

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

In the Matter of

LITTLE FERRY BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. RO-79-118

LITTLE FERRY SECRETARIAL ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among clerical employees of the Board of Education to ascertain their representational desires. The Director determines that the secretary to the Board Secretary/Business Administrator is a confidential employee and may not be included in the proposed negotiations unit. However, the Director finds that the secretary to the Superintendent has not been utilized in a confidential capacity and may be included in the proposed unit.

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Petitioner.

Appearances:

For the Public Employer
William DeLorenzo, Jr., Esq.

For the Petitioner
Goldberg & Simon, Esqs.
(Louis P. Bucceri, of Counsel)

DECISION AND DIRECTION OF ELECTION

On October 18, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Little Ferry Secretarial Association (the "Association") with respect to a proposed collective negotiations unit of clerical employees employed by the Little Ferry Board of Education (the "Board"). The Board disputes the appropriateness of the inclusion within the proposed unit of the secretary to the Board Secretary/Business

Administrator and the secretary to the Superintendent claiming that these individuals are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

Pursuant to a Notice of Hearing, a hearing was held before Hearing Officer Steven P. Weissman on May 14, 1979, at which all parties were afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. The Board and the Association both submitted post-hearing briefs.

On August 16, 1979, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. The Association filed exceptions to the Hearing Officer's Report and the Board has filed a brief in opposition to the Association's exceptions.

The undersigned has considered the entire record, including the Hearing Officer's Report and Recommendations, the transcript, the exceptions, and the brief in opposition thereto, and on the basis thereof finds and determines as follows:

1. The Little Ferry Board of Education is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Little Ferry Secretarial Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association filed a Petition for Certification of Public Employee Representative seeking to represent a collective negotiations unit comprised of approximately five clerical employees employed by the Board. The Board claims that two of the employees petitioned-for, the secretary to the Superintendent and the secretary to the Board Secretary/Business Administrator are confidential employees within the meaning of the Act and not appropriately includable in the unit petitioned-for by the Association. Accordingly, there is a question concerning the representation of employees, a dispute exists, and the matter is properly before the undersigned for determination.

4. The Hearing Officer recommended that Mrs. Rizzo, the secretary to the Board Secretary/Business Administrator, be classified as a confidential employee. Neither party has excepted to this recommendation. The Board Secretary is instrumental in developing and reviewing the Board's negotiations proposals. The Hearing Officer found, and the undersigned's review of the record confirms, that among her duties the secretary to the Board Secretary/Business Administrator types the recommended Board budgets; has access to files containing negotiations and grievance information; opens and sorts the Board Secretary's mail; and assists the Board Secretary in costing out negotiations proposals. Significantly, Mrs. Rizzo also has costed out the Board Secretary's alternative negotiations proposals for consideration by the Board, and has typed the Board Secretary's negotiations proposals submitted to the Board. The undersigned, having reviewed the record in its

entirety, concludes and determines that Mrs. Rizzo's functional responsibilities and knowledge in connection with the issues involved in the collective negotiations process makes her membership in any appropriate negotiations unit incompatible with her official duties.

5. The Hearing Officer recommended that Mrs. Kaulfers, the Superintendent's secretary, be classified as a confidential employee. The Superintendent, in addition to the Board Secretary, plays some role in developing and reviewing the Board's negotiations proposals. The Hearing Officer found that Mrs. Kaulfers has sporadically typed confidential negotiations memoranda, has typed memoranda concerning personnel policy, has access to files containing confidential material. The Hearing Officer acknowledged that he reached some findings of facts based on inferences from the record evidence. Regarding the typing proposals, the Superintendent testified that although the majority of his proposals were handwritten he had, on past occasions, requested his secretary to type some material. The Hearing Officer noted that evidence concerning the typing of negotiations strategy material required an inference that Mrs. Kaulfers typed a letter from the Superintendent to a Board member suggesting that Board proposals be communicated directly to all teachers at a general meeting. With one exception, noted below, Mrs. Kaulfers denied knowledge of typing any material concerning negotiations proposals or strategy. Mrs. Kaulfers' testimony was not contested by the Board.

The one instance in which the Superintendent and Mrs. Kaulfers agree that Mrs. Kaulfers typed a memorandum relating to negotiations proposals occurred on November 1, 1978, shortly after the filing of the instant Petition. This one instance, additionally, is the sole specific example identified by the Board in support of its claim that Mrs. Kaulfers typed negotiations related material. The Association vigorously argues that "this one instance was not a legitimate example of confidential work" since the typing of this material was assigned only to those secretaries who, two weeks before, were the signatories to the representation petition. ^{1/}

The undersigned has carefully reviewed the record ^{2/} concerning the November 1, 1978 memorandum and concludes that the assignment performed by Mrs. Kaulfers did not involve an element of confidentiality. Pursuant to a request from the Board for "clarification of language and some clean up of language," the Board attorney reviewed the previous collective negotiations agreement with the teachers and submitted a reply to the Superintendent. The Superintendent reviewed this reply before submitting it to the Board, and sought to "paraphrase" certain language. Examples of the paraphrasing involved his changing some references from "I" to "we".

^{1/} The record does not support the Association's claim that the Board purposely assigned this work to create self-serving testimony.

^{2/} Mrs. Kaulfers' actual work product was not submitted as documentary evidence.

Mrs. Kaulfers' testimony indicates that she typed a memorandum limited to deletions and additions, based on the attorney's letter. ^{3/} She further testified, without contradiction, that the memorandum had no meaning to her since she did not have the original document.

The undersigned concludes from the above that Mrs. Kaulfers did not function in a confidential capacity in typing the November 1 memorandum. Additionally, the record fails to establish any specific example where Mrs. Kaulfers was utilized or exposed to confidential labor relations material. The grievance responses she has typed have been those directed from the Superintendent to the teachers association's grievance committee. Her activities regarding the Board's canvassing of other school districts' salary guides purely involve the collection of raw, nonconfidential data. Mrs. Kaulfers' access to locked files which contain some confidential labor relations notes, as well as other materials, is not, absent additional significant factors, sufficient to render her a confidential employee.

In conclusion, the Superintendent's secretary is not an employee whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make her membership in any appropriate negotiating unit incompatible with her official duties. ^{4/}

^{3/} T. 132, line 11 "A. The one November document? I did type that, I recall that, and that's one that said paragraph two, you know, line three delete this word."

^{4/} Should the Superintendent's secretary's function change, the Board is not precluded from filing a clarification petition at a subsequent date raising the confidentiality issue anew for consideration based on the change in circumstances.

Therefore, the undersigned determines that the secretary to the Board Secretary/Business Administrator is a confidential employee within the meaning of the Act and the secretary to the Superintendent is not a confidential employee.

Accordingly, the undersigned finds that the appropriate unit for collective negotiations is: All clerical employees of the Lower Ferry Board of Education, excluding managerial executives, confidential employees, professional and craft employees, police and supervisors within the meaning of the Act. The Superintendent's secretary is not a confidential employee and is eligible to vote in an election among unit employees to ascertain their representational desires. The secretary to the Board Secretary/Business Administrator is a confidential employee, is excluded from the proposed unit, and is ineligible to vote.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in 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 Board is directed to file with the undersigned and with the Association an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Little Ferry Secretarial Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: January 18, 1980
Trenton, New Jersey

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

In the Matter of

LITTLE FERRY BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. RO-79-118

LITTLE FERRY SECRETARIAL ASSOCIATION,

Petitioner.

SYNOPSIS

The Little Ferry Secretarial Association filed a Petition for a unit of clerical employees. The Board objected to the inclusion of two secretaries contending that they should be classified as confidentials.

The Hearing Officer, concurring with the Board, finds that the secretaries to the Superintendent and Board Secretary/Business Administrator are confidential employees within the meaning of the Act and should therefore be excluded from the petitioned-for unit. Accordingly, it is recommended that an election be directed excluding the aforementioned titles.

A Hearing Officer's Report and Recommendations is not 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 binding upon the parties unless a request for review is filed before the Commission.

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Petitioner.

Appearances:

For the Respondent
William DeLorenzo, Jr., Esq.

For the Petitioner
Goldberg & Simon, Esqs.
(Louis P. Bucceri of Counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On October 18, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Little Ferry Secretarial Association (the "Association") with respect to a proposed unit of certain clerical employees of the Little Ferry Board of Education (the "Board"). The Association seeks to be certified as the exclusive representative of the employees in the proposed unit pursuant to a secret ballot election.

Pursuant to a Notice of Hearing, a hearing was held in Newark before the undersigned Hearing Officer, on May 14, 1979, at which all parties had an opportunity to examine witnesses, present evidence, and argue orally. Both parties filed briefs subsequent to the hearing, the Association's brief being received on July 10, 1979 and the Board's on July 25, 1979.

Upon the entire record, the exhibits submitted into evidence and the briefs in the instant proceeding, the Hearing Officer finds:

1. The Little Ferry Board of Education is a public employer within the meaning of the Act, is subject to its provisions, and is the employer of the employees included in this proceeding.
2. The Little Ferry Secretarial Association is an employee representative within the meaning of the Act and is subject to its provisions.
3. The Association sought recognition as the exclusive representative of a unit consisting of five clerical employees. The Board objected to the appropriateness of the unit, claiming that the secretaries of the Superintendent and the Board Secretary/Business Administrator were confidential employees. Accordingly, there is a question concerning the composition of the petitioned-for negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

POSITIONS OF THE PARTIES

The Board contends that a finding of non-confidentiality for both the Superintendent's and the Business Administrator's secretaries would leave the Board without any confidential clerical to type or prepare documents pertaining to labor relations. Moreover, the Board argues that a determination of confidentiality in this instance cannot solely be based upon the past involvement of the employees in question with negotiations. According to the Board it would be unreasonable to expect that in a small district such as Little Ferry, which has had relatively few labor disputes, there would be any continuous need for the performance by clericals of confidential functions. While in the past, there have only been limited occasions during which the employees in question performed confidential functions, it is reasonable to ex-

pect that their confidential responsibilities would increase with the formation of a secretarial unit. Such future contingencies must, the Board maintains, be given due consideration when rendering a determination as to confidential status.

The Association on the other hand contends that the record fails to demonstrate that either Kaulfers or Rizzo are regularly involved in confidential functions. While admitting that Weisman and Hirtler are involved in the collective negotiations process, the Association maintains that due to the small size of the school district there are few situations where the confidential services of a secretary are needed. Therefore, the infinitesimal portion of time which Kaulfers and Rizzo may spend performing confidential duties is not sufficient to warrant a finding that they are confidential employees. Moreover, the Association argues that minor alterations of certain administrative procedures would virtually eliminate any possibility that either Kaulfers or Rizzo would have knowledge of or access to information related to collective negotiations.

FRAMEWORK FOR ANALYSIS

The undersigned notes that the Commission is charged with the responsibility of determining the confidential status of public employees based upon the definition which appears at N.J.S.A. 34:13A-3(g). ^{1/} Thus in reviewing the record herein, the undersigned must consider whether or not the job functions of the Superintendent's secretary, Ruth Kaulfers, and the Business Administrator's secretary, Joan Rizzo, permit them access to or knowledge of issues involved in the collective negotiations process so as to make their membership in the proposed unit, incompatible with their existing duties.

In making such a determination where the employees in question are secretaries, a two-fold method of analysis is generally employed. First, the involv-

collective negotiations process must be examined. If it is established that such individual is integrally involved in the formulation, implementation, and effectuation of labor relations policies, then inquiry must be made into the nature of the duties which his or her secretary performs. The following clerical duties will be considered in rendering a determination as to confidential status: the typing of recommendations as to negotiations, budgetary allocations, the disposition of grievances, and personnel policy; the typing of minutes of, or the agenda for private Board sessions; responsibility for opening and/or sorting of confidential mail; and access to files containing confidential information. Depending upon the extent of the involvement in labor relations of the individual to which a clerical has been assigned, the presence of one or more of the above criteria may be sufficient for finding a clerical to be a confidential employee.

DISCUSSION

As the record makes abundantly clear, both the Superintendent, Irwin Weisman and the Board Secretary/Business Administrator, Arthur Hirtler, formulate, implement, and effectuate labor relations policy.

Uncontroverted testimony demonstrates that the Superintendent: (1) attends negotiations sessions, negotiations strategy meetings and private Board caucuses; ^{2/} (2) has a major role in the formulation of personnel policies; ^{3/} (3) submits negotiations proposals to the Board; ^{4/} (4) sits at the second step of the grievance procedure; ^{5/} (5) and shares responsibility for budget preparation. ^{6/}

^{2/} Tr. 34, 46.

^{3/} Tr. 46.

^{4/} Tr. 45.

^{5/} Tr. 43.

^{6/} Tr. 35; 36. Weisman testified that he continues to work up a needs analysis for various education supplies. Moreover, it should be noted that school superintendents are statutorily defined as managerial executives and therefore excluded from all negotiations units. N.J.S.A. 34:13A-3(f) and 5.3.

The Business Administrator has primary responsibility for budget preparation ^{7/} and as a result is often involved in the casting out of negotiations proposals. ^{8/} The performance of this duty clearly provides Hirtler with knowledge of the Board's negotiations positions and strategy. In addition, the Business Administrator attends negotiations sessions ^{9/} as well as private Board meetings which deal with personnel and budgetary matters. ^{10/} Finally, although Hirtler has no formal role in any contractual grievance procedure, he does have input into the disposition of grievances. For example, the Business Administrator testified that he has corresponded with representatives of the Custodians Union, Local 866 with regard to grievances. ^{11/} From the above discussion, it is evident that both the Superintendent and the Business Administrator are integrally involved in the collective negotiations process. We now turn to an examination of the duties performed by the two clerical employees in question.

SECRETARY TO THE SUPERINTENDENT

Kaulfers has been the Superintendent's secretary since 1972. In addition to the duties she performs for Weisman, she also functions as the secretary to the Building Principal of the Washington School, and to the Child Study Team. ^{12/} The majority of her time is spent on various projects such as Kindergarten registration and the preparation of enrollment statistics. ^{13/} However, for purposes of this inquiry, the undersigned is particularly concerned with those aspects of Kaulfers' job which provide exposure or access to labor relations information.

^{7/} Tr. 66, 98.
^{8/} Tr. 61, 99, 100, 106.
^{9/} Tr. 99.
^{10/} Tr. 72.
^{11/} Tr. 72, 87-89.
^{12/} Tr. 128, 129.
^{13/} Tr. 129, 130.

Weisman testified that in past years he has requested his secretary to type for the Board his evaluation of negotiations proposals put forward by the teachers' or custodians' unions. ^{14/} Kaulfers acknowledged that although communication involving negotiations between the Superintendent and the Board is ordinarily hand written, perhaps one memorandum out of ten would be typed by her. ^{15/} From Weisman's testimony it may be inferred that Kaulfers typed a letter from the Superintendent to a Board member suggesting that a general meeting of all teachers be called for the purpose of explaining the Board's negotiations proposals directly to the affected employees rather than relying upon the Association negotiating committee to transmit the Board's position to unit members. ^{16/} Moreover, Weisman testified that Kaulfers had typed a memorandum dated November 1, 1979, which paraphrased a letter from the Board attorney recommending various contract revisions to be proposed in negotiations. ^{17/} Kaulfers admitted typing such a memorandum but denied that the document had any meaning to her. ^{18/} Despite the Association's intimation that the Board assigned Kaulfers to type this memorandum to create evidence of confidentiality, other than the timing of memorandum itself, ^{19/} no other evidence was proffered which would support the Association's allegation of ill-motive. In fact, the Association's reference to Callinan's work on the November 1 document ^{20/} serves to undercut its argument with regard to the Board's motive. Kaulfers' additional negotiations-related duty involves the collection of information as to the status of negotiations in other school districts. She sends out xeroxed forms for this purpose, which are generally returned directly to and analyzed by the Superintendent. ^{21/} Citing

^{14/} Tr. 12, 45.

^{15/} Tr. 143.

^{16/} Tr. 53.

^{17/} Tr. 28.

^{18/} Tr. 132.

^{19/} The within petition was filed on October 18, 1979 and Kaulfers was assigned to type the memorandum on November 1, 1979.

^{20/} See page 4 of the Association's brief.

^{21/} Tr. 135.

In re Brookdale Community College, D.R. No. 78-10, 4 NJPER 4018, (1977), the Association accurately points out in its brief that such mechanical data collection is not by itself a sufficient basis to categorize an employee as a confidential. ^{22/}

Although for the last several years primary responsibility for budget preparation has resided with the Business Administrator, the Superintendent has in the past and may in the future perform this task. ^{23/} Weisman testified that when his office assumes responsibility for the budget, Kaulfers would be privy to confidential information concerning projected salary figures. ^{24/}

Insofar as grievances are concerned, the record demonstrates that Kaulfers types the responses of the Superintendent, who sits at the second step of the grievance procedure. ^{25/} Although these responses are sent to the chairperson of the grievance committee and the grievant and cannot therefore be considered confidential, nonpublic recommendations are contained in locked files to which Kaulfers has access. Aside from Kaulfers, only the Superintendent and the Building Principal at Washington School have keys to these files. ^{26/}

Mail is opened by either Kaulfers or Weisman. ^{27/} Although Kaulfers has never been instructed not to open certain correspondence, she testified that she would not open mail from the Board attorney's office or mail in hand-addressed envelopes. ^{28/} Despite these precautions, it is certainly possible that she would inadvertently open confidential correspondence. Finally, Weisman testified that he

^{22/} See page 3 of the Association's brief.

^{23/} Tr. 35, 53, 143.

^{24/} Tr. 19.

^{25/} Tr. 43, 146, 150.

^{26/} Tr. 47. In past decisions, the Director of Representation has found that access to records pertaining to labor relations which are stored in locked files is an important criteria in determining an employee's confidential status. See In re Township of Dover, supra.

^{27/} Tr. 40.

^{28/} Tr. 149.

he formulates proposed personnel policies which are typed by Kaulfers and forwarded to the Board for discussion. ^{29/}

SECRETARY TO THE BOARD SECRETARY/BUSINESS ADMINISTRATOR

Joan Rizzo has been assigned to the Business Administrator/Board Secretary for the last seven years. Located in the same office with Rizzo and Hirtler are two other secretaries, one of whom is assigned to the Building Principal. ^{30/} Much of Rizzo's time is spent working on the payroll, completing quarterly reports, and doing other accounting functions. ^{31/} In addition, Rizzo handles transportation arrangements and inquiries from credit bureaus. ^{32/}

Tentative budgets are typed up by the Business Administrator's office prior to being made public. ^{33/} Although Hirtler admitted that Rizzo did not type the budget proposal for the 1978-79 school year ^{34/} she has typed such proposals in the past years. ^{35/}

With respect to her role, vis-a-vis negotiations, Rizzo testified that she has typed negotiations proposals within the last year. ^{36/} Hirtler testified that while Rizzo has not typed his negotiations proposals for several years, ^{37/} she has typed negotiations recommendations from the Board attorney or a Board member at least once within the last two years. ^{38/} Rizzo also indicated that she assists the Business Administrator in costing out negotiations proposals, ^{39/}

^{29/} Tr. 46, 47.

^{30/} Tr. 101.

^{31/} Tr. 103.

^{32/} Tr. 104.

^{33/} Tr. 66.

^{34/} The 1978-79 proposal was typed by another clerical in the Board's office. Presumably, if an association is certified the Board will be more selective with regard to which clericals type budget proposals. See Tr. 79.

^{35/} Tr. 99.

^{36/} Tr. 105.

^{37/} Tr. 100.

^{38/} Tr. 81.

^{39/} Tr. 106.

and could therefore figure out the respective bargaining positions of the Board and the teachers' and janitors' associations'. 40/ Furthermore, Rizzo testified that although she could not supply an exact date, she has on occasion typed up a comparative cost analysis of alternative proposals under consideration by the Board. 41/ In addition, referring to item 3 on the job description of the Business Administrator's secretary, 42/ Hirtler testified that Rizzo has assisted in the preparation of reports to the New Jersey School Boards Association relating the status of negotiations and outlining the Board's proposals. 43/

Although the Business Administrator is not designated to sit at any of the contractual levels of the grievance procedure, as previously noted, he is involved in the disposition of grievances. Rizzo has typed up public Board responses to grievances and in addition supplies to the Board certain payroll information which may be needed for the Board's deliberations. 44/ Rizzo acknowledged that she has been involved with grievances concerning sick leave and custodian dental claims. 45/ However, the precise nature and extent of her involvement is unclear.

Although Hirtler ordinarily opens the mail, occasionally Rizzo will go through the correspondence, particularly in Hirtler's absence. 46/ She testified that she has not been directed to refrain from opening any mail and that she would not hesitate to open a letter from the Board attorney. 47/ However, she could not recall ever opening any letter which dealt with negotiations. 48/

Rizzo has access to all the files in the Business Administrator's office, which contain information pertaining to budget, negotiations, personnel matters, 49/

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- 40/ Tr. 107.
 - 41/ Tr. 107.
 - 42/ See Exhibit J-1.
 - 43/ Tr. 80.
 - 44/ Tr. 157, 158.
 - 45/ Tr. 159, 160.
 - 46/ Tr. 64.
 - 47/ Tr. 114, 78, 115.
 - 48/ Tr. 115.
 - 49/ Tr. 82.

and grievances. ^{50/} Records with regard to grievances apparently contain notes of preliminary discussions between Hirtler and the Board attorney. ^{51/}

There can be little doubt that both the Superintendent and the Business Administrator are integrally involved in the labor relations process. The more problematic issue before the undersigned is whether or not the amount of time which Kaulfers and Rizzo spend performing duties which expose them to confidential labor relations information is sufficient to classify them as confidential employees. The record substantiates the Association's claim that Rizzo and Kaulfers spend the vast majority of their time on duties which have little or no bearing upon labor relations policy. However, this fact is not necessarily dispositive as to the question of their confidentiality. Where the employee in question is the regular secretary to an individual who formulates, determines, and effectuates labor relations policy, both the Commission ^{52/} and the National Labor Relations Board ^{53/} have found that an inference of confidentiality is created. In In re Township of Dover, D.R. No. 79-19, 5 NJPER ____ (1979), the Director of Representation noted that:

Where the confidential status of a clerical employee is at issue, the involvement of the individual in the collective negotiations process for which the clerical duties are performed is highly relevant. D.R. No. 79-19 at p. 5.

Therein, the Hearing Officer had found the secretary in question to be non-confi-

^{49/} Tr. 82.

^{50/} Tr. 94, 64.

^{51/} Tr. 64.

^{52/} Although past decisions do not explicitly establish the creation of such an inference an examination of Commission decisions reveals that whenever it was found that the individual to whom the clerical employee in question was assigned performed managerial functions in relation to collective negotiations, the clerical was invariably found to be a confidential employee. See In re Gloucester County College, D.R. No. 78-47, 4 NJPER 4116, (1978); In re Orange Board of Education, D.R. No. 78-28, 4 NJPER 4001, (1977); In re Bloomfield Board of Education, E.D. No. 76-40, 2 NJPER 194, (1976).

^{53/} See Bethel Inc., 88 LRRM 1082, 215 NLRB 126, (1974); B.F. Goodrich Co., 37 LRRM 1383, 115 NLRB 103, (1956). In Lullo v. Int'l Assn. of Firefighters, 55 N.J. 409, 424, (1970) the Supreme Court directed the Commission to look to Board law for guidance in representation matters.

dential based in part upon a finding that she was not regularly involved in the collective negotiations process. In reversing the Hearing Officer's determination the Director of Representation went on to state that:

Although the record may not conclusively demonstrate a continuous pattern of exposure to the collective negotiations process, the statutory definition does not make confidential status dependent upon regular involvement in labor relations. D.R. No. 79-19 at p. 7.

Moreover, the N.L.R.B. in Bethel Inc., supra, stated that if a secretarial employee is exposed to an official's labor relations activities in the normal course of the secretary's duties, he or she is a confidential employee. The Board declared that:

In such instance, no inquiry need be made into the amount of time the employee actually spends in duties connected with labor relations. 88 LRRM at 1083.

Thus, unless such clerical is intentionally excluded from access to labor relations information, the N.L.R.B. ordinarily will presume said employee's confidentiality. ^{54/} Accordingly, minimal exposure to confidential information, particularly where a clerical works for an individual intimately involved in labor relations, is not by itself determinative as to non-confidentiality. If such were the case any small school district or municipality where the volume of work generated with regard to labor relations was nominal would be denied access to a confidential secretary.

The Association implicitly acknowledges that the Board has some need for the performance of confidential clerical services as is evidenced by the following excerpt from its brief:

Based on the testimony given it is clear that the Little Ferry Board has had few situations where it has needed confidential secre-

^{54/} It bears mentioning that such a presumption will not be created where the employee in question acts in a confidential capacity only as a substitute for a regular confidential employee. See Meramec Mining Company, 49 LRRM 1386, 134 NLRB 1675, (1961), and Swift and Company, 47 LRRM 1195, 129 NLRB 1391, (1961).

taries. (TR. 148/5-19). The Association submits that that need has not suddenly increased to the point that two (2) such confidential positions must exist. . . . Current procedures, plus the geographical proximity of the Superintendent's office and the Board's office make it unnecessary for Kaulfers' position to be confidential. . . . At most, minor changes, such as not instructing her to open confidential mail when she normally would not do so and perhaps, limiting her access to negotiations files, which she has never been involved with anyway, would assure the Board complete security. pp. 9-10 of the Association's brief.

Thus, on the one hand, the Association appears to concede that there is some need for the performance of confidential clerical services while on the other it asserts that the Board should redistribute certain responsibilities so as to eliminate any possibility that Kaulfers (or presumably Rizzo) would be privy to confidential information. However, it is not within the undersigned's province to recommend that the Board restructure its personnel assignments. Rather, the undersigned's inquiry must be restricted to the question of whether Rizzo or Kaulfers have functional responsibilities which provide them with access to and knowledge of issues involved in the collective negotiations process. A thorough review of the record indicates that this question requires an affirmative response.

To reiterate: Kaulfers has on a sporadic basis typed confidential memoranda related to negotiations; she has typed the Superintendent's recommendations to the Board concerning personnel policy; she has access to files containing negotiations information; and she may open confidential correspondence. Rizzo has in past years typed and currently helps the Business Administrator cost out negotiations proposals; she types the recommended budget; she has access to files which contain budget, negotiations and grievance information; and she may open confidential mail in Hirtler's absence. Accordingly, the undersigned finds that the secretaries to

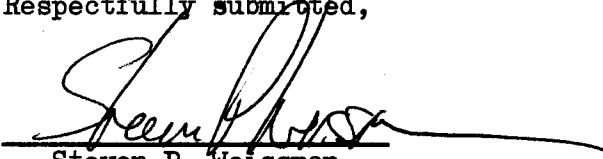
the Superintendent and Board Secretary/Business Administrator perform confidential functions for persons who formulate, determine, and effectuate management policies in the area of labor relations.

RECOMMENDATIONS

Based on the foregoing and the official record of these proceedings, the undersigned recommends:

1. That a secret ballot election be conducted among employees as hereinafter delineated in the designated appropriate unit, and the date for the election shall be set by the Public Employment Relations Commission.
2. The appropriate unit shall be: "All secretarial employees of the Little Ferry Board of Education excluding the secretary to the Superintendent of Schools, the secretary to the Board Secretary/Business Administrator, professional employees, police, managerial executives, confidential employees, craft employees, and supervisors within the meaning of the Act."
3. Those eligible to cast ballots in this election shall vote on whether or not they desire to be represented for purposes of collective negotiations by Little Ferry Educational Secretaries Association affiliated with the New Jersey Education Association.
4. The election shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

Respectfully submitted,


Steven P. Weissman
Hearing Officer

DATED: August 16, 1979
Trenton, New Jersey