association submitted the certification of Gladys Aponte Reyes who is currently employed by the Board in the clerk III title. Reyes had previously worked in the HR office from September 1977 - April 2003 in the clerk III

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<sup>1/</sup> The Association then filed an unfair practice charge, CO-2005-070, alleging that the Board's action violated 5.4a(1) and (5) of the Act, in that it constituted an unlawful unilateral removal of bargaining unit work and an unlawful transfer of work to other Board employees. The Commission scheduled a June 30, 2005 exploratory conference on the charge, which was later postponed at the parties' request. Thereafter, on September 28, 2005, the Association filed the instant petition. In light of the petition, further processing of the unfair practice charge is being held in abeyance, pending resolution of the petition.

title. From April 2003 until November 2005, she held the confidential secretary title. In her certification, Reyes states that the job duties she performed in her 2 titles were identical. She also claims that, as a result of her work history, she observed that the clerk III title and the confidential HR clerk title performed substantially identical duties. She further certified, "Neither the Human Resource clerks, the Clerks III, nor the confidential secretary had access to labor relations materials; nor did we assimilate, evaluate, analyze or provide significant information to our supervisors concerning labor relations information." In addition, she certified that to the extent any grievances were processed in the HR office, they were processed by the HR director, who is a managerial employee and not in the Association's unit.

The Board acknowledges that the workload in the HR office is substantially the same as it was before its June 2004 decision to designate all its HR clerks confidential employees. However, the Board explains that prior to its decision to replace the 13 HR clerk III positions with confidential HR clerks, it was forced to allow these individuals to handle confidential information, because of the large size of the district. According to the Board, an unfortunate side effect of this circumstance was that these individuals shared confidential labor relations information

with their union and subjected the Board to a great disadvantage during labor negotiations and disputes with Association members.

5. The Board's HR Office currently consists of (13) HR clerks and four managers. The managers are: (1) Dr. Garnell Bailey, Director of Human Resources; (2) Movetia Salter, Benefits Manager; (3) Helen Wapenski, Human Resources Data Analysis and Reporting Manager; and (4) Karen Uqdah, Employment/Training Manager. These managers do not directly participate in labor negotiations, but they provide support information to the Board in its preparation for labor negotiations and grievance hearings.

HR Director Bailey oversees managers Wapenski, Salter, and Uqdah and is responsible for oversight of all HR matters. She is specifically involved in hiring, evaluation, promotion, discipline, layoff and discharge; she also plans, directs, coordinates, and participates in recruitment programs. Bailey also counsels with employees to resolve complaints, difficulties, and other personnel matters and assures that appropriate documents are available for the Superintendent regarding recommendations for hires, transfers, promotions, dismissal and other personnel actions. Bailey receives copies of all grievances and is responsible for preparing and administering the HR Budget. As a result, she is directly involved in the budget formulation/adoption process and is privy to all labor relations cost data.

Currently, Bailey also holds the vacant position of human resource manager. The HR manager assists the HR director in preparing and administering the HR budget. The HR manager also processes pay increases and increment withholdings, and ensures that all employees are on the correct salary step. Further, the HR manager is privy to all labor relations cost data. As HR Manager, Bailey represented the Board in contract negotiations with the Association. Beth Peter is the confidential HR clerk to HR Director Bailey. Her status is not at issue, as the Association no longer disputes that she is a confidential employee within the meaning of the Act and thus not includable in the unit.

6. Data and Operations Specialist Wapenski monitors employee attendance to determine if action must be taken based on satisfactory or unsatisfactory time and attendance; such action may include whether an employee is promoted, disciplined, laid off or discharged. She also assists in the preparation of non-renewal/renewal letters, increment withholding letters, and RICE letters.

Wapenski is also responsible for calculating salaries and withholding increments, providing District salary administration, and researching grievances involving salary, time and attendance matters. Her duties also include the coordination and reconciliation of HR and payroll data and the preparation of HR



statistical data and reports. Moreover, Wapenski is involved in the budget formulation/adoption process by preparing reports consisting of this data, and is privy to all labor relations cost data.

Five (5) HR clerks report to Wapenski: 1. Oretta Thomas; 2. Deborah Yax; 3. Annette Valle; 4. Robin Irvin-Wright and 5. Victoria Tatem. These individuals handle time, attendance, and substitute replacement matters; in addition they assist Wapenski in researching both unit and non-unit employees' personnel records.

Specifically, they research employees' personnel files and search for items such as an employee's time and attendance records, sick time used, salary information, and confidential information such as doctors' notes. This information is used to support the Board's position with regard to the renewal/non-renewal of employment contracts or withholding of an employee's increment.

7. Benefits Manager Salter administers worker's compensation, unemployment and CBOE benefits. She also has responsibilities regarding employment relations and grievance processing. Her job description states she prepares data and reports to assist in negotiations with bargaining units. Salter is also privy to all labor relations cost data. Further, she is involved in discipline, layoff and discharge, in that she assists

in the preparation of non-renewal/renewal letters, increment withholding letters and RICE letters.

As Benefits Manager, Salter is involved in the budget formation/adoption process by analyzing the costs and benefits of various medical plans, dental plans, life insurance, pension, optical, prescription drug plans, etc. Salter determines which plans are most cost effective and which would be most suitable for the Board; the determination of the cost is then incorporated into the formulation of the budget.

Four (4) HR clerks report to Salter: 1. Frances Williams; 2. Laura Davis; 3. Susie Adorno and 4. Pam Christy. Williams' job duties include handling vision, dental, prescriptions and disability benefits, as well as medical processing and auditing for Medicare. She also handles New Jersey medical support and coordination of benefits and open enrollment, and new teacher orientation. In performing her duties, Williams provides benefits information to Salter in preparation for labor negotiations.

Davis handles benefits data entry, OSHA reporting, and provides administrative support for grievances relating to workers compensation.

Adorno handles unemployment processing and benefits packets; she also maintains personnel files. In addition, she makes

copies and sends documents to counsel, in support of grievances, non-renewals, increment withholdings and Donaldson hearings.

Christy is the front desk receptionist and, as such, she opens and distributes mail. She is required to read all mail, which includes memorandums relating to labor negotiations and grievances.

8. Employment/Training Manager Uqdah supervises the operations of the hiring and training process, including recruiting, background checks, certification, provisional teachers program, Teach for America, website access, recruitment calendar, employment testing, orientations, performance management and the training and development of support staff. Additionally, Uqdah provides information to the Board regarding increment withholdings, non-renewals and Donaldson hearings. She obtains this information by researching personnel files, and compiling the applicable information for the Board's review.

Three HR clerks report to Uqdah: 1. Antoinette Johnson; 2. Desiree Taylor and 3. Joannie Burnett. All of Uqdah's HR clerks assist her in researching personnel records, time records, and information for non-renewal/increment withholdings. Specifically, Johnson's job duties include interview scheduling, employment offer/decline letters, data entry for applications, internal/external job postings, exit interviews process, vacancy

reporting, staffing requests reporting, HR website input, job fairs, display boards and other marketing materials.

Taylor's duties involve criminal background checks, fingerprints, certification process, provisional teacher program, tuition reimbursement, substitute teacher certification and Teach for America.

Burnett's job duties include employment verifications for active, past, and retired employees.

DUTIES COMMON TO ALL HR CLERKS

9. All HR department employees have access to budget information; however, no HR employee has access to the actual budget. All managers and their confidential HR clerks are directly involved in collecting, compiling, researching, and analyzing data regarding salary administration, Donaldson hearings, negotiations, benefits reporting, withholding of increments, non-renewals, tenure charges, unemployment hearings, civil rights investigations/hearings, forensic audits resulting in charges/indictments, PERC hearings, and any other activity that supports the Board's position regarding labor relations. The HR clerks provide this information for the monthly board meetings at which this information is presented.

Further, the HR clerks have access to such letters as the following: non-renewal/renewal letters, RICE letters, and withholding of increment letters. The percentage of time each

day each employee spends working on these matters depends on various factors, such as the time of year, the volume of grievances filed, whether Donaldson hearings are scheduled, whether it is renewal/non-renewal time for employee contracts, or whether it is time for union negotiations. At particular times, the percentage of time HR clerks spend working on these types of confidential matters can be up to 90% of their day.

HR clerks have access to confidential labor relations materials throughout the day, as needed. The confidential files are unlocked in the morning and locked at the end of the day. The HR managers delegate to the HR clerks particular tasks regarding confidential labor relations materials. The HR clerks then carry out these tasks, which may include typing letters, copying files, compiling data and mailing letters.

All HR clerks research non-union and union employee personnel files and search for items such as time records, attendance records, sick time used, salary information, etc., and provide this information to their supervisors. This information is used to support the Board's position in situations such as the non-renewal of employment contracts, withholding of an employee's increment, or in response to an employee's grievance. HR clerks usually are made aware of labor relations issues as soon as their managers are, as the HR managers are required to prepare the appropriate documentation and gather the information needed to

respond to the issue. Thus, HR clerks must also be knowledgeable of the particular labor matter in order to know what they are looking for in the personnel files.

Further, each HR Clerk has advance knowledge of what will be discussed in Board meetings regarding issues involving HR records or personnel information, including information relating to grievances, non-renewals/renewals, increment withholdings, tenure charges, etc.

10. In support of its position that the petitioned for employees are confidential employees within the meaning of the Act, the Board provided copies of four letters that the HR clerks typed. One letter informed an employee that the Board voted to withhold his increment; another letter informed an employee that the Board voted not to renew her contract; the third letter informed an employee of an upcoming Board meeting that might include a discussion of her position; and the fourth letter informed an employee that the Board voted to reappoint her.

11. The job description for the HR clerks at issue includes the following responsibilities:

1. . . . Work closely with Human Resources Officer and Board Attorneys in preparing data and necessary reports for all negotiating unions and handle all salary increases for Labor Negotiators and other legal matters.  
. . .
4. Access personnel file of active and inactive employees.

6. Access attendance information and interpret same for the employee. . . .

7. Composes and types routine and confidential correspondence. . . .

12. Prepare letters of non-renewals and suspensions.

12. In her March 16, 2005 certification in opposition to the instant petition, HR Director Bailey certified that:

HR clerks provide administrative assistance to their supervisors who are involved in labor relations. HR clerks type and read internal memorandums relating to labor relations as well as maintain files.

As a result, HR clerks handle information directly related to labor relations as well as being fully aware of the contents of the materials and comprehending their implications as it related to the union.

HR clerks assist their supervisors in the handling of grievances by providing their supervisors with information regarding union employees. This information is used to support the Board's position in situations such as the non-renewal of employment contracts or withholding of an employee's increment.

The HR clerks inclusion in the Association's bargaining unit compromises the Board's position at the negotiations table.

13. Each HR clerk at issue also provided a May 9, 2006 certification in opposition to the instant petition, certifying that:

As an HR clerk, I provide administrative assistance to my supervisor who is involved in labor relations. My duties include typing and reading internal memorandums relating to

labor relations as well as maintaining confidential files.

As a result, I handle information directly related to labor relations as well as being aware of the contents of the materials and comprehending their implication as it relates to the union.

As a HR clerk, I also assist my supervisor in the handling of grievances by providing her with information regarding union employees. This information is used to support the Board's position in situations such as the non-renewal of employment contracts or withholding of an employee's increment.

HR Director Bailey, Benefits Manager Salter and Data and Operations Specialist Wapenski also provided May 9, 2006 certifications supporting the HR clerks' certifications.

#### ANALYSIS

A clarification of unit petition is appropriately filed where the majority representative has identified and petitioned for newly-created titles or positions during the contract period in which the new title was established and prior to the execution of the next succeeding contract. New Jersey Transit, P.E.R.C. No. 2000-6, 25 NJPER 370, (¶30160 1999); Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984); Bergen Pines Hospital, D.R. No. 80-20, 6 NJPER 61 (¶11034 1980) Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

Here, the Board abolished the 13 clerk III positions in human resources, created new positions of confidential HR clerk, and placed the clerks in the newly created positions. This



occurred in June, 2004 - during the period of the Association's 2003-2006 collective agreement. By its petition filed October 25, 2005, the Association seeks to put these employees back in its unit. Therefore, the CU petition is appropriate and timely filed. Bor. of Somerville, D.R. No. 2005-17, 31 NJPER 132 (¶57 2005); Burlington Cty. College, D.R. No. 2006-5, 31 NJPER 382 (¶150 2005). The Board opposes the Association's petition to include in its unit the HR clerks at issue, claiming they are confidential employees under the Act and thus are not appropriate for inclusion in the unit.

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 has narrowly construed the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of New Jersey (Dept. of Civil Service), 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); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp. 2d 186 (¶165 1988); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). In State of New Jersey

(Dept. of Civil Service), the Commission explained how it determines whether employees are confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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 was included in a negotiating unit. 11 NJPER 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., 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. Knowledge of information which is confidential because it concerns security or personal matters, but is unrelated to the negotiation process, is not the type of confidential duties covered by the Act. Cliffside Park Bd. of Ed. Moreover, such determinations should not be based on speculation about what duties an employee might be asked to perform, or solely on a written job description. Lacey Bd. of Ed., P.E.R.C. No. 90-36, 15 NJPER 626 (¶20263 1989); Pompton Lakes Bd. of Ed., D.R. 2005-16, 31 NJPER 33 (¶27 2005).

Here, the Board claims that the petitioned-for titles perform confidential labor relations duties which makes them inappropriate for inclusion in the unit. Further, the Board

claims it abolished the 12 HR clerk III positions and made these individuals confidential HR clerks because these individuals would relay confidential labor relations information to the Association, giving the Association the unfair advantage of knowing in advance the Board's position on issues to be negotiated, thus compromising the Board's position at the negotiations table.

However, the facts before me fail to show that these individuals have responsibilities or knowledge in connection with issues involved in the negotiations process, such as advanced knowledge of the Board's negotiations proposals, which makes their membership in the unit incompatible with their duties. In fact, the supervisors that these alleged confidential HR clerks report to and work for are not even directly involved in the collective negotiations process. Even grievances are generally not routed to the HR office, instead they are submitted to the Assistant Superintendent and the Board Secretary/Business Administrator who have confidential secretaries. In the event they are processed in the HR office, they are processed by the HR director, whose clerk, the Association concedes, is confidential.

Further, as for the negotiations process, neither the HR clerks nor even their supervisors have any direct or significant involvement. Rather, they simply assist the HR director who assists the negotiating team. While the HR clerks may gather

information and provide it to their supervisors, who then may analyze it and submit it to the Board's negotiating team, the Board has not shown what information the clerks learn from gathering the information, or how their knowledge of this information could compromise the Board's position in the negotiations process. Specifically, it does not appear that the HR clerks are privy to any of the Board's strategies or proposals before their disclosure to the unions or that they have any other direct involvement in the Board's conduct of negotiations.

Additionally, while the Board claims the HR clerks at issue have access to and knowledge of confidential information involving budget issues and information that could lead to disciplinary actions or increment withholdings for unit employees, no examples of such confidential information were provided. Rather, the Board merely provided a few examples of letters typed by the HR clerks simply informing employees of decisions that the Board had already made regarding their employment; knowledge of this information would not compromise the Board's position in the collective negotiations and/or grievance processes, since the Board's decision has already been made.

Although the Board has repeatedly emphasized that the HR clerks have access to sensitive information, such as salaries, budget issues, Donaldson hearings, RICE letters, unemployment,

background checks, medical benefits, disability, coordination of benefits, worker's compensation, OSHA reporting, etc., this is not necessarily confidential information within the meaning of the Act. State of New Jersey (Dept. of Civil Service); River Dell Reg. Bd of Ed. Knowledge of personnel or security matters unrelated to advance knowledge of grievance or contract strategies is not sufficient to designate a position confidential. Cliffside Park. Mere access to budget information not specifically relevant to the employer's bargaining position does not indicate confidential status. Monmouth Reg. Bd. of Ed. D.R. No. 94-10, 20 NJPER 16 (¶25009 1993); Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985).

In its submission on September 18, 2006, the Board argued in support of its position that: 1) the HR clerks had advance knowledge of Board negotiation strategies or proposals, 2) the clerks were involved in grievance processing and 3) the clerks had access to and knowledge of confidential information regarding disciplinary action on increment withholdings affecting unit employees.

In support of its first supplemental position the Board simply argued that HR clerks gather and compile data for Board proposals. Even if true, that function does not mean or demonstrate that the clerks know what the Board's actual negotiations proposals will state. The Board does not explain

whether the clerks are compiling data not previously considered in this case. The mere access to data that may be used to draft employer proposals is not normally the type of information used to justify finding that employees are confidential within the meaning of the Act. State of New Jersey (Dept. of Civil Service); Tp. of Orange.

In its second supplemental position the Board argues that all HR clerks are confidential because they may help compile back-up information for the Human Resource director to use in deciding grievances, despite the fact that the director has a confidential clerk for such assistance. The Board here seems to argue that because all HR clerks have some role in compiling grievance data they are all confidential employees. Similar institutional arguments were made by the employer in State of New Jersey (Dept. of Civil Service), and State of New Jersey (State Troopers NCO Assoc.), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983), and rejected. The Commission explained:

The Act's definition of confidential employee and our case law require that a determination of confidential status look beyond the function of a department to the knowledge or responsibilities the department's employees have with respect to collective negotiations. State of New Jersey (Department of Civil Service), at 515.

The compilation of back up information for the director's use in deciding grievances does not justify a determination that all HR clerks are confidential. There is no categorization of

all of that information, and no indication that clerks know how it will be assessed. Both the director and his/her confidential clerk can gather that information from HR clerks and make the final determination on how to respond to the grievance without including the majority of the clerks in the decision process.

In its third supplemental position the Board argues the HR clerks have access to and knowledge of information regarding disciplinary action or increment withholdings. It attached examples with its submission. As in its second supplemental argument, this argument seeks the removal of a large group of employees from the unit, and rights under the Act, merely because of their supporting role assisting in the gathering of information.

Examples of information the Board submitted included a supervisor's recommendation to withhold an increment, a teacher's disciplinary referral of a student with behavioral problems which included statements by students about a teacher hitting a student, and a police incident report accusing that teacher of hitting that student. While that information certainly is sensitive, it is not--at least in that form--the type of information that would justify declaring the HR clerks confidential employees within the meaning of the Act. Having access to that information does not mean the clerks know what the HR Director or the Board will do with the information. Some of

that information, a copy of the supervisor's recommendation and a copy of a police incident report, is available to an employee even before the employer considers what-if-any-action to take regarding the matter. As I previously explained, knowledge of information which is confidential in the traditional sense or definition because it concerns security or personal matters, and does not--in and of itself--reveal how an employer will assess or use the information, is not sufficient to remove employees based upon the definition of a confidential employee within the meaning of the Act. Cliffside Park Bd. Ed.; State of New Jersey (Dept. of Civil Service).

In New Jersey Turnpike Authority v. AFSCME, Local 73, 150 N.J. 331 (1997), the New Jersey Supreme Court, when addressing an earlier case regarding whether certain employees were confidential, held:

Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. 150 N.J. at 358.

Having found that the HR clerks mere access to sensitive information they gather does not establish their knowledge of what decisions the Board will make as a result of that



information, and noting that the information they gather does not--standing alone--compromise the Board's position in the collective negotiations process, I find there is insufficient basis to declare the HR clerks are confidential employees within the meaning of the Act.

ORDER

The clerk III's in the Board's human resources office are included in the Association's unit effective immediately.

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Arnold H. Zudick  
Director of Representation

DATED: November 30, 2006  
Trenton, New Jersey

**A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.**

**Any request for review is due by December 11, 2006.**