

D.R. No. 2013-6

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

In the Matter of

OLD BRIDGE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2012-006

OLD BRIDGE EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a broad-based unit of teachers, nurses, psychologists, secretaries, custodians, aides and others to exclude the title of payroll specialist and include the titles of bookkeeping specialist and purchasing specialist. The Director found that the bookkeeping specialist and purchasing specialist were not supervisors or confidential employees within the meaning of the Act, and therefore, their placement in the unit was appropriate. Conversely, the Director found that the payroll specialist is a confidential employee under the Act and should be excluded from the unit.

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Appearances:

For the Public Employer,
Kenney, Gross, Kovats & Parton, attorneys
(Christopher B. Parton, of counsel)

For the Petitioner,
Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On August 11, 2011, the Old Bridge Board of Education (Board) filed a clarification of unit petition seeking to clarify a broad-based collective negotiations unit of teachers, nurses, psychologists, secretaries, custodians, aides and others to exclude the titles, bookkeeping specialist, payroll specialist and purchasing specialist currently represented by the Old Bridge Education Association (Association). The Board asserts that the titles it seeks to exclude from the unit are supervisors and confidential employees within the meaning of the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. (Act), rendering them ineligible for inclusion in any unit.

The Association opposes the petition. It asserts that none of the petitioned-for titles are supervisors or confidential employees within the meaning of the Act.

We have conducted an administrative investigation into this matter to determine the facts. N.J.A.C. 19:1-2.2. On October 2, 2012, I wrote to the parties advising of my tentative findings and conclusions and invited responses. Neither party filed a response. The disposition of the petition is properly based upon our administrative investigation. No substantial material disputed facts requires us to convene an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6. Based upon the administrative investigation, I find the following facts.

The Association and the Board signed a collective negotiations agreement that expired on June 30, 2012. About 80 secretarial employees are included in the broad-based unit of about 1,150 employees. Excluded from the unit are the superintendent's secretaries, assistant superintendent's secretary, the business administrator's secretary and executive assistant personnel, as set forth in the agreement's recognition provision. The Board currently employs four confidential secretaries/assistants: the superintendent's executive secretary and executive assistant, the assistant superintendent/human

resources executive secretary and the school business administrator/board secretary's executive secretary.

Melanie Westerlund is employed as the Board bookkeeping specialist. The Board's Business Administrator/Board Secretary Nancy M. Mongon certifies that in March, 2010, Westerlund assisted in the hiring of a junior bookkeeper by writing the job description, participating in the screening and interviewing of applicants and providing hiring recommendations. Mongon also writes that Westerlund authorizes the attendance sheet of the class D junior bookkeeper. If the junior bookkeeper engages in "misconduct," Westerlund is authorized to instruct the employee to stop the behavior and may initiate discipline by providing a written and/or oral report of the conduct to Mongon. The Board, upon recommendation of the Superintendent, has final authority to hire or terminate an employee.

Mongon certifies that Westerlund "has advanced access to, or knowledge of confidential labor relations material" pertaining to payroll/personnel; workers compensation; accrued sick leave and unemployment insurance. She has "file/password protected access to confidential online accounts" to generate wire transfers of funds, which she uses to generate payments to the State Division of Pension and Benefits for health benefit plan premiums; to wire transfer debt service payments semi-annually; to wire transfer

PERS pension payments annually. Westerlund has file/password protected access to payroll software and student record software.

The Board asserts that Westerlund's job description sets forth certain "confidential" duties. They include: maintaining records pertaining to revenue; maintaining the district's balance sheet; supervising payments for transportation; setting up federal and state grant budgets; supervising the funding of payroll; supervising the incoming and outgoing monies for the general account; preparing accrued sick leave and vacation liability spreadsheets annually for auditors; and assisting with the district's annual financial audit.

RuthAnn Shamey is employed as the Board payroll specialist. Mongon certifies that Shamey took an active role in the hiring of an employee in the class D payroll clerk title by assisting in writing the job description; being part of the screening and interviewing process and providing hiring recommendations in February, 2009. Mongon also certifies that Shamey is involved in setting work schedules and signs the attendance sheets of the two class D payroll clerks. If a clerk acts or performs poorly, Shamey has the authority to initiate discipline by providing a written and/or oral report of the misconduct to the Business Administrator and to instruct the staff member to stop the behavior. The Board, upon recommendation of the Superintendent, has the final authority to hire or terminate an employee.

Mongon also certifies that Shamey "has advanced access to, or knowledge of confidential labor relations material" and has played a key role in all unit collective negotiations. Mongon represents that Shamey has attended meetings with Labor Counsel and provided recommendations for amendments to "contract language" on issues including supplemental hourly rates, length of school year, family leave, overtime, deferred/sheltered compensation, non-certified staff salaries, class coverage, coaching/co-curricular stipends, etc. Shamey has also reportedly reviewed contract proposals and grievance settlements and "provided insight into cost factors and impact to operations of the district." Shamey makes direct deposits of district payrolls and files a variety of federal and state payroll forms. The Board asserts that the following duties set forth in Shamey's job description are confidential: assisting the school business administrator; reviewing and verifying all agenda items to maintain database; managing all payroll staff to perform all operations required in the payment of wages; inputting payroll from agenda and time sheets; generating payroll; verifying NJEA billing against employee deductions; sending reports to NJEA membership representative of employees not paying dues; and disseminating all pertinent payroll information to district personnel.

Carrie Shreder is employed as the Board's purchasing specialist. Mongon certifies that Shreder took an "active role" in implementing a reduction of the accounts payable staff in June 2011; in the hiring and transfer of a purchasing clerk in July 2007; in developing a new title - copy center clerk - in 2007; and in developing a part-time business office student/clerk title in 2009. Mongon also certifies that Shreder authorizes the completed attendance sheets of the two class D accounts payable clerks, the class D purchasing clerk, the class B copy center clerk, the class C records retention/receptionist clerk and the part-time clerk. If any of these clerks act or perform poorly, Shreder has the authority to report the misconduct to the Business Administrator and to order the clerk to stop the behavior. The Board, upon recommendation of the Superintendent, has the final authority to hire or terminate an employee.

Mongon certifies that Shreder "has advanced access to/or knowledge of labor relations material" concerning purchasing requirements for "contractual items," including employee tool allowances, custodial/field/maintenance and security staff uniforms. Mongon writes that Shreder's access and knowledge includes:

. . . financial and operational impact of privatization of custodial staff vs. utilization of a printing service; financial and operational impact of utilizing a time and material contracted vendor vs. an

in-house staff member salary and overtime;
and solicitation of bids/quotes for
transportation routes vs. financial and
operational impact of utilizing staff and/or
overtime.

The Board asserts that the following duties set forth in Shreder's job description are confidential: assisting the SBA in budget preparation; attending all Board agenda, finance and shared service meetings as requested/required; overseeing accounts payable department; and assisting with the district's annual financial audit.

The Association contends that the three titles are employed at level 7 of the contractual guide and that no supervisors are employed at that secretarial capacity. All supervisors employed by the Board are administrative and hold supervisory/administrative certifications. The job descriptions for the three titles are void of any supervisory job requirements and none of the petitioned-for titles set work schedules for others. The Association argues that none of the petitioned-for titles have the authority to hire, fire, discipline or effectively recommend those actions. The final authority for those actions rests with the Board. The chain of command is from the petitioned-for titles to the business administrator; the superintendent; and finally, the Board. The Association asserts that in March, 2012, for the first time, the petitioned-for titles participated in the evaluation

process. The business administrator however, and not the petitioned-for titles must approve those evaluations. Also, none of the three titles or individuals are responsible for ensuring that their "charges" perform up to standard.

The Association also disputes that any of the petitioned-for titles are confidential within the Act's meaning. It contends that none of the petitioned-for titles' job descriptions set forth any confidential duties as defined by the Act, and that the three employees do not have advanced access or knowledge of any confidential labor relations material.

Finally, the Association asserts that the petitioned-for titles have never attended negotiations sessions on behalf of the Board. Attendance at those meetings is limited to the Board negotiations committee, the superintendent, assistant superintendent, business administrator, and Board attorney.

ANALYSIS

The Board contends that the bookkeeping specialist, purchasing specialist and payroll specialist are supervisors and confidential employees within the meaning of the Act, despite a history of their inclusion in the unit.

An employer may seek clarification to remove statutorily exempt employees from a unit at any time, notwithstanding the parties' prior acquiescence to a title's inclusion in that unit.

Madison Bor., D.R. No. 99-1, 24 NJPER 441 (¶29203 1998);

Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). A nonsupervisory unit will be clarified to exclude supervisor(s) upon the expiration of a collective negotiations agreement, unless the parties mutually agree otherwise. Clearview.

Supervisors

The first issue is whether any of the three petitioned-for titles are supervisors under the Act. N.J.S.A. 34:13A-5.3 provides in pertinent part:

. . . except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

A determination of supervisory status requires more than the assertion that an employee has or will have the authority to hire, discharge, discipline or effectively recommend such action. In Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976), the Commission held:

. . . the bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employee in question, the mere 'possession' of the authority is a sterile attribute unable to sustain a claim of supervisory status.

The Commission will look beyond the title or job description to ascertain the nature of the authority the employee actually exercises; evidence that the authority is exercised with some degree of regularity is required. Somerset Cty.

An "effective recommendation" occurs when the "supervisor's" recommendation is adopted without independent review and analysis by a higher level of authority. See Avalon Bor., P.E.R.C. No. 84-108, 10 NJPER 207 (¶15102 1984), adopting H.O. No. 84-11, 10 NJPER 149 (¶15075 1984); Teaneck Bd. of Ed., E.D. No. 23, NJPER Supp. 465 (¶114 1971). Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not make an employee a statutory supervisor. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985).

I find that the Board has not demonstrated that any of the three petitioned-for titles have ever exercised authority to hire, discharge, or discipline any employee.

The Board asserts that all three titles have screened resumes/applications, sat on interview committees and provided recommendations for hire. The Commission has held that an employee's mere participation in a candidate selection process does not necessarily render that employee a supervisor within the meaning of the Act. Rumson-Fair Haven Reg. B/E, D.R. No. 84-5, 9 NJPER 529 (¶14216 1983). See also, East Windsor Reg. School Dist., H.O. No. 81-11, 7 NJPER 277 (¶12124 1981). The facts

reveal that the three employees' participation in the evaluation process is limited; multiple and higher tiers of authority rest (in ascending order) with the Board business administrator, Superintendent, and ultimately the Board, which retains the power to hire, discharge or discipline. Although the Board has asserted that all three of the petitioned-for titles issue recommendations on hiring, firing and discipline of various subordinate titles, the facts suggest only that the Board, upon recommendation of the Superintendent, actually hires or terminates any employee. The facts do not show that any of the petitioned-for titles "effectively recommend" hiring, discharge or discipline.

Accordingly, I find that the bookkeeping specialist, purchasing specialist and payroll specialist are not supervisors within the meaning of N.J.S.A. 34:13A-5.3.

Confidential Employees

The second issue is whether any of the three petitioned-for titles are confidential employees under the Act. N.J.S.A. 34:13A-3(g) defines confidential employees of public employers other than the State of New Jersey 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., P.E.R.C. 88-108, 14 NJPER (¶19128 1988).

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

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., 11 NJPER at 510]

In N.J. Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey. The Court 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 ¶16179 (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 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. 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. [Turnpike Authority, 150 N.J. at 358]

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 support 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 Community College, P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988).

The facts do not show that bookkeeping specialist Westerlund or purchasing specialist Shreder perform duties that can be

classified as confidential. Although Business Administrator Mongon, Westerlund's and Shreder's immediate supervisor, is involved in the collective negotiations process, no facts suggest that either subordinate's duties give them access to or knowledge of confidential labor relations matters which could compromise the Board's position in negotiations.

Westerlund has access to password-protected accounts and budgeting software pertaining to pension/benefit payments, payroll and workers' compensation. She also has access to unemployment records, accrued sick leave and unemployment insurance information.

When our Legislature initially adopted the definition of "confidential employee", it rejected a broader definition which would have excluded employees with "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, 11 NJPER at 516. Mere access to personnel files, or even knowledge of employee personnel information, does not render an employee confidential, as that term is defined by our Act. Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 73 (¶17294 1986). The Board has not identified the kind of budget or personnel data that Westerlund learns which relates to confidential negotiations strategies. The information to which Westerlund and Shreder have access is not concerned with collective negotiations. Only when the employee's involvement with budget and personnel data gives the employee

knowledge of the employer's negotiations strategies may confidential status be found (e.g., budget increases reflecting planned proposed or unit employee wage increases). The mere access to data that may be used to draft employer proposals is not normally the type of information used to justify a finding that employees are confidential within the meaning of the Act. 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); Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985).

Shreder's job description also provides that she is responsible for assisting in budget preparation, attending all Board agenda, finance and shared services meetings as requested or required, overseeing the accounts payable department and assisting with the district's annual financial audit. She also has password-protected access to override purchase orders in the budget software. We will not find confidential status when an employer fails to specifically identify facts demonstrating that the employee's budget participation results in that employee knowing confidential negotiations strategies. Evesham Tp. Fire Dist #1, D.R. No. 99-4, 24 NJPER 503 (¶29233 1998); Monmouth Reg. Bd. of Ed., D.R. No. 94-10, 20 NJPER 16 (¶25009 1993). Here, the Board has not submitted any specific facts demonstrating that Shreder's

budget involvement and meeting attendance, if any, results in her knowledge of the Board's confidential negotiations strategies.

Based on all of these facts, I find that neither the bookkeeping specialist nor the purchasing specialist is a confidential employee within the meaning of the Act.

I find however, that payroll specialist Shamey has advanced access to and knowledge of confidential labor relations material and has played a key role in negotiations. She has attended meetings with Labor Counsel and/or provided recommendations for amendments to collective negotiation agreement provisions regarding supplemental hourly rates, length of school year, family leave, overtime, deferred/sheltered compensation, class coverage, coaching/co-curricular stipends, etc. She reads and reviews contract proposals and/or grievance statements and provides insight into cost factors and operational impact to the district. She has access to and knowledge of the employer's positions in labor relations processes, including contract negotiations. Knowledge of this negotiations information could compromise the Board's position in the collective negotiations process. For these reasons, I find that the payroll specialist is a confidential employee within the meaning of the Act.

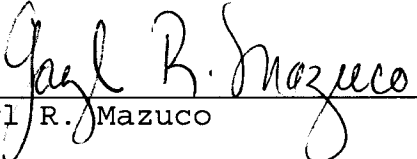
Considering all the circumstance and facts, I find that the bookkeeping specialist and purchasing specialist are neither supervisors nor confidential employees within the meaning of the

Act and will remain in the unit. I also find that the payroll specialist, though not a supervisor within the Act's meaning, is confidential under the Act and that the Association's unit is clarified to exclude that title.

ORDER

The unit is clarified to exclude the title, payroll specialist, effective immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco

DATED: November 30, 2012
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 10, 2012.