

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LACEY TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-H-88-35

LACEY TOWNSHIP EDUCATION ASSOCIATION,

Employee Organization.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit represented by the Lacey Township Education Association to exclude the payroll assistant of the Lacey Township Board of Education. The payroll assistant is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act.

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Employee Organization.

Appearances:

For the Public Employer, Curry & Stein, P.C.
(Mark Rogers, of counsel)

For the Employee Organization, Oxfeld, Cohen, Blunda,
Friedman, LeVine & Brooks, Esqs. (Mark J. Blunda, of
counsel); Charles W. Walker, Jr., NJEA UniServ
Representative, before the Hearing Officer

DECISION AND ORDER

On January 25, 1988, the Lacey Township Education Association filed a petition for clarification of unit seeking to add the payroll assistant and purchasing assistant to its unit of certificated employees, bus drivers, custodians and clerical employees employed by the Lacey Township Board of Education. On January 19, 1989, the Director of Representation dismissed, as untimely, the petition with respect to the purchasing assistant. Lacey Tp. Bd. of Ed., D.R. 89-12, 15 NJPER 106 (¶20050 1989). The Board contends the payroll assistant 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 Association disagrees.

On December 20, 1988, a Notice of Hearing issued. On February 16, 1989, Hearing Officer Joyce M. Klein conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by June 2, 1989.

On June 12, 1989, the Hearing Officer recommended dismissing the petition. H.O. 89-7, 15 NJPER 425 (¶20177 1989). She found that the payroll assistant is a confidential employee because she was aware of the Board's negotiations positions and opened mail that included minutes of the Board's negotiations sessions and strategy discussions.

On July 13, 1989, after an extension of time, the Association filed exceptions. It claims that: the Hearing Officer improperly barred the Association from introducing documentary evidence and unduly restricted cross-examination; the payroll assistant's duties do not render her confidential, and the Board secretary's claim to seven confidential assistants is not justified.

On August 8, 1989, after an extension of time, the Board filed a reply. It claims that: the record reflects that the parties agreed on the exhibits to be admitted into evidence; the testimony which the Hearing Officer excluded about the Board's bottom line in negotiations is irrelevant; the payroll assistant's duties render her confidential, and the confidential status of other employees is irrelevant to these proceedings.^{1/}

^{1/} This matter was transferred to us pursuant to N.J.A.C. 19:11-8.8.

We agree with the Hearing Officer that Noren's duties render her a confidential employee. N.J.S.A. 34:13A-3(g) defines confidential employees as those:

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

A determination that an employee is confidential and therefore excluded from the Act's protections, N.J.S.A. 34:13A-5.3, should not be based on speculation:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he 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 was included in a negotiating unit. [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)]

See also Wayne Tp. v. AFSCME, Council 52, 220 N.J. Super. 340 (App. Div. 1987); Sayerville 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); 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).

Noren's knowledge and responsibilities would compromise the Township's labor relations confidentiality if she were included in the Association's unit. Her duties have exposed her to the Board's negotiation proposals before they were presented to the Association. She compiles confidential information needed for negotiations and has opened mail that includes confidential labor relations material. Sayreville.

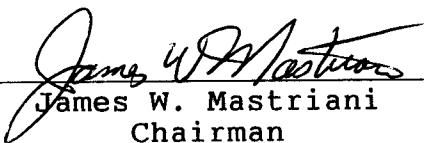
We reject the Association's evidentiary exceptions. The record does not indicate any attempt by the Association to have exhibit P-7 admitted into evidence. The Hearing Officer specifically noted that the Association did not move for the document's admission into the record. Absent extraordinary circumstances, we will not entertain an exception seeking the admission of an exhibit when the record does not show an attempt to have it introduced at the hearing. No extraordinary circumstances are present here.

We also reject the exception concerning Noren's testimony. Even if she were not aware of the Board's bottom line in negotiations, that fact would not alter the evidence concerning her other duties or a determination of confidentiality based on all the other evidence in the record.^{2/}

ORDER

The Association's unit is clarified to exclude payroll assistant Catherine Noren as a confidential employee.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Wenzler and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained. Commissioner Ruggiero was not present.

DATED: Trenton, New Jersey
October 27, 1989
ISSUED: October 30, 1989

^{2/} The Association's claim that there are too many confidential assistants must be resolved in an unfair practice proceeding. Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

H.O. NO. 89-7

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-and-

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LACEY TOWNSHIP EDUCATION ASSOCIATION,

Employee Organization.

SYNOPSIS

A Hearing Officer recommends that the Public Employment Relations Commission dismiss a Clarification of Unit Petition seeking to include the payroll assistant into an existing broad-based collective negotiations unit. The Hearing Officer finds the payroll assistant is a confidential employee because she was aware of the Board's position at negotiations and opened mail that included minutes of Board negotiations sessions and strategy discussions.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

H.O. NO. 89-7

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Appearances:

For the Public Employer
Curry & Stein, P.C.
(Mark Rogers, Esq., of counsel)

For the Employee Organization
(Charles W. Walker, Jr., NJEA UniServ Representative)

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On January 25, 1988, the Lacey Township Education Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Association sought to include the payroll assistant and purchasing assistant positions in the existing collective negotiations unit of certificated employees, bus drivers, custodians and clerical employees employed by the Lacey Township Board of Education ("Board"). On January 19, 1989, the Director of Representation found the petition untimely with respect to the purchasing assistant and dismissed that portion of it. Lacey Tp. Bd. of Ed., D.R. 89-12, 15 NJPER 106 (¶20050 1989). The Board

asserts that the payroll assistant 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"). The Association argues that the payroll assistant is not confidential.

On December 20, 1988 the Director of Representation issued a Notice of Hearing. I conducted a hearing on February 16, 1989. The parties examined witnesses and introduced exhibits.^{1/} The parties waived oral argument and after a delay in receipt of the transcript, submitted briefs by June 2, 1989.

Based upon the entire record, I make the following:

Findings of Fact

1. Dorothy Yaeger, the Board Secretary until April 1, 1988, created the payroll assistant position to help reduce an increased workload. She wrote the payroll assistant's job

^{1/} At the hearing, the Association sought to include a chart that the Board submitted during the investigatory process. The chart was marked as "P-7" and the Association questioned witnesses about the document's origin. No witness testified that she/he created the chart or knew who was the author. The Association did not question witnesses about the chart's contents or move for the document's admission into the record.

The Association attached a copy of the chart to its brief. P-7 lists confidential duties and marks which duties the payroll assistant and the purchasing assistant (1) performed at the time the chart was created; (2) are likely to assist with in the future; and (3) may assist with in the future.

Since there is no foundation for P-7's admission, and the Association did not move for its admission during the hearing, I do not now included P-7 in the record. In the absence of explanatory testimony, P-7 has no probative value.

description and interviewed Catherine Noren (T131, J-2).^{2/} Noren was hired as payroll assistant in July 1986. James Savage replaced Yaeger in April 1988 and assumed additional responsibilities as business administrator.

2. Richard Starodub, Assistant Superintendent, and Savage both report to Superintendent Beers. Starodub and Beers work upstairs. Savage and his staff work downstairs. Savage's staff includes an assistant board secretary, secretary to the business administrator, purchasing assistant, administrative assistant, and the payroll assistant (T16).^{3/} The secretaries in Savage's office are not included in any negotiations unit.^{4/}

3. Savage is responsible for fiscal and planned school operations (T78). As the Board's accountant, Savage manages the Board's finances and prepares the Board's budget (J-3). Savage's secretary types and collates the budget (T119). Most raw salary and benefits data for negotiations are prepared by Savage's staff (T25). Savage does not negotiate for the Board, but his office

^{2/} Citations to the transcript of the February 16, 1989 hearing are designated as "T". Joint exhibits are designated as "J". Association exhibits are designated as "P" and Board exhibits are designated as "R".

^{3/} Starodub lists both Nancy Nolan and Florence Gradone as the purchasing assistant (T16). Only one purchasing assistant is noted in Lacey Tp. Bd. of Ed., D.R. No. 89-12, 15 NJPER 106 (¶20050 1989).

^{4/} All positions except the payroll assistant and the purchasing assistant are excluded under the parties' recognition clause (J-1). The Director made no finding as to whether the purchasing assistant is appropriate for inclusion in the unit.

provides projections on the effect percentage increases have on available funds (T112). Negotiations projections are based upon the previous year's expenditures (T125). Budget projections use the existing contract when one is available (T125). Savage's office does not create salary guides (T113).

As board secretary, Yaeger attended negotiations and provided the negotiators with fiscal information and cost projections (T134). Until April 1988, the clerical staff shared responsibilities whenever necessary, particularly on major projects (T142). The Board negotiator or attorney requested financial information from Starodub, who forwarded the requests to Yaeger (T147). Yaeger or her staff prepared the requested data (R-1). Starodub uses the same procedure with Savage. Since Noren generally prepares the requested information, she often attends these discussions (T96).

In the most recent negotiations, Savage calculated the effect of salary proposals on the budget (T124). Noren and the administrative assistant provided a cost analysis of fringe benefits. Savage used the cost analysis to compute incremental increases in fringe benefits for negotiations (T123-T124). Savage testified that he did all the calculations necessary for collective negotiations (T126).

4. Savage maintains employee files in his office. These files include grievances or litigation concerning payroll problems. Noren gets current salary and benefits information from the files

daily. Personnel files are kept in the superintendent's office (T99). Savage also maintains a negotiations file containing all negotiations information and requests he receives from Starodub (T100-T101). Savage's office is usually open to his staff, who use the safe several times daily.

5. As payroll assistant, Noren prepares the payroll and other fiscal reports (J-2). She helps issue personnel contracts and salary notifications and assists in processing new employees (J-2). The job description also requires "performance of other duties" and responsibilities as assigned by the board secretary (J-2). As a clerical employee in Savage's office, Noren opens the mail and copies documents (T163-T164). Noren has copied documents used in negotiations and budget preparation (T163).

When Noren opens the mail, she opens all envelopes, including those marked confidential (T164, T174, T185). Most of the mail is addressed to Savage, but often is routed to other office employees for administrative purposes. Noren has seen minutes of Board negotiations sessions and discussions concerning negotiations strategies (T176). If mail addressed to Starodub, it is sent unopened upstairs through interoffice mail (T165).

During negotiations, Noren knew which ranges the Board considered for certain groups of employees and percentages allocated to the various steps in the guide (T157, T162, T166). She was asked to "develop a differential based on three separate percentages projecting down the line what...the overall effects of the budget

would be." Noren was also asked to calculate certain groups of individuals at a higher level or percentage (T157). Noren prepared specific projections on specific guides as requested (T167).^{5/} She prepared projections for professional and nonprofessional staff at the top and bottom of the salary guides (T168). She was never asked to prepare a comprehensive salary guide, but was asked to proof read and double check the numbers on the salary guide after agreement was reached (T169, T177).

On a few occasions, Noren was asked to compare extra compensation proposals to current contract language (T175-T176). She saw the proposals before the Board proposed them (T175, T184).

Noren knew what figure the Board would settle for before the conclusion of negotiations.^{6/} Near the close of negotiations, Noren attended a meeting with Savage, Peterson and Starodub. Starodub mentioned "ballpark figure" for the Board's bottom line. The Board and the Association settled for that amount (T191-T192).

Noren was not aware that the Board uses a professional negotiator, but knew that Starodub sat at the negotiations table (T172).

^{5/} Noren has detailed knowledge about the calculations and projections she developed for Starodub's use in negotiations. Savage has more generalized knowledge of the information provided by his office. Based upon this comparison, I find that whether Noren or Savage or both performed the calculations and projections, Noren has specific knowledge of which calculations and projections were prepared in the office.

^{6/} Savage's testimony that he did not know who else knew the Board's "bottom line" does not contradict Noren's statement (T119).

Noren participated in a discussion with Starodub and others about a unit member whose increment was withheld and then erroneously restored (T30, T158). At Starodub's request, Noren calculated the original rate, the amount of the proper increase, the amount of the anticipated increment for the following year and the correct figure (T158). She examined disciplinary files to compile the information necessary to make the proper calculations (T183). Noren's calculations are reflected in a memo to the effected individual from Starodub (R-3).

At Starodub's request, Noren prepared a proposed salary schedule for instructional aides that increased their work day by one half hour (T161, T166). Starodub told Noren the Board would review the information and vote on it at the next meeting (T162). The Board approved it and the instructional aides are now paid under the new schedule prepared by Noren (T166).

6. Space is limited in the board secretary/business administrator's office. Upon entering the office during work hours, one faces Savage's secretary, the accounts payable clerk and the purchasing assistant at their desks. File cabinets are nearby. The corner office behind the secretarial area is the assistant board secretary's. Savage's office is in the opposite far corner and the payroll assistant's office is between those of the assistant board secretary and Savage. Grace Peterson, the administrative assistant occupies the office on the other side of Savage's. The remainder of the space is used for storage, files, supplies and a copy machine (T120-123, R-4).

Analysis

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization." Confidential employees, however, are excluded from the Act's definition of "employee" and do not enjoy its protections. N.J.S.A. 34:13A-3(d).

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

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

The Commission's policy strictly construes the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶ 4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶ 16249 1985) ("State of New Jersey"). In State of New Jersey, the Commission explained its approach in determining whether an employee is confidential:

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

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86-T7 (2/18/88).

Finding confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position in the collective negotiations

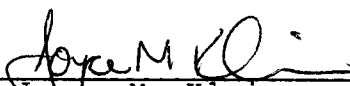
process, River Dell Regional Board of Education, P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984) aff'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶11131 1980).^{7/}

I find that the payroll assistant is a confidential position. As payroll assistant, Noren works for the business administrator/board secretary. Though Savage does not negotiate for the Board, he prepares financial data and projections for the Board's use in negotiations. Typically, Starodub requests financial data from Savage for use in negotiations. Savage asks Noren to be present when Starodub tells Savage what financial information is needed for negotiations so that she may compile the information. By attending one of these meetings, Noren learned the Board's final position before a settlement was reached. She also knew about Board proposals regarding extra compensation before the Board proposed them in negotiations. Noren's knowledge and responsibilities would compromise the Board's right to confidentiality during negotiations if she were included in a collective negotiations unit. State of New Jersey; River Dell Bd. of Ed., D.R. No. 83-21, 9 NJPER 180 (¶14084 1983).

^{7/} The Association argues that the parties' recognition clause, combined with its efforts to negotiate the payroll assistant's inclusion in the recognition clause are evidence that the payroll assistant is not a confidential employee. My obligation as the hearing officer is to determine whether the payroll assistant is a confidential employee under N.J.S.A. 34:13A-3(g). Only the payroll assistant's responsibilities are relevant. The recognition clause and the parties' positions during negotiations are not.

Noren also opens the mail including envelopes marked confidential and interoffice correspondence. Some envelopes contained minutes of Board negotiation sessions and discussions concerning negotiations strategies. Opening mail that includes confidential labor relations materials is a "functional responsibility" incompatible with negotiations unit membership. Sayreville Ed. Ass'n and Sayreville Bd. of Ed., P.E.R.C No. 88-109, 14 NJPER 689 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89).

I find the payroll assistant is a confidential employee within the meaning of the Act. Accordingly, I recommend the Association's petition be dismissed.



Joyce M. Klein
Hearing Officer

DATED: June 12, 1989
Trenton, New Jersey