

D.R. NO. 91-8

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

In the Matter of

OAKLAND BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-90-72

OAKLAND EDUCATIONAL SECRETARIES
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation determines that the Assistant Secretary to the Superintendent has access to and knowledge of confidential labor relations material and is a confidential employee within the meaning of the Act. This position is excluded from the existing negotiations unit immediately.

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Appearances:

For the Public Employer
Fogarty & Hara, attorneys
(Jane Gallina Mecca, of counsel)

For the Employee Representative
New Jersey Education Association
(John Biondi, Field Rep.)

DECISION

The Oakland Board of Education ("Board") filed a Petition for Clarification of Unit on May 14, 1990 seeking to remove the position of Assistant Secretary to the Superintendent from an existing negotiations unit of 15 educational secretaries. The Board asserts that this position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g) ("Act") and should be excluded from the unit.

The Oakland Educational Secretaries Association ("Association") has been the majority representative of the Board's secretaries for approximately 20 years. The current collective negotiations agreement runs from July 1, 1989 - June 30, 1992. The

Association opposes removing the position from the unit, claiming that the employee in the position does not perform confidential duties within the meaning of the Act. The Association questions the Board's need to have a third confidential secretary^{1/} in light of what the Association describes as declining staff employment, fewer negotiations units, longer contracts, and minimal grievances. Further, the Association alleges that the Board's true motivation for seeking the removal of the position is to unilaterally grant an additional raise to an individual who was not satisfied with the raise received in the negotiated contract.^{2/}

We conducted an administrative investigation into the issues raised by this petition. There were no substantial and material facts in dispute which warranted a hearing. N.J.A.C. 19:11-2.2 and 2.6. The following facts appear.

Theresa Martens is the Assistant Secretary to the Superintendent. She shares an office with a confidential employee, Paula Marsenison, the Secretary to the Superintendent. Both Martens and Marsenison report to the Superintendent of Schools, Lawrence Ksanznak. Working one office away is the other confidential employee, Arlene Pampeno, the Secretary to the Board

^{1/} The Board's confidential secretaries are the Secretary to the Superintendent and the Secretary to the Board Secretary/Business Administrator.

^{2/} It is noted that the Association claims this individual was on its negotiating team and that no unfair practice proceedings have been initiated by the Association regarding their objections to the removal of the position from the unit.

Secretary/Business Administrator. Pampeno reports to Board Secretary/Business Administrator Frank Buono.

Superintendent Ksanznak is the school district's chief executive officer and, although not a member of the Board's negotiating team, serves as a negotiating resource person to the Board's attorney, the Board, and Buono. He reviews and comments on proposals, scattergrams and negotiations status reports. He participates in grievance administration concerning all negotiations units,^{3/} and hears grievances at the second step of the grievance procedure in the secretarial contract. Grievance and personnel files are maintained in locked file cabinets accessible only to him and his two secretaries.^{4/} Information regarding negotiations and grievances is frequently exchanged through the mail between Ksanznak, Buono and the Board's attorney. Ksanznak also distributes confidential information to Board members in regularly mailed Weekend Reading packets.

Board Secretary/Business Administrator Buono is the school district's financial officer and manages its budget. He is a member of the Board's negotiating team for bargaining with the custodial and cafeteria units and is a resource person during negotiations

^{3/} The Board had contracts with five negotiations units until May 1990, when the cafeteria unit was eliminated through sub-contracting. Four units remain; three are NJEA affiliates. Recent negotiations concluded in October 1989 and will resume in 1991 for successor contracts.

^{4/} There are currently three pending grievances and seven grievances were resolved in 1989.

with other units. He has developed salary scattergrams, proposals for salary increases and negotiations status reports. His negotiations material is kept in a locked file cabinet in his office accessible only to him and his secretary. He is a step in the grievance procedures for certain units and prepares responses to grievances when necessary. He also takes the minutes at all sessions of the Board including regular, special, work and executive sessions.

Martens, the employee in dispute, has been employed as the Assistant Secretary to the Superintendent since August 1988. Her position has been included in the educational secretaries negotiations unit for a number of years. It is the Board's position that circumstances have changed in the Office of the Superintendent and now Martens' functional responsibilities are confidential, making her continued inclusion in the negotiations unit inappropriate. In April 1990, the Board modified her job description to reflect duties she had been performing and to include some new duties.^{5/}

Martens maintains all general office files and the personnel files pertaining to Board employees. She tracks attendance including sick, personal, vacation and unpaid leave days. When disputes arise over these issues, she works with Ksanznak and Buono and knows management's decision before the

^{5/} Martens' affidavit describes her job duties and sets forth her job description.

concerned employee is notified.^{6/} Martens creates and maintains separate files for grievances and all litigation involving the Board. She reviews and copies documents, if necessary, for inclusion in appropriate files. She has physically handled grievance decisions from the Board and Superintendent prior to their issuance. Martens has distributed documents from these files to Board members and the Board attorney. She is aware of "sensitive matters" through working with these files.

Martens works closely with Marsenison and, over time, has been assigned some of Marsenison's job duties due to the latter's high volume of work.^{7/} Martens opens and sorts all mail including mail to and from Board members, the board attorney, unions and all mail marked "confidential." After the mail is reviewed by Marsenison and Ksanznak, it is returned to Martens for filing, if no further action is required. She has handled Board proposals and status reports which arrived through the mail during negotiations in October 1989. She will continue to view these kinds of materials received by mail in the future.

Martens proofreads documents, regardless of content, typed by Marsenison and prepared by Ksanznak. She specifically acknowledges proofreading proposals prepared for negotiations with

^{6/} As an example, the Board cited a dispute over an employee's use of vacation time which resulted in a grievance.

^{7/} Marsenison stated that all filing, opening of mail, and photocopying tasks were assigned to Martens because of their time-consuming nature.

the administrators' unit. She is also responsible for all photocopying. She has copied Board proposals, status reports, and grievance responses. She has distributed documents to appropriate files, Board members, the board attorney, unions and employees. She also has assisted Marsenison in compiling the Weekend Reading Packets mailed to board members which include correspondence about personnel, grievance and negotiations matters.

Martens substitutes for Marsenison when she is on vacation or if she is unavailable. Prior to a scheduled absence, Marsenison apprises Martens of pending matters which could require her attention. In Marsenison's absence, Martens has contacted Board members for Ksanznak to inform them of the status of negotiations and to schedule an emergency meeting. She also attended a grievance conference during which she took dictation. She typed Ksanznak's grievance response and contacted the Board's attorney about the case. When Marsenison is present but very busy, Martens acts as her backup. Ksanznak comfortably delegates work to Martens.

Since April, 1990, a new duty for Martens has involved compiling and typing Board meeting minutes, including those of closed executive sessions. She transcribes the minutes from Buono's notes. Recent executive session minutes have contained strategy discussions of pending litigation, discussions of personnel matters, and at least two grievance/arbitration matters. This was formerly Pampeno's task, but was delegated to Martens due to Pampeno's excessive workload.

Martens' job description also cites other general clerical duties. These include placing and receiving phone calls, taking messages, ordering supplies, scheduling appointments and conferences, reviewing copy work orders and cutting stencils for duplicating machines.

Managerial executives and confidential employees may not appropriately be included in any negotiations unit. A clarification of unit petition is the appropriate means for seeking the removal of a position from an existing unit due to a change in circumstances, where the employee has become either a confidential or managerial employee. See Clearview Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

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

...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 Commission has narrowly construed the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); 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); 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); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). A finding of confidential status requires a case-by-case

examination of an employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood. 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 (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

Employees in clerical positions are often deemed confidential due to their boss' 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. 56 (1971); Salem Comm. Coll., P.E.R.C. No. 88-71, 14 NJPER 136 (¶19054 1988); and 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 River Dell; Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); and Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986). Gathering and

collecting materials for Board meetings and preparing the meeting agenda has been found to be a confidential duty. See E. Rutherford Bd. of Ed., D.R. No. 90-9, 15 NJPER 665 (¶20271 1989); and Cliffside Park.

A close working relationship with another confidential employee, such as where employees substitute for each other or provide "back up" support may indicate confidential status. See Cliffside Park; Montague; Mt. Olive; River Dell; Orange Bd. of Ed., D.R. No. 78-28, 4 NJPER 1 (¶4001 1977); and W. Milford. In some situations where employees share an office with a confidential employee and are thus exposed to information related to the negotiations process, the Commission has determined such employees are confidential. See Salem; River Dell; Sayreville; Mt. Olive and Montague.

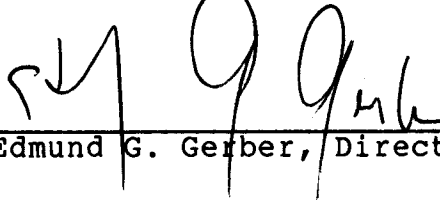
Here, many of Martens' duties as the Assistant Secretary to the Superintendent give her access to and knowledge of confidential labor relations matters which could compromise the Board's position in negotiations -- she sometimes learns of management personnel decisions, including grievance answers, before they are announced; she opens and sorts mail to and from Board members and administrators, including negotiations proposals and status reports; and she types minutes of executive Board session meetings in which negotiations proposals and strategy are discussed.

Accordingly, I conclude that the Assistant Secretary to the Superintendent is a confidential employee within the meaning of the

Act. Effective immediately, the negotiations unit is clarified to exclude the position of Assistant Secretary to the Superintendent.

See Clearview.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 7, 1990
Trenton, New Jersey