

D.R. NO. 2002-11

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

In the Matter of

WASHINGTON TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2002-1

WASHINGTON TOWNSHIP EDUCATION ASSOCIATION,

Petitioner.

**SYNOPSIS**

The Director of Representation finds that two new positions, accountant/payroll analyst and accounts payable clerk are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act and cannot be included in an existing unit of all certified personnel and support staff employed by the Board of Education and represented by the WTEA. The Director finds that both employees report directly to the Board administrator who is involved in preparing the Board's collective negotiations proposals and both have met privately with the Administrator and been assigned the responsibility for development of negotiations proposals prior to their disclosure to the Association.

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Appearances:

For the Public Employer  
Destribats, Campbell, DeSantis & Magee, attorneys  
(Dennis M. DeSantis, of counsel)

For the Petitioner  
Bergman & Barrett, attorneys  
(Michael T. Barrett, of counsel)

DECISION

On July 5, 2001, the Washington Township Education Association (Association) filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission) seeking to add the recently created positions of accountant/payroll analyst and accounts payable clerk to its existing collective negotiations unit of all certified personnel and support staff employed by the Washington Township Board of Education (Board).

The Association argues that the two positions perform essentially the same duties as the recently eliminated unit position of bookkeeper. The Association asserts that neither position performs supervisory or confidential duties.

The Board opposes the petition and maintains that the positions are confidential or supervisory and, therefore, should not be included in the unit. The Board claims that both employees will be involved with preparing the Board's negotiations proposals and have attended meetings with the business administrator during which specific negotiations proposals have been discussed.

We have conducted an investigation into the issues raised by the petition. N.J.A.C. 19:11-2.2 and 2.6. An investigatory conference was conducted by the assigned staff agent on August 23, 2001. The parties were asked to supply additional information. All submissions were received by September 26, 2001. The Board filed a written statement of position, supported by the job descriptions for the positions, and certifications from the superintendent and the school business administrator. Because the certifications contain sensitive information concerning the Board's negotiations strategies, the Board has asked that we keep the content of those documents confidential. The Association submitted the parties' current collective negotiations agreement, a job description for the unit bookkeeper position, job descriptions dated March 2001 for the accountant/payroll analyst and accounts payable clerk, and a certification signed by the Association president and grievance chairperson. In correspondence dated March 22, 2002, I advised the parties that I was inclined to find that the accountant/payroll analyst and the accounts payable clerk are confidential employees within the meaning of the New Jersey Employer-Employee Relations

Act, N.J.S.A. 34:13A-1 et seq. (Act), and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon our investigation, I find the following facts:

The Association has a collective negotiations agreement with the Board which expires on June 30, 2002. The recognition clause of the agreement includes: "...all certified personnel and support staff employed by the Board...." The recognition clause specifically excludes support staff designated as confidential employees. The bookkeeper position has been included in the Association's unit for many years.

Washington Township is facing the largest growth in enrollment in the State. In April 1999, Paul Harren was appointed district superintendent. At the end of June 1999, Harren commenced a two-year building program for renovations and additions to several schools in the district. Additionally, from mid-1999 through the fall of 2001 the Superintendent and the business administrator/board secretary developed a proposal for a \$66,000,000 building referendum. The referendum passed in the late fall of 2001.

Also beginning in June 1999 through fall 1999, the district business administrator/board secretary resigned, as did the superintendent's secretary and the payroll clerk in the central office. All claimed that the district's workload was too great. The business administrator was initially replaced by an interim business administrator who held the position only until August

1999. At that time, a permanent business administrator was appointed. The position of payroll clerk was filled temporarily by the employee who currently holds the accountant/payroll analyst position at issue here.

In 1999, during the budgeting process for the 2000-2001 school year, the superintendent and the then business administrator initiated discussions with the Board about the creation of two new business office positions to share the expanding workload in that office. The intent in creating two new positions was to reorganize the business office and allow the business administrator to work on the expansion programs. The business administrator was also involved in providing information on proposals to the Board for collective negotiations which were then in progress with the Association.

In June 2000, the business administrator who had been appointed in August 1999 resigned. A new interim administrator was hired. Once again the need for two new confidential positions was discussed, particularly to assist the business administrator with some of the responsibilities of negotiations.

In March 2001, advertisements were placed for an accountant/payroll analyst. The position was filled around March or April 2001, with the employee who had been serving as the payroll clerk. The Board then sought to fill the newly created position of accounts payable clerk.

In March 2001, the interim business administrator resigned effective April 2001 for health reasons assertedly related to the job. Another interim was appointed.

During its March 2001 search for an accountant/payroll analyst and accounts payable clerk, the Board prepared job descriptions for both positions. Both job descriptions provide that each position reports directly to the business administrator. The March 2001 responsibilities included in the description for the accountant/payroll analyst include: "preparation of cost/benefit analyses for district accounts, assists with preparation of annual budget, assists the business administrator in day-to-day activities for the business office...and, provides guidance to the accounts payable clerk." The accounts payable clerk's March 2001 job description includes numerous payroll and computer oriented responsibilities and requires that the accounts payable clerk assist the accountant/payroll analyst with the payroll function when necessary. There is no reference in either of these job descriptions to preparing or assisting the business administrator with the preparation of negotiations proposals.

The responsibilities of the bookkeeper position overlap to some degree with both of the positions at issue here; however, the accountant/payroll analyst's responsibilities as set forth in the March 2001 job description are broader than those of the bookkeeper. The duties for the bookkeeper, as contained in the March 2001 description, appear to encompass those of the accounts

payable clerk except that the accounts payable clerk assists the newly created position of accountant/payroll analyst.

In May 2001, the Association's president and its grievance chair met with the Superintendent, who told them, in part, that the accountant/payroll analyst would be gathering comparative salary data in preparation for negotiations and that both new positions would provide input into policy recommendations to be made to the Board by the business administrator. There was no discussion of supervisory responsibilities for either of the new positions during the May 2001 meeting.

The accountant/payroll analyst appointed in approximately March or April 2001 participated in the search and interview process for a new, permanent business administrator. That process began in April 2001.

A new business administrator/board secretary, Christopher Mullins, began employment with the district on July 1, 2001.<sup>1/</sup> Mullins remains in the position to date. Beginning shortly after his arrival in July 2001 and prior to August 23, 2001, Mullins met jointly with the accountant/payroll analyst and the accounts payable clerk and discussed at least two specific areas for which the Board will make proposals as part of upcoming collective negotiations with

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<sup>1/</sup> Mullins was hired in approximately May 2001 but could not begin work until July. An interim business administrator was appointed for 60 days prior to Mullins' start. In all, since April 1999 there have been seven business administrators in the district.

the Association when its contract expires. The accountant/payroll analyst, with the assistance of the accounts payable clerk is charged with developing and drafting proposals in those specific areas for review by the business administrator.

On August 28, 2001, the Board revised and adopted modified job descriptions for both positions at issue. The August 28 job descriptions reflect expanded responsibilities for each position which include formulation and assistance to the business administrator in forecasting and analyzing payroll to be used in negotiations, and participation with the business administrator in formulating the Board's negotiations proposals. Additionally, the August 28 job description for the accounts payable clerk calls for that position to assist the accountant/payroll analyst in formulating negotiations proposals.

Unit members have not observed the employees in either of the two disputed positions performing duties other than those previously performed by the bookkeeper position. There is no longer a bookkeeper title in the unit.

Since September 5, 2001, the Superintendent has added at least one other non-confidential secretarial position in his office. That position is included in the unit represented by the Association.

#### ANALYSIS

The Board argues that neither of the two positions should be included in the negotiations unit because both have been, and



will be involved in developing negotiations proposals along with the business administrator for presentation to the Board in upcoming negotiations with the Association. The Board asserts that their involvement in pre-negotiations preparation of proposals establishes that they are confidential employees within the meaning of the Act and, therefore, should remain outside the established unit. Additionally, as to the accountant/payroll analyst, the Board asserts that this position is responsible for supervising the accounts payable clerk and should be statutorily excluded as a supervisor.

The Association contends that neither position performs confidential duties within the meaning of the Act; that the business administrator, not the accountant/payroll analyst, supervises the accounts payable clerk; and that both positions perform work which is essentially the same as, or substantially similar to the work previously performed by the unit position, bookkeeper.

This dispute arose when the Board created an accountant/payroll analyst and an accounts payable clerk position. A clarification of unit petition is used to resolve questions concerning the scope of a collective negotiations unit within the framework of the provisions of the Act, the unit definition stated in either a Commission certification or the parties' recognition article contained in the collective agreement. In Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248, 251 (1977), the Director noted that a clarification of unit petition is appropriate to determine the unit placement of new positions.

The positions at issue were established in early Spring 2001. The Association promptly sought to add the positions to its unit by filing this clarification petition. It did so prior to the execution of a successor collective agreement with the Board. Therefore, this clarification of unit petition is procedurally appropriate and timely.

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

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

The policy of this Commission is to narrowly construe the term confidential employee. Ringwood Bd. of Ed. and Ringwood Ed. Office Personnel Ass'n, P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd NJPER Supp.2d 186 (¶165 1988); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985).

In State of New Jersey, the Commission explained the approach taken in determining whether an employee is confidential.

The Commission stated:

We scrutinize the facts of each case to find for whom each employee works, what [the employee] does, and what [the employee] 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 [were] included in a negotiating unit. [Id. at 510.]

See also River Dell Reg. Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983), req. for rev. den. P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984).

The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and the preparation for these processes. See State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). Particular employees holding support staff positions are often deemed confidential due to their superior's role in the labor relations process and their own performance of administrative support duties which expose them to confidential matters. See Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell; W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971). An employee who performs such tasks will be determined to be confidential within the meaning of the Act.

In New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved the standards articulated in State of New Jersey and explained:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. N.J.S.A. 34:13A-3(g); see also State of New Jersey, supra, 11 NJPER 507 (¶16179 1985) (holding that final determination is '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.').

Obviously, an employee's access to confidential information may be significant in determining whether that employee's functional responsibilities or knowledge make membership in a negotiating unit inappropriate. However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. We entrust to PERC in the first instance the responsibility for making such determinations on a case-by-case basis. [Id. at 358.]

Applying the standards to the facts in this matter, I find that the accountant/payroll analyst and the accounts payable clerk are confidential employees. Both positions report directly to the business administrator who is undisputedly involved in preparing collective negotiations proposals for the upcoming negotiations with the Association. In that context, since approximately August 2001, both employees in these positions have been involved in meetings with the business administrator regarding specific proposals for the Board's discussion and review, prior to the start of negotiations. Therefore, both employees have already been made privy to, and given responsibility for development of negotiations proposals prior to their disclosure to the Association. Attendance at these types of meetings with the business administrator, and performance of duties related to the topics discussed at those meetings, give the

employees in these positions advance knowledge of the Board's negotiations proposals and strategies.<sup>2/</sup>

While the Association representatives attest that unit members have informed them that the only duties they have observed being performed by the employees in these positions are the same or substantially similar to the duties performed by the former bookkeeper, these observations, even if accepted as fact, are insufficient to contradict the additional facts presented by the business administrator that both employees have met with him privately to discuss specific Board pre-negotiations proposals.

Based upon all of the foregoing, I find that if the accountant/payroll analyst and the accounts payable clerk were to be placed into the Association's unit, the Board's ability to maintain confidentiality with regard to the collective negotiations process would be compromised. I further find that in their role as assistants to the business administrator, the employees holding these positions are confidential within the meaning of the Act and, therefore, must remain outside the existing unit. The employees' functional responsibilities and knowledge concerning issues involved in the collective negotiations process make their membership in the negotiations unit incompatible with their official duties. For the

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<sup>2/</sup> The Association calls attention to the differences in the job descriptions of March 2001 and August 2001 for these positions. The discrepancies are noted. However, the operative job description for purposes of this petition is the August 2001 description which was enacted by the Board on August 28, 2001.

reasons set forth above, I find that the accountant/payroll analyst and the accounts payable clerk are confidential employees within the meaning of the Act; therefore, they may not be added to the Association's unit.

ORDER

The petition is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

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Stuart Reichman, Director

DATED: April 5, 2002  
Trenton, New Jersey