E.D. NO. 76-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD BOARD OF EDUCATION,
Public Employer-Petitioner,

-and- Docket No. CU-190

BLOOMFIELD EDUCATIONAL SECRETARIES ASSOCIATION,
Employee Organization.

SYNOPSIS

The Executive Director, agreeing with the conclusions of the Hearing Officer that the secretaries to the Superintendent, the Board Secretary/Business Administrator, and the Assistant Board Secretary/Director of Buildings and Grounds are "confidential employees" as defined in the Act, dismisses exceptions of the Association and excludes those three secretaries from the unit represented by the Association.

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BLOOMFIELD EDUCATIONAL SECRETARIES ASSOCIATION,
Employee Organization.

Appearances:
For the Petitioner, Metzler Associates, by Raymond Cassetta.

For the Employee Organization, New Jersey Education Association, by John A. Thornton.

DECISION

Hearing Officer Gerald Clendenny's Report and Recommendation was served upon the parties March 8, 1976. The Report (H.O. No. 76-9) is attached hereto and made a part hereof. Pursuant to an approved request for an extension of time within which to file exceptions, timely exceptions were filed by the Bloomfield Educational Secretaries Association (the "Association") on March 29, 1976. The Bloomfield Board of Education (the "Board") by letter dated April 8, 1976 indicated that it did not intend to file exceptions and urged adoption of the Hearing Officer's Report and Recommendations.

The undersigned has considered the entire record herein as specified in N.J.A.C. 19:14A-4.1(c) and, on the basis of the facts in this case, finds:

1. The Bloomfield Board of Education is a public employer within the meaning of the New Jersey Employer-Employee

Relations Act, as amended, and is subject to its provisions.

2. The Bloomfield Educational Secretaries Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. There is a dispute regarding the continued inclusion of three employees in the negotiating unit which is represented by the Association. The Board contends that the incumbents of the three positions are "confidential employees" as defined in the Act and, therefore, ineligible for representation by the Association. The Association disputes this claim. Accordingly, there is a question regarding the composition of the negotiations unit and the matter is appropriately before the undersigned for determination.

4. The Hearing Officer, based upon the record evidence, concluded that the three disputed titles - secretary to the Superintendent, secretary to the Board Secretary/Business Administrator, and secretary to the Assistant Board Secretary/Director of Buildings and Grounds - are "confidential employees" as that term is defined in the Act [1/] and, therefore, that they should be excluded from the unit represented by the Association.

The Hearing Officer described the administrative structure of the school district. Of significance in this

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1/ N.J.S.A. 34:13A-3(g) contains the following definition: "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiations unit incomptaible with their official duties."

proceeding, according to the Association, is the fact that there are two so-called executive assistants, one of whom works in the Superintendent's office and one of whom works in the Business Office which is under the supervision of the Board Secretary. The Association's basic contention is that these two individuals could perform any confidential duties which need to be performed. However, this argument is rejected. As the Commission noted in In re State of New Jersey, P.E.R.C. No. 50 (1971), unit determination is not an appropriate vehicle for reforming the structure or functions of employers.

The Hearing Officer found that the Superintendent, the Board Secretary/Business Administrator, and the Assistant Board Secretary/Director of Buildings and Grounds all have responsibilities for and take part in the negotiations process. He found that these three individuals obtain, digest and present raw material andproposals relating to negotiations. Thus, he concluded that the secretaries of these three individuals fall within the statutory definition of "confidential employee" in that they have both knowledge and functional responsibilities in connection with the issues involved in the negotiations process, making their membership in an appropriate unit incompatible with their official duties.

The Association's exceptions have been carefully considered by the undersigned. Exception 1 relates to a statement by the Hearing Officer that the administrative structure of the

district is "unusual." This statement by the Hearing Officer is not germane to the issue of whether the three disputed individuals are confidential employees and his conclusion is not based upon this statement.

Exception 2 relates to the finding of the Hearing Officer that the Superintendent, the Board Secretary and the Assistant Board Secretary are involved in negotiations and, particularly, in negotiations with the instant unit. While the undersigned does not read the statutory definition of "confidential employee" as being limited to functional responsibilities or knowledge in connection with issues involved vis-a-vis the unit in which the disputed employees seek to be or to remain represented in, nevertheless the uncontroverted testimony of the Superintendent, the Board Secretary and the Assistant Board Secretary is that they are all involved in the negotiations process not only with some units of employees but specifically with the Bloomfield Educational Secretaries Association.

Exception 3 concerns the statement by the Hearing Officer that the two executive assistants are not included in the existing unit. The Association claims that only one has been excluded by agreement. It is noted that the Association's 1974-75 contract with the Board does list those two titles on page 10, Office Personnel-Classification Assignments, of the contract (Exhibit C-5 in evidence). Salaries for those titles are apparently not included. However, this is not

relevant to the instant proceeding. At issue is the status of the three secretaries, not the two executive assistants.

Exception 4 is that the Hearing Officer refers to the Association's testimony but not that of the Board as "contentions". A reading of the Report and the transcript reveals that the Hearing Officer appropriately used the word "contention" to describe claims or arguments -- and the term is applied to both the Board as well as the Association (see page 3, line 2) -- as opposed to direct and uncontroverted testimony of sworn witnesses.

Exception 5 concerns statements by the Hearing Officer relating to supervisory duties of the executive assistants as well as other secretaries. Again, at issue here is the status of the three secretaries as "confidential employees" and this case does not turn upon anyone's supervisory status or functions.

Exception 6 is that the Association takes exception to the "testimony which relates that the secretarial positions in question are charged with the responsibility of typing and communicating information which is directly related to the collective bargaining process." However, as the Association states, this was the sworn testimony. It was not refuted or contradicted by contrary testimony. The Association did not elicit testimony from any of the three secretaries to place in question the sworn testimony of the Superintendent, the Board

Secretary, or the Assistant Board Secretary.

Finally, the Association excepts to the Hearing Officer's alleged statement that the "individuals themselves desire exclusion." The statement of the Hearing Officer was that they "feel uncomfortable with their inclusion in the unit, and recognize the conflict which the Act demands be eliminated." As stated by the Hearing Officer, the desires of the employees is not controlling. Nevertheless, the Hearing Officer's statement is supported by sworn and uncontroverted testimony.

Each of the exceptions of the Association is found to be without merit and each is, accordingly, dismissed.

5. The secretary to the Superintendent, the secretary to the Board Secretary/Business Administrator, and the secretary to the Assistant Board Secretary/Director of Buildings and Grounds are all found to be confidential employees as defined in the Act. Accordingly, the unit shall be and hereby is clarified to exclude those confidential employees from the negotiations unit represented by the Bloomfield Educational Secretaries Association.

BY ORDER OF THE EXECUTIVE DIRECTOR

Jeffrey B. Tener

DATED: Trenton, New Jersey
May 28, 1976

H.O. NO. 76-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD BOARD OF EDUCATION,
Public Employer,

-and-

Docket No. CU-190

BLOOMFIELD EDUCATIONAL SECRETARIES ASSOCIATION
Employee Organization.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on May 23, 1975, by the Bloomfield Board of Education (hereinafter the "Board"), seeking a clarification of the unit represented by the Bloomfield Educational Secretaries Association, affiliated with the New Jersey Education Association (hereinafter the "Association"). Pursuant to a notice of hearing dated July 10, 1975, a hearing was held before the undersigned Hearing Officer on August 26, 1975, in Newark, New Jersey. A second session was held on September 16, 1975, in Bloomfield, New Jersey. At both sessions all parties were given an opportunity to examine and cross examine witnesses, to present evidence and to argue orally. Neither party filed a brief in this matter although afforded the opportunity to do so. Upon the entire record in the proceeding, the Hearing Officer finds:

1. The Board is a Public Employer within the meaning of the Act and is subject to the provisions thereof.
2. The Association is an Employee Representative within the meaning of the Act and is subject to the provisions thereof.
3. The Board and the Association disagree as to the continued inclusion of certain secretarial personnel in the existing unit. Therefore, there is a question concerning representation and this matter is appropriately before the Hearing Officer for this Report and Recommendations.
4. The sole issue to be determined in this proceeding is whether or not three secretarial positions now included in the existing unit are confidential positions. If they are found to be confidential within the meaning of the Act, the positions shall be excluded since, confidential employees are specifically excluded from the coverage of the Act.

In order for the undersigned to make a determination herein, it is necessary, due to the somewhat unusual administrative structure of the district, to examine not only the secretarial positions in question, but also the overall structure of the District and the position of Executive Assistant.

District Administrative Structure

Robert E. Morris, the Superintendent of Schools, testified as to the administrative structure of the Bloomfield Schools. There are five administrative positions at the Board level: the Superintendent, the Board Secretary/Business Administrator, and the Assistant Board Secretary and Director of Buildings and Grounds, and two Assistant Superintendents.[1/] While all five of the administrators have some involvement in labor negotiations, the evidence indicates that three, the Superintendent, the Board Secretary/Business Administrator and the Assistant Board Secretary/Director of Buildings and Grounds are involved on a more direct level than the two Assistant Superintendents.

In the Superintendent's office there is one Executive Assistant and one secretary. In the Board Secretary's office there is one Executive Assistant, one secretary to the Board secretary, one secretary to the Assistant Board Secretary, and a number of secretaries in the business office.[2/]

Executive Assistants

As mentioned above, there are two Executive Assistants in the Administrative Structure.[3/] These employees, while listed in the current contract are presently excluded from the unit.[4/] The Association contends, inter alia, that these positions

1/ Tr. September 16, 1975, p.5
2/ Board Exhibit - 1
3/ Commission Exhibit 5, p.10
4/ Tr. September 16, 1975, pp. 17-18; pp. 44-45

are basically secretarial in nature and should be utilized for any confidential purposes. The Board, on the other hand, contends that these positions are managerial in nature, not secretarial, and, accordingly, the secretarial positions in question herein meet the requirements of the Act as it pertains to confidential employees.

The Secretarial unit was recognized as employee representative on or about July 1, 1974, to represent "...those persons on the office personnel salary guide who are under contract to the Bloomfield Board of Education for the school year 1974-1975."[5/]

Mr. Morris testified as to the duties and responsibilities of the Executive Assistant in the Superintendent's Office and it is set out at length in the record.[6/] These duties include responsibility to deal with certification matters concerning faculty members; control and processing of transcripts of faculty members for use of determination of statistical and other reports for use of the Board, the State and the County. Additionally, this position involves making work decisions which "...really require a knowledge of the school system."[7/] There was further testimony that the Executive Assistant's duties are performed in other districts by administrative assistants or Board Secretaries.[8/]

There is also a supervisory function in the position. The Executive assistant in the Superintendent's Office shares supervision of the Secretary in that office with the Superintendent;[9/] while the Executive Assistant in the Board Secretary/Business Administrator's/office, functions as an "office manager" of that particular office.[10/]

5/ Commission exhibit 5, p.2
6/ Tr., September 16, 1975, pp. 7-8
7/ ID
8/ Tr., September 16, 1975, p.9
9/ Tr., September 16, 1975, p.10
10/ Tr., September 16, 1975, p.57

As such the Executive Assistant in the Board Secretary's office has a supervisory and directory responsibility over six secretarial positions in that office,[11] as well as a purchasing, accounting, and clerical function.[12] This Executive Assistant does not, however, have any supervisory role over the Secretary to the Board Secretary or the Secretary to the Assistant Board Secretary.[13]

From an overall examination of the record, it is clear to the undersigned that the role of the Executive Assistant in the Bloomfield System is one which differs considerably from that of a secretary. Notwithstanding the supervisory responsibilities discussed above, the discretionary function of the position indicates an occupation more closely akin to a managerial or administrative role than a secretarial/clerical role. Certainly these positions have confidential qualities inherent in their make-up; however, the contention of the Association that these positions are already excluded on the basis of confidentiality and should function as the sole confidential employees in the district, is not supported by the weight of the evidence and overlooks the make-up of the position. Having reached that conclusion, it is now necessary to examine the three titles sought to be excluded.

Secretarial positions:

N.J.S.A. 34:13A-3(g) defines confidential employees as "... (those) employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate unit incompatible with their official duties." N.J.S.A. 34:13A-5.3(7) specifically excludes such employees from the coverage of the Act, together with managerial executives and other persons. The issue before the undersigned is whether or not, having

11/ Board Exhibit - 1
12/ Tr., September 16, 1975, p. 56
13/ Tr., September 16, 1975, p. 57, Board Exhibit - 1

previously dealt with the position of Executive Assistant, the secretarial positions in question are confidential within the meaning of the Act. For the reasons set out below, the undersigned finds the Secretary in the Superintendent's office, the Secretary to the Board Secretary/Business Administrator and the Secretary to the Assistant Board Secretary/Director of Buildings and Grounds are all confidential employees within the meaning of the Act and should be excluded from the existing unit.

The issue of confidentiality of employees has been dealt with at length by the Executive Director and by the Commission.[14/] The legislature, in its most recent amendment[15/] to the Act, included the definition and exclusion pointed out above, and it is with that legislative mandate in mind that the undersigned must come to a determination herein.

The Superintendent of Schools, the Board Secretary/Business Administrator and the Assistant Board Secretary/Director of Buildings and Grounds each have responsibilities for, and take part in the collective negotiations process. The record clearly indicates that, notwithstanding the fact that a labor relations consulting firm has recently been hired to assist the Board,[16/] the three titles mentioned above are positions which clearly are involved in the collective negotiations process. Accordingly, it certainly follows that the secretarial personnel who work for them are in contact with "knowledge in connection with the issues involved in the collective negotiations process (that) would make their membership in any appropriate unit incompatible with official duties."[17/]

The Association contends that since there are two excluded persons within the school system at present, that this additional exclusion is unnecessary. The evidence, however, indicates that the Executive Assistant's positions are not primarily clerical in nature, but rather managerial and administrative. In fact the Executive

14/ See, eg. Plainfield Board of Education, E.D. No.1; Board of Education of West Milford, PERC 56

15/ N.J.S.A. 34:13 -5.3(7)

16/ Metzler Associates was hired by the Board on a consulting basis and assists in all labor matters within the school district

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

Assistant in the Superintendent's office shares the secretary in that office with the superintendent for general clerical matters. The Executive Assistant in the other office is "office manager", and is not included, apparently, in the collective negotiation process. However, the secretaries to the Board Secretary and the Assistant Board Secretary clearly are.

The Association contends that the use of the consulting firm, Metzler Associates, obviates the need for confidential employees since Metzler does all of the necessary background preparation as well as negotiations. The record shows on the contrary, that the raw material is obtained, digested and presented to Metzler, by the Board employees so charged, and that proposals are made as a cooperative venture.[18/] Accordingly, the secretaries in question have not only access to that information, but are charged with the responsibility of typing and communicating it.[19/] As the Executive Director in the Plainfield Board of Education[20/] case said:

> Similarily, secretarial employees who act in a confidential capacity to a member of management's team who is involved in the formulation of labor relation policy and who is privy to information concerning such matters would have the same conflict of interest (as the management employees).

A final note should be made at this point in the discussion and that is, the desires of the affected employees themselves. While not being a sole determination, they themselves feel uncomfortable with their inclusion in the unit, and recognize the conflict which the Act demands be eliminated.[21/]

For all of the reasons, therefore, cited above, the undersigned recommends that the three secretarial positions in question be excluded from the unit presently represented by the Association.

RESPECTFULLY SUBMITTED

Gerald Clendenny
Assistant to Executive Director

DATED: Trenton, New Jersey
December 29, 1975

18/ Tr., September 16, 1975, at p. 18 see also Tr. p. 16
19/ Tr., September 16, 1975, at p. 13
20/ E.D. No.1 at p. 3
21/ Tr., September 16, 1975, at pp. 82-83