

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

In the Matter of

RIVER DELL REGIONAL
BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-81-59

THE SECRETARIAL UNIT OF THE
RIVER DELL EDUCATION, NJEA/NEA,,

Petitioner.

Appearances:

For the Public Employer
Stein, Joseph & Rosen
(Marc Joseph of counsel)

For the Petitioner
Bucceri & Pincus
(Louis P. Bucceri of counsel)

DECISION

On April 28, 1981, the Secretarial Unit of the River Dell Education Association, NJEA/NEA ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking a determination as to whether the Secretary to the Assistant Superintendent, Second Secretary to the Superintendent, and Secretary/Switchboard Operator are included within the collective negotiations unit comprised

D.R. NO. 83-21

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SYNOPSIS

The Director of Representation determines that the Second Secretary to the Superintendent and the Secretary to the Assistant Superintendent have access and exposure to confidential labor relations material and are confidential employees within the meaning of the Act. These employees are excluded from a negotiations unit of secretaries. The Director remands the record concerning a third employee, a Secretary/Switchboard Operator, to the Hearing Officer for further hearing.

of all full time and part-time secretarial and clerical personnel employed by the River Dell Regional Board of Education ("Board"). The Board asserts that each secretary is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and should be excluded from the negotiations unit.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer, Judith E. Mollinger, on September 22, October 9, and October 23, 1981, in Newark, New Jersey, at which time all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. The Board waived a post-hearing brief and argued orally at the hearing on October 23, 1981. The Association filed its post-hearing brief on December 18, 1981. A reply brief was filed by the Board on February 8, 1982. The Hearing Officer submitted her report and recommendation on August 4, 1982, a copy of which is attached hereto and made a part hereof. Thereafter, the Association and the Board filed exceptions to the Hearing Officer's Report and Recommendations. The Association has filed a reply to the exceptions filed by the Board.

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

1. The River Dell Regional Board of Education is a public employer within the meaning of 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 Secretarial Unit of the River Dell Education Association, NJEA/NEA is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association represents a unit consisting of all Secretaries, Clerks, Switchboard Operators, Administrative Secretaries, Bookkeepers, Payroll Clerks and AVA Technicians employed by the Board, but excluding the Secretary to the Superintendent, the Secretary to the Board of Education Secretary, and such temporary, hourly personnel that may be needed in an emergency situation and/or as summer replacements.

4. The Hearing Officer recommended that the Secretary to the Assistant Superintendent was a confidential employee and therefore not included in the unit. She further recommended that the Second Secretary to the Superintendent and Secretary/Switchboard Operator were not confidential employees and were appropriately included in the unit. ^{1/}

^{1/} Confidential employees are not eligible for inclusion in a collective negotiations unit with other public employees. See N.J.S.A. 34:13A-3(d).

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

... 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.

The Association takes exception to the Hearing Officer's finding that the Secretary to the Assistant Superintendent is a confidential employee because she has access to information concerning the labor relations policies of the Board. It states that such a finding is unsupported by the record.

The Association relies on the decision In re Brookdale Community College, H.E. No. 77-7 3 NJPER 108 (1976), aff'd in part, rev'd in part, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977) in which a hearing officer recommended that the definition of a confidential employee be narrowly construed. Further reliance is placed on In re City of Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980), where it was stated that the determination of confidential status is to be made on a case-by-case basis.

The Board takes exception to the Hearing Officer's finding that the Assistant Secretary to the Superintendent and the Secretary/Switchboard Operator are not confidential employees. It argues that both employees have access to and knowledge of confidential information, and cites In re Bd. of Ed. of West Milford, P.E.R.C. No. 56 (1971); In re Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶ 4001 1977); and In re Jersey City Bd. of Ed., D.R. No. 78-35, 4 NJPER 139 (¶ 4085 1978).

The undersigned has engaged in a careful review of the record, focusing upon evidence concerning the extent of the above employees' access and exposure to confidential information involved

in the collective negotiations process in the course of their functional responsibilities.

The Secretary to the Assistant Superintendent, Margaret Grossi, works exclusively for the Assistant Superintendent, Thomas Hausdorff. Hausdorff's responsibilities include the preparation of negotiations proposals, and he attends all closed Board work sessions pertaining to negotiations. Grossi types all of Hausdorff's correspondence, calculates the cost of Association proposals, and types memoranda concerning the school budget. Grossi has also been present when Hausdorff and the Superintendent have discussed current negotiations and has taken notes of these discussions. Grossi maintains all of the files in the Assistant Superintendent's office. Some of these files include confidential communications between the Superintendent and the Assistant Superintendent including negotiations matters, public and nonpublic Board minutes, information concerning staffing, negotiations and budget, and the Assistant Superintendent's own notes concerning various school personnel matters. These files are locked and only Grossi and the Assistant Superintendent have access to them. Grossi testified that her work on a daily basis requires her to open these files and to inspect their contents. The record establishes that Grossi's access and exposure to confidential Board materials involved in the collective negotiations process renders her membership in any appropriate negotiating unit incompatible with her official duties.

The next disputed individual is the Second Secretary to the Superintendent, Sheila Diggle. The prior Second Secretary, Charlotte Fehrle, who is now the Secretary to the Superintendent, was treated by the parties as being within the Association's unit. The record indicates that no appreciable change in duties has occurred since Fehrle occupied the position.

Notwithstanding the above, the record establishes that, in the course of her responsibilities, Diggle has significant exposure to the issues involved in the collective negotiations process. Superintendent Mary Lou Bartley has dictated notes of negotiations progress reports and notes of her conversations with Board members regarding negotiations to Diggle for typing. The Superintendent keeps a file of all items relating to work conditions that the Board seeks to raise in negotiations. Diggle is responsible for inserting and removing materials in both the general and the negotiations files. Additionally, Diggle has typed correspondence from the Superintendent to the Board's attorney concerning grievance responses. In reviewing the mail, Diggle has received and has opened the attorney's replies. She has, on occasion, reviewed on the phone the contents of the attorney's replies with the Superintendent when the Superintendent was away from the office.

Although the Superintendent's secretary, Fehrle, is available full day and Diggle works only half day, it is apparent that the assignment to perform office work is indiscriminate and depends solely upon the secretaries' respective availability.

The undersigned is satisfied that Diggle's access and exposure to issues involved in the collective negotiations process renders her membership in any appropriate negotiating unit incompatible with her official duties.

The record established not only that Grossi and Diggle have handled confidential materials in the past, but that they would be expected to continue to have access and exposure ^{2/} to such materials in the exercise of their duties in the future. ^{3/} In reaching the instant conclusion, the undersigned has given due consideration to the degree to which Grossi and Diggle are exposed to confidential materials. As observed in In re Tp. of Dover, D.R. No. 79-19, 5 NJPER 61(¶ 10040 1979), "although the record may not conclusively demonstrate a continuous pattern of exposure to the collective negotiations process, the statutory definition does not make confidential status dependent upon regular involvement in labor relations."

^{2/} The undersigned, in prior determinations, has occasionally used the term "access and knowledge" interchangeably with the term "access and exposure." Cf. In re Bd. of Ed. City of Rahway, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979). It is recognized that the word "knowledge" includes an awareness of the contents of confidential materials. It is not inconceivable that an employee would be exposed to confidential material and would be of a certain mindframe that would not involve consciously absorbing the contents of the material. The element of exposure is in itself sufficient to ascribe confidentiality if the employee is in any way expected to pay attention to the contents of the material in order to perform the job function.

^{3/} Diggle testified that she typed negotiations proposals, but she did not recall whose proposals they were. The record is not complete as to this factual issue, and the undersigned has not considered this testimony in reaching his conclusions as to Diggle.

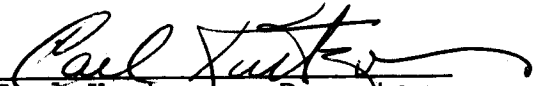
The third disputed employee is Dorothy Savage, Secretary/Switchboard Operator. Savage is a full time employee whose primary duties involve general typing for the Board Secretary, switchboard relief (lunch/break time), processing reimbursements for employees under the Paid Drug Prescription Plan, and substituting for absent secretaries.

Savage reports to Board Secretary Paul Chieff. The record reveals that Chieff, along with Superintendent Bartley and Assistant Superintendent Hausdorff, participates intimately with Board members in developing the Board's negotiations positions. However, the record with respect to Savage's functional responsibilities on her knowledge in connection with the issues involved in the collective negotiations process is not sufficiently clear to render a determination at this time. The record is ambiguous as to what negotiations or grievance material Savage may have typed as well as the nature of her review of any mail from the Board attorney which she may have opened. Additionally, further examination of Savage's filing responsibilities is required. Therefore, the record must be remanded to the Hearing Officer for further proceedings. The Board may wish to present documentary material in support of its evidentiary proffers.

Accordingly, the undersigned finds that Sheila Diggle and Margaret Grossi are confidential employees and, effective with the issuance of this decision, they are excluded from the

Association's unit. The record is remanded for further hearings respecting Dorothy Savage.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 16, 1983
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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NJEA/NEA,

Petitioner.

SYNOPSIS

In a Clarification of Unit Petition filed by the Secretarial Unit of the River Dell Education Association, NJEA/NEA, a Hearing Officer of the Public Employment Relations Commission finds that the Secretary to the Assistant Superintendent is a confidential position within the meaning of the Act and is not included within the collective negotiations unit. The positions of Second Secretary to the Superintendent and Secretary/Switchboard Operator are not confidential positions within the meaning of the Act and are appropriately included within the collective negotiations unit.

A 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, and 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.

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For the Public Employer
Stein, Joseph and Rosen
(Marc Joseph of Counsel)

For the Petitioner
Bucceri and Pincus
(Louis P. Bucceri of Counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDATION

On April 28, 1981, the Secretarial Unit of the River Dell Regional Board of Education, NJEA/NEA ("Association" or "Unit") filed a Clarification of Unit Petition with the Public Employment Relations Commission ("Commission") (C-1), ^{1/} seeking a determination that the positions of second secretary to the Superintendent, secretary to the Assistant Superintendent, and Secretary/Switchboard Operator are included within the

1/ Commission exhibits will be designated C- , Joint exhibits J- , Association exhibits P- , and Employer exhibits E- .

collective negotiations unit which is comprised of all full-time and part-time ^{2/} secretarial and clerical personnel employed by the Board of Education for the River Dell Regional School District ("Board" or "Employer"). In its response filed May 21, 1982, the Board contends that the disputed positions are confidential within the meaning of the New Jersey Public Employer-Employee Relations Act 34:13A-1 et seq. ("Act") and therefore should be excluded from the collective negotiations unit.

Pursuant to a Notice of Hearing issued July 20, 1981, by the Director of Representation, hearings were held September 22, October 9, and October 23, 1981, at which the parties were given the opportunity to examine and cross-examine witnesses, to present evidence and argue orally. A post hearing brief was received from the Association December 18, 1981. The Board waived a post-hearing brief and argued orally at the hearing October 23, 1982. It requested and was granted an extension for filing its reply brief which was received February 8, 1982. No reply brief was submitted by the Association. Following the receipt of these briefs the record was closed.

FINDINGS OF FACT

Based on the entire record in these proceedings, the hearing officer makes the following findings of fact;

1. The River Dell Regional Board of Education is a public employer within the meaning of the Act, is subject to its

^{2/} Part-time employees were included in the unit by agreement of the parties beginning 1971. (J-2 - Recognition Clause).

provisions and is the employer of the employees who are the subject of this proceeding (Tr I,5). ^{3/}

2. The Secretarial Unit of the River Dell Education Association NJEA/NEA is an employee representative within the meaning of the Act and is subject to its provisions (Tr I,6). The recognition clause of the current collective agreement between the parties (J-2) establishes the Association as the exclusive representative for all secretarial and clerical personnel employed by the Board on a ten or twelve month basis as follows: "Secretaries, clerks, switchboard operator, administrative secretaries, bookkeepers, payroll clerks, AVA technicians". Specifically excluded are "the Secretary to the School Superintendent, the Secretary to the Board of Education Secretary and such temporary, hourly personnel that may be needed in an emergency situation and/or as summer replacements." (J-2)

3. The issue is whether three positions - secretary to the Assistant Superintendent, second secretary assigned to the Superintendent and Secretary/Switchboard Operator - are included in the Unit.

4. There are four collective negotiations units of employees of the River Dell Regional School Board which are: Teachers Unit, Secretarial Unit, Custodial and Building Maintenance Unit, and Administrators' Unit. Three of these units are affiliates of the River Dell Education Association (the Administrators' Unit is not affiliated). The Secretarial Unit represents 22 full and part-time employees excluding the three disputed positions. (Tr I,92).

^{3/} Transcript references are as follows: September 22, 1981, Tr I, ____; October 9, 1981, Tr II, ____; and October 23, 1981, Tr III, ____.

5. The River Dell Regional School system consists of two schools: the junior high school located in River Edge and the senior high school located in Oradell (Tr I,92; Tr II,25; Tr III,54). School Superintendent Dr. Mary Lou Bartley and the Board Secretary/Business Administrator Paul Chieff have offices in the senior high school building (Tr I,92; Tr II,24); Assistant Superintendent of Schools Thomas L. Hausdorff has an office in the junior high school building (Tr III,53).

6. The Superintendent's office is separated physically from the secretaries' area and from other offices located in the senior high school building (Tr III,18). Two secretaries share the office space located immediately outside the Superintendent's office (Tr I,91-92). One, a full-time secretary to the Superintendent, Charlott Fehrle, is designated confidential by agreement of the parties and excluded from the collective negotiations unit (J-1 and J2). The other, Sheila Diggle, is in a ten month position which is a subject of this proceeding. Diggle, who presently works five days per week from 9:00 a.m. to 1:00 p.m., was employed in the Superintendent's office as an hourly employee between October 1979 and June 1980; in September 1980 she received an individual contract as a part-time salaried employee (Tr III,29). Her prior experience with the Board from January 1979 through June 1979 was as a substitute part-time hourly employee in the office of the High School Vice-Principal (Tr III,29).

Ms. Diggle has no particular duties assigned exclusively to her; work is assigned by the Superintendent and occasionally

by Charlotte Fehrle or Paul Chieff, Board Secretary. No one other than Fehrle and Diggle do secretarial work for Superintendent Bartley. (Tr III,31-33).

Ms. Diggle's regular duties consist of answering the telephone (Tr III,45) filing in both general and negotiation files (Tr III,38), and opening mail, including mail marked confidential. She does not open mail marked "personal". (Tr II,55; Tr III, 37). Diggle and Fehrle each have keys to the office files.

Ms. Diggle types the agenda for regular school board meetings and occasionally types the agenda for closed sessions, but she was unable to remember the content of any particular closed meeting agenda. (Tr III,31). In early 1981, she typed some contract proposals but cannot recall whose proposals, the content or the intended use by the Superintendent of these proposals. She has not typed any collective agreements or budget proposals (Tr III,33), nor has she costed-out any contract proposals (Tr III,34). Ms. Diggle has conducted two or three surveys of other school districts concerning substitute teacher salaries in order to gather information for the Superintendent, (Tr II,45; Tr III,34) but she has not compiled final reports on these matters. One day a year, in April, she types the teacher's individual yearly salary contracts (Tr III,49); then throughout the year she does the same on an as needed basis (Tr III,50). Ms. Diggle types official correspondence, memos and letters concerning grievances to the Board attorney (Tr III,42). She does not attend Board meetings or any meetings between the Superintendent and individual Board members (Tr II, 35).

There is no job description for this part-time secretarial position. Ms. Diggle considers the job description for secretary to the Superintendent as hers. (Tr III,46).

7. The position currently held by Ms. Diggle was held by Charlotte Fehrle, the present full-time confidential secretary to the Superintendent until 1977, when she replaced the prior full-time secretary to the Superintendent. Fehrle's part-time secretarial position remained vacant until the 1978-79 school year when Ms. Diggle was hired as an hourly employee and rehired in 1980 as a contract employee. While Ms. Fehrle was part-time secretary to the Superintendent, her salary and benefits were negotiated by the Association as the position was included in the clerical negotiations unit (Tr I,95).

Superintendent Bartley testified, without offering any examples, that Ms. Diggle receives and sends messages concerning various matters including grievances and negotiations to the Assistant Superintendent, the Board Secretary, and the Board Attorney; but, no dictation or typing assignments concerning these topics are specifically hers. No evidence was offered by Superintendent Bartley of negotiation or grievance material prepared by Ms. Diggle. (Tr II,24-29,33).

Although Superintendent Bartley has not been present at negotiating sessions with the various employee units since the 1979 contract meetings, she does act as consultant to the Board, and regularly meets with them to discuss contract proposals (Tr II,32). She researches various matters for the Board, for Assistant Superintendent Hausdorff and for Board Secretary

Chieff (Tr II,32). Clerical work in her office is divided between Fehrle and Diggle in no particular planned manner; (Tr II,38; Tr III,46); most of the work is assigned to Fehrle. Confidential material is generally sealed in an envelope marked confidential. No evidence was offered as to any specific material of this nature prepared by Ms. Diggle (Tr III,46,104).

In the past year five grievances were heard by the Superintendent at level three of the various employee contract grievance procedures (Tr II,48). Responses to grievances are forwarded simultaneously to employees and unit representatives after typing from notes of dictation by Diggle. (Tr II,48). Ms. Fehrle types twice as much material as Ms. Diggle and is responsible for all school transcript certifications (Tr II,49). Either secretary may open and sort mail, occasionally pulling the proper files for the Superintendent (Tr II,56). Neither secretary is responsible for transcribing notes from closed Board sessions as that responsibility lies with the Board Secretary.

8. Paul Chieff has been Board Administrator/Board Secretary for the past twelve years. His office is located in the senior high school building to the rear of the main business office, (Tr III,8) and is separate from the other offices and the main clerical area of the Board office. The main clerical area is shared by various personnel including Ms. McPherson, confidential secretary to the Board Secretary (Tr I,25; Tr II,62; J-2), Marge, the payroll clerk (Tr III,9), Louise, the bookkeeper Adele Mottershead, secretary to the Child Study Team and the Secretary/Switchboard Operator, Mrs. Dorothy Savage. Located in the

front of the main clerical area near the Superintendent's office are Charlotte Fehrle and Sheila Diggle (Tr III,8).

Mr. Chieff personally costs out the Association contract proposals as soon as possible after they are received (Tr II, 59) and is intimately involved in the formulation of Board counter-proposals. (Tr II,60). Mr. Chieff is the Board representative at Step 2 in the grievance procedure for secretarial and building service (maintenance) employees. (Tr II,63-64).

Mr. Chieff maintains the minutes of both the open and closed Board meetings. Ms. McPherson takes the minutes of open meetings and prepares a draft from her own notes and for the closed meetings from Chieff's dictation. Final copies of the open Board meeting minutes are typed by either McPherson or Savage for distribution to the Board. Ms. Savage is the Secretary/Switchboard Operator whose status as confidential is in dispute. (Tr II,35).

9. Ms. Savage was first hired in May 1978 as an hourly employee and continued as such until she received an individual salary contract June 1981 for the school year 1981-82 as a full-time, 12 month employee (Tr III,3). Her duties primarily involve processing reimbursements for employees under the Board Paid Prescription Plan, (Tr II,63,85), typing, relief on the switchboard each day for approximately 1-1/2 hours during lunch and breaks and substituting for other secretaries when they are absent (Tr III,4). Ms. Savage has access to highly personal, confidential, information about employees' health necessary to

processing and verifying reimbursements under the Paid Prescription Plan.

She does not have a regular desk of her own; her typing table serves this function. Ms. Savage is unable to take dictation and therefore types from hand written material. She also prepares stencils, duplicates and collates Board minutes for distribution and receives other assignments either from Chieff or occasionally from McPherson. Generally, the bookkeeper, the payroll clerk and Savage all work together (Tr III,7-10) under the general direction of Chieff.

Occasionally, Savage types negotiation proposals for distribution to the Board but she does not know whose proposals these are (Tr III,11). She makes no calculations for the budget or for contract proposals; (Tr III,14), she does no research and does not open confidential mail or mail marked "personal". (Tr II,89). Files containing material from negotiations and the Board minutes are kept locked in Chieff's office in a file cabinet to which he and McPherson have the only keys. She types letters and memos for Hausdorff and Superintendent Bartley including notices to terminated and RIFed ^{4/} employees. Some of this material may be marked confidential, but Savage does not know the negotiation unit of the employees or if in fact, they are included in any unit. (Tr II,15). She does not attend open or closed Board meetings or negotiation sessions. (Tr III,14). During negotiations for the school year 1981-82 Savage typed

^{4/} "RIF" is a colloquial expression which denotes "reduction in force" or layoff.

Chieff's budget recommendations for submission to the Board, but she does no research or computations in connection with the budget process. (Tr II,82). Changes in the proposed budget are typed and duplicated by McPherson or Savage for distribution (Tr II,83). For school year 1982-83 budget proposals will be compiled commencing the week of October 23, 1982. Savage will be assigned to type this material for the Board.

There is no formal job description for Savage's position. The posted notice describing the position for school year 1980-81 characterized it as a "12 month confidential secretary relief switchboard operator to work approximately 60% in the Board Secretary office and 40% in other offices". Mr. Chieff was unable to recall any specific letters or legal inquiries sent to Board Attorney Joseph which were typed by Savage. Assignments are made as a matter of convenience without reference to the confidential nature of the material (Tr II,124 & 125).

10. Mr. Hausdorff has been the Assistant Superintendent for the last three years of his 11 years of employment with the Board. Primarily, he is responsible for curriculum and instruction (Tr II,125). Until June 1980 his position was included in a bargaining unit represented by the River Dell School Administrators Association. Hausdorff, because of the expanded scope of his labor relations function withdrew his membership and his position was excluded from the negotiation unit in the summer of 1980 (Tr II,128). Currently, he is responsible for all administrative matters concerning hiring, firing, RIFing, staffing, and curriculum. Beginning June 1980 he assumed certain negotiation responsibilities on behalf of the Board and therefore, attends all closed

work sessions concerning negotiations, RIFing and salary except for discussions concerning his own position (Tr II,132). Before negotiations Hausdorff analyzes and discusses the impact of Association proposals with the Board and during negotiations he participates in meetings concerning strategy and counter-proposals regarding staffing, class size, duty periods, length and number of periods, preparation time and hiring (Tr II,130-141). He often prepares notes recording his thoughts which are then filed in appropriate office files (Tr II,141). He makes recommendations concerning these various matters first to Superintendent Bartley and then to the Board. (Tr II,142). Hausdorff is the immediate supervisor of some administrators but plays no formal role in the grievance procedure for any of the employees in the instant case (Tr II,141) except in his capacity as acting superintendent. (Tr II,147). During the summer he meets with Supervisors to solicit information for justification of budget requests which he then compiles into handwritten budget proposals and forwards to the Superintendent for her review. This budget work begins October 9 of each year. Budget information concerning staffing or money allocations for salaries if known prematurely, by employees may adversely affect management's negotiating posture. Hausdorff makes termination recommendations together with the Superintendent which are then typed by either his secretary or one of the Superintendent's secretaries and then forwarded to the Board (Tr II,154).

RIFing recommendations are made by the Superintendent. Copies of all correspondence, including handwritten memos concerning the budget, staffing and RIFing are kept in files maintained by Ms. Grossi, Hausdorff's secretary. Some of these files are kept in Hausdorff's office and some are stored in files standing behind Grossi's desk. There are two sets of keys for each of these files; one set is in Hausdorff's possession and Grossi retains the other (Tr II,155-165). Last year Hausdorff acted as superintendent a substantial amount of time, because the Superintendent was unavailable. As Assistant Superintendent he supervises the Supervisors whom he evaluates for merit increases and retention decisions. In this capacity he may serve as a management representative at the first level of the Supervisor's grievance procedure, but in the last year there were no formal grievances. (Tr II,166).

Grossi has been Hausdorff's part-time secretary since November 1980. She is his only secretary and works exclusively for him (Tr III,53). At present she takes notes at most meetings he has with the Superintendent and various Supervisors; she types all correspondence emanating from his office and handles his morning mail. (Tr III,55). While she attends no Board meetings (Tr III,60), she is responsible to calculate the cost of Association negotiation proposals, but does no calculations for proposed budgets. (Tr III,58). She maintains all the files in the Assistant Superintendent's office and is privy to advance information on RIFing, school closings and the agenda for closed Board meetings. (Tr III,62).

There is no written job description for this position. Grossi thinks that her responsibility is to "see it, eat it up, and forget it". (Tr III,62). Generally, she says that if Hausdorff is involved then "she is". (Tr III,62).

Adele Mottershead was Hausdorff's prior part-time secretary from September 1978 until October 1980 (Tr I, 96), she worked for him 50% of the time until her transfer in 1980 to the position of Secretary to the Child Study Team. During the time she was Hausdorff's secretary she was represented for the purpose of collective negotiations by the Association for salary and benefits.

ANALYSIS

N.J.S.A. 34:13A-3 excludes confidential employees from the definition of "employee" and consequently from the protections and rights afforded by the Act. Confidential employees are therefore not eligible for inclusion in a collective negotiations unit with other public employees. Section 13A-3(d) in relevant part reads as follows:

The term "employee" ...[s]hall include any public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer except elected officials, members of boards and commissions, managerial executives and confidential employees.

Section N.J.S.A. 34:13A-3(g) added to the Act in 1974 defines confidential employees to mean those:

...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.

The Commission and Director of Representation have determined in a number of cases that a finding of confidential status turns on a close examination of the facts in each case. ^{5/}

Most recently In Old Bridge Township, D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981) the Director of Representation determined that the position of Research Assistant to the Assistant Superintendents for Personnel/Education Services and Curriculum Instruction was a confidential employee because of her significant functional responsibilities and knowledge concerning collective negotiations, grievance processing, contract analysis, staff evaluations, hiring, and the development of Board policies. The possession of this information rendered her membership in any appropriate negotiation unit incompatible with her official duties.

^{5/} Several recent decisions established the contours of legal analysis for a finding of confidential status. In re Jersey City, D.R. 80-36, 6 NJPER 278 (¶ 11132 1980); In re Township of Parsippany-Troy Hills Board of Education D.R. 80-35, 6 NJPER 276 (¶ 11131 1980); In re Little Ferry Board of Education, D.R. No. 80-19, 6 NJPER 59 (¶ 11039 1980); see also, In re Passiac County Regional High School District No. 1, Board of Education, P.E.R.C. No. 77-19, 3 NJPER 34 (1976) affirming H.E. No. 77-3, 2 NJPER 268 (1976); In re Board of Education of Township of West Milford, P.E.R.C. No. 56 (1970); In re Woodbridge Township Board of Fire Commissioners District No. 1, P.E.R.C. No. 51 (1974); In re Springfield Board of Education, E.D. No. 52 (1974); In re Plainfield Board of Education, E.D. No. 1 (1970); In re Jersey City Board of Education, D.R. No. 80-15, 5 NJPER 61 (¶ 10040 1979); In re Rahway Board of Education, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979); In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 3018 1977) affm'g H.E. No. 77-7, 3 NJPER 108 (1977); In re Mercer County Community College, H.O. No. 80-3, 5 NJPER 336 (¶ 10181 1979).

Based upon the entire record in the instant matter, the undersigned hearing officer must determine whether the job functions of the disputed positions permit the incumbents access to or knowledge of labor relations information on a regular basis in the performance of their job duties.

The Board, in support of its position that the disputed job titles are confidential, relies on several decisions of the Director of Representation, In re Cranford Board of Education, D.R. No. 78-20, 3 NJPER 352, In re Orange Board of Education, D.R. No. 78-28, 4 NJPER (¶ 4001 1977); and In re Jersey City, D.R. No. 78-35, 4 NJPER 139, (¶ 4065 1978), in which certain clerical positions were found to be confidential.

In Cranford, supra, the Director found the secretaries to the Superintendent, the Board Secretary/Business Manager and the Assistant Superintendent for Personnel to be confidential. The dispute concerned the status of the two secretaries to the Assistant Superintendent whose responsibilities included a wide-range of managerial functions including participation in collective negotiations and processing employee terminations. ^{6/} The two secretaries were both routinely required to perform duties with regard to confidential labor relations matters and therefore, were confidential employees excluded from the collective negotiations unit of secretaries and clerks.

^{6/} The parties stipulated that the secretary to the Superintendent of Schools and the secretary to the Board Secretary/Business Manager were confidential employees.

Similarly, in Orange, supra, the Director of Representation found that four Administrative Secretaries to the Superintendent of Schools, the Assistant Superintendent for Personnel and the Business Manager who all regularly conducted labor negotiations on behalf of the Board, were confidential employees because the secretaries regularly and routinely performed functions in regard to the negotiations or on a semi-regular basis were responsible for maintaining the labor relations policy files. In Jersey City, D.R. No. 78-35, supra, upon a record which failed to raise any disputed substantial or material factual issues, the Director of Representation found three positions to be confidential - Personnel Supervisor, Legal Stenographer to the Board Attorney, and Assistant Secretary to the Board Secretary - as the incumbent employees "regularly handle confidential labor relations material."

The Association arguing to the contrary, acknowledges only two existing confidential positions viz: primary secretary to the Superintendent and the secretary to the Board Secretary/Business Administrator. The Association contends that the employees in the three disputed positions perform no secretarial duties regarding labor relations on a routine and regular basis, and have no access to confidential collective negotiations information which would make their inclusion in the clerical unit incompatible with the performance of their job duties. Additionally, the Association argues, the Act's definition of "confidential employee" is to be narrowly construed because they are excluded from the Act's benefits and protections. Brookdale Community

College, H.E. No. 77-7, 3 NJPER 108, 1977, D.R. No. 78-10, 4
NJPER 32, (¶ 4018 1977).

Finally, the Association contends that a bare assertion by the Board that the positions are confidential is not sufficient because each case must be decided on its individual facts, Jersey City, D.R. No. 78-35, supra, Parsippany Troy Hills, supra, and Linden Free Public Library Board of Trustees, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981).

In In re Board of Education of West Milford, P.E.R.C. No. 56, 1971 the Commission excluded the Secretary and Assistant Secretary to the Superintendent and the Secretary to the Board Administrator/Board Secretary from a collective negotiations unit as confidential employees, because they

...all work for and with those at a management level who share with the Board responsibility for personnel and labor relations policies and by virtue of that relationship these three secretaries have in the course of their normal duties, access to and knowledge of such policy information.

* * *

...It may be that the lowest level clerk would as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collection function should disqualify one from the possibility of representation. Mere knowledge of raw information acquired in this process would not ordinarily tend to compromise management's right to confidentiality in matters of policy affecting negotiations or contract administration... Slip Op. page 4.

The relevant consideration is whether or not the individuals in question have access to confidential information having a direct bearing on collective negotiations and the labor relations function of the public employer.

Additionally, the Executive Director in Board of Education and Plainfield Education Association of Educational Secretaries, E.D. No. 1 found:

It is axiomatic that those charged with the responsibility for negotiations or the formulation of labor relations policy may not be included in the same unit as those affected by such negotiations or such policy. To include both sides of the negotiating table in one unit would be the clearest conflict of interest and would effectively interfere with the purpose of this Act which provides for good faith negotiations. Similarly, secretarial employees who act in a confidential capacity to a member of management's team who is involved in the formulation of labor relations policy and who is privy to information concerning such matters should have the same conflict of interest. Slip. Op. page 8.

The analysis therefore is two-fold. First, a determination must be made as to the managerial and labor relations functions of the immediate superior to each of the secretaries. Secondly, a determination must be made as to whether each of these secretaries acts in a confidential capacity to a member of management's team.

In the instant case, the Superintendent, Assistant Superintendent and the Board Secretary are all unquestionably members of the management team who formulate, determine and effectuate the Board's labor relations policy. All currently participate in the collective negotiations process, formulate

contract proposals, and develop Board strategy. Superintendent Bartley has attended negotiating meetings and participated in face-to-face discussions with the Association. Presently, she acts as a consultant to the Board, attends all open and closed Board meetings and participates in discussions concerning labor relations matters although she no longer meets on a regular basis face-to-face with the Association in collective negotiations. However, she was present for the negotiating session August 31, 1981, during which the parties reviewed a final contract draft and signed the document. Dr. Bartley is directly responsible for answering grievances presented to her as the Board representative at the third level of the grievance procedures in the various contracts with the Association covering the teachers, secretaries and custodians employed by the Board.

Mr. Chieff, Board Secretary, plays a very active direct role in labor relations on behalf of the Board, he assists in the initial critique of the Association's contract proposals, the development of Board counter-proposals, and personally costs-out the various contract proposals of both the Board and the Association. He keeps the minutes and records of all closed sessions of the Board in a locked file in his office to which only he and his full-time secretary have a key.

Mr. Hausdorff, Assistant Superintendent, has significant functional responsibilities concerning labor relations and collective negotiations. As a result his position was excluded from the Administrators' collective negotiations unit and he withdrew from membership in the River Dell Association of School Administrators.

He is responsible for all administrative matters concerning curriculum and staffing including the hiring, firing and RIFing of employees. He analyzes the impact of Association proposals and assists in the development of Board counter-proposals and positions. His notes concerning these matters are kept in subject files located in his office. Although he has no daily formal role in the employee grievance procedure for the instant unit he acts in the absence of Superintendent Bartley.

Clearly, the Superintendent, the Assistant Superintendent and the Board Secretary all have extensive functional responsibilities for collective negotiations and labor relations on behalf of the Board. The test in the first part of the analysis has been met.

The second part of the analysis requires a determination of whether the secretarial employees to these management personnel act in a confidential capacity relating to labor relations and collective negotiations functions or whether they are privy to information concerning these matters.

Because Hausdorff's duties changed, a closer look at the duties performed by his secretary Marge Grossi is necessary. Prior to June 1980, Mr. Hausdorff's secretary was included in a negotiations unit as was Mr. Hausdorff himself. Since June 1980 there have been substantial changes in the nature of his duties and, similarly, those of his secretary. Currently, his part-time secretary, appointed November 1980, opens all the mail, takes notes of discussions between Hausdorff and the Board Secretary or the Superintendent, files all materials including Board minutes;

types budget proposals for the Superintendent; and types financial reports, surveys, staff notices and contract proposals.

As a consequence of Grossi's regular and routine duties she has access to information concerning Board policy for labor relations and collective negotiations before its public announcement or dissemination to other employees. I find that the secretary to the Assistant Superintendent acts in a confidential capacity to a member of the Board's management team who is involved in the formulation of labor relations policy and is therefore properly classified as a confidential employee within the meaning of the Act.

The part-time second secretary to the Superintendent is a position in existence for some time and the title has always been included in the instant collective negotiations unit. There is no evidence in the record to support a finding that there is any substantive change in the duties which would warrant removal of the position from the unit at this time. The duties performed by the incumbent Sheila Diggle, hired April 1978, when compared with the duties of the previous part-time secretary to the Superintendent, Charlotte Fehrle, are substantially the same. Diggle performs no particular labor relation assignments nor has she any advance information or special access to collective negotiation or labor relations material during the regular and routine performance of her duties. The conduct of surveys, the gathering of raw data and typing of letters or grievance material without any role in the decision making processes or knowledge of the intended use or import of the information, or the occasional

handling of files which may contain labor relations or negotiation material and the typing of letters to the Board Attorney, is not sufficient to warrant confidential status. Superintendent Bartley has a full-time confidential secretary who generally and routinely opens and sorts the mail, types memos and letters to Board members, answers the phone, makes calls for the Superintendent and generally performs all other secretarial duties. The second secretary assists with the office overflow, some of which may on occasion be material related to grievances or negotiation. Ms. Diggle is not regularly utilized in a confidential capacity by the Superintendent and does not have access to confidential labor relations information. Therefore, I find that the position of parttime secretary to the Superintendent of Schools is not confidential.

The last disputed position is Secretary/Switchboard Operator, held by Dorothy Savage, who is primarily responsible for the processing of Paid Prescription Plan claims by Board employees and typing. She shares work space with other employees in the collective negotiations unit. She has no desk of her own but uses the typing table. She provides relief for other unit employees on the switchboard and substitutes for secretaries who are absent. Although Savage has typed budget proposals and prepared stencils of Board meeting minutes for distribution she does not know the importance of the material or the use thereof intended by the Board. She does no other work which can be fairly related to labor relations or collective negotiations. She does not act in a confidential capacity to a member of the Board's management team concerning collective negotiations or

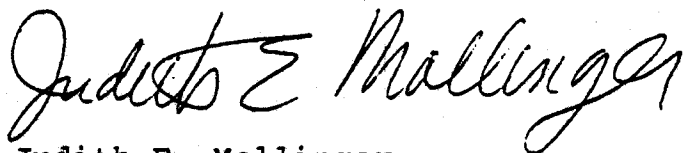
labor relations matters. Therefore I find that the position of Secretary/Switchboard Operator to be non-confidential.

RECOMMENDATIONS

Based on the foregoing discussion, I recommend the following:

1. The position of Secretary to the Assistant Superintendent is confidential within the meaning of the Act and should not be included within the collective negotiations unit.
2. The positions of Second Secretary to the Superintendent and Secretary/Switchboard Operator are not confidential and are appropriately included in the collective negotiations unit.

Respectfully submitted



Judith E. Mollinger
Hearing Officer

DATED: August 4, 1982
Trenton, New Jersey