

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

In the Matter of

EAST WINDSOR REGIONAL SCHOOL
DISTRICT,

Public Employer,

-and-

DOCKET NO. CU-81-15

EAST WINDSOR CLERICAL ASSOCIATION,
N.J.E.A.

Petitioner.

SYNOPSIS

The Director of Representation, adopting the recommendation of a Hearing Officer, determines that the newly created title of Transportation Secretary/Assistant to the Supervisor may not be added to the negotiations unit of clerical employees since the individual employed in this title is a confidential employee. The Transportation Secretary is a member of the Board's negotiations committee and, in this capacity, assists in preparing proposals and counterproposals.

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

In the Matter of

EAST WINDSOR REGIONAL SCHOOL
DISTRICT,

Public Employer,

-and-

DOCKET NO. CU-81-15

EAST WINDSOR CLERICAL ASSOCIATION,
N.J.E.A.,

Petitioner.

Appearances:

For the Public Employer
James E. Major, Director of Special Projects

For the Petitioner
New Jersey Education Association
(Bernard Gilbert, Field Representative)

DECISION

On September 22, 1980, a Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the East Windsor Clerical Association, N.J.E.A. (the "Association") seeking to add the title "Transportation Secretary/Assistant to Supervisor" to the existing negotiations unit of clerical employees of the Board of Education of the East Windsor Regional School District (the "Board"). The Association argues that this new title shares the requisite community of interest with those titles currently in the unit and should be included in the unit. The Board seeks to have the title excluded from the unit on the grounds that the functional duties and

responsibilities of the position are supervisory and/or confidential in nature.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Michael B. Berman on January 6, 1981, in Trenton, New Jersey, at which all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. The parties have waived their right to submit post-hearing briefs. The Hearing Officer submitted his Report and Recommendations on May 8, 1981, a copy of which is attached hereto and made a part hereof. No exceptions to the Hearing Officer's Report have been filed.

The undersigned has considered the entire record herein, including the Hearing Officer's Report and Recommendations and the transcript, and on the basis thereof, finds and determines as follows:

1. The Board of Education of the East Windsor Regional School District is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. The East Windsor Clerical Association, N.J.E.A. is an employee representative within the meaning of the Act, is subject to its provisions, has filed the instant Petition to clarify the status of the title in question and requests the inclusion of the title in the existing unit.

3. The Association represents a unit consisting of clerks, secretaries, and bookkeepers employed by the Board but excluding professionals, police, managerial executives, confidential employees, craft workers, and supervisors within the meaning of the Act.

4. The title in question was created and filled during the Summer of 1980, and subsequent to the execution of the current contract between the parties. Therefore, the instant Petition for Clarification of Unit is the appropriate means of raising a question concerning the composition of the existing collective negotiations unit.

Although the Board seeks the exclusion of the Transportation Secretary/Assistant to the Supervisor because the duties of the position are supervisory and/or confidential, the primary question for resolution herein is whether the employee in question satisfied the Act's definition of a "confidential employee."

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

"(c)onfidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

An examination of the record reveals that the Transportation Secretary/Assistant to Supervisor "sits directly at the negotiating table, helps in preparing and counterpreparing proposals and counterproposals to negotiated agreements with those employees" (T 10). Such functional responsibility in connection

with the issues involved in the collective negotiations process would make the Transportation Secretary's membership in any appropriate negotiating unit incompatible with her official duties. In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977). Therefore, the undersigned, noting the absence of exceptions to the Hearing Officer's Report and Recommendations and finding ample evidence in the record in support thereof, finds the Transportation Secretary/Assistant to Supervisor to be a confidential employee within the meaning of the Act. N.J.S.A. 34:13A-3(g). Accordingly, the Association's Petition for Clarification of Unit, seeking to include the title in question, is denied. The undersigned concludes that the question of supervisory status is made moot by virtue of the finding of confidential status, precluding the inclusion of the title in question within the existing negotiations unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: August 25, 1981
Trenton, New Jersey

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

In the Matter of

EAST WINDSOR REGIONAL SCHOOL DISTRICT,

Public Employer,

-and-

DOCKET NO. CU-81-15

EAST WINDSOR CLERICAL ASSOCIATION, N.J.E.A.,

Petitioner.

SYNOPSIS

The East Windsor Clerical Association filed a Petition for Clarification of Unit seeking to include the position of Transportation Secretary/Assistant to Supervisor in its existing bargaining unit. The Board objected to the inclusion contending that the individual should be considered a confidential and/or supervisory employee.

The Hearing Officer, finds that the employee sits on the Board's negotiating team for the bus drivers' unit and concludes that her membership on the team clearly makes her a confidential employee vis-a-vis the bus drivers' unit and concludes that, therefore, her membership in any appropriate unit would be incompatible with her official duties.

The Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject, or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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

In the Matter of

EAST WINDSOR REGIONAL SCHOOL DISTRICT,
Public Employer,

-and-

DOCKET NO. CU-81-15

EAST WINDSOR CLERICAL ASSOCIATION, N.J.E.A.,
Petitioner.

Appearances:

For the Public Employer
James E. Major, Director of Special Projects

For the Petitioner
Jane C. Protich, President

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On September 22, 1980, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the East Windsor Clerical Association, N.J.E.A. (the "Association") to add the title "Transportation Secretary/Assistant to Supervisor" to the existing negotiating unit of clerical employees of the Board of Education of the East Windsor Regional School District (the "Board"). ^{1/} The Association argues that this new title shares the requisite community of interest with those titles currently in the unit and should be included in the unit. The Board seeks to have the title excluded from the unit on the grounds

^{1/} The unit as defined in the current contract is "all personnel under the contract as listed below: Clerks - 10 months, Clerks - 12 months, Elementary Secretaries, Secondary Secretaries, Community School Secretary, Head Bookkeeper, and Assistant Bookkeepers."

that the functional duties and responsibilities of the position are supervisory and/or confidential in nature.

Pursuant to a Notice of Hearing, a hearing was held before Michael B. Berman on January 6, 1981, in Trenton, New Jersey, at which time all parties were given the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. The parties have waived their right to submit post-hearing briefs.

Upon the entire record in this matter, the Hearing Officer finds:

1. The Board of Education of the East Windsor Regional School District is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the "Act") is subject to its provisions and is the employer of the employees in question.
2. The East Windsor Clerical Association, N.J.E.A. is an employee organization within the meaning of the Act, is subject to its provisions, and has filed the instant Petition to represent the title in question.
3. The Association represents a unit consisting of clerks, secretaries, and bookkeepers employed by the Board but excluding, professionals, police, managerial executives, confidential employees, craft workers, and supervisors within the meaning of the Act.
4. The title in question was created and filled during the summer of 1980, subsequent to the execution of the current contract between the parties and, therefore, the instant Petition for Clarification of Unit is proper to raise a question concerning the composition of the existing collective negotiations unit.

CONFIDENTIALITY

The Board contends that the employee in question is a confidential employee within the meaning of the Act.

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

(g) "confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

If it is found that she is a confidential employee within the meaning of the Act, then she should not be permitted to be represented by the Association.

The Director has found individuals who have access to and a reasonably certain potential for knowledge of contract proposals which form the basis for management policy affecting negotiations or contract administration to be confidential employees. ^{2/} In the instant matter the employee involved is a member of the Board's team which negotiates with the bus drivers' association. ^{3/} It is unrefuted that the Board's

^{2/} In re Township of Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 11131, 1980. The Secretary to the Assistant Superintendent is a confidential employee as her duties include the filing of negotiations proposals. cf., In re Board of Education of the City of Rahway, D.R. No. 80-12, In re Township of Dover, D.R. No. 79-19, 5 NJPER 10040 (1979). The Secretary to the Chief of Police was found to be a confidential employee since her duties included typing the Chief's recommendations concerning negotiations proposals as well as typing communications involving the disposition of grievances.

^{3/} Tr. pp. 10, 16, 20-21, 26, 35-36.

negotiating team consists of the Director of Special Projects, who is the spokesperson, the Transportation Supervisor, the Transportation Secretary/Assistant to Supervisor (the title in question), and three members of the Board of Education. ^{4/} As a regular practice, she sits at the bargaining table across from the bus drivers' unit representatives. ^{5/}

The Association's representative reacts by stating that this individual is "at the table at the pleasure of the Board of Education. I don't feel that there's any real need for them to be at the table." ^{6/}

Absent union animus as a motivating factor, the undersigned will not recommend that the Board restructure its negotiating teams so that the Transportation Secretary/Assistant to Supervisor is stripped of her membership on the negotiating team. Rather, the undersigned will look solely at the question of confidentiality within the context of the employee's current functional duties and responsibilities.

FINDINGS

A thorough review of the entire record indicates that the Transportation Secretary/Assistant to Supervisor is a confidential employee within the meaning of the Act and her membership in any appropriate negotiating unit would be incompatible with her official duties. As described by the Board's negotiator, the Transportation Secretary/Assistant to Supervisor sits at the bargaining table, or provides written input, in the preparation of proposals and counter-proposals. The team meets in caucus as a whole and this individual as a member of the team, is privy to and a contributor of ideas which become the Board's negotiating position.

^{4/} Tr. pp. 26-27.

^{5/} Tr. p. 27.

^{6/} Tr. p. 12, repeated p. 41.

SUPERVISION

The Act prohibits any employee "having the power to hire, discharge, discipline, or to effectively recommend the same" ^{7/} from being in any unit which represents nonsupervisory employees, "except where dictated by established practice, prior agreement or special circumstances." ^{8/} If the Transportation Secretary/Assistant to Supervisor meets any of these criteria, then she must be found to be a supervisory employee and should be absent one of the exclusionary conditions, excluded from the unit.

DISCUSSION

The testimony reveals that the individual has a wide-range of duties and responsibilities. The majority of her day is involved in routine office procedures, i.e., answering the telephone, handling the questions of parents and typing office correspondence. The remainder is taken up, apparently, in scheduling drivers either to cover for absent drivers or in preparing special runs, eg., field trips and athletic events. ^{9/} The assignment of drivers to special runs is done according to a seniority list which leaves little discretion to the person making those assignments. The assignment of drivers to cover for absent drivers gives the person making the assignments some leeway, but not very much. Regardless of the amount present, it still would not make an individual a supervisor absent the power to hire, discharge, discipline or effectively recommend the same.

The Transportation Supervisor stated that the individual has not been involved in disciplining any employees of the school district ^{10/} although she might at sometime in the future. He also discussed a recent situation where, in his absence, she was involved in interviewing an individual for possible employment. The Transportation

^{7/} N.J.S.A. 34:13A-5.3.

^{8/} N.J.S.A. 34:13A-6.

^{9/} Tr. pp. 19, 20, 21, 22, 33, 34, 35.

^{10/} Tr. p. 25.

Secretary/Assistant to Supervisor interviewed the potential employee, did the background check and suggested that the person be hired.^{11/} The recommendation was then forwarded to the Personnel Director and from there to the Chief Administrative Officer of the district and ultimately to the Board of Education which is, in fact, the actual appointing authority.^{12/}

FINDINGS

The undersigned cannot find the Transportation Secretary/Assistant to Supervisor to be a supervisory employee within the meaning of the Act. The vast majority of her time is spent performing routine clerical office functions, i.e., typing, answering the telephone and responding to inquiries from the public. The rest of her time is spent making driving assignments either from a seniority list or from among the drivers available. She has not been engaged in the discipline of employees in any way nor in their discharge. In a single incident, she interviewed a potential employee whom she recommended for employment and who, in fact, was employed. However, that recommendation was passed onto the Director of Personnel, the Superintendent of Schools and the Board of Education which is the appointing authority. As outlined by the Director of Special Projects who was at one time intimately involved in the procedure, the hiring process begins with a recommendation from the Supervisor or Assistant Supervisor being sent to the Personnel Director where it is "normally"^{13/} followed, perhaps "99 percent of the time."^{14/} From there it is forwarded to the Superintendent and finally to the Board who has actual hiring authority. At each step of the way, there is some degree of independent review. The Commission has stated that where there is an independent review

^{11/} Tr. p. 23.

^{12/} Tr. pp. 24, 25.


^{13/} Tr. p. 24.

^{14/} Tr. p. 25.

of the recommendation to hire, as here, it will not find "effective recommendation." ^{15/}

CONCLUSION

The undersigned concludes that on the record as a whole and the evidence and testimony submitted, the Transportation Secretary/Assistant to Supervisor is a confidential employee within the meaning of the Act. The undersigned further concludes, that the Transportation Secretary/Assistant to Supervisor is not a supervisor within the meaning of the Act and should she, at some point in time, be divested of her confidential duties, would be appropriately placed within the Petitioner's unit.



Michael B. Berman
Hearing Officer

DATED: May 8, 1981
Trenton, New Jersey

^{15/} In re Township of Teaneck, E.D. No. 23 (1971). In this case, the Executive Director wrote, "The mere rendering of an opinion which is subject to independent analysis by the hiring authority does not constitute the high order of reliance necessary to meet the test of effective recommendation." cf. In re Cherry Hill Department of Public Works, P.E.R.C. No. 30 (1970), In re Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), and In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (para. 4018 1977).