

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

In the Matter of

TOWNSHIP OF PARSIPPANY-TROY HILLS
BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-80-1

EDUCATIONAL SECRETARIES ASSOCIATION
OF PARSIPPANY-TROY HILLS, NJEA,

Employee Organization.

SYNOPSIS

The Director of Representation, in agreement with the Hearing Officer, determines that the secretary to the Assistant Superintendent of Planning and Evaluation is a confidential employee under the New Jersey Employer-Employee Relations Act and directs that the secretary be removed from a negotiations unit comprised of the Board's secretarial staff. The record demonstrates that, as part of her duties, the secretary to the Assistant Superintendent files confidential negotiations proposals prepared for the Board. The Director concludes that the secretary's functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process makes her membership in any appropriate negotiating unit incompatible with her official duties.

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Employee Organization.

Appearances:

For the Public Employer-Petitioner
Dillon, Bitar & Luther, attorneys
(Henry N. Luther, III of counsel and
Myles C. Morrison, III on the brief)

For the Employee Organization
John W. Davis, UniServ Field Representative

DECISION

On July 2, 1979, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Township of Parsippany-Troy Hills Board of Education (the "Board") seeking the removal of the secretary to the Assistant Superintendent of Planning and Evaluation from a collective negotiations unit comprised of secretarial employees represented by the Educational Secretaries Association of Parsippany-

Troy Hills, NJEA (the "Association"). The Board asserts that the above secretary, Ms. Diana Yuhasz, is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, § 3(g).

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Bruce D. Leder on December 14, 1979, at which all parties were given the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Both parties filed post-hearing briefs by February 21, 1980. The Hearing Officer issued his Report and Recommendations on April 8, 1980, a copy of which is attached hereto and made a part hereof. The Association filed exceptions to the Hearing Officer's Report on April 23, 1980. The Board has not filed exceptions to the Report, nor has it filed a reply to the Association's exceptions.

The undersigned has considered the entire record herein including the Hearing Officer's Report and Recommendations, the transcript, the exhibits and the Association's exceptions, and on the basis thereof finds and determines as follows:

1. The Township of Parsippany-Troy Hills Board of Education is a public employer within the meaning of the Act, is the employer of the employees who are the subject of the Petition, and is subject to the provisions of the Act.

2. The Educational Secretaries Association of Parsippany-Troy Hills is an employee representative within the meaning

of the Act, and is subject to its provisions.

3. The Board has filed a Petition for Clarification of Unit seeking a determination that the secretary to the Assistant Superintendent of Planning and Evaluation is a confidential employee under the Act. The Association disputes this contention. Accordingly, there is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for determination.

The Hearing Officer recommended that the secretary be deemed a confidential employee and removed from the Association's collective negotiations unit. The Hearing Officer based his recommendation upon factual findings which, in part, indicated that the Assistant Superintendent to whom the secretary was assigned, was intimately involved in the collective negotiations processes. The Hearing Officer reasoned that Ms. Yuhasz, through her filing responsibilities, had access to negotiations proposals and personnel files which included information related to grievances.

The Association excepts to the Hearing Officer's finding that the Assistant Superintendent of Planning and Evaluation is intimately involved in the collective negotiations process. The Association claims that the evidence does not demonstrate that the Assistant Superintendent was involved in the discussion of negotiations proposals as part of a five member team of administrators and argues that the Assistant Superintendent's secretary's access to personnel folders does not establish this individual as a confidential employee.

The undersigned's review of the record herein confirms the findings of the Hearing Officer, and his recommendation that the secretary is a confidential employee is adopted.

The record reveals that the Board's Director of Employee Relations utilizes a five member administrative team to prepare and review negotiations proposals. The Assistant Superintendent of Planning and Evaluation participates on this team. The Director of Employee Relations testified that he has forwarded written negotiations proposals to the Assistant Superintendent in confidential envelopes. The Assistant Superintendent, after digesting these materials, has required his secretary to file these materials, which have been opened, in his negotiations files.

The undersigned is satisfied that this activity is sufficient to establish the involvement of the Assistant Superintendent's secretary in a functional responsibility or to establish knowledge in connection with the issues involved in the collective negotiations process.

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

"Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

The status of secretarial employees who work for management level employees involved in the labor relations process is an issue

which the Commission has addressed even before the implementation of the statutory definition in § 3(g). In re Bd. of Ed. of the Tp. of West Milford, P.E.R.C. No. 56 (1971). The Commission stated therein:

These three secretaries work for and and with those at a management level who share with the Board both responsibility for personnel and labor relations policies and by virtue of that relationship these three secretaries have, in the course of their normal duties, access to and knowledge of such policy information.

The Association herein argues:

All secretaries file. All secretaries have access to personnel folders. Mere access is not the criteria. The standard applied must meet the direct test of relationship. That relationship must link directly. The accessibility of information and its direct bearing on labor relations and negotiations. [sic] This has not in any fashion been established.

The Association has also cited the Commission statement in West Milford, supra:

It may be that the lowest clerk would, as part of that job, record or assemble data which the Board may consider confidential for a variety of reasons and which may later become a factor in a policy decision, but there is no reason why the performance of that collection function should disqualify one from the possibility of representation. Mere knowledge of this raw information acquired in this process would not ordinarily tend to compromise management's

right to confidentiality in matters of policy affecting negotiations or contract administration.
(P.E.R.C. No. 56 at Page 3.)

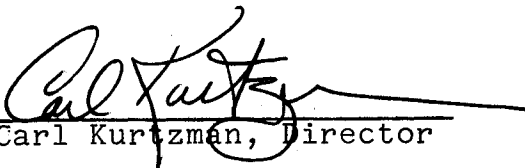
The instant matter, however, does not involve an employee whose functional responsibility is limited to the assembly of raw data which may be later used by those responsible for formulating negotiations proposals, nor does this matter deal with the lowest level clerk. Moreover, the record herein establishes that the secretary to the Assistant Superintendent of Planning and Evaluation has access to and a reasonably certain potential for knowledge of negotiations proposals and personnel files which form the basis for management policy affecting negotiations or contract administration.

The portion of the West Milford decision cited by the Association related to the claim by the Board therein that each and every one of the employees in the 19 office personnel positions and 16 building aide positions in the school district were confidential employees. The secretary to the Assistant Superintendent of Planning and Evaluation herein is employed in a manner which more closely resembles the employment of those individuals who were found to be confidential in the West Milford decision. ^{1/}

1/ Ms. Yuhasz is employed at a working location which houses a number of the highest ranking personnel of the Board. Although Ms. Yuhasz is specifically assigned to the Assistant Superintendent, she has also, in the course of her responsibilities, occasionally worked for these other administrators, whose work is normally performed by confidential secretaries.

Accordingly, for the reasons stated above, the undersigned determines that the secretary to the Assistant Superintendent of Planning and Evaluation is an individual whose functional responsibility or 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. Therefore, the undersigned finds the above employee a confidential employee within the intendment of the Act and directs that the secretary be removed from the secretarial unit immediately.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: May 12, 1980
Trenton, New Jersey

STATE OF NEW JERSEY
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BOARD OF EDUCATION,

Petitioner-Public Employer,

-and-

Docket No. CU-80-1

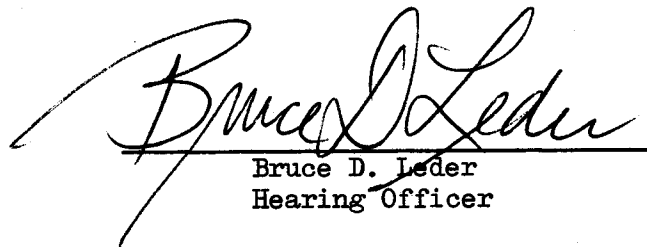
EDUCATIONAL SECRETARIES ASSOCIATION OF
PARSIPPANY-TROY HILLS, NJEA,

Employee Organization.

ERRATA

The Hearing Officer's Report and Recommendations in the above-titled matter issued April 8, 1980, is hereby corrected as follows:

<u>PAGE</u>	<u>LINE</u>	<u>DELETE</u>	<u>SUBSTITUTE</u>
1	22	Certification	Clarification


Bruce D. Leder
Hearing Officer

DATED: April 28, 1980
Trenton, New Jersey

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

In the Matter of

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Docket No. CU-80-1

EDUCATIONAL SECRETARIES ASSOCIATION
OF PARSIPPANY-TROY HILLS, NJEA,

Employee Organization.

SYNOPSIS

A Commission Hearing Officer, in a clarification of unit proceeding, recommends that the Administrative Secretary for the Planning and Evaluation Office be found to be a confidential employee within the meaning of the Act and inappropriate for inclusion in any negotiations unit.

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

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Appearances:

For the Petitioner

Dillon, Bitar & Luther, Esqs.
(Henry N. Luther, III, of Counsel)
(Myles C. Morrision, III, on the Brief)

For the Employee Organization

John W. Davis, UniServ Field Representative

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On July 2, 1979, a Petition for Certification of Unit was filed with the Public Employment Relations Commission (the "Commission") by the Township of ParsIPPany-Troy Hills Board of Education (the "Board") seeking to exclude a certain employee from the collective negotiations unit currently represented by the Educational Secretaries Association of ParsIPPany-Troy Hills, NJEA (the "Association"). ^{1/} Specifically, the Board seeks to exclude the Administrative Secretary for the Planning and Evaluation Office from the Association's unit as a confidential employee within the meaning of N.J.S.A. 34:13A-3(g).

Pursuant to a Notice of Hearing, a hearing was held before Hearing Officer

^{1/} See Article I Recognition of the Agreement between the parties for the period July 1, 1978 to June 30, 1980, Exhibit J-1.

Bruce D. Leder on December 14, 1979, in Trenton, New Jersey, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. All briefs were filed by February 21, 1980.

Upon the entire record in this matter, the Hearing Officer finds:

(1) The Township of Parsippany-Troy Hills Board of Education is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employee involved in this matter.

(2) The Educational Secretaries Association of Parsippany-Troy Hills is an employee representative within the meaning of the Act, is subject to its provisions and currently represents in its unit the employee who is the subject of this matter.

(3) The Board filed the instant Petition seeking to exclude the above-named secretarial title, currently occupied by Diana Yuhasz, from the existing unit. The Board argues that Ms. Yuhasz performs confidential duties which make her inclusion in the unit inappropriate.

(4) The Association alleges that Ms. Yuhasz is not a confidential employee.

(5) Accordingly, there is a question concerning the composition of the collective negotiations unit, and the matter is properly before the Hearing Officer.

BACKGROUND

The Association currently represents a unit of more than 80 secretaries. Ms. Yuhasz, the subject of this matter, holds the unit position of Administrative Secretary to the Planning and Evaluation Office. She functions as the secretary to the Assistant Superintendent of Planning and Evaluation, Dr. Michael Talty ^{2/} and Dr. Talty's Administrative Assistant, Mr. Sullivan.

^{2/} The Assistant Superintendent of Planning and Evaluation will soon be changed to Assistant Superintendent of Curriculum and Instruction.

There are currently three confidential secretaries employed by the Board. One secretary works for the Superintendent, another for the Business Administrator and the third for the Director of Employee Relations and the Assistant Superintendent of Administration. ^{3/} The secretary to the Director of Employee Relations and Assistant Superintendent of Administration and the disputed title, Secretary to Assistant Superintendent of Planning and Evaluation, share an office which also contains the personnel files for most of the employees of the Board.

Prior to July 1, 1979, all negotiations were handled by a private law firm. Subsequently, the Board has hired a Director of Employee Relations, who, in addition to other duties, is the chief spokesperson for the Board in negotiations. Contrary to the past, this Director has utilized a team to prepare for negotiations. Members of that team are the Superintendent, the Assistant Superintendent of Planning and Evaluation, the Assistant Superintendent of Administration (the only Board employee who played an active part in the negotiations process before July 1, 1979), the Business Administrator and the Director of Employee Relations. This team meets once per week and is responsible for the development of the position the Board will take at the negotiations with the five associations which represent Board employees.

POSITION OF PARTIES

The Board maintains that the Assistant Superintendent of Planning and Evaluation is significantly involved in the collective negotiations process and that Ms. Yuhasz, his secretary, has access to confidential material in the normal course of her work performance. In addition, the Board alleges that Ms. Yuhasz performs confidential work for other Board administrators, namely the Superintendent, the Assistant Superintendent for Administration and the Director of Employee Relations.

^{3/} The Assistant Superintendent of Administration will soon be changed to Assistant Superintendent of Personnel

Also, simply by the fact of her physical location, Ms. Yuhasz has access to confidential information.

On the other hand, the Association contends that the record does not support a finding that Ms. Yuhasz is a confidential employee. The Association argues that the Assistant Superintendent for Planning and Evaluation is not directly involved in the collective negotiations, and therefore his secretary is not performing confidential work.

FRAMEWORK FOR ANALYSIS

The Commission is charged with the responsibility of determining the confidential status of public employees pursuant to N.J.S.A. 34:13A-3(g), the definition of a confidential employee. Thus, in reviewing the record herein, the Hearing Officer must consider whether or not Ms. Yuhasz's actual job duties and functions permit her access to or to have knowledge of issues involved in the collective negotiations process so as to make her membership in the existing unit incompatible with her existing duties.

A number of factors are material in making such a determination. Where the confidential status of a clerical employee is in dispute, the involvement in the collective negotiations process of the individual or individuals to which the disputed employee is assigned must be examined. ^{4/} If it is established that such individual performs managerial or confidential functions, then the inquiry must be made into the nature of the duties which his or her secretary performs. If the clerical types recommendations regarding negotiations, disposition of grievances, budgetary allocations, or personnel matters, then such employee may be classified as confidential. Other indicia which are considered are whether or not the clerical types the minutes of private Board meetings, attends such meetings, opens confidential correspondence or has access to files contain-

^{4/} In re Dover Township, D.R. No. 79-17, 5 NJPER 6 (¶ 10040 1979); In re Cranford Board of Education, D.R. No. 78-20, 3 NJPER 352 (1977).

ing confidential material.

DISCUSSION

A thorough review of the records reveals that the Assistant Superintendent of Planning and Evaluation is intimately involved in the collective negotiations process, and his involvement will be increasing in the future. The Assistant Superintendent is one of five members of the administrative team. One function of this group in its weekly meeting, is to discuss and analyze collective negotiations proposals. The Assistant Superintendent does not attend actual negotiations sessions. Although, not part of any step in a formal grievance process, the Assistant Superintendent of Planning and Evaluation has played some role in the resolution of grievances. ^{5/}

At this point, it is important to highlight that the Board has changed its method of operation with respect to the collective negotiations process. Prior to July 1, 1979, these matters were handled by a private law firm. Since then, this work is being done in-house under the direction of the Director of Employee Relations. While previously he was not involved, the Assistant Superintendent of Planning and Evaluation is now directly involved in the preparation of negotiations proposals. Furthermore, the Director of Employee Relations testified that more grievance administration will also be handled in-house rather than by outside counsel. ^{6/}

Having met the first prong of the test, the actual duties and functions of Ms. Yuhasz must be examined. Concerning her typing duties, Ms. Yuhasz has not typed any negotiation proposals ^{7/} nor has she typed any minutes of the administrative team meetings. ^{8/} In fact, most typing is done in the work processing center. ^{9/}

^{5/} See Exhibits Pl-A through Pl-D.

^{6/} Tr. p. 28.

^{7/} Tr. p. 40.

^{8/} Tr. p. 43. The Director of Employee Relations testified that regular minutes of these meetings are not taken.

^{9/} Tr. p. 69.

On the other hand, Ms. Yuhasz does have access to some sensitive information. She does all the filing in the personal files of the Assistant Superintendent of Planning and Evaluation and also has access and does filing in personnel files of most Board employees. ^{10/} While she does not open mail marked confidential, she does file that correspondence after it is opened by the Assistant Superintendent. ^{11/}

Ms. Yuhasz is also directly involved in certain budgetary affairs. She is responsible for the application for state aid, ^{12/} administers grant programs, ^{13/} and has access to monthly budget computer print-outs. ^{14/}

The evidence in the record irrefutably establishes that Ms. Yuhasz is regularly assigned to an individual who has an integral role in the formulation and implementation of management policies in the area of labor relations. ^{15/} The testimony reveals that, through filing duties and through direct involvement, she has (1) access to various financial records, (2) access to negotiations proposals, and (3) access to personnel files which may include information related to grievances.

After a review of recent decisions concerning confidential employees, ^{16/} the undersigned finds that these job duties support the conclusion that Ms. Yuhasz, Administrative Secretary for the Planning and Evaluation Office, is a confidential employee and should be excluded from the existing unit represented by the ~~Educational Secretaries~~ Association of Parsippany-Troy Hills, N.J.E.A.

^{10/} Tr. p. 60.

^{11/} Ms. Yuhasz testified that with respect to some recent negotiations proposals, she gave them to the Assistant Superintendent unopened and then received the opened proposals back to be filed. Tr. pp. 58, 66.

^{12/} Tr. p. 62.

^{13/} Tr. p. 61.

^{14/} Tr. p. 75.

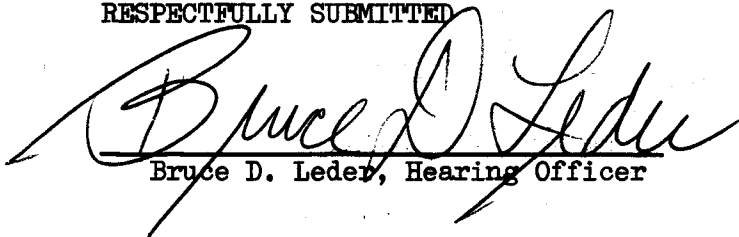
^{15/} This role will be increased in the future due to the change from the title Assistant Superintendent of Planning and Evaluation to the title of Assistant Superintendent of Curriculum and Instruction. Tr. pp 20-21 and pp. 52-53.

^{16/} In re Township of Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979); In re Board of Education of the City of Rahway, D.R. No. 80-12, 5 NJPER 506 (¶ 10261 1979).

RECOMMENDATION

For the reasons set forth herein, the undersigned Hearing Officer recommends that the Administrative Secretary for the Planning and Evaluation Office be found to be a confidential employee within the meaning of the Act and therefore inappropriate for inclusion in any negotiations unit.

RESPECTFULLY SUBMITTED


Bruce D. Leder, Hearing Officer

DATED: April 8, 1980
Trenton, New Jersey