

D.R. NO. 94-4

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-92-52

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of professional and secretarial/clerical employees employed by the Middletown Township Board of Education. The Director found that the secretary to the assistant superintendent for personnel and labor relations is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g), and excluded her position from the unit.

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Appearances:

For the Public Employer
Kalac, Newman, Lavender & Campbell, attorneys
(Howard M. Newman, of counsel)

For the Petitioner
New Jersey Education Association
(John Molloy, Field Representative)

DECISION

On May 20, 1992, the Middletown Township Education Association filed a Petition for Clarification of Unit seeking to have the secretary to the former director of labor relations included in its unit of professional and secretarial employees employed by the Middletown Township Board of Education. The Board opposes the petition and asserts that the secretary at issue is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

We have conducted an administrative investigation into the issues raised by the petition. There are no substantial and

material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The Association is the exclusive majority representative of a broad-based negotiations unit which includes professional and secretarial/clerical employees. The most recent collective negotiations agreement between the Board and the Association covered the period from July 1, 1990 through June 30, 1993.^{1/} The following confidential secretaries are specifically excluded from the unit at Article I, "Recognition":

secretary to the superintendent, one secretary to the assistant superintendent for personnel, one secretary to the director of labor relations, the secretary to the board secretary and the data processing manager.

The Board abolished the director of labor relations position in June 1990 and reassigned its duties to the renamed assistant superintendent for personnel and labor relations.^{2/} The secretary to the director of labor relations, Mary Bushnell, was then reassigned to the assistant superintendent for personnel and labor relations, Dr. Alrita Morgan. Laurie Alloca, confidential secretary to the assistant superintendent for personnel, also reports to Morgan and is excluded from the unit.

Bushnell performs a variety of labor relations support duties, including preparing and processing documents necessary for

^{1/} There are two other negotiations units in the Middletown Board of Education: a blue collar unit and an administrators' unit.

^{2/} Formerly, this position was the assistant superintendent for personnel.

civil rights and learning disabilities litigation to which the Board is a party. She gathers materials for Morgan's use in collective negotiations with all of the Board's negotiations units. For example, Bushnell collected the Board's health insurance cost data for negotiations. Bushnell has not attended negotiations sessions or recorded minutes of the Board's negotiations team meetings.

She prepares background information, such as sick leave records, for use by the Board's labor counsel and assistant superintendent in arbitration hearings. She maintains arbitration awards files. She assists in processing grievances. She arranges grievance hearings conducted by Morgan. She prepares correspondence for Morgan and the Board's attorney containing information about the Board's position on grievances before the Board's disposition is disclosed to the union or the grievant.

* * * * *

The Board argues that Mary Bushnell's position should be excluded from the unit because of her labor relations support duties as secretary to Morgan. The Association questions the Board's need to have two confidential secretaries assigned to the assistant director for personnel and labor relations. The Association also disputes that Bushnell's duties involve her directly in confidential labor relations matters.

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

...whose functional responsibilities or knowledge in connection with the issues involved in the collective

negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

The Commission narrowly construes the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶ 4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).^{3/} In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the collective negotiations process if the employee was included in a negotiating unit. 11 NJPER at 510

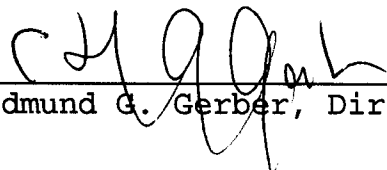
A finding of confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position in the collective negotiations process, including contract administration. River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986).

^{3/} See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88).

Bushnell reports to Assistant Superintendent Alrita Morgan, who absorbed the Board's labor relations functions. Bushnell collects information and materials for Morgan's use in collective negotiations, but it is not clear that Bushnell is privy to the Board's negotiations strategies or positions prior to their use in negotiations. However, Bushnell also prepares correspondence concerning the Board's position on grievances before that information is final and disclosed to the grievant or union. The knowledge of such information concerning the proposed disposition of grievances could compromise the Board's position in the grievance process. Bushnell's duties concerning grievances place her in a conflict of interest between performance of these duties and membership in any collective negotiations unit.

Based upon the foregoing, I find that the secretary to the assistant superintendent for personnel and labor relations, Mary Bushnell, is a confidential employee within the meaning of the Act. Accordingly, I clarify the Association's negotiations unit to exclude the position of secretary to the assistant superintendent of personnel and labor relations. Accord, Montague; Northern Highlands Reg. Bd. of Ed., D.R. No. 88-2, 13 NJPER 629 (¶18234 1987); and Oakland Bd. of Ed., D.R. No. 91-8, 16 NJPER 500 (¶21220 1990).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: August 6, 1993
Trenton, New Jersey