

D.R. NO. 93-21

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

In the Matter of

WEST AMWELL BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-93-64

WEST AMWELL EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an accretion election among employees of the West Amwell Board of Education. The Director found that the secretary to the superintendent is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g), and excluded her position from the unit. The Director further found that the cafeteria manager is not a supervisor within the Act's meaning and included her position in the unit. The Director ordered that an election be conducted, including a professional option ballot.

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Appearances:

For the Public Employer
Cassetta, Taylor & Whalen, Consultants
(Garry M. Whalen, Consultant)

For the Petitioner
New Jersey Education Association
(Thomas Myers, Field Rep.)

DECISION AND DIRECTION OF ELECTION

The West Amwell Education Association, NJEA filed a timely representation petition on October 2, 1992, with the Public Employment Relations Commission, seeking to add all full-time cafeteria personnel, custodian/maintenance personnel, secretaries and aides to its existing unit of certificated personnel employed by the West Amwell Board of Education. The petition was supported by an adequate showing of interest. The Board opposes the accretion of certain of the petitioned-for titles and refuses to consent to an election.

The Board and Association agree that five employees in the following titles may be included in the unit: two instructional

aides, day custodian, cafeteria helper and night custodian. The parties agreed to exclude the board secretary/school business administrator (Karen Grayson), and part-time cafeteria helper/office and library aide (Tiffany Miller).

The Board alleges two additional employees should be excluded from the unit: Sandra Kascik, the superintendent's secretary, as a confidential employee and the cafeteria manager, Nina Siwy, as a supervisory employee. We have conducted an investigation of the issues and make the following findings.

N.J.A.C. 19:11-2.6.^{1/}

Secretary to the Superintendent

Sandy Kascik, secretary to the superintendent, reports to Superintendent Anthony DeCanzio and is the only secretary in the school district. Kascik receives, opens, routes and files all incoming correspondence, including correspondence from the Board's labor relations consultant. Kascik also types all the superintendent's correspondence. The Board asserts that Kascik has typed correspondence containing the superintendent's proposed salary position for negotiations. The Association claims that Kascik typed only one statement concerning terms and conditions of employment for support staff who were not organized or negotiating with the Board. DeCanzio is part of the Board's negotiating team.

^{1/} On April 13, 1993, we informed the parties of our intended findings and invited their response. Neither party responded.

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization." Confidential employees, however, are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d).

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

[E]mployees 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission explained our approach to determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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 was included in a negotiating unit. [Id. at 510]

See also, Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88). We must look to the particular facts concerning the individual involved. See, e.g., Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988) (four of seven secretaries in board's main office found confidential) and State of New Jersey, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd. App. Div. Dkt. No. A-1445-89T1 (1/22/91).

Kascik's responsibilities and knowledge of the Board's positions in labor relations matters would compromise the Board's right to confidentiality concerning the collective negotiations process if she is included in the Association's unit. Accordingly, the secretary to the superintendent, Sandy Kascik, is excluded from the proposed unit. Accord, Greenwich Tp. Bd. of Ed., P.E.R.C. No. 93-27, 18 NJPER 490 (¶23224 1992).

Cafeteria Manager

Nina Siwy, the cafeteria manager, reports to the superintendent. Siwy manages the school cafeteria, including maintaining the budget, assigning work and overseeing the preparation and sale of lunches.

The Board claims that Siwy directly supervises Eva Green, who is included in the proposed unit. The Board asserts that Green was hired by the Board on Siwy's recommendation. The Association disputes this. It claims that Siwy participated in interviews of Green, but the superintendent recommends all new hires to the Board and only the Board hires employees. The Association further asserts that Siwy had no role in hiring Joyce Miller approximately two years ago.

The parties disagree about disciplinary actions. The Board claims that Siwy has disciplined cafeteria employees in the past and that one employee was discharged on her recommendation. However, it did not cite specific examples. The Association claims that there have been no discharges during Siwy's tenure as cafeteria manager.

It claims that the only employee who left the district within this time was an employee who resigned. The Association claims that the cafeteria operates on the basis of cooperation and is not structured in a strict chain of command. The Board argues that Siwy should be found to be a supervisor because she is expected to recommend or impose discipline on cafeteria employees, if necessary, since she, as manager, is in daily contact with them.

N.J.S.A. 34:13A-5.3 provides:

...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....

N.J.S.A. 34:13A-6(d) provides:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors....

Consistent with subsection 5.3, the Commission has defined a statutory supervisor as one having the authority to hire, discharge, discipline or effectively recommend the same. Cherry Hill Twp. Dept. of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (1970). A determination of supervisory status requires more than an assertion that an employee has the power to hire, discharge, discipline or effectively recommend. An indication that the power claimed to be possessed is exercised with some regularity is

needed. "The mere possession of the authority is a sterile attribute unable to sustain a claim of supervisory status."

Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358, 360 (1976).

Based upon the foregoing, I conclude that the cafeteria manager is not a supervisor within the Act's meaning. Although the Board asserted that Siwy has disciplined cafeteria employees and that one employee was discharged on her recommendation, it failed to cite specific examples. Further, while it is likely that Siwy participates in interviewing prospective employees, the superintendent and Board ultimately decide who is hired. Supervisory duties must be exercised regularly for the statutory definition to apply and the position excluded from the unit. Somerset. Accordingly, the cafeteria manager, Nina Siwy, is included in the proposed unit.

Accordingly, an election is ordered to be conducted among the petitioned-for employees, excluding the secretary to the superintendent. The cafeteria manager shall be included in the unit and eligible to vote. Professional employees shall also vote on whether they wish to be represented in a unit with non-professional employees. See the attached Method of Balloting. The unit shall be defined as follows:

Included: All cafeteria personnel, custodians/maintenance personnel, secretaries and aides to be added to the existing unit of all certificated personnel.

Excluded: All other employees, all employees represented in other negotiations units, secretary to the


superintendent, managerial executives, confidential employees, craft employees, police, fire fighters and supervisors within the meaning of the Act.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. Such list shall include all certificated personnel. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerben, Director

DATED: May 5, 1993
Trenton, New Jersey