

D.R. NO. 94-10

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

In the Matter of

MONMOUTH REGIONAL BOARD
OF EDUCATION,

Public Employer,

-and-

Docket No. RO-93-155

MONMOUTH REGIONAL EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among secretaries and clerks employed by the Monmouth Regional Board of Education to determine whether these employees wish to be represented by the Monmouth Regional Education Association. The Director found, over the Board's objection, that the executive secretary to the transportation supervisor, data entry clerk, payroll clerk, and bookkeeper are not confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and, therefore, are eligible for inclusion in the proposed unit. The Director found that the confidential secretary to the business administrator/board secretary is a confidential employee and is excluded from unit membership.

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Appearances:

For the Public Employer
Murray, Murray & Corrigan, attorneys
(Regina Waynes Joseph, of counsel)

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

DECISION AND DIRECTION OF ELECTION

On April 2, 1993, the Monmouth Regional Education Association filed a timely Petition for Certification of Public Employee Representative with the Public Employment Relations Commission seeking to represent all secretaries and clerks employed by the Monmouth Regional Board of Education. The petition is supported by an adequate showing of interest. N.J.A.C. 19:11-1.3. The Board objects to the inclusion of certain of the proposed unit titles and refuses to consent to an election.

We have conducted an investigation pursuant to the Commission's rules (N.J.A.C. 19:11-1.1 et seq.) and make the following findings.

1. Since the 1970s, the Board appears to have had a series of "collective" agreements with a group of employees known as the Office Personnel Unit. The unit does not have an organization or exist as a public employee representative. The agreements do not contain a unit description or list of included titles. The data entry clerk was removed from the unit in the mid-1980s because its duties were changed. The bookkeeper and payroll clerk have not been part of the unit for over ten years.

2. The Board and Association agree that 11 of the petitioned-for employees are eligible for membership in the proposed unit. The parties further agree to exclude Confidential Secretary Angela Pfister's position because she is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Pfister is the superintendent's secretary.

3. The parties disagree about the eligibility of 5 positions.^{1/} The following positions are in dispute:

- | | |
|---------------------------|-------------------|
| 1. Confidential Secretary | Claire Shames |
| 2. Executive Secretary | Donna Weingartner |
| 3. Data Entry Clerk | Debbie Gastelu |
| 4. Payroll Clerk | Eleanor Hagerman |
| 5. Bookkeeper | Marie Murphy |

^{1/} The Association would agree to exclude from the unit one but not both of the secretarial positions assigned to Board Secretary/Business Administrator James Cleary: either Confidential Secretary Claire Shames or Executive Secretary Donna Weingartner. The Board alleges that both of these positions are confidential.

6. Confidential Secretary (Shames)

Confidential Secretary Claire Shames reports to Business Administrator/Board Secretary James Cleary. Cleary is a member of the Board's negotiations team. Shames is Cleary's primary personal secretary and prepares and handles his correspondence, notes and memoranda, including that prepared by Cleary concerning negotiations matters.

7. Executive Secretary (Weingartner)

Executive Secretary Donna Weingartner reports to the transportation supervisor. She also performs secretarial duties for the board secretary/business administrator and the superintendent in their secretaries' absence. Although the Board asserts that in this substitute role, Weingartner "is privy to any confidential documents and information received by the superintendent or board secretary," it did not identify any specific instance where Weingartner handled confidential documents or information. The Board further alleges that the board secretary and superintendent's secretaries "may share" confidential labor relations information with Weingartner, but did not provide examples of this. Further, the Board's general examples do not indicate when Weingartner actually assisted these two secretaries in performing confidential duties.

8. Data Entry Clerk (Gastelu)

The data entry clerk, Debbie Gastelu, reports to the board secretary/business administrator. She performs data entry, data programming, systems operation and network management duties. She instructs the secretarial staff in word processing, performs

recordkeeping, calendar maintenance and completes student discipline reports. Gastelu costs out proposals for the Board's review during the course of negotiations and has access to all of the Board's computer security codes.

9. Payroll Clerk (Hagerman)

The payroll clerk is responsible for preparing and maintaining the payroll, including enrollments into benefits programs. She reports directly to the business administrator. The payroll clerk provides payroll cost information to the business administrator for his and the Board's use in preparing for and conducting collective negotiations.

10. Bookkeeper (Murphy)

The bookkeeper reports to the business administrator. She processes all requisitions, prepares financial statements, reconciles cash accounts, calculates expenses, prepares balance sheets for financial accounts and assists in preparing the district's budget. The bookkeeper directly assists the business administrator in costing out proposals for negotiations. She is involved in the preparation of salary guides, scattergrams, benefit costs, tax resources, salary projections for future years, analysis of payroll from prior years and computation and analysis of all budgetary data that impacts on the Board's position in the labor relations process.

* * *

ANALYSIS

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

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

[E]mployees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

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

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally, we determine whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

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

Confidential Secretary and Executive Secretary (Shames/Weingartner)

The Board alleges that Shames is confidential within the Act because of her duties as primary secretary to Cleary, a member of the Board's negotiating team. Shames prepares and handles Cleary's memoranda, correspondence and notes, which can include materials Cleary prepares for use in negotiations. These duties would tend to place Shames in a conflict of interest between her job performance and membership in any collective negotiations unit. This is the type of conflict the policy and statute seek to avoid. Cliffside Park Bd. of Ed. Based upon the foregoing, I find that Confidential Secretary Claire Shames is excluded from the proposed unit because of duties performed as the primary secretary to the board secretary/business administrator.

The Board asserts that Weingartner is confidential because of her substitute role for Shames and because the other excluded confidential secretaries (Pfister and Shames) may share confidential information with her. Although the Board asserts that in this substitute role, Weingartner "is privy to any confidential documents and information received by the superintendent or board secretary," it did not identify any specific instance where Weingartner handled confidential information. The Board further alleges that the board secretary and superintendent's secretaries "may share" confidential labor relations information with Weingartner, but did not provide specific occasions when these secretaries had shared information or, the exact nature of the information. The Board's general examples do not indicate specifically when or how Weingartner

actually assisted these two secretaries in performing confidential duties. There is no evidence here demonstrating that Weingartner's duties resulted in her exposure to or knowledge of confidential labor relations documents or information. Under these facts, I find that Weingartner is not a confidential employee. Accord, Morris School Dist. Bd. of Ed. and Ed. Ass'n. of Morris, P.E.R.C. No. 89-42, 14 NJPER 681 (¶19287 1988), aff'd. App. Div. Dkt. No. A-2191-88T2 (11/16/89) (personnel office clerk not confidential where she had potential substitute role but had not assumed full authority of absent clerk or attended closed meetings where negotiations matters were discussed); compare, Wayne Tp. v. AFSCME, Council 52, 220 N.J. Super. 340 (App. Div. 1987) (deputy clerk found confidential where she was present in closed negotiations strategy sessions). Accordingly, Weingartner is included in the proposed unit.

Data Entry Clerk (Gastelu)

The Board argues that this position should be excluded from the proposed unit because it is a confidential position and does not share a community of interest with other proposed unit titles. However, applying the above standard, I find that the position is not confidential. Gastelu's costing out responsibilities do not appear to have given her knowledge of the Board's positions and strategies prior to their disclosure to the unions. Although access to confidential information is a relevant factor in the determination of confidential status within the meaning of the Act, by itself it is not enough to make an employee confidential. Access

alone to computer security codes and information contained within the computer system relating to negotiations issues does not render the Data Entry Clerk confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980); Accord, New Jersey Turnpike Auth., P.E.R.C. No. 94-24, 19 NJPER ___ (¶_____ 1993, H.O. No. 93-2, 19 NJPER 303 (¶24254 1993)) (computer systems project coordinator who produces negotiations scenarios not confidential where there was no evidence that he knew employer's negotiations positions) and Morris School Dist. Bd. of Ed.

The Board also claims that Gastelu's "senior level" responsibilities are too dissimilar from those of the other petitioned-for titles to be included in the proposed unit. If the Board is alleging that Gastelu's position is professional or managerial executive within the Act's meaning, it has not established either of these allegations.^{2/} Professional employees are those:

whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. . . The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall

^{2/} A professional employee would not be prohibited from collective representation but may more properly belong in the Association's professional unit.

include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

N.J.A.C. 19:10-1.1

In City of Jersey City, H.O. No. 83-8, 9 NJPER 191 (¶14089 1983), aff'd. D.R. No. 84-6, 9 NJPER 556 (¶14231 1983), professional employees were defined as those requiring special training, having extensive and diversified duties and exercising wide authority without obtaining prior approval from superiors.

Applying that standard here, the data entry clerk does not have the kind of broad authority described above, nor does the position appear to require significant and extensive training. The Board asserts that Gastelu has "senior level responsibility for the Board's management information systems," and states that the position requires a high degree of technical expertise and knowledge of computer equipment. However, Gastelu can only recommend purchases to the business administrator and does not possess independent authority to create the Board's management information systems. Gastelu does not supervise other employees. Further, it is not clear that this position regularly performs work which is "intellectual...requiring the consistent exercise of discretion and judgment and knowledge of an advanced nature in a particular field." Compare, Ridgewood Bd. of Ed., D.R. No. 88-16, 14 NJPER 19 (¶19006 1987). Thus, I find that the data entry clerk is not a professional employee.

Gastelu is not a managerial executive within the meaning of

the Act. The Act defines managerial executives as:

persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices....

N.J.S.A. 34:13A-3(f)

The term "managerial executive" is narrowly construed.^{3/}

Gastelu does not possess the requisite broad authority over policies and programs by which the statute defines managerial executives. Accordingly, her data entry clerk position is not a managerial executive position and is appropriately included in the proposed unit.

Payroll Clerk (Hagerman)

The Board asserts that the payroll clerk is a confidential employee because she provides cost information used by the business administrator in negotiations. However, while the provision of such information is important to the Board's pre-negotiations preparation, much of the raw information would be available to the unions. There is no evidence that Hagerman is privy to any of the Board's strategies or proposals before their disclosure to the unions or that she has other direct involvement in the Board's

3/ See Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977) (lifeguard captain not a managerial executive, although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the workweek, added guards to the payroll in emergencies, influenced the Borough's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis.) and Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (11259 1980) ("...a managerial executive must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purposes." (Emphasis added).

conduct of negotiations. Her role in contract administration is ministerial, that is, enrolling employees in various benefits programs and maintaining and compiling records and reports. Based on these facts, I find that this position is not confidential and is included in the proposed unit. Accord, Morris School Dist. Bd. of Ed. and Ed. Ass'n. of Morris, P.E.R.C. No. 89-42, 14 NJPER 681 (¶19287 1988), aff'd. App. Div. Dkt. No. A-2191-88T2 (11/16/89) (personnel office clerk not confidential); Compare, Ringwood Bor., D.R. No. 93-19, 19 NJPER 196 (¶24093 1993) (payroll clerk confidential where she sat in on confidential negotiations meetings). Bookkeeper (Murphy)

The Board alleges that the bookkeeper is confidential and should be excluded from the petitioned-for unit. Among her other bookkeeping and accounting duties, the bookkeeper costs out proposals for negotiations for the business administrator. It is not clear at what stage of the negotiations process or to what extent the bookkeeper performs the costing out function. She is involved in the preparation of salary guides, scattergrams, benefit costs, tax resources, salary projections for future years, analysis of payroll from prior years and computation and analysis of all budgetary data that impacts on the Board's position in the labor relations process. It is not clear in what manner or at what stage of the budget process the bookkeeper analyzes budgetary data.

Based upon these duties, I do not agree that the bookkeeper is confidential within the Act. There is no evidence that Murphy is

privy to any of the Board's strategies or proposals before their disclosure to the unions or that she has other direct involvement in the Board's conduct of negotiations. Costing out and assisting in budget analysis does not demonstrate an employee's exposure to sensitive labor relations information. Much of the raw data upon which costing out is performed is available to the public. And, school budget information is public information. Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985) (budget information not specifically relevant to employer's bargaining position does not indicate confidential status).

Accordingly, based upon all of the above, I conclude that Confidential Secretary Claire Shames is excluded from the unit and that the remaining disputed positions should be included. I direct that an election be held to determine whether the employees in the following unit wish to be represented for purposes of collective negotiations over terms and conditions of employment by the Monmouth Regional Education Association:

Included: all secretaries and clerks employed by the Monmouth Regional Board of Education, including the executive secretary to the transportation director, data entry clerk, payroll clerk and bookkeeper.


Excluded: all other employees, all employees represented in other negotiations units, managerial executives, confidential employees, professional employees, custodial and maintenance employees, craft employees, police, firefighters, supervisors within the meaning of the Act, and the confidential secretaries to the superintendent and business administrator/board secretary.

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

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

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: November 10, 1993
Trenton, New Jersey