

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

In the Matter of

CRANFORD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-77-43

CRANFORD EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation Proceedings, in agreement with the Hearing Officer's Report and Recommendation in a Clarification of Unit proceeding, finds that the Secretary to the Superintendent, the Secretary to the Board Secretary/Business Manager, and the two Secretaries to the Assistant Superintendent for Personnel are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act and excluded from a secretarial negotiations unit.

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Appearances:

For the Public Employer
Weinberg, Manoff & Dietz, Esqs.
(Irwin Weinberg, Of Counsel)

For the Petitioner
Ronald Harvey, NJEA Field Representative

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of a collective negotiations unit represented by the Cranford Education Association (the "Association"), a hearing was held before Arnold H. Zudick, on June 22, 1977, at which time all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Neither party filed a brief, and the Hearing Officer issued his Report and Recommendation on September 20, 1977. A copy is annexed hereto and made a part hereof. No exceptions to the Hearing Officer's Report have been filed.

The undersigned has considered the entire record including the

Hearing Officer's Report and Recommendation and the transcript and on the basis thereof finds as follows:

1. The Cranford Board of Education (the "Board") is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), is the employer of employees involved herein, and is subject to the Act's provisions.

2. The Cranford Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Cranford Education Association is the exclusive representative of a negotiations unit consisting of all secretaries and clerks employed by the Board. The Board has filed the instant Clarification of Unit Petition seeking a determination that four secretaries -- the Secretary to the Superintendent, the Secretary to the Board Secretary/Business Manager, and two Secretaries to the Assistant Superintendent for Personnel are confidential employees, as defined in N.J.S.A. 34:13-3(g) ^{1/} and, consequently must be excluded from the negotiations unit. Accordingly, a Clarification of Unit Petition having been filed and there existing a question concerning the composition of a negotiations unit, the matter is appropriately before the undersigned for determination.

4. Subsequent to the opening of the hearing the parties stipulated that the Secretary to the Superintendent and Secretary to the School Board Secretary/Business Manager are confidential employees, as that term is defined under the Act. Therefore, the testimonial evidence presented at the hearing

^{1/} This subsection provides:

"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."

was limited to the issue of the claimed confidential status of the two Secretaries to the Assistant Superintendent.

5. The Hearing Officer found that the Assistant Superintendent for Personnel performs a wide range of management responsibilities including participation in collective negotiations sessions, the preparation of negotiation proposals and documentation on behalf of the Board, the processing of employee terminations, and the implementation of Board directives. The Hearing Officer concluded that the Assistant Superintendent is intimately involved in the preparation and implementation of labor relations policies, especially in the area of collective negotiations. Further, the Hearing Officer found that the Assistant Superintendent's two secretaries are both routinely required to perform secretarial duties with regard to the confidential labor relations material prepared by the Assistant Superintendent. Accordingly, the Hearing Officer recommended that the two secretaries be designated as confidential employees and excluded from the unit of secretaries and clerks.

Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and the lack of any party's exceptions to the Report, the undersigned finds that there is ample record evidence to support the Hearing Officer's findings, and these are specifically adopted. Moreover, the Hearing Officer's conclusion and recommendation that the employees in dispute are confidential employees is consistent with and in accordance with prior standards enumerated by the Commission in previous decisions involving confidential employees. ^{2/} The record reveals that the Assistant Superintendent for Personnel performs functions on behalf of the Board which entail the

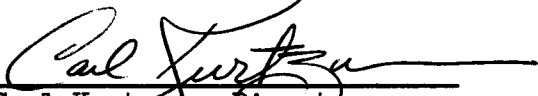
^{2/} In re Board of Education Township of West Milford, P.E.R.C. No. 56 (1971); In re Bloomfield Board of Education, E.D. No. 76-40 (1976); In re Springfield Board of Education, E.D. No. 52 (1974).

the preparation of confidential negotiations material, and that the two secretaries assigned to the Assistant Superintendent have, in the exercise of their duties, handled such confidential material and would be expected to continue to have access to and knowledge of such material in the regular exercise of their secretarial duties in the future.

Accordingly, the undersigned finds that the two secretaries to the Assistant Superintendent of Personnel are confidential employees within the meaning of the Act. The undersigned, additionally, accepts the parties' stipulation that the Secretary to the Superintendent, and Secretary to the School Board Secretary/Business Manager are confidential employees within the meaning of the Act.

Inasmuch as these employees are confidential employees, they are excluded from the Association's secretarial unit immediately upon this determination. ^{3/}

BY ORDER OF DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director
of Representation

DATED: November 3, 1977
Trenton, New Jersey

3/ In re Clearview Regional High School Board of Education, D.R. No. 78-2,
3 NJPER 248 (1977).

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

In the Matter of

CRANFORD BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-77-43

CRANFORD EDUCATION ASSOCIATION,

Public Employee Representative.

SYNOPSIS

A Commission Hearing Officer, in a Clarification of Unit proceeding, recommends that the secretary to the Superintendent, the secretary to the Board Secretary/Business Manager, and the two secretaries to the Assistant Superintendent for Personnel be found to be confidential employees within the meaning of the Act and therefore found to be inappropriate for inclusion in any negotiations unit.

The Hearing Officer finds that pursuant to the parties' stipulation, the secretaries to the Superintendent and the Board Secretary/Business Manager are confidential employees within the meaning of the Act. Additionally, the Hearing Officer concludes after a review of the record, that the secretaries to the Assistant Superintendent have handled confidential material in the past and will be expected to handle similar material in the future. Finally, the Hearing Officer finds that due to the interrelation of the instant secretarial positions it would not have been possible for the Assistant Superintendent's Office to function properly if only one secretary were found to be a confidential employee.

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 Proceedings 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.

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Appearances:

For the Petitioner, Weinberg, Manoff &
Dietz, Esqs.
(Irwin Weinberg, of Counsel)

For the Employee Representative, Mr. Ronald
Harvey, NJEA, Field Representative

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission (the "Commission") on January 19, 1977 by the Cranford Board of Education (the "Board") seeking a clarification regarding the composition of a unit of employees represented by the Cranford Education Association, which affiliated with the New Jersey Education Association (the "Association"). The Board seeks a determination which would exclude from the negotiating unit consisting of secretaries and clerks, four secretaries - the secretary to the Superintendent, the secretary to the Board Secretary/Business Manager, and two secretaries to the Assistant Superintendent for Personnel - as confidential employees within the meaning of the New Jersey Employer-Employee Relations Act (the "Act").^{1/} Pursuant to a Notice

1/ N.J.S.A. 34:13A-1 et seq.

of Hearing dated May 11, 1977, a hearing was held before the undersigned Hearing Officer on June 22, 1977 in Newark, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Both parties elected not to file briefs in this matter. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The Board is a Public Employer within the meaning of the Act, is subject to its provisions, and is the employer of the employees involved in the proceeding.

2. The Association is an Employee Representative within the meaning of the Act and is subject to its provisions.

3. The Board filed the instant Petition seeking the exclusion of the above-named secretarial titles from the unit represented by the Association because of the secretaries' alleged confidential status. The Association, however, asserts that the secretaries in question are not confidential employees and thus it would not agree to their exclusion from the unit. Accordingly, there is a question concerning the composition of the negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

4. Subsequent to the opening of the Hearing the parties stipulated that the positions of secretary to the Superintendent and secretary to the School Board Secretary/Business Manager were confidential employees within the meaning of the Act and were therefore excluded from the instant unit.

5. Therefore, the sole issue to be determined in this proceeding is whether or not the two secretaries to the Assistant Superintendent are confidential employees within the meaning of the Act, and if found to be

confidential, the positions shall be excluded from the unit since confidential employees are precluded from membership in any negotiations unit.^{2/}

Background and Analysis

The Board and the Association are parties to a collective negotiations agreement effective July 1, 1976 through June 30, 1978.^{3/} The Board, through the instant Petition, contends that the two secretaries in question were generally relied upon by the Board to perform confidential work when needed. The Board argued that such work included the typing of various proposals used in previous negotiations with the Association, and in preparing notifications of reductions in force. However, the Board asserted that since the secretaries had not yet officially been classified as confidential employees that therefore, the Board found it necessary to remove confidential material from the secretaries' workload in order to protect both the Board and the secretaries. Therefore, the Board concluded that in order for the office of the Assistant Superintendent to function properly, it was absolutely necessary for the secretaries in question to be classified as confidential employees thereby enabling them to handle confidential material without undue pressure.

The Association argued that although the secretaries handled various kinds of information, that none of the information in question would require their positions to be classified as confidential employees within the meaning of the Act.

^{2/} The Act at N.J.S.A. 34:13A-3(g) defines confidential employees as:

"...employees whose functional responsibilities or knowledge in connection with the issues involved in collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties."

^{3/} Joint Exhibit -1.

The Recognition Clause includes the title of "secretaries".

The undersigned was therefore required to examine not only whether the secretaries in question handle or have handled confidential material, but also, whether the evidence and testimony as a whole clearly established that the secretaries would be required - as a necessary part of their job - to handle confidential material in the future. In examining that question, it was necessary for the undersigned to consider the steps taken by the Board to remove confidential work from the two secretaries, and the likelihood of the secretaries being required to perform that same confidential work in the future. Finally, the undersigned found it necessary to examine whether the Assistant Superintendents' office could function properly if only one of the two secretaries were classified as a confidential employee within the meaning of the Act.

The bulk of the testimony produced at the hearing came from the Assistant Superintendent, Mr. Anthony Terregino. Mr. Terregino testified that he has been Assistant Superintendent since 1971, and he is required to perform a wide range of management responsibilities including preparing negotiations proposals and being present at negotiation sessions, implementing Board directives, preparing documentation for mediation and fact finding sessions, and handling employee terminations.^{4/} The evidence, therefore, was clear that Mr. Terregino performed a great deal of work of a confidential nature.

The Board's attorney then questioned Mr. Terregino thoroughly on whether his secretaries had ever assisted him in preparing confidential material. Mr. Terregino testified clearly that one of his secretaries, Mrs. Brenda Tarver, had prepared Board negotiation proposals in November 1973 to be used for the 1974-75 contract year;^{5/} that she had prepared other

^{4/} Transcript pp 12-13.

^{5/} Employer, Exhibit -2.

related negotiation material in March, 1974 for the 1974-75 and 75-76 contract years;^{6/} and, that she prepared documents for mediation and fact finding in February 1976.^{7/} Regarding his other secretary, Mrs. Winifred Madonia, Mr. Terregino testified that in June 1977 she typed a confidential memorandum to Dr. Paul, Superintendent, concerning an update of a June 1, 1977 negotiation session.^{8/}

Mr. Terregino was then questioned as to how most of his recent confidential material was prepared. He testified that he prepared much of the work himself in longhand because he was concerned about maintaining the confidentiality of the material and in relieving the pressure on his secretaries.^{9/} Moreover, he testified that he frequently used the copy machines himself to prepare copies of confidential material for other administrative officials.^{10/} Later, Mr. Terregino testified that the reason he prepared confidential work in longhand was because he and the Superintendent felt that since the secretaries in question were in the unit, that they were being put under severe pressure by having to deal with confidential material. Finally, Mr. Terregino testified that the Board's attorney, Mr. Weinberg, had directed him not to use his secretaries for preparation of 1976-1977 and 77-78 negotiations material in order to relieve the pressure on his secretaries.^{11/}

When questioned as to the likelihood of assigning future confidential work to the secretaries in question, Mr. Terregino testified that it

^{6/} Employer Exhibit -3.

^{7/} Employer Exhibit -4.

^{8/} Transcript p. 21.

^{9/} Transcript pp. 37-38.

^{10/} Transcript pp. 15, 23-24, 37-38.

^{11/} Transcript p. 23.

would be appropriate to assign such work to his secretaries.^{12/}

Finally, Mr. Terregino was asked whether it would be possible for his office to function properly if only one of his secretaries were classified as a confidential employee, and he testified that such a procedure would not work.^{13/} Dr. Paul agreed that if both of Mr. Terregino's secretaries were confidential employees he would be free to assign them much of the work he has been performing by hand.^{14/}

In support of its position the Association questioned Mr. Terregino's secretaries, Mrs. Tarver and Mrs. Madonia. Both ladies testified that they did not handle mail that was stamped "confidential", and that they had not recently handled material that they believed was confidential. However, neither secretary could deny that in the past they handled the specific confidential material discussed earlier by Mr. Terregino. Moreover, both secretaries testified that they did prepare letters used to notify individuals of reductions in force, and that they had access to personnel files.^{15/}

The undersigned has reviewed several Commission cases dealing with positions similar to those involved in the instant matter. In In re Bloomfield Board of Education, E.D. No. 76-40 (1976), for example, the Executive Director upheld the Hearing Officer and found that the secretaries to the Superintendent, the Board Secretary/Business Administrator, and the Assistant Board Secretary/Director of Buildings and Grounds were confidential employees because they handled material relating to negotiations. In another case, In re Springfield Board of Education, E.D. No. 52 (1974), the Executive Director

^{12/} Transcript pp. 15, 29-30.

^{13/} Transcript pp. 29-32, 43.

^{14/} Transcript pp. 69-70.

^{15/} Transcript pp. 53, 57, 64.

upheld the Hearing Officer and found that the secretary to the Assistant Superintendent in Charge of Curriculum was not a confidential employee. However, the decision in Springfield clearly sets forth that the reason the secretary to the Assistant Superintendent therein was not a confidential employee was because she did not deal with labor relations material, nor was she required to perform such work during the performance of her duties.^{16/} In the instant matter, the evidence did establish that Mr. Terregino's secretaries have dealt with labor relations material, and that they have done so during the normal performance of their duties.

The undersigned has considered the record herein, and the established case law, and finds that there is substantial basis on which to conclude that the secretaries to the Assistant Superintendent herein are confidential employees within the meaning of the Act. The evidence established that both secretaries have handled confidential material in the past and that they would be expected to handle similar material in the future. Moreover, it was clear that the only reason neither secretary had handled confidential material in the most recent negotiations was because Mr. Terregino voluntarily removed such material from the secretaries in order to protect them and the Board. Mr. Terregino testified that in the normal course of events his secretaries would handle material concerning negotiations, and that under present conditions his office was not functioning properly but would do so if his secretaries were confidential. Finally, the evidence established that the work performed by the secretaries in question is substantially similar, that Mr. Terregino assigns work to whichever secretary is most available at the time and ~~that there~~ is an interaction between the two secretaries, and that therefore it would not be possible to expect only one secretary to perform in a confidential capacity.

^{16/} E.D. No. 52, at pp. 8-9.

RECOMMENDATION

Based upon the entire record the undersigned Hearing Officer recommends the following:

1. That pursuant to the parties stipulation, the positions of Secretary to the Superintendent, and Secretary to the School Board Secretary/Business Manager be found confidential employees within the meaning of the Act and therefore be found to be inappropriate for inclusion in any negotiations unit.
2. That based upon the entire record herein and the foregoing discussion, the two secretaries to the Assistant Superintendent for Personnel be found to be confidential employees within the meaning of the Act, and therefore be found to be inappropriate for inclusion in any negotiations unit.

RESPECTFULLY SUBMITTED,


Arnold H. Zudick
Hearing Officer

DATED: September 20, 1977
Trenton, New Jersey