

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

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF WILLINGBORO,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-80-39

WILLINGBORO EDUCATIONAL
SECRETARIES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation adopts the recommendations of a Hearing Officer and concludes that Clerk 2 to the Personnel Manager is a confidential employee within the meaning of the Act based upon that title's: (1) access and exposure to grievance and negotiations files; (2) preparation of grievance reports and grievance correspondence; (3) preparation of reports and other documents for the Board negotiating team; and (4) typing of negotiations recommendations and proposals. The Director further adopts the Hearing Officer's recommendation that neither the Head Payroll Clerk nor the Clerk to the Board Secretary/Business Administrator is a confidential employee within the meaning of the Act. The Head Payroll Clerk's functions principally concern the maintenance of payroll records, absence records and insurance records, and the calculation of employee provisions. The duties of the Clerk to the Board Secretary/Business Administrator are primarily to type, proofread and distribute minutes of public Board meetings. Accordingly, effective with the issuance of this decision, Clerk 2 to the Personnel Manager is excluded from the Association's unit.

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WILLINGBORO EDUCATIONAL
SECRETARIES ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner
Barbour & Costa, attorneys
(John T. Barbour of counsel)

For the Employee Representative
Selikoff & Cohen, attorneys
(Joel S. Selikoff of counsel)

DECISION

On December 10, 1979, the Board of Education of the Township of Willingboro ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking a determination as to whether certain employees are appropriately included within a collective negotiations unit comprised of secretarial and clerical employees represented by Willingboro Educational Secretaries Association

("Association"). ^{1/} The Board seeks the exclusion of the titles enumerated below, n.l, based on their purported confidential status within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association argues that none of the disputed personnel are confidential employees within the meaning of the Act.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Charles A. Tadduni, on December 10, 11, 17 and 18, 1980, February 9 and April 23, 1981, in Trenton, New Jersey, at which time all parties were afforded the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Thereafter, the Board filed a letter memorandum in lieu of a formal brief on June 12, 1981. The Association also filed a brief on June 12, 1981. The Board filed a reply letter memorandum in lieu of a formal reply brief on June 17, 1981. The Association filed a reply letter memorandum in lieu of a formal reply brief on June 22, 1981. Finally, on June 25, 1981, the

^{1/} The Board's original Petition sought clarification with respect to 15 titles. On the fifth day of hearing in this matter, the parties agreed to exclude from the unit the Secretary to the Personnel Manager, Clerk I to the Personnel Manager, the Secretary to the Assistant Superintendent, the Secretary to the Business Administrator/Board Secretary and the Assistant Payroll Clerk, Accountants Office. The parties agreed to include in the unit the Secretary to the Administrative Assistant, the Clerk to the Administrative Assistant, the Secretary to the Director of Pupil Services, the Clerk to the Director of Pupil Services, the Secretary to the Director of Continuing Education, the Secretary to the Director of Elementary Education and the Secretary to the Director of Secondary Education.

A dispute still exists, and the parties seek a determination, with respect to the Clerk 2 to the Personnel Manager, the Clerk to the Business Administrator/Board Secretary and the Head Payroll Clerk, Accountant's Office.

Board filed a reply letter memorandum in lieu of a formal reply brief in response to the Association's reply letter memorandum.

The Hearing Officer submitted his Report and Recommendations on May 5, 1983, a copy of which is attached hereto and made a part hereof. Neither party has filed exceptions to the Hearing Officer's Report and Recommendations.

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

1. The Board of Education of the Township of Willingboro 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 Willingboro Educational Secretaries Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association represents a unit consisting of administrative secretaries (other than the Secretary to the Superintendent), school secretaries, other secretaries, administrative clerk-typist, clerk typist, half-time clerk-typist, learning resource center aides, PBS operators, accounts payable clerks, accounts receivable clerks, head payroll clerks and assistant payroll clerks.

4. The Hearing Officer recommended that the Clerk 2 to the Personnel Manager was a confidential employee and not properly

included in the unit. He further recommended that the Head Payroll Clerk and the Clerk to the Board Secretary/Business Administrator were not confidential employees and were appropriately included in the unit. ^{2/}

With respect to the Clerk 2 to the Personnel Manager, the record reveals the following: The Personnel Office files contain (1) all employee personnel files (general personnel files), (2) grievance files and (3) negotiations files. All three clericals in the Personnel Office have access and exposure to the files.

The Personnel Office clerical staff assists the Personnel Manager in preparing for negotiations. The clerical staff gathers information and prepares reports and other documents for use by the Board negotiations team. Such documents are typed by any of the clerical personnel in the Personnel Office.

The Personnel Office receives negotiations recommendations from various central staff administrators. Various proposals on issues are typed in the Personnel Office for submission to the Board.

The Personnel Manager is involved in grievance preparation and administration. He receives and sends correspondence to other

^{2/} Confidential employees are not eligible for inclusion in a collective negotiations unit with other public employees. See N.J.S.A. 34:13A-3(g). This statutory provision defines confidential employees as:

... 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.

Board personnel concerning grievances. He is sometimes asked for advice by building administrators or the Board administrator on how to handle a grievance or other similar personnel problem. He often replies by letter, typed by any of the three personnel office clericals. Additionally, many grievance reports are prepared and typed in the Personnel Office.

Generally, there is no division of the secretarial responsibilities in the Personnel Office. Each of three clericals may be called on to do any work of the office, as needed. All three of the clericals have handled and may be expected to handle labor relations materials in the course of performing their normal functions.

Accordingly, the undersigned finds sufficient evidence in the record to support the Hearing Officer's conclusion that Clerk 2 is a confidential employee within the meaning of the Act.

With respect to the Head Payroll Clerk, Accountant's Office, the record reveals the following evidence. The Accountant is involved in the Board's budget processing and various other financial dealings with the Board; however, even in financial matters, the Accountant and his staff act more as resource personnel than as direct participants in financial decision making, at least with respect to the collective negotiations process.

Significantly, the Assistant Payroll Clerk, whom the parties agree is a confidential employee, functions as the Accountant's secretary. Materials which are prepared by the Accountant

to assist the Board in contract negotiations are typed by the Assistant Payroll Clerk -- not the Head Payroll Clerk. The various materials which are supplied by the Accountant to the Personnel Office are also typed by the Assistant Payroll Clerk.

The Head Payroll Clerk testified that she does not work on materials for use by the Board in collective negotiations. She testified that she does not work on budget materials or have access to confidential budget data. Moreover, she stated that she has never been told by the Accountant to exercise any restraint in talking about or letting anyone see the material on which she works.

The Head Payroll Clerk's functions principally concern the maintenance of payroll records, absence records and insurance records, and the calculations of employee pensions.

Accordingly, the undersigned determines that the Head Payroll Clerk is not a confidential employee within the meaning of the Act and is appropriately included in the Association's unit.

With respect to the title Clerk, Board Secretary/Business Administrator, the record reveals the following. The complete and full extent of the Clerk's duty and responsibility is to type public board meeting minutes from tape recordings made at the Board meetings, to proofread her typed copy and to distribute those typed, corrected copies to all Board members and the Administrators designated to receive them. The Clerk further testified that she does not type or otherwise handle executive session minutes. ^{3/}

^{3/} The undersigned specifically adopts the Hearing Officer's resolution of all factual disputes relating to the typing of executive session minutes.

The undersigned observes that the Clerk's access to file keys, and an occasional, and superficial exposure to possibly confidential material does not, under the circumstances described in this record, give rise to confidential status within the meaning of the Act. The undersigned is satisfied that the duties of the Clerk to the Board Secretary/Business Administrator are primarily to type, proofread and distribute minutes of public Board meetings. On the basis of this record, the undersigned is satisfied that management's right to confidentiality in matters affecting the collective negotiations process is not compromised by the performance of the Clerk's normal assigned functions.

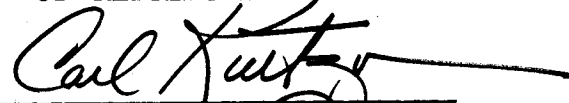
Accordingly, the undersigned concludes that the Clerk to the Board Secretary/Business Administrator is not a confidential employee within the meaning of the Act.

Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and noting the absence of any exceptions to the Report, the undersigned finds that there is ample record evidence to support the Hearing Officer's factual findings, and conclusions concerning the status of the employees in dispute. Furthermore, the Hearing Officer's conclusions are fully consistent and in accord with prior decisions involving confidential employees. ^{4/}

^{4/} See In re River Dell Reg. B/E, D.R. No. 83-21, 9 NJPER 180 (¶ 14084 1983); In re Western Monmouth Utilities Auth., D.R. No. 82-38, 8 NJPER 140 (¶ 13061 1982); Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981); Old Bridge Tp. B/E, D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981); East Windsor Reg. School Dist., D.R. 82-9, 7 NJPER 524 (¶ 12231 1981); Little Ferry B/E, D.R. No. 80-19, 6 NJPER 59 (¶ 11033 1980); and Rahway B/E, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979).

Accordingly, effective with the issuance of this decision, Clerk 2 to the Personnel Manager is excluded from the Association's unit. The Head Payroll Clerk and the Clerk to the Board Secretary/Business Administrator are appropriately included in the Association's unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: August 8, 1983
Trenton, New Jersey

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

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF WILLINGBORO, COUNTY OF BURLINGTON,

Public Employer-Petitioner,

-and-

Docket No. CU-80-39

WILLINGBORO EDUCATIONAL SECRETARIES
ASSOCIATION,

Employee Representative.

SYNOPSIS

A Commission Hearing Officer recommends that the unit of secretarial/clerical employees employed by the Willingboro Board of Education be clarified as follows: (1) The Hearing Officer found that Clerk 2 to the Personnel Manager performs functions in the Personnel Office which provide her with access and exposure to confidential labor relations materials sufficient to render her membership in any collective negotiations unit incompatible with her official duties. Thus, Clerk 2 to the Personnel Manager is a confidential employee and the unit should be clarified to exclude that position.

(2) The Hearing Officer found that the Head Payroll Clerk and the Clerk to the Board Secretary/Business Administrator do not have access and exposure to confidential labor relations material sufficient to render their membership in any collective negotiations unit incompatible with their official duties. The Hearing Officer determined that the Clerk to the Board Secretary/Business Administrator works on public Board meeting minutes. The Hearing Officer determined that the Head Payroll Clerk's principal function is the maintenance of payroll records and the compilation of certain raw data therefrom. The Hearing Officer determined that neither of these employees were confidential employees within the meaning of the Act and therefore recommended that the unit be clarified as including same.

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, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF WILLINGBORO, COUNTY OF BURLINGTON,

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Docket No. CU-80-39

WILLINGBORO EDUCATIONAL SECRETARIES
ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner
Barbour & Costa, Esqs.
(John T. Barbour, Esq.)

For the Employee Representative
Selikoff & Cohen, Esqs.
(Joel S. Selikoff, Esq.)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

A Petition for Clarification of Unit (Docket No. CU-80-39) was filed with the Public Employment Relations Commission (the "Commission") on December 10, 1979 by the Board of Education of the Township of Willingboro (the "Board") seeking clarification of a negotiations unit comprised of certain employees of the Board. By its petition, the Board is seeking to clarify a negotiations unit comprised of secretarial and clerical employees to exclude the following titles: (1) Secretary to the Assistant Superintendent (2) Secretary to the Personnel Manager (3) Clerk 1 to the Personnel Manager (4) Clerk 2 to the Personnel Manger (5) Secretary to the

Board Secretary/Business Administrator (6) Clerk to the Board Secretary/Business Administrator (7) Secretary to the Administrative Assistant (8) Clerk to the Administrative Assistant (9) Secretary to the Director of Pupil Personnel (10) Clerk to the Director of Pupil Personnel (11) Secretary to the Director of Continuing Education (12) Secretary to the Director of Elementary Education (13) Secretary to the Director of Secondary Education (14) Head Payroll Clerk --Accountant's Office (15) Assistant Payroll Clerk--Accountant's Office. The Willingboro Educational Secretaries Association (the "Association"), in responding to the Board's petition, contends that the secretarial-clerical employee negotiations unit should be clarified as including the above-listed titles. Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on December 10, 11, 17, 18, 1980; on February 9, 1981 and on April 23, 1981, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Briefs and reply briefs were submitted by the parties by July 2, 1981. Upon the entire record in this proceeding, the Hearing Officer finds:

1) The Board of Education of the Township of Willingboro is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is subject to its provisions and is the employer of the employees who are involved herein.

2) The Willingboro Educational Secretaries Association is an employee organization within the meaning of the Act and is subject to its provisions.

3) The Association is the statutory majority representative of a negotiations unit of secretarial and clerical employees of the Board comprised as follows: administrative secretaries (other than the secretary to the Superintendent), school secretaries, other secretaries, administrative clerk-typists, clerk-typists, half-time clerk-typists, learning resource center aides, PBS operators, accounts payable clerks, accounts receivable clerks, head payroll clerks, and assistant payroll clerks. ^{1/}

4) Accordingly, there is a question concerning the composition of a negotiations unit and the matter is properly before the Hearing Officer for a Report and Recommendations.

I. POSITIONS OF THE PARTIES

The Board contends that the employees in the above-listed titles are confidential employees within the meaning of the Act and therefore should be excluded from this or any other negotiations unit. In support of its position, the Board recites various facts from the record herein including the tasks performed by these employees, the administrators for whom they work and the materials with which they work. Taken together, the Board argues that these facts demonstrate that the employees in the titles at issue herein are confidential employees within the meaning of the Act.

The Association disagrees and argues that the record herein shows that the tasks performed by these employees and the materials on which they work are sufficiently removed from the actual labor negotiations process and the Board preparations therefor

^{1/} Exhibits J1 and J2.

so as to warrant the conclusion that these employees are not confidentials within the meaning of the Act.

III. THE ISSUE

Accordingly, the issue to be determined in this matter is whether the employees in the above-enumerated titles are confidential employees within the meaning of the Act; if a particular employee is determined to be a confidential, then the unit will be clarified to exclude such position; if an employee is determined not to be a confidential, then the unit will be clarified as including such position.

III. ANALYSIS: FINDINGS OF FACT AND DISCUSSION OF LAW

On February 9, 1981, the fifth day of hearing in this matter, the parties entered into a stipulation of settlement concerning the unit status of some of the titles which are at issue herein. The essential terms of the parties' settlement stipulation are set forth below.

(1) The parties agree that the following positions are confidential employee positions and thus are excluded from the secretarial/clerical unit: (a) the Secretary to the Personnel Manager, (b) Clerk 1 to the Personnel Manager, (c) the Secretary to the Assistant Superintendent, (d) the Secretary to the Business Administrator/Board Secretary and (e) the Assistant Payroll Clerk, Accountant's Office.

(2) The parties agree that the following titles, which were heretofore contested, are appropriate for inclusion in the

negotiations unit and accordingly shall remain therein: (a) the Secretary to the Administrative Assistant, (b) the Clerk to the Administrative Assistant, (c) the Secretary in the Director of Pupil Personnel Services, (d) the Clerk to the Director of Pupil Personnel Services, (e) the Secretary to the Director of Continuing Education (f) the Secretary to the Director of Elementary Education, and (g) the Secretary to the Director of Secondary Education.

Accordingly, the employment positions whose unit status remains in dispute between the parties are: (1) Clerk 2 to the Personnel Manager (2) the Clerk to the Business Administrator/Board Secretary and (3) the Head Payroll Clerk, Accountant's Office. The undersigned shall treat the positions seriatum.

Background -- The record indicates that there are four collective negotiations units at the Willingboro Board of Education, approximately as follows: (1) teaching professionals (approximately 775 employees) (2) secretarial/clerical unit (approximately 100 employees) (3) support staff unit (custodial employees, maintenance employees, transportation employees and aides, approximately 400-500 employees) and (4) administrators' unit (building principals and vice principals, approximately 25-30 employees). Other employees in the district are either unorganized or are excluded from coverage under the Act -- central staff administrators, computer personnel, secretaries to the Superintendent and the Assistant Board Secretary.

The employee positions at issue herein are all associated with one of the central staff administrators. The central staff

administrators are all located in the Levitt Building: in E wing are the offices of the Superintendent, the Assistant Superintendent, the Board Secretary/Business Administrator, the Director of Elementary Education and the Director of Secondary Education; in A wing are the offices of the Personnel Manager, the Administrative Assistant, the Director of Pupil Personnel Services and the Director of Continuing Education.

The Board conducts its contract negotiations through a negotiations team comprised of a three Board member negotiations committee, the Board's labor counsel and the Personnel Manager. Generally, central staff administrators (other than the Personnel Manager) are not requested to formulate and present negotiations proposals to the Board or its negotiations team. ^{2/} Central staff administrators do not generally sit with the negotiations team. The role of the central staff has been to provide the negotiations team and the full Board with background information pertaining to the upcoming or ongoing negotiations. The kinds of information compiled by the central staff administrators concerns items such as staff age, staff experience levels, relationship of wage increases to the cost of living index, the cost of various percentage salary increases, resultant savings from staff cuts and changed staffing patterns. There was testimony from one witness that central staff administrators sometimes provide written recommendations concerning the negotiations proposals received from the various negotiating units.

^{2/} Tr. 2/30-35.

Discussion of law -- N.J.S.A. 34:13A-3(g) defines confidential employee as:

...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 has addressed the issue of confidential employee status in numerous decisions wherein it has examined a multitude of factual settings. ^{3/} Several basic factors have emerged from these Commission and Director of Representation decisions which constitute the framework for examination of confidential employee disputes.

Initially, one must examine the functions of the individual and/or the specific office for whom the alleged confidential renders services. Is that person (or office) involved in the labor relations process (negotiations, contract administration, grievance handling or preparations for negotiations or preparations for grievance handling) on behalf of management? Is the person (or office) for whom the alleged confidential works involved in such personnel processes as employee hire, evaluation, promotion, discipline and/or discharge? Is that person (or office) involved in the budget formulation/adoption process?

The next major consideration in the determination of a confidential employee dispute is the specific set of functions ascribed to the alleged confidential employee. What is the nature of the work performed by the alleged confidential? What is the

^{3/} See In re Bd/Ed of Twp. of West Milford, P.E.R.C. No. 56 (1971); In re Twp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979); In re Old Bridge Bd/Ed, D.R. No. 82-17, 7 NJPER 639 (¶12287 1981); In re Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981); and In re River Dell Reg. Bd/Ed, D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

nature of the alleged confidential's work relationship with the person for whom the work is done (and/or the office for which it is done)? Does the confidential, in the course of performing his/her functions, have access to and knowledge of confidential labor relations materials? Do they handle such confidential materials in the course of performing their duties (data collection, typing, filing, mail distribution, telephone messages etc.)? Do they have advanced knowledge of certain labor relations material or other confidential material which eventually will be made public? Are they expected to continue performing that part of their duties which exposes them to the confidential materials? If they have had access to and knowledge of confidential materials, has the exposure been of such a degree so as to render the alleged confidential's membership in any negotiations unit inappropriate? Finally, in this regard, it should be noted that in determining the confidential status of a contested employment position, the Act does not require that the alleged confidential have a continuous pattern of involvement -- or even a regular involvement -- with the collective negotiations process. Rather, what is required for a finding of confidentiality is an involvement with the collective negotiations process to such an extent so as to render the confidential's membership in any collective negotiations unit incompatible with his/her job duties. ^{4/}

Clerk 2 to the Personnel Manager -- Three clerical employees work in the Personnel Office -- the Secretary to the Personnel Manager, Clerk 1 to the Personnel Manager and Clerk 2 to the

^{4/} In re Twp. of Dover, supra.

Personnel Manager. The Secretary to the Personnel Manager and Clerk 1 are confidential employees. All three of these employees work in the outer reception area of the Personnel Office. The Personnel Manager's office is located behind and is separate from the outer reception area.

Willingboro is a large school district and thus it necessarily follows a divisional staffing pattern which results in having a central staff administrator responsible for each major division or activity of the Board. The Personnel Office is the labor relations nerve center for the district. It is a collection and distribution point for both general and specific labor relations information. It is the interface between the Board's labor relations counsel and the central staff administrators. It is the coordination point for all labor relations activity in the district.

The activities of the Personnel Office and the Personnel Manager are varied. The Personnel Office keeps all the employee personnel files and most of the labor relations files in the district. The Personnel Office files contain: (1) all employee personnel files (general personnel files) (2) grievance files and (3) negotiations files. The general personnel files include an employee's original application and hiring documentation, evaluations, letters of commendation and/or reprimand and any other relevant personnel-type materials.

The grievance files contain: (1) a copy of the actual grievance, (2) all communications concerning the grievance, including recommendations for treatment, (3) arbitration awards, (4) final settlements, (5) the Board's back-up materials to justify their position on the grievance.

All files in the Personnel Office are kept locked at night. They are left open, but never unattended, during the day due to the frequent use which they are given. All three clericals in the Personnel Office have access to the files. Clerk 2 keeps the keys to the files. Whenever a Board administrator needs a personnel office file (presuming they have permission/authority to see such files), one of the Personnel Office clericals will retrieve the file for him/her.

The Personnel Manager is heavily involved in contract negotiations. The Personnel Manager sits on the Board's negotiations team. The Personnel Office clerical staff assists the Personnel Manager in preparing for negotiations. The clerical staff gathers information and prepares reports and other documents for use by the Board negotiations team in contract negotiations. Sometimes the Personnel Manager has the clericals compile data and he subsequently prepares a written report or other document therefrom for use in negotiations. Such documents are typed by one of the clerical personnel in the Personnel Office.

The Personnel Office is also a clearinghouse for negotiations recommendations to the Board from various central staff administrators. Various possible proposals on issues are typed in the Personnel Office for submission to the Board; thereupon, the Board determines which of the proposals to adopt and have its negotiations team advocate in contract negotiations. All correspondence from the Board's labor counsel to the Board is routinely carbon copied to the Personnel Manager.

The Personnel Manager is also involved in grievance prep-

aration and administration. He receives and sends correspondence to other Board personnel concerning grievances. He is sometimes asked for advice by building administrators ^{5/} or other Board administrators on how to handle a grievance or other situation. He often replies in letter form, which document is typed in the Personnel Office. Many grievance replies are prepared and typed in the Personnel Office. Grievance replies often go through several drafts before being finalized.

With a few exceptions, there is no division of the secretarial labors in the Personnel Office. All three of the clericals in the Personnel Office do all the work of the office as needed. There is specifically no reservation of the typing, filing or other handling of labor relations material to any one clerical employee. All three of the clericals have handled and do handle labor relations materials from time to time.

One of the exceptions to the non-reservation rule referred to above is that the secretary to the Personnel Manager does no

5/ The undersigned notes the Association's argument that such recommendations were directed to building administrators, who probably received them through the district mail system and, therefore, whose secretaries have probably had access and exposure to same. It is argued by the Association that because the Board has not contended that the building secretaries are confidentials, neither should the secretaries who typed the letter be confidential. There are several problems attendant to this argument. (A) The record is unclear as to whether building secretaries have actually seen such recommendations. The record is unclear concerning how such mail is sent and, when received at the building end, how it is treated there. (B) Assuming arguendo that the building secretaries have seen such grievance recommendations, their having seen the grievance recommendations does not change the essential confidential status of such material. A recommendation by a personnel director to a building administrator concerning the handling of a grievance is a confidential labor relations communication. and (C) The fact that a building secretary may see such a confidential communication once in two years and that such communications are the lifeblood of a personnel office creates qualitative and quantitative distinctions vis-a-vis confidentiality between the personnel office clerical and the building secretary.

typing -- thus, all the typing is done by either Clerk 1 or Clerk 2. Also, the secretary usually opens, sorts, and distributes the mail; from time to time however, one of the clerks will do that job. All three of the Personnel Office clericals take phone messages.

Clerk 2 testified that while she does not regularly work on labor relations or budget materials, she does type and handle such materials -- materials relating to contract negotiations and grievances -- periodically. Further, she testified that she types most of the Personnel Manager's correspondence, including that to the Board's labor counsel. Clerk 2 has access and exposure to all the files in the Personnel Office. She also testified that she has heard conversations in the Personnel Office concerning ongoing grievances.

Based upon the foregoing, the Hearing Officer concludes that the Personnel Manager and the Personnel Office are heavily involved in all phases of the labor relations processes of the Board of Education; that Clerk 2 to the Personnel Manager performs various functions in the Personnel Office which provide her with access and exposure to labor relations materials and that there is no expectation that Clerk 2 will not continue performing substantially such functions as were delineated in this record. Accordingly, the undersigned is satisfied that the extent of Clerk 2's access and exposure to confidential labor relations material is sufficient so as to render her membership in any appropriate collective negotiations unit incompatible with her employment assignment with the Board. Having thus concluded that Clerk 2 is a confidential employee, it is recommended that secretarial/clerical unit be clarified to

exclude that employment position.

Head Payroll Clerk, Accountant's Office -- The Accountant's Office has four clerical employees: the Assistant Payroll Clerk, the Head Payroll Clerk, and two Assistant Clerks. The Assistant Payroll Clerk is a confidential employee; the two Assistant Clerks are in the secretarial/clerical unit. The Head Payroll Clerk and the two Assistant Clerks work in the outer reception area of the Accountant's Office. The Head Payroll Clerk sits at the rear of the outer office. At the rear of the outer office is a small, short "corridor" of sorts. To one side of that corridor is the Accountant's Office; immediately opposite the door of the Accountant's Office is the office of the Assistant Payroll Clerk.

The Accountant and the Accountant's Office are less involved -- both directly and indirectly -- in the collective negotiations processes of the Willingboro Board of Education than are the Personnel Manager and the Personnel Office. The Accountant is not a member of the Board negotiations team and only rarely becomes involved in negotiations. However, the Accountant is involved in the Board's budget process and in various other financial dealings of the Board. The Accountant periodically meets with the Board when it is in executive session. However, even in financial endeavors, the Accountant (and the Accountant's Office) is more a resource than a direct participant.

With regard to collective negotiations, the Accountant prepares financial and budgetary data for the Board's negotiations team. The Accountant, working in conjunction with the Board Secretary/Business Administrator's office, gives the Board's negotiations team

such information as cost data on various contract proposals, what personnel costs the Board can afford (based on its income) for the upcoming contract year, and how much money a personnel move such as a reduction in force or contracting out services might save the Board. ^{6/}

The Accountant provides the Board with data for consideration in the budget formulation process (number of students, amounts of money coming from other sources, etc.). In the distant past, the Accountant had provided the Board with information updates regarding the current status of expenditures from the ongoing budget. Presently such information is received from the Board's computer office. The Accountant has been requested to gather data showing the actual payroll cost of various classes of employees -- all teachers, all custodials, etc.

The Accountant's Office maintains (in the rear of the outer office area) (1) employee payroll files (2) employee absence records and (3) employee insurance records. Access to the payroll records is limited to: the Accountant, the Head Payroll Clerk, the Superintendent, the Board Secretary/Business Administrator, the Board President and the two Assistant Clerks. These files are not kept locked. All other requests for payroll information go through the Accountant.

The Assistant Payroll Clerk functions as the Accountant's secretary. In general, typed material which is prepared by the

^{6/} While the record indicates that the Accountant's Office and the Board Secretary/Business Administrator's office work in conjunction to provide the Board with such data, the record does indicate that data such as the cost of a negotiations proposal is submitted to the Board by the Board Secretary/Business Administrator's office. (T1, 53-5; T2, 45-9).

Accountant (and/or in the Accountant's Office) is typed by the Assistant Payroll Clerk. Specifically, the record indicates that materials which are prepared by the Accountant to assist the Board in contract negotiations are typed by the Assistant Payroll Clerk; generally, the various materials which are supplied to the Personnel Office are typed only by the Assistant Payroll Clerk.

A large part of the work performed by the Head Payroll Clerk involves the insertion of raw data into, and the extraction of raw data from, district records. The Head Payroll Clerk computes the payroll, does pension calculations, fills out various forms and reports and disburses money. She has collected data from payroll records concerning budget expenditures for various categories of employees -- for example, teachers, custodians, etc. After grievance disputes are resolved, the Head Payroll Clerk is charged with the responsibility for calculating retroactive pay amounts due to employees. ^{7/}

The Head Payroll Clerk testified that she does not work on materials for use by the Board in collective negotiations (such as comparative cost data). She stated that she does not work on budget materials or have access to confidential budget data (such as a preliminary draft). Further, she has never been told by the Accountant to be cautious about not talking about or letting anyone see the material which she is working on.

Based upon the foregoing, the Hearing Officer concludes

^{7/} While there is testimony concerning one instance where the Accountant requested that the Head Payroll Clerk calculate the retroactive pay due to a grievant prior to the grievance being concluded, this appears as an isolated instance so as to be of minimal effect. Further, it appears to the undersigned that standard NLRB practice would enable such a grievant to discover either the back pay cost data or the calculation of back pay or both.

that the Accountant is less directly involved in the Board's collective negotiations processes than is the Personnel Manager. The Accountant's involvement is more in the nature of an information resource than as a participant in the decisional aspects of the labor relations process. While the record shows that, from time to time, the Accountant has been called upon to prepare (or work on) what appears to be confidential materials (for example, cost estimates of negotiations proposals), the record also indicates that such material would be typed by his secretary (the Assistant Payroll Clerk).

It is further determined that the functions of the Head Payroll Clerk principally concern the maintenance of payroll records, absence records and insurance records and the calculation of the payroll and employee pensions. The access of the Head Payroll Clerk to payroll cost data and similar personnel cost information would appear to be a moot issue in the context of a determination of confidentiality, inasmuch as the Association would likely be entitled to access to such information either through the application of sunshine law provisions or under the NLRB's line of cases giving unions access to the employer's wage and benefit cost data as a concomitant responsibility of good faith bargaining.^{8/} Also in this regard, the Head Payroll Clerk's access and exposure to materials and her compilation of data in the Accountant's Office is limited to handling raw information materials of the type that would not ordinarily tend to compromise management's right to confident-

^{8/} International Woodworkers v. NLRB, 43 LRRM 2462 (D.C. Cir. 1959); In re Dynamic Machine Co., 91 LRRM 1054 (NLRB 1975); see also, Developing Labor Law, p. 318 (Morris, 1971).

iality in matters affecting negotiations or contract administration. ^{9/}

The undersigned concludes that the Head Payroll Clerk has no discernible access and exposure to confidential labor relations materials. Accordingly, the undersigned determines that the Head Payroll Clerk is not a confidential employee within the meaning of the Act and is appropriate for inclusion in the Association's unit.

Clerk, Board Secretary/Business Administrator -- The Board Secretary/Business Administrator's Office is located in the A-wing of the Levitt Building, directly across the hall from the Superintendent's Office. The office contains an outer reception area where two clerical employees (Clerk to the Board Secretary/Business Administrator and Secretary to the Board Secretary/Business Administrator) and one administrative employee (Assistant Board Secretary) are situated. The Assistant Board Secretary and the Secretary to the Board Secretary/Business Administrator are confidential employees. The Board Secretary/Business Administrator's office is located in a rear corner of this reception-office area. When first coming into the Board Secretary/Business Administrator's outer office, the Clerk to the Board Secretary/Business Administrator is closest to the corridor door. Continuing along in that outer office area, one next comes to the Assistant Board Secretary and finally, the Secretary to the Board Secretary/Business Administrator.

The functions performed by the Board Secretary/Business Administrator include preparation of various documents for use

^{9/} In re Bd/Ed of West Milford, P.E.R.C. No. 56 (1971); In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶4018 1977) (see discussion by Hearing Officer); and In re Little Ferry Bd/Ed, D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

the Board's negotiations team in collective negotiations; providing the Board with financial information and analyses for use in collective negotiations and in the budget formulation process (in conjunction with the Accountant); and cost analyses of contract proposals during collective negotiations. The record shows that the Secretary to the Board Secretary/Business Administrator is responsible for the typing of and does in fact type such materials. ^{10/} The Board Secretary/Business Administrator regularly attends public Board meetings and attends the Board's executive session meetings. During their executive sessions, the Board may discuss, inter alia, labor negotiations, grievances, other personnel matters and budgetary matters.

Another function of the Board Secretary/Business Administrator's office is to maintain and house (a) all financial records of the district (generally, non-personnel financial records), (b) the minutes of public Board meetings and (c) the minutes of Board executive sessions. The files are generally kept locked. Access to the files is enjoyed by the Board Secretary/Business Administrator, the Assistant Board Secretary, the Secretary to the Board Secretary/Business Administrator and the Clerk to the Board Secretary/Business Administrator. The minutes of the public Board meetings and Board executive sessions are usually typed by personnel in the Board Secretary/Business Administrator's office. Authority to review executive session minutes is reserved for Board members, the Superintendent, the Board Secretary/Business Administrator, the Board solicitor and the Assistant Board Secretary.

^{10/} Tr. 1/p. 54.

The Board's contention that the Clerk to the Board Secretary/Business Administrator is a confidential is premised upon four essential factors: (1) that the clerk types Board executive session minutes; (2) that the clerk has access to the files and in fact handles executive session minutes; (3) that the clerk has access to the non-public copy of Board agendas; and (4) that the clerk has access to confidential labor relations materials which are being worked on in the Board Secretary/Business Administrator's offices.

Board member Patricia Harper testified that executive session minutes are typed by either (a) the Assistant Board Secretary (b) the clerk to the Board Secretary/Business Administrator or (c) the Superintendent's secretary. 11/ Harper also testified that on some occasions when she has gone into the Board Secretary/Business Administrator's office and requested copies of executive session minutes, the Board Secretary/Business Administrator has directed either the Assistant Board Secretary, the Secretary to the Board Secretary/Business Administrator or the Clerk to the Board Secretary/Business Administrator to get them. Harper also testified that she once played a tape of an executive session aloud in the Board Secretary/Business Administrator's office. And finally Harper indicated that on one occasion, the Secretary to the Board Secretary/Business Administrator was compiling some confidential collective negotiations data for submission to the Board's negotiations team; Harper came into the Board Secretary/Business Administrator's outer office and noted the material was spread over

11/ Tr. 2/pp. 74-78; 138-140. Tr. 3/pp. 93-94.

the desk; whereupon, Harper suggested to that secretary that she should not be so casual about displaying such material.

The Personnel Manager testified that the Clerk to the Board Secretary/Business Administrator types from tapes all day; however, he indicated that he was not certain whether the material she was typing was executive session minutes or public meeting minutes (both types of minutes are put on tapes, although the record indicates that the Assistant Board Secretary also sometimes takes notes during executive session meetings). The Assistant Superintendent testified similarly. 12/

Finally, the Clerk to the Board Secretary/Business Administrator, Judy Muller, testified that the complete and full extent of her duties and responsibilities is to type public Board meeting minutes (from the tape recordings made at the public Board meetings), to proofread her typed copy and to distribute those typed, corrected copies to all Board members and the administrators designated to receive same.

Clerk Muller provided some background testimony concerning how she came to her current position. In 1978 (early to mid '78), Muller indicated that she was working in the Board Secretary/Business Administrator's office and was performing various duties, but that she was not at that time typing the public Board meeting minutes. In late 1978, Muller filled out a job content questionnaire (Exhibit E-3) and indicated thereon that one of her duties was to do "confidential record keeping." Muller testified that the confidential record keeping related to working with budgetary materials

used by the Board.

Prior thereto, another clerical employee in the Board Secretary/Business Administrator's office (named Cass) had performed the task of typing the minutes of public Board meetings. Cass left employment with the Board sometime in late 1977 (approximately). Muller indicated that thereafter, a serious backlog developed in getting the Board's public meeting minutes typed and distributed. Eventually (approximately late 1978), Muller spoke to the Board Secretary/Business Administrator and volunteered to try to do the task of typing, proofreading and distributing the Board's public meeting minutes. She tried it for a time and it worked out quite well. Muller testified that she has been typing and proofing and distributing the minutes ever since.

Muller testified that since assuming this task, she has done nothing else because it simply consumes all of her working time -- as it did to Cass, to the best of her knowledge, when Cass performed the task before her.

In typing the minutes, Muller has occasion to utilize the non-public Board agendas (which are kept on file in the Board Secretary/Business Administrator's offices). The essential difference between the public and non-public Board agendas is that the public agendas do not contain the names of persons (employees or others) whom the Board may have occasion to discuss at its meeting. Presumably, this is done to insure some measure of privacy to the individual whose case is being considered by the Board. From the record, it does not appear that this practice is followed to preserve the confidentiality of the Board's labor relations materials.

Further, where the case of a Board employee is being discussed, that employee may be entitled to receive appropriate notice that his/her case is being considered by the Board. The employee's entitlement to such notice would necessarily negate the Board's claim that the names on the non-public agendas to which Muller has access are confidential items or that her knowledge of the names would tend to compromise the Board's right to confidentiality in matters affecting labor relations.

There are some fairly direct factual conflicts in the record concerning the duties performed by Clerk Muller. The undersigned will endeavor to resolve those below.

Board member Harper testified that she had seen Muller typing and filing Board executive session minutes; the Assistant Superintendent and the Personnel Manager testified that they were uncertain of which minutes (public meeting or executive session) Muller typed; Muller unequivocally testified that she types, proof-reads, and handles only the public meeting minutes and that she does not type or otherwise handle executive session minutes.

Ms. Muller was an articulate and cooperative witness who answered the questions put to her in a succinct and straightforward manner. She was unequivocal about what her current duties are and quite clear about how she acquired them. In terms of accuracy, her testimony must be considered of the very highest quality. Her testimony was entirely credible. 13/

13/ The undersigned notes that the dates of the occurrence of events in connection with Muller's change of duties (from general secretarial chores to full-time preparation of Board public meeting minutes) are not completely consistent, to wit: the employee who typed the minutes before her, Cass, left in approximately late '77; by late '78, a backlog of untyped Board public meeting minutes had developed; Exhibit E3 indicates that in November

The testimony from the Assistant Superintendent and the Personnel Manager verified that Muller spends all of her work time typing from tape recordings; but they could not elucidate the point of which minutes (public or executive session) she typed. Note that these witnesses are high level executive employees of the Board who are employed full time, who work in relatively close physical proximity to Muller and who may have occasion to visit the Board Secretary/Business Administrator's office with some frequency. Despite all of this, they were unable to testify surely about which minutes Muller types.

Ms. Harper is a member of the Board of Education and she has been a member of the Board's negotiations team. Generally, she appears to be quite involved in her position as a Board member. Her testimony was that she had seen Muller typing and filing Board executive session minutes. Harper's testimony, presumptively, was based upon an observation (or more than one) which she made on an occasion when she was in the Board Secretary/Business Administrator's office.

13/ (continued) 1978, Muller was still doing her general secretarial chores and not typing Board minutes; Muller testified that she began typing the Board meeting minutes approximately 2-1/2 years ago, or in September 1978. Thus, some discrepancy exists between Exhibit E3, which indicates Muller was still doing general secretarial chores (including confidential filing) and her testimony which indicates that she began typing (exclusively) public meeting minutes in September 1978. However, the undersigned notes that Muller prefaced this testimony by indicating that her recollection of dates was not good and that this was but an approximation. Thus, if one concedes that the 2-1/2 year approximation was three months too long, then all of the dates appear to coincide. Moreover, the undersigned is most concerned not with the precise time when Muller began typing the public meeting minutes (or when she began doing that work exclusively), but rather with what she is doing now: it appears from the record that she is now typing, proofing and distributing public Board meeting minutes.

In evaluating this testimonial evidence, the undersigned notes that the record indicates that the Assistant Board Secretary usually types the executive session minutes. Thus, for Harper to have seen a person other than the Assistant Board Secretary typing executive session minutes, it would have been necessary for her to have come into the Board Secretary/Business Administrator's office, on several occasions, when an unusual event was occurring and to have made the pertinent observation. The undersigned believes, at a minimum, that for a person not working on a full-time basis in the Board Secretary/Business Administrator's office to make such observations at all stretches credulity; to make them accurately is an unlikelihood. Occasional, even fairly regular, casual observations of the Board Secretary/Business Administrator's clerk, on a qualitative basis, does not significantly challenge the testimony proffered by Muller. Accordingly, the undersigned credits Muller's testimony on this issue.

The final basis for the Board's contention of confidentiality is Muller's exposure to confidential labor relations material being worked on in the Board Secretary/Business Administrator's office. The undersigned notes that the situation wherein the Secretary to the Board Secretary/Business Administrator was casually displaying alleged confidential negotiations materials on her desk was a one-time occurrence which, after being admonished for it, did not occur again. There is nothing in the record to suggest this is now a problem or will be one in the future. The undersigned would evaluate similarly the playing of an executive session tape aloud in the Board Secretary/Business Administrator's office. Further,

there was no clear indication that that executive session tape contained confidential labor relations materials. More importantly, these "exposures" to confidential materials are not sufficiently significant to bring an employee so exposed to the level required to be designated confidential. In In re River Dell Bd/Ed, D.R. No. 83-23, 9 NJPER 180 (¶14084 1983), the Director suggested that exposure to confidential materials must contain some element of absorption of the confidential information. This level of exposure may be achieved where the alleged confidential employee performs some function which requires him/her to "pay attention" to the contents of the confidential material -- perhaps reading it or otherwise performing some functional operation upon it. It is not likely to occur where the exposure is merely a physical one -- being in the same room with a piece of paper or to occasionally retrieve a document (which might contain confidential labor relations material) from a file in order to merely transfer it to another person.


Based upon the foregoing, the undersigned concludes that the duties of the Clerk to the Board Secretary/Business Administrator are to type, proofread and distribute minutes of public Board meetings. The record does not demonstrate that the clerk has access and exposure to confidential labor relations materials so as to compromise management's right to confidentiality in matters affecting the collective negotiations process. Accordingly, the undersigned determines that the Clerk to the Board Secretary/Business Administrator is not a confidential employee within the meaning of the Act and therefore is appropriate for inclusion in the Association's unit.

IV. CONCLUSIONS AND RECOMMENDATIONS

Upon consideration of the entire record in this matter and the foregoing discussion, the Hearing Officer concludes and recommends as follows: (1) Clerk 2 to the Personnel Manager is a confidential employee within the meaning of the Act and therefore is inappropriate for inclusion in any negotiations unit. Accordingly, it is recommended that that portion of the Board's petition seeking to clarify the Association's unit to exclude this title should be granted and given immediate effect.

(2) The Head Payroll Clerk and the Clerk to the Board Secretary/Business Administrator are not confidential employees within the meaning of the Act and therefore they are appropriately included in the negotiations unit represented by the Willingboro Educational Secretaries Association. Accordingly, it is recommended that that portion of the Board's petition seeking to clarify the Association's unit to exclude these titles therefrom be dismissed.

Respectfully submitted,


Charles A. Tadduni
Hearing Officer

Dated: May 5, 1983
Trenton, New Jersey