

Issued 5/24/85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE BOARD OF EDUCATION

-and-

Docket No. CU-85-28  
L-85-19

ORANGE EDUCATIONAL SECRETARIES  
ASSOCIATION, N.J.E.A.

On November 29, 1985, the Orange Educational Secretaries Association, NJEA, (hereinafter "Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission (hereinafter the "Commission") seeking to include the recently created title of Office Manager into the existing rank and file secretarial unit. On December 11, 1984, the employer, Orange Board of Education (hereinafter the "Board"), filed a written statement of position in which it asserted that the employee serving in the Office Manager title should be excluded from the unit on the grounds that the employee is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act") and/or a supervisor.

On or about January 7, 1985, the parties agreed to seek the resolution of the instant matter through the use of the Commission's Litigation Alternative Program (LAP). A LAP hearing was conducted on April 18, 1985 whereby each party was provided with the opportunity to set forth its position, present witnesses and

documentary evidence, and make oral arguments. During the hearing, the parties agreed that the decision rendered in this matter would be final and binding with respect to all issues presented.

The mutually agreed upon issue submitted for resolution is the following:

Whether the title Office Manager<sup>1/</sup> should be included in the current unit represented by the Orange Educational Secretaries Association.

I. Whether the Office Manager is a Supervisor Association's Position

The Association took the position that Office Manager, Jean Tindall was not a supervisor within the meaning of the Act. While conceding that Tindall is responsible for the day-to-day operation of the office, the Association contends that she does not possess the authority to hire, discharge, discipline or effectively recommend the same.

The Association claims that Tindall is not responsible for evaluating employee performance. In support of its argument, the Association offered the testimony of Gina Lynnuk, Bookkeeper/Accounts Payable. Lynnuk, who is also President of the

---

<sup>1/</sup> While the parties indicated the title of the position in dispute to be that of "Office Manager", the job description submitted shows the title as "Office Manager/Head Bookkeeper." I shall refer to the disputed title as "Office Manager" in this decision.

Association, testified that her last written evaluation took place approximately three (3) years ago by Assistant Business Administrator Williams. Lynnuk stated that while Tindall may pencil in evaluation recommendations on the form, she was never formally evaluated by Tindall and the final decision lies solely with Business Administrator Pelosi.

Finally, the Association takes the position that Tindall has no significant role in discipline. The Association contends that as Office Manager, Tindall is merely involved in attempting to resolve problems that develop in order to keep the office operating smoothly. However, the Association asserts that Tindall's role in the office is limited to advising Pelosi of incidents which occur in the office and Pelosi, alone, decides whether to take disciplinary action and the nature of such action.

#### Board's Position

The Board takes the position that Tindall is a supervisor within the meaning of the Act and, consequently, should be excluded from the unit. In support of its position, the Board offered Tindall's testimony.

Tindall testified that she is responsible for six (6) subordinate employees. Her duties include the scheduling of work, preparation and approval of vacation schedules, recording of employee leave time usage, and bring to the employee's attention various minor rule infractions, e.g., tardiness, substandard work, telephone manners and habits.

While Tindall further claims that she makes the initial evaluation determination, her testimony revealed that Pelosi has always exercised the final decision concerning employee evaluation. Pelosi signs each employee's evaluation form.

It is also clear from Tindall's testimony that she is responsible for maintaining office harmony. In the event of a problem, employees routinely go to Tindall for assistance. However, Tindall's testimony indicated that to the extent resolution of the problem requires any change in procedure, she merely acts as an intermediary between the employee(s) and Pelosi. Should the problem indicate a need for disciplinary action, Tindall will discuss such action with Pelosi, but Pelosi makes the final decision. Indeed, the only incident of disciplinary action which has occurred, resulted in a meeting between the involved employee, Tindall and Pelosi. The problem was discussed and Pelosi issued verbal warnings to the employee.

Tindall testified that she was involved in the hiring process for the office. Upon further examination, it became evident that the alleged hiring situation, in fact, involved a transfer of a current Board employee who worked in another office. Tindall stated that since the employee's qualifications were already known, a full interview was not conducted and the only purpose of her meeting with the employee was to enable her (Tindall) to provide Pelosi with input on whether the employee would "fit" into the office.

Analysis

N.J.S.A. 34:13A provides in relevant part the following:

§5.3...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 nonsupervisory personnel to membership....

§6(d)...the Director shall decide in each instance which unit of employees is appropriate for collective negotiations, 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....

Cases applying the above-cited statutory provision are legion and it is unnecessary to cite them all here.

It is undisputed that the unit represented by the Association is comprised of nonsupervisory employees. Accordingly, if the Office Manager is a supervisor within the meaning of the Act, she may not be included in the unit. If she is not a supervisor, and shares a community of interest with unit employees, the Office Manager must be placed in the unit.

Preliminarily, the I note that a determination of supervisory status requires far more than a job title or description or oral assertion that an employee has the power to hire, discharge, discipline or effectively recommend the same:

[T]he bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employees in question, 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).

The facts reveal that Tindall has a minimal role in the hiring process and no role with respect to the discharge of employees. The Commission has held that mere participation in the candidate selection process by an employee does not necessarily make him/her a supervisor within the meaning of the Act. Rumson-Fair Haven Reg. B/E, D.R. No. 84-5, 9 NJPER 529 (¶ 14216 1983). See also, East Windsor Reg. School Dist., H.O. No. 81-11, 7 NJPER 277 (¶ 12124 1981).

The facts further reveal that Tindall participates in only a limited fashion in the evaluation process. Tindall has not evaluated employees up to this time and, even now, only discusses evaluation with Pelosi, who then makes the final decision and signs the evaluation form. The Commission has held that the fact that an employee might perform some evaluative function is insufficient to prevent that employee from being included in the unit. North Bergen Bd/Ed., D.R. No. 84-8, 9 NJPER 615 (¶ 14263 1983). See also, Edison Twp. Bd/Ed., D.R. No. 82-8, 7 NJPER 560 (¶ 12248 1981); and Lakewood Bd/Ed., D.R. No. 78-44, 4 NJPER 212 (¶ 4105 1978).

The Board points out that the Office Manager is involved in the discipline process. However, on the basis of the testimony, I find that Tindall's role in discipline is only to bring incidents to Pelosi's attention. Pelosi exercises independent judgement in such matters and makes the final decision. Accordingly, any recommendations made by Tindall regarding the disciplinary matter do not raise to the level of effective recommendation pursuant to N.J.S.A. 34:13A-5.3. See, State of New Jersey, H.O. No. 80-13, 6 NJPER 144 (¶ 11072 1980).

Finally, the Board asserts that the Office Manager is the lead person in the office to whom all of the other employees turn to for work scheduling, vacation approval and the like. However, this assertion also will not prevail in this case. In In re Borough of Closter, D.R. No. 81-12, 6 NJPER 528 (¶ 11269 1980), the Director of Representation held that the employee designated by the employer as the "responsible person" was not a supervisor within the meaning of the Act, because that employee did not possess the requisite authority to hire, discharge or discipline.

Consequently, it is clear that the Office Manager is the lead employee in the office, possessing certain oversight responsibilities. The additional authority exercised by the Office Manager arises almost exclusively from the areas of assignment and monitoring of other office personnel. While evidence of an employee with somewhat greater responsibility than his peers, this additional authority does not indicate statutory supervisory status. See, e.g., County of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶ 4178 1978).

Accordingly, for all of the above reasons, I find that on the basis of the information presented in this case, Jean Tindall is not a supervisor within the meaning of the Act.

II. Whether the Office Manager is Confidential Association's Position

Until recently, there existed the title Office Manager/Payroll Clerk. As the title indicates, the employee serving in that title performed duties which included a combination of office manager responsibilities and payroll clerk responsibilities. In 1977, a Unit Clarification Petition was filed which sought to exclude the Office Manager/Payroll Clerk from the unit on the grounds that employees serving in such title were confidential employees within the meaning of the Act. On September 23, 1977, the Hearing Officer issued a report (H.O. No. 78-5, 3 NJPER 286 (1977), aff'd D.R. No. 78-28, 4 NJPER 1 (¶ 4001 1977), finding the Office Manager/Payroll Clerk to be a confidential employee within the meaning of the Act. The Association takes the position that the Hearing Officer found the Office Manager/Payroll Clerk to be confidential in 1977 because of elements of responsibility ascribed to the payroll clerk's position of the title. In September 1983, the Office Manager/Payroll Clerk title was eliminated and the functional responsibilities were split into two new titles: Office Manager and Payroll Clerk. The Association contends that the confidential responsibilities, which have always been ascribed to the Payroll Clerk's portion of the title, have remained with the



Payroll Clerk. Accordingly, the Association does not now contest the Board's assertion that the Payroll Clerk is a confidential employee. However, the Association also asserts that upon the break-up of the titles, all confidential duties have been removed from the Office Manager portion of the old title, and, consequently, the Office Manager title must now be included in the unit. The Association argues that the Office Manager's job description contains no mention whatsoever of any duties involving participation in negotiations or the grievance procedure. Further, there is an ample number of other non-unit employees who should more appropriately be assigned any responsibilities involving the collective negotiations process.

#### Board's Position

The Board substantially agrees with the Association in terms of the historical treatment of the Office Manager title. However, the Board disagrees with the Association's claim that all of the confidential duties performed by the Office Manager/Payroll Clerk were related to the "Payroll Clerk" portion of the title. The Board argues that the Office Manager portion of the old title had its own cadre of confidential responsibilities, and those responsibilities continue in effect presently.

In support of its position, the Board presented testimony from Jean Tindall, the employee presently serving as Office Manager. Tindall reports to and works for Patrick J. Pelosi, Board Secretary and Business Administrator. Tindall testified that Pelosi has asked her to advise him with respect to items contained in the secretarial unit Agreement. More significantly, Tindall stated that

she has been shown and asked to comment on Board negotiating positions and proposals prior to their presentation to the Association at the table. The testimony indicates that Pelosi told Tindall the Board's wage settlement proposal for the secretarial unit prior to offering the proposal to the Association at the negotiations table. Additionally, Pelosi has sought input from Tindall regarding the operational impact of the Association's proposals.<sup>2/</sup> On cross-examination, Tindall concedes that there is nothing in her job description which indicates an involvement in the collective negotiations process.

Analysis

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

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.

N.J.S.A. 34:13A-5.3 states the following:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of the right, freely and without fees of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees....

<sup>2/</sup> While Tindall concedes on cross-examination that her job description does not contain any duties related to the collective negotiations process, this fact, alone, is not controlling. The absence of duties enumerated in a job description does not override the fact that particular duties are, in fact, performed. The job description is only one element to be considered in reaching a final determination.

In determining whether an employee is confidential, a close examination of the particular facts extant in each case must be undertaken. In In re River Dell Reg. Bd/Ed, H.O. No. 84-7, 10 NJPER 10 (¶ 15045 1983), aff'd P.E.R.C. No. 84-95, 10 NJPER 148 (¶ 15073 1984).<sup>3/</sup> Furthermore, "the definition of confidential employee should be narrowly construed because those employees are excluded from the Act's benefits and protection (§5.3). "In re River Dell Reg. Bd/Ed at 149. See, In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977).

---

<sup>3/</sup> A partial listing of Commission decisions setting forth the legal analysis utilized in determining confidential status is the following: In re Passaic Cty. Reg. H.S. Dist. No. 1 Bd/Ed, P.E.R.C. No. 77-19, 3 NJPER 34 (1976) ("Passaic"); In re Bd/Ed Twp. of West Milford, P.E.R.C. No. 56 (1970); In re Woodbridge Twp. Bd/Fire Commissioners Dist. No. 1, P.E.R.C. No. 51 (1974); Willingboro Bd/Ed, D.R. No. 84-4, 9 NJPER 527 (¶ 14215 1983); Linden Free Public Library Bd/Trustees, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981); Old Bridge Twp., D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981); In re Jersey City, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980); In re Twp./Parsippany-Troy Hills Bd/Ed, D.R. No. 80-19, 6 NJPER 276 (¶ 11033 1980); In re Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979) ("Dover"); In re Rahway Bd/Ed, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979); Mercer County Community College, D.R. No. 80-13, 5 NJPER 507 (¶ 10262 1979); Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977); In re Jersey City, D.R. No. 78-35, 4 NJPER 139 (¶ 4065 1978); Orange Bd/Ed, D.R. No. 78-28, 4 NJPER 1 (¶ 4001 1977); Cranford Bd/Ed, D.R. No. 78-20, 3 NJPER 352 (1977); In re Springfield Bd/Ed, E.D. No. 52 (1974); In re Plainfield Bd/Ed, E.D. No. 1 (1970).

In In re Plainfield Bd/Ed, E.D. No. 1 (1970), the Executive Director said the following:

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 would have the same conflict of interest. Slip Op. pp. 2-3.

Consequently, "the relevant consideration is whether or not the individuals in question have access to information that has a direct bearing on collective negotiations and the labor relations function of the public employer."

"The analysis, therefore, is twofold. Firstly, we must determine the managerial and labor relation functions of the immediate supervisor.... Secondly, we must determine whether the [Office Manager] acts in a confidential capacity to a member of management's team. "In re River Dell Reg. Bd/Ed, supra, at 149.

In the instant matter, the parties do not dispute that Pelosi is "charged with the responsibility for negotiations or the formulation of labor relations policy...." In re Plainfield Bd/Ed, supra. As Business Administrator, he is, among other things, intimately involved in budget matters, and as Board Secretary, he is undeniably involved in policy development and implementation.

Pelosi conducts the contract negotiations with the Association and responds to grievances filed pursuant to the grievance procedure set forth in the Agreement.

While Tindall is not Pelosi's secretary, she clearly acts in a "confidential capacity to a member of management's team." In re Plaifield Bd/Ed, supra. Tindall has access to and knowledge of the Board's negotiations posture and "bottom-line" positions prior to their presentation to the Association at the table. Pelosi discusses the operational impact of the Association's negotiations demands with Tindall. Consequently, Tindall is clearly currently functioning in a confidential capacity to Business Administrator/Board Secretary Pelosi.

The Association argues that the Board does not need Tindall to perform confidential duties. The Association points out that several other non-unit employees, specifically, the Assistant Business Administrator, Pelosi's personal secretary (who the Association concedes is confidential), and the Payroll Clerk, should be assigned the confidential duties presently assigned to Tindall. However, the Commission has held that the question of the distribution of confidential work to an employee by the employer is not appropriately raised in a unit clarification proceeding. In re Twp. of Scotch Plains, D.R. No. 84-11, 9 NJPER 632 (¶ 14270 1981). See, also In re Bloomfield Bd/Ed, 2 NJPER 194 (1976); In re State of New Jersey, P.E.R.C. No. 50 (1971). Accordingly, the wisdom of the Board's assignment of confidential duties to the Office Manager will not be questioned herein.


On the basis of the particular circumstances present in this matter and for all of the reasons set forth above, I hereby find Jean Tindall to be a confidential employee within the meaning of the Act.

Finding 4/

On the basis of the foregoing I find the following:

(1) The Office Manager is not a supervisor within the meaning of the Act.

(2) The Office Manager is a confidential employee within the meaning of the Act and must be excluded from the collective negotiations unit.

  
Stuart Reichman

4/ The finding of Jean Tindall's status is based upon her current duties and responsibilities and does not foreclose re-evaluation of such status after a reasonable period of time if circumstances have changed. Clearview Reg. H.S. Dist. Bd/Ed., D.R. No. 78-2, 3 NJPER 248 (1977).