

D.R. NO. 2002-13

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

In the Matter of

HIGH BRIDGE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2002-13

HIGH BRIDGE EDUCATION ASSOCIATION,

Employee Representative.

**SYNOPSIS**

The Director of Representation dismisses a clarification of unit petition finding a secretary to the superintendent/middle school principal title performs confidential functions within the meaning of the Act. Inclusion of the title in a broad-based bargaining unit would be incompatible with the title's confidential job duties.

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Appearances:

For the Public Employer  
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys  
(Nicholas Celso, III, of counsel)

For the Employee Representative  
Klausner & Hunter, attorneys  
(Stephen Klausner, of counsel)

DECISION

On October 12, 2001, the High Bridge Education Association (Association) filed a Clarification of Unit Petition with the Public Employment Relations Commission (Commission) seeking to include the secretary to the superintendent/middle school principal in its collective negotiations unit of certificated and non-certificated employees employed by the High Bridge Board of Education (Board). The Board opposes the petition and argues that the secretary 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), and, therefore, should be excluded from the unit.

We have conducted an investigation in accordance with N.J.A.C. 19:11-2.2 and 2.6. An investigatory conference was conducted on December 12, 2001. The parties submitted position statements, additional information and supporting documents by March 8, 2002. By letter dated April 23, 2002, I summarized the parties' positions and accompanying evidence and advised the parties of my intention to deny the Association's petition on the grounds that the title appears to be confidential within the meaning of the Act. I provided the parties an opportunity to respond and forward additional materials by May 3, 2002. Neither party has responded or submitted supplemental material. Therefore, there being no substantial and material factual issues in dispute, the disposition of the petition is properly based on our administrative investigation which has shown the following.

#### FINDINGS OF FACT

The Association and Board are parties to a collective negotiations agreement covering the period July 1, 1999 through June 30, 2002. The recognition clause provides that:

[t]he Board hereby recognizes the Association as the exclusive and sole representative for collective negotiations concerning the terms and conditions of employment for all employees in the titles listed below, whether under contract, on leave or employed in the future: Teacher, School Nurse, Librarian, Guidance Counselor, Secretary, Custodian, Speech and Language Specialist, Psychologist, Aide, Social Worker, Learning Disabilities Teacher/Consultant.

The title at issue does not appear in the collective agreement.

The High Bridge school district is comprised of one elementary school and one middle school serving approximately 480 students. Sixty-three of its 95 employees are teachers. Four are secretaries: one elementary school secretary; one secretary to the business administrator; one secretary to the superintendent; and, one secretary to the superintendent/middle school principal.

Dr. Patricia Ash was appointed superintendent/middle school principal on July 1, 2001. She is responsible for carrying out the dual functions of superintendent and middle school principal. As superintendent, she is a non-voting member of the Board, as well as the district's chief administrative officer to whom all employees report. She makes all personnel recommendations to the Board including hiring, firing, promoting, disciplining and transferring.

The collective agreement between the parties also makes Ash the decision-maker at step three of the employee grievance procedure. Secretaries are subject to this grievance procedure.

Ash's duties also include coordination, leadership of, and participation in, the collective negotiations process. The parties' agreement will expire on June 30, 2002, therefore, preparations for negotiation of a successor agreement began in late September of 2001.

Soon after Ash's appointment as superintendent, it became apparent to her that the circumstances of her dual administrative function necessitated changes to the existing secretarial staffing plan. The superintendent's confidential secretary, Nancy Schaufele, shares a common workspace with Susan Johnson, the middle school

secretary. In fact, these employees are stationed approximately two feet apart from each other in a 12 by 15 foot room adjacent to Ash's office. Ash found the physical arrangement impossible for either secretary to work on matters of which the other is unaware, or for any conversation concerning business that is transpiring in the superintendent's office not to be overheard by both.

On or about August 20, 2001, on Ash's recommendation, the Board created a new title and job description: superintendent/middle school principal secretary to replace the middle school secretary title. Johnson was assigned the new title but her salary and other terms and conditions of employment remained the same.

The revised title appears to add eight (8) new performance responsibilities as follows:

1. Acts as a substitute for the Executive Secretary and performs the duties of the Executive Secretary in her absence.
2. Maintains confidentiality as required and appropriate.
3. Performs all secretarial and confidential work as assigned by the Superintendent/Middle School Principal.
4. Performs the usual office routines and practices associated with a busy yet productive and smoothly-run office.
5. Operates all technology equipment necessary to complete reports and clerical work required in the operation of the office.
6. Maintains a well-organized up-to-date filing system.
7. Types correspondence, notices, reports, and confidential documents.

8. Assists the Executive Secretary with the filing and maintenance of all personnel records.

The remaining responsibilities are the same as the prior middle school secretary responsibilities.

In September of 2001, the Board engaged the services of the Labor Relations Department of the New Jersey School Boards Association. Its representative, Esther R. Straussman, prepared a detailed written analysis of the parties' agreement, which was disseminated to members of the Board. In preparation for negotiations, Ash also developed a detailed written analysis of the contract, which included a variety of topics she sought to address during successor negotiations. That analysis was typed by Nancy Schaufele. On September 24, 2001, Ash met with Straussman for a negotiation strategy session. Ash directed Johnson to type the notes of that session and disseminate them to Board members. The notes, although somewhat cryptic, list a variety of topics and potential negotiations issues which were discussed during the strategy session.

The Board contends that on or about October 1, 2001, Ash directed Johnson to collect documentation of the district's grievance history in support of an analysis of the grievance section of the contract. Johnson denies being directed to do this, denies knowing where grievances are stored, and claims she does not have access to grievance files.

The Board further contends that in October 2001, Ash

directed Johnson to organize data, notes, analysis and contracts from prior negotiations, as well as newly generated material for the upcoming negotiations. Johnson asserts that she was merely directed to delete duplicate copies of documents, that she paid no attention to the contents of the documents, and that in any event, the documents were not related to current negotiations.

On or about November 30, 2001, Johnson prepared a schedule of meetings for the Board's negotiating team. On or about January 3, 2002, Johnson prepared a summary of Ash's notes from a confidential proposal-planning meeting of the Board's negotiating team. On or about January 15, 2002, Johnson prepared a summary of hours worked by teachers in conjunction with the Board's tentative proposal to increase part-time hours to gain benefits. The Board contends that Johnson will continue to perform the foregoing responsibilities and well as similar duties related to the Board's collective negotiations issues.

#### ANALYSIS

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 contained in a Commission certification or set forth in the parties' recognition 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 when there are changed

circumstances such as changes in the duties attendant to a title or position or the creation of a new title or position, as is the circumstance in this case.

I find that the newly created superintendent/middle school principal secretary is a confidential position. 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:

[w]e 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). Employees in clerical positions are often deemed confidential due to their superior's role in the labor relations process and their own performance of clerical support duties which expose them to confidential matters. See W. Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971); Salem Comm Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); River Dell. An employee who performs such tasks will be determined to be confidential within the meaning of the Act.

Access to negotiations and grievance documents through typing and photocopying them and maintaining files containing them may indicate confidential status. See Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd NJPER Supp. 2d 207 (¶182 App. Div. 1989) (secretary who maintained grievance files and had advance knowledge of employer's grievance responses was confidential); River Dell. Thus, 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.]

The Association asserts that Johnson does not perform any functions that make her confidential within the meaning of the Act. The Commission has been cautious in finding confidential status, as such a finding exempts the employee from the protections of the Act. N.J.S.A. 34:13A-5.3. Where such a determination relies upon "speculation or conjecture as to job function," the Commission has found that such circumstances are insufficient to warrant excluding the employees from the unit. Lacey Tp. Bd. of Ed., P.E.R.C. No. 90-38, 15 NJPER 628 (¶20263 1989); Wayne Tp., P.E.R.C. No. 87-82, 13

NJPER 77 (¶18035 1986). The Commission, however, finds confidential status where the duties are clear and their implementation is certain. Tp. of Belleville D.R. No. 92-33, 18 NJPER 335 (¶23148 1992); Commercial Tp., D.R. No. 91-9, 16 NJPER 511 (¶21223 1990).

Applying the facts in this matter to the standards set forth above, I find that the superintendent/middle school principal secretary is a confidential employee within the meaning of the Act. I recognize there have been no finalized collective negotiations since the Board approved the creation of that title and Johnson was appointed to the position. Thus, there has been little opportunity for her to handle materials related to negotiations. Additionally, I recognize there is some dispute over the confidential nature of assignments given to Johnson, specifically the grievance history and organization of data, notes and prior contracts. Moreover, there is nothing confidential about the preparation of the Board negotiating team's meeting schedule.

However, Ash is clearly expected to be an active member of the Board's negotiations team. Ash expects Johnson to continue working with Schaufele typing proposals for negotiations and handling other negotiations memoranda. Johnson has, and will continue to be expected to type confidential memoranda on contract administration issues for the superintendent. She has already had occasion to type the superintendent's analysis of the contract; therefore, she knew the administration's view of those issues prior to their disclosure to employees or the majority representative.


Performance of these types of duties give the superintendent/middle school principal secretary advanced knowledge of the Board's labor relations strategies and, therefore, appears to render the employee confidential within the meaning of the Act. See W. Milford; Salem Comm. Coll; River Dell; Sayreville.

Based upon the totality of the circumstances of this case, if the title were to be placed in the Association's unit, the Board's ability to maintain confidentiality with regard to the collective negotiations process would be compromised. Therefore, I find that the superintendent/middle school principal secretary is a confidential employee within the meaning of the Act and, therefore, should be excluded from the existing unit since the incumbent's functional responsibilities and knowledge of issues involved in the collective negotiations process make membership in the negotiations unit incompatible with her official duties.

ORDER

The Association's petition is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Stuart Reichman, Director

DATED: May 14, 2002  
Trenton, New Jersey