

H.O No. 2009-1

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST MORRIS REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2005-015

WEST MORRIS REGIONAL ADMINISTRATIVE
ASSISTANTS ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that the Payroll/Benefits Coordinator employed by the West Morris Regional High School Board of Education is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g). The Hearing Officer determined that the Coordinator's assistance in contract negotiations and grievance processing could compromise the Board's right to confidentiality in the collective negotiations process.

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Appearances:

For the Public Employer,
Parker McCay, P.A.
(David W. Carroll, of counsel)

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

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

On November 17, 2004, the West Morris Regional Administrative Assistants Association (Association) filed a clarification of unit petition with the Public Employment Relations Commission (Commission) seeking to include the new position of payroll/benefits coordinator in its existing unit of administrative assistants. The West Morris Regional High School Board of Education (Board) opposes the inclusion of this position on the grounds that it is confidential within the meaning of the

New Jersey Employer-Employee Relations Act (Act), N.J.S.A.
34:13A-1 et seq.

On October 11, 2005, the Director of Representation determined that a formal hearing was required to resolve the relevant legal and factual issues. I conducted a hearing on January 10 and April 29, 2008. The parties examined witnesses and introduced documents.^{1/} Post-hearing briefs were simultaneously submitted by the parties on June 27, 2008. Based upon the entire record I make the following:

FINDINGS OF FACT

1. The Board is a public employer within the meaning of the Act (1T7-1T8).

2. The Association is an employee representative within the meaning of the Act (1T8).

3. The Board and Association are parties to a collective negotiations agreement signed on November 17, 2003, which covers the period of July 1, 2003 through June 30, 2006 (J-3).

4. The parties stipulate to the following facts:

The Association represents administrative assistants employed by the Board, though none of the job titles actually use the term "administrative assistant." There are about 20

^{1/} Commission exhibits are marked "C", Respondent documents are designated "R" and exhibits jointly submitted by the parties are marked "J", all of which were received into evidence at the hearing. "T" designates transcript with the number preceding the "T" indicating the day of hearing and the number following the "T" representing the page.

positions under that job title. Examples of positions included in the unit are:

Secretary to the Assistant Superintendent for
Curriculum and Instruction
Secretary to the Director of Special Services
Data Processing Assistant - Student
Activities Accounts
Data Processing Assistant - Accounts Payable
Secretary to Principal(s)
General Office Secretary
Guidance Office Secretary/Data Processing
Assistant
Library/Media Center Secretary

The Board also employs several secretaries who are not included in any negotiations unit because they are confidential employees. Examples are:

Secretary to the Superintendent of Schools
Assistant Secretary to the Superintendent of
Schools
Secretary to the Business Administrator

Prior to July 1, 2004, the negotiations unit included the position of Data Processing Assistant. Effective July 2, 2004, the Board eliminated this position and created a new position entitled Payroll/Benefits Coordinator.

The petition which is the subject of this case was timely filed by the Association (1T8-1T10).

5. Douglas Pechanec has been the board secretary and business administrator for the last ten years. He reports to the Superintendent of Schools and Board of Education (1T13). He is responsible for the financial, facilities and transportation functions of the school district (1T14). Among the staff that

reports to him are those in accounts payable, payroll processing and accounting including the former position of data processing assistant and the new position of payroll/benefits coordinator (J-1, J-2; 1T13, 1T47).

Pechanec is on the Board's contract negotiations team. He prepares financial information to aid the Board in contract negotiations with labor unions. He prepares scattergrams and cost projections for the Board during contract negotiations. Along with labor counsel, Pechanec attends all negotiations sessions with labor unions as well as meeting privately with the Board to develop negotiations proposals and strategies (1T14-1T15, 1T17; 2T18).

6. Around the year 2000, the school district was planning to construct additions to existing buildings (1T17-1T18). As the person responsible to manage facilities, Pechanec's work load was going to increase (1T17). At the same time, the Board would be entering negotiations with labor unions for the 2003-2006 contracts (1T17-1T19). The preparation work before entering face-to-face negotiations typically begins in the September or October preceding the June in which the labor contract will expire (1T21-1T22, 1T42; 2T19). Some of the preparatory work could commence even more in advance of the end of the contract (1T66).

Pechanec needed help with his work. Instead of hiring a new administrative assistant, he began utilizing an existing data processing assistant to help him develop cost impact projections

for contract proposals. The employee who aided Pechanec was Janice Greco (1T18; 2T54-2T55). Greco started helping with negotiations by working on the cost impacts of health benefits proposals for the 2003-2006 contract (1T66; 2T54).

7. Pechanec intended to use Greco in a greater capacity for the negotiations of the 2006-2009 labor contracts. He intended to have her develop both scattergrams based upon possible salary increases that the Board might propose during negotiations and cost impacts of possible changes to the district's prescription and dental plans (1T17-1T18). Between the intended increased role in negotiations and the increased skills needed to work with sophisticated software, the Board created a new title, payroll/benefits coordinator, in July 2004 and hired Greco into the new position (1T17-1T19; 2T30). The job description for the payroll/benefits coordinator reflects the changes in responsibilities from those belonging to the data processing assistant, notably increasing the qualifications for the job and adding the responsibility of assisting the business administrator/board secretary in preparing for and supporting negotiations with various employee bargaining units (Compare J-2 and J-1).

8. The Board unilaterally determined that the new title payroll/benefits coordinator was confidential within the meaning of the Act and therefore inappropriate to be included in the Administrative Assistants Association unit or any other

negotiations unit. But for the Board's position, the payroll/benefits coordinator belongs in the negotiations unit represented by the Association (C-1; 1T44).

9. Preparation for negotiations of the 2006-2009 contracts began in May, 2005. The first contract to be negotiated was for the teachers. Greco prepared scattergrams for teacher salaries based on parameters set by the Board (1T18, 1T20, 1T24, 1T66; 2T32). Preparation for negotiations for the teachers' contract began in earnest in the fall of 2005 (1T21-1T22, 1T24, 1T27, 1T67; 2T19). Greco prepared cost impact reports based on salary increases that the Board was considering proposing to the teachers' union. She knew the minimum salary offer and the maximum salary increase the Board would settle the contract upon (1T28-1T29, 1T61). She also knew the way in which the Board was going to present the salary proposals to the union; that is, the timing or staging of the proposals to the union during negotiations (1T30).

In preparation for negotiations, Greco also developed cost studies regarding changes to the prescription and dental plans. She worked on three models the Board was considering proposing involving changes to the employee co-pay for prescription drugs as well as changes to the dental plan (1T32-1T33, 1T54-1T55; 2T40).

Greco knew of the Board's proposals before they were made to the union (1T30-1T31, 1T43). She was told by Pechanec to keep

her calculations confidential so as not to compromise the Board's bargaining position during negotiations (1T23; 2T39). Greco was the only administrative assistant to have her own private office and only she and Pechanec had access to her work product concerning negotiations (1T31-1T32, 1T45). Pechanec and Greco discussed negotiations issues only in the privacy of their offices, usually with the office door closed (1T31; 2T38-2T39).

10. Across-the-table negotiations with the teachers' union began in February, 2006. There were about one negotiations session per month or a total of five between February and June, 2006 (1T24, 1T38). Greco continued to assist the Board's negotiations team through Pechanec during this time (1T37, 1T55-1T56).

Greco did not attend negotiations sessions (1T27-1T28). She would prepare financial reports based on negotiations proposals and give them to Pechanec. He in turn would share them with the rest of the negotiations team and they would decide exactly what to propose to the union (1T18-1T19, 1T22-1T23, 1T34-1T35, 1T56; 2T42).

11. There are three other smaller negotiations units in the school district including the Administrative Assistants Association (2T21-2T22). By custom, contract negotiations for the three smaller units do not begin until after the teachers' contract is finalized (2T22, 2T28). The smaller units have far fewer members than the teachers' unit. Developing scattergrams

and cost studies of potential negotiations proposals are much easier for the smaller units and consequently Pechanec, himself, did all of the preparatory work for those negotiations (1T64-1T65; 2T25-2T26). Greco's participation in those negotiations was limited to providing Pechanec with the current salaries of unit members (2T44).

12. During Greco's employment with the school district, only one grievance was filed. The grievance concerned the termination of an employee who was in the teachers' negotiations unit (1T52; 2T20, 2T48-2T49). Pechanec discussed with Greco an offer the Board was considering making to settle the grievance. While he did not discuss the precise terms of settlement, he shared with her the range of money the Board was considering offering to settle the dispute (1T52-1T53, 2T10-2T11). They primarily discussed the manner in which the terminated employee would be paid because it impacted the overall cost to the school district. Greco's suggestion on the method of payment of the settlement was adopted by the Board (1T39, 1T50-1T53; 2T9-2T10, 2T35-2T36). The conversations took place before any type of offer was presented to the terminated employee (1T39-1T40, 1T50-1T51; 2T43).

13. On or about June 30, 2006, Greco left the school district for another job (1T28, 1T40; 2T30). The Board hired an external job applicant, Sherri Betsy, to replace Greco as payroll/benefits coordinator on or around July 19, 2006 (1T75).

It is the intention of the Board to utilize Betsy in the same capacity as it did Greco; that is, to assist and support Pechanec with the negotiations and administration of labor contracts in the district (1T41-1T43, 1T71; 2T23-2T25). She occupies Greco's former, enclosed office (1T78; 2T30-2T31).

14. Labor negotiations were on-going when Betsy was hired. Negotiations for the teachers' contract were concluded in December 2006 (1T28, 1T35; 2T19). The bulk of the work that Pechanec would assign the payroll/benefits coordinator in support of negotiations was completed by Greco before she left the district (1T37; 2T24). What little work there was left to be done, Pechanec did so as not to overwhelm his new employee Betsy and enable her to learn all of the other aspects of the job (1T68; 2T24-2T25).

15. Contract negotiations with the other three unions commenced after Greco had left the district and after negotiations with the teachers had concluded. Had she stayed, Pechanec did not intend to have her assist him in negotiations with the other three unions. He did not involve Betsy in those negotiations, either. He prepared the scattergrams and other cost impact reports himself (1T64; 2T22-2T26).

16. Preparations for the next round of negotiations will commence in the fall of 2008 (1T42; 2T19). It is expected that Betsy will be privy to Board proposals in advance of them being made to the teachers' union and that she will prepare cost impact

reports based on parameters given to her by Pechanec as set by the Board (1T42-1T43, 1T71; 2T26-2T27). She has yet to perform any of the anticipated tasks because the Board has not begun to prepare for negotiations (1T76-1T77).

17. Thus far during Betsy's employment with the Board, there have been no grievances filed by employees or their representatives (1T53-1T54; 2T20). Consequently, she has not had the opportunity to assist in processing them, though it is anticipated that she will, should a grievance be filed (1T39, 1T41-1T43, 1T77).

Analysis

The Board maintains that the payroll/benefits coordinator is a confidential employee within the meaning of the Act and must be excluded from the Association's negotiations unit. For the reasons to follow, I agree that the functional duties of the payroll/benefits coordinator make her a confidential employee.

The Act defines confidential employees as those:

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. N.J.S.A. 34:13A-3(g).

In 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), the Commission explained the approach taken in determining whether an employee is confidential:

[W]e 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]

In New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997) ("N.J. Turnpike Auth."), our Supreme Court approved the standards articulated in State of New Jersey and explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g); see also State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (holding that final determination is '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'). Obviously, an employee's access to confidential information may be significant in determining whether the 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. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional

responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358]

The key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract administration, grievance handling and preparation for these processes. See, Pompton Lakes Bd. of Ed., D.R. No. 2005-16, 31 NJPER 73 (¶33 2005); State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

The Commission exercises caution in finding confidential status because such a finding removes the employee from the rights and protection of the Act. Thus, the Commission will not base such a finding on speculation or conjecture as to job functions and responsibilities. Pompton Lakes Bd. of Ed.; Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989). However, it will find confidential status where the duties are clear and the implementation is certain. The Commission has found confidential status when the employer intends to utilize an employee in such capacity and the performance of confidential duties are imminent. Mt. Laurel Bd. of Fire Commissioners District One, P.E.R.C. No. 2001-50, 27 NJPER 132 (¶32050 2001), (Commission found business manager to be confidential employee on employer's representation that he would be involved in future

negotiations); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988), (Commission determined that a bookkeeper was confidential because board planned to have her assist the accounts payable clerk in preparing scattergrams).

In Tp. of Vernon, D.R. No. 2002-3, 27 NJPER 354 (¶32126 2001), the Director of Representation found the secretary to the police chief was a confidential employee even though there had been no negotiations since her appointment to the position. Her predecessor had assisted the chief in negotiations and the processing of grievances. She was found to be a confidential employee because the Township planned on utilizing her in the same capacity as her predecessor.

Similarly, in High Bridge Bd. of Ed., D.R. No. 2002-13, 28 NJPER 247 (¶33093 2002), the Director of Representation determined that the newly created position of secretary to superintendent/middle school principal was confidential though she had not yet handled bargaining related materials. She was expected to be involved with contract negotiations and administration.

Applying the facts of this case to the legal standards, I find that the payroll/benefits coordinator is a confidential employee within the meaning of the Act. Greco developed scattergrams based on proposals the Board was considering making to the Association. She knew the minimum and maximum salary increases the Board was willing to offer in advance of them being

presented to the Association. She also developed cost impact reports regarding changes to employee prescription and dental plans in preparation for negotiations with the Association. She understood that the changes would be a part of the Board's negotiations strategy and proposals.

During Greco's employment with the Board, only one grievance was filed. She was involved. She knew the range of money upon which the Board would settle the dispute in advance of any offer being made to the aggrieved. Her suggestion on the manner of payment of the settlement was employed by the Board.

There have been no contract negotiations or grievances filed thus far during Betsy's employment with the Board. Preparation for the next round of contract negotiations is set to begin this fall of 2008. The Board intends to utilize Betsy in the same way in which it used Greco. It is expected that Betsy will prepare scattergrams and other cost impact reports with advance knowledge of the Board's negotiations strategies. Additionally, should a grievance be filed, the Board intends to have her assist in its processing.

The Association in part relies on Willingboro Tp. Bd. of Ed., D.R. No. 97-15, 23 NJPER 358 (¶28169 1997), to support its view that the payroll/benefits coordinator is not a confidential employee. There, the Director of Representation found that the newly created position of payroll/systems administrator was not confidential where the evidence failed to show that its duties

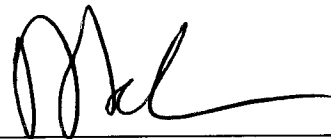
exposed the employee to the board's bargaining strategies. The Director determined that the payroll/systems administrator merely had access to raw data which was also available to the association and did not give her advanced knowledge of the board's negotiations position. Further, the Director dismissed the board's claim as speculative that it was going to utilize the position to support negotiations in the future.

Unlike the disputed position in Willingboro Tp. Bd. of Ed., the payroll/benefits coordinator has had demonstrated involvement in contract negotiations and administration. In both areas, the coordinator had information not available to the union and knowledge of Board positions prior to disclosure to the Association and/or the aggrieved employee.

Based upon the totality of circumstances, if Betsy were to be placed into the Association's unit, the Board's ability to maintain confidentiality with regard to contract negotiations would be compromised. Potentially, the same holds true should a grievance be filed with the Board. Therefore, I find that the payroll/benefits coordinator is a confidential employee within the meaning of the Act and should be excluded from the existing unit. Her functional responsibilities and knowledge of issues involved in the collective negotiations process make her membership in the negotiations unit incompatible with her official duties.

RECOMMENDATION

I recommend that the Commission find that the Payroll/Benefits Coordinator, Sherri Betsy, is a confidential employee within the meaning of the N.J.S.A. 34:13A-3(g) and exclude her position from the West Morris Regional Administrative Assistants Association.



Perry O. Lehrer
Hearing Officer

DATED: July 15, 2008
Trenton, New Jersey

Pursuant to N.J.A.C. 19:11-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:11-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:11-7.4(c).

Any exceptions are due by July 25, 2008.