

P.E.R.C. NO. 88-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLAINFIELD EDUCATION ASSOCIATION,

Petitioner,

-and-

Docket No. CU-H-87-41

PLAINFIELD BOARD OF EDUCATION,

Public Employer.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a clarification of unit petition filed by the Plainfield Education Association. The Association sought to include the secretary to the superintendent of personnel, secretary to the business administrator and two secretaries to the superintendent of schools in its existing broad-based negotiations unit of Plainfield Board of Education employees. The Chairman, in agreement with a Commission Hearing Officer, finds that these employees are "confidential" and that the Association waived its right to represent them.

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PLAINFIELD BOARD OF EDUCATION,

Public Employer.

Appearances:

For the Public Employer, King, King & Goldsack, Esqs.
(Victor E.D. King of counsel)

For the Petitioner, Dianne Sylvester, NJEA UniServ Rep.

DECISION AND ORDER

On January 16, 1987, the Plainfield Education Association ("Association") filed a Clarification of Unit petition. The Association seeks to include the secretary to the superintendent of personnel, secretary to the business administrator, and two secretaries to the superintendent of schools in the Association's existing broad-based unit of Plainfield Board of Education ("Board") employees. The Board contends these employees are "confidential" within the meaning of N.J.S.A. 34:13A-3(g). The Association disagrees.

On March 16, 1987, the Director of Representation issued a Notice of Hearing. On June 22 and 30, 1987, Hearing Officer Lorraine H. Tesauro conducted hearings. The parties examined

witnesses and introduced exhibits. They also filed post-hearing briefs.

On March 18, 1988, the Hearing Officer recommended that the petition be dismissed. H.O. No. 88-6, 14 NJPER ____ (¶ 1988). She found that the petitioned-for positions were confidential and that the Association waived its right to represent these employees.

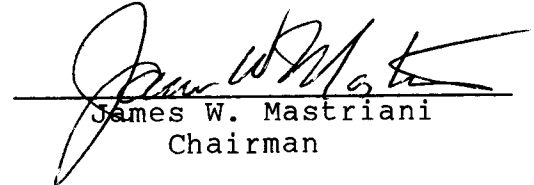
The Hearing Officer served her report on the parties and informed them that exceptions were due on or before April 5, 1988. Neither party filed exceptions.

I have reviewed the record. The Hearing Officer's findings of fact (pp. 3-8) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree the petition should be dismissed.

ORDER

The clarification of unit petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 19, 1988

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

In the Matter of

PLAINFIELD EDUCATION ASSOCIATION,

Petitioner

-and-

Docket No. CU-H-87-41

PLAINFIELD BOARD OF EDUCATION,

Public Employer

SYNOPSIS

A Hearing Officer recommends that the Commission find the secretary to the business administrator/board secretary; secretary to the superintendent of personnel; and the two secretaries to the superintendent of schools are confidential within the meaning of the Act. She finds that they have knowledge of and are privy to negotiations sensitive materials, thereby making their inclusion in the negotiations unit inappropriate.

Further, she finds the secretary to the business administrator/board secretary; secretary to superintendent of personnel; and one secretary to superintendent of schools have been historically excluded employees, and absent any changes in circumstances or duties, an employee organization may not seek to include these employees in a unit clarification proceeding where the organization has slept on its rights to seek clarification.

Accordingly, the Hearing Officer recommends the petition be dismissed.

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. 88-6

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

In the Matter of

PLAINFIELD EDUCATION ASSOCIATION,

Petitioner

-and-

Docket No. CU-H-87-41

PLAINFIELD BOARD OF EDUCATION,

Public Employer

Appearances:

For the Public Employer
King, King & Goldsack, Esqs.
(Victor E.D. King of counsel)

For the Petitioner
Dianne Sylvester, NJEA UniServ Rep.

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On January 16, 1987 the Plainfield Education Association ("PEA" or "Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to clarify certain clerical titles employed by the Plainfield Board of Education ("Board").^{1/} Specifically, PEA petitioned to include employees in the following titles: 1 secretary to the superintendent for personnel; 1 secretary for the

^{1/} At hearing on June 22, 1987, NJEA amended the Petition to include additional titles (TA5).

assistant superintendent of operations; 1 secretary for the business administrator/school board secretary; 1 secretary for the superintendent of pupil personnel services; and, 2 secretaries for the superintendent of schools.^{2/}

The board asserts that these employees are confidential employees within the meaning of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and therefore, are appropriately excluded from the unit. The Association contends that these employees' functional responsibilities are not of a confidential nature, making their exclusion from the unit inappropriate.

On March 16, 1987, the Director of Representation issued a Notice of Hearing. After several requests for adjournment,^{3/} hearings were held in this matter on June 22, 1987 and June 30, 1987.^{4/} Both parties filed post-hearing briefs by November 1987.^{5/}

^{2/} Pursuant to letter dated March 17, 1988, PEA withdrew from the decisional process the titles secretary to the assistant superintendent of operations - held by Latti Wyatt - and the secretary to the superintendent of pupil personnel services - held by Maritza Bloedorn-Holmes.

^{3/} The parties requested several adjournments due to the ill health of the Board's counsel and conflicting schedules.

^{4/} TA refers to transcript of June 22, 1987 and TB refers to transcript of June 30, 1987.

^{5/} In January 1988, immediately preceding the issuance of this decision, the Association motioned to re-open the record asserting at a January Board meeting, that the Board created

Based upon the entire record, I making the following:

FINDINGS OF FACT

1. The Association is the recognized exclusive representative of the Board's professional and support staff employees inclusive of the secretaries and clerical employees (Exhibit J-1).^{6/} Exhibit J-1 was effective from 1985-1987.

2. The Acting Superintendent of Schools is Dr. Annette Kearny. Dr. Henry Lee is the Board Secretary/School Business Administrator; the Superintendent for Personnel is Robert DeCastro; the Assistant Superintendent for Operations is Edward Lattimore; and the Acting Assistant Superintendent of Pupil Personnel Services is Jay Cuff (J-2).^{7/} All the administrators participate in preparing

5/ Footnote Continued From Previous Page

an additional confidential title in the Business Administrator/School Board Secretary's office. Also the Board created an office manager's position in the Office of Buildings and Grounds.

Both parties provided positions regarding the motion and after a careful review of the relationship of the new titles to the record, I denied the motion. I found neither title to be subject to this petition.

6/ The recognition clause of J-1 covers the following titles: (1) all professional staff personnel who are required to hold an appropriate certificate; (2) aides, including, but not limited to attendants, lunchroom, teacher, clerical, library, bus, lavatory and locker room; (3) custodial and maintenance personnel; (4) all secretaries and clerical employees; (5) all security officers; (6) all extra-curricular athletic and non-athletic advisors and coaches.

7/ Exhibit J-2 is a compiled list of titles and their secretaries.

the district's budget for the negotiations and administration of labor agreements.

3. Carol Warshaw is secretary to Robert DeCastro, the superintendent of personnel (TA27). She has been employed in the school system for fifteen years and worked in the present title since 1976 (TA27).

DeCastro is responsible for all personnel operations (TA29). He is a member of the Board's negotiating team and is involved in the negotiations regarding salary and budget proposals for the negotiated year (TA29). As DeCastro's secretary, Warshaw is responsible for preparing and typing the grievance materials relative to her boss' responsibility for step one of the grievance process (TA30). DeCastro has negotiations files that he maintains (TA30), but Warshaw receives and reviews all communications in DeCastro's office (TA31).

Warshaw types proposals that DeCastro presents to the Board's negotiating team in the executive sessions (TA32); correspondence to the board attorneys and administrators (TA47); and changes in the language of the Board's negotiation proposals (TA47).

Warshaw's position makes her privy to negotiations materials, i.e. - proposals DeCastro presents to the negotiations team (TA36), and requires her to collect data from other school districts regarding the information to be contained in those proposals (TA36).

Warshaw supervises two other secretaries in DeCastro's office (TA53). These secretaries are limited to general office work. Should Warshaw be absent, her work is assigned to Ann Patty, the secretary in Dr. Lee's office, (TA53) or the work waits until Warshaw returns (TA53). Warshaw's desk is directly opposite DeCastro's office (TA54). The other two secretaries are to Warshaw's right (TA54).

4. Ann Patti is the secretary to the business administrator/school board secretary, Dr. Henry Lee. Patty was appointed in 1971 (TA21) and has served several business administrator/board secretaries during that time.^{8/}

The Board secretary's office is primarily responsible for communicating to the Board and counsel information involving grievances and negotiations (TA19).

Lee is deeply and totally involved in the labor relations process for the district. He conducts executive sessions and actively participates with the Board in budget processing, completing grievances, drafting negotiations proposals and leading the negotiating team during the negotiations sessions (TB8).

As Lee's secretary, Patty types all information pertaining to negotiations, i.e., board proposals, minutes, executive session notes, grievance information and collecting data the board uses in collective bargaining (TA17).

^{8/} There was one vacant level six title that the board did not intend to fill. Subsequent to a January 1988 board meeting, the level six title was eliminated and resulted in an additional secretarial title.

Patty, on a regular basis, has been responsible for typing correspondence between the Board and the Board negotiating team and the professional negotiators hired by the Board. She attends executive sessions in Lee's absence (TA15) and takes notes at those meetings. She later types and distributes those minutes (TA26). On any given day, Patty opens and reads the mail, including negotiations letters. She maintains files on sensitive matters, and has a personal file complete with copies of Lee's correspondence regarding union matters (TA18).

5. Nancy Baughman is a secretary in the superintendent's office (TB8) and is secretary to the acting superintendent of schools, Dr. Annette Kearney (TB64). She served in that position since July 1985 (TB8). There are no other secretaries in that office. Baughman originally served in a level six clerical title (TB12), but replaced her retiring predecessor permanently in July 1985 (TB12) leaving a level six vacancy in that office.

Her primary duties and responsibilities include maintaining Kearney's personal files containing sensitive negotiations information and taking minutes or notes at executive sessions or staff meetings (TB22). She also types all Kearney's correspondence, notes, negotiations or policy memoranda and grievance materials (TB21, TB24).

Baughman has also knowledge of and is privy to all Kearney's mail, memoranda and minutes to board members, administrators and the negotiations team members (TB22). Baughman

attends executive sessions upon request, and takes notes (TB28). Negotiations are routinely discussed at these meetings (TB28).

6. Dorothy Sliker is a secretary to the superintendent of schools and shares Baughman's responsibilities (TB24). She also has equal access to and knowledge of Kearney's duties as acting superintendent (TB25, TB28). Should Baughman be unavailable, Sliker replaces her (TB35). When Kearney became acting superintendent, she requested an additional confidential secretary in her office (TB67). Dorothy Sliker was appointed to that position and "told to report to the superintendent's office" in August 1986 (TB33). She "occupied" the level six desk and performed duties synonymous with those of Nancy Baughman (TB34).

Sliker was a confidential secretary to the assistant superintendent for pupil personnel services from April 1986 until her appointment in August 1986 (TB34).^{9/}

Sliker's responsibilities include maintaining Kearney's files, reviewing and filing all incoming correspondence (TB35, TB37, TB42, TB44). Sliker, like Baughman, types Kearney's communications, memoranda concerning Board policy and/or negotiations, prepares grievance files, types Kearney's notes from grievance hearings (TB49), negotiations sessions and executive sessions (TB36).

^{9/} Plainfield Bd. of Ed., D.R. No. 87-6, 12 NJPER 724 (17270 1986), the Commission found Sliker's position to be confidential.

Kearney does not differentiate work duties between Baughman and Sliker (TB45). They share equally in assisting Kearney in fulfilling the functional responsibilities of her title (TB37, TB45).

Sliker performs her duties on a regular basis (TB70) and shares the same privileges as Baughman (TB70) in accessing labor relations matters pertinent to Kearney's responsibilities (TB67, TB69-TB71, TB74).

Sliker routinely types negotiations proposals prepared by Kearney (TB73, TB85), types Kearney's memoranda directed to all administrators and members of the negotiating team (TB39) and prepares items Kearney presents to the Board reporting on occurrences in the district (TB45).

The physical construction of Kearney's office includes an outer office which houses all the secretaries' desks and the filing cabinets containing both regular and personnel materials (TB34). The files are behind the secretaries desks and kept locked. Both his secretaries have keys (TB47). Kearney's office is behind the outer office and she has her own set of files, accessible by only her secretaries (TB36).

Kearney assigns Sliker and Baughman's workload based upon their availability (TB76).

DISCUSSION AND ANALYSIS

The primary issue to be determined is whether or not the four secretaries at issue are confidential pursuant to the Act.

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

"...employees 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 Board maintains that these employees are confidential employees and their functional responsibilities make their membership in the appropriate unit incompatible with the other eligible members of that unit.^{10/}

The Commission's policy is to strictly construe the term confidential employee. 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); Brookdale Comm. College, D.R. No. 78-20, 4 NJPER 32 (¶ 4018 1977), (Brookdale).

In the State of New Jersey, the Commission outlined the process for determining an employees confidentiality status:

We scrutinized 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 the employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiations unit (Id. at 510).

^{10/} Confidential employees are excluded from the act's definition of public employees and cannot be included in a negotiations unit with other public employees. See N.J.S.A. 34:13A-3(g); N.J.S.A. 34:13A-5.3; River Dell Bd/Ed, D.R. No. 83-21, 9 NJPER 180 (¶ 14084 1983) (River Dell [1]); and Old Bridge Twp., D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981) (Old Bridge).

The Commission observed in State of New Jersey, that "the definition [for confidential] requires us to consider more than an employer's (or department's) function" Id. at 715. Accordingly, the Commission established policy making it our responsibility to examine the whole picture and not just a corner of it. Based upon that, I shall examine each employee separately in conjunction with their superior.

ANN PATTY

Patty is the secretary to the Business Administrator/School Board Secretary, Dr. Henry Lee. She types Lees' notes of negotiation sessions, the negotiations proposals, and responses to formal grievances. She prepares memoranda and collects data for transmittal to the board's negotiations committee. The typing of such labor related materials, which results in Patty's knowledge of sensitive negotiations materials necessitates a finding of confidential status. Middlesex County, P.E.R.C. No. 84-147, 10 NJPER (¶ 15141 1984) (Middlesex); River Dell Bd/Ed, P.E.R.C. No. 84-95, 10 NJPER 148 (¶ 15073 1984) (River Dell [2]); Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶ 11131 1980) (Parsippany). Such a finding does not require regular or continuous involvement with the collective negotiations process but a finding that the extent of the employee's involvement renders his/her membership in any collective negotiations unit incompatible with their job duties. Township of Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979) (Dover).

CAROL WARSHAW

Carol Warshaw is the secretary to superintendent of personnel, Robert DeCastro. The superintendent of personnel's involvement in the negotiations process is to prepare budget materials, receive proposals and recommendations pertaining to the negotiations from other administrators and communicating with the administrators and the members of the negotiating team. His secretary is involved in typing and preparing his negotiating materials that eventually are presented to the Board and to the negotiating team. Warshaw's exposure and knowledge in the collective bargaining and labor relations process stems from DeCastro's involvement in the same. Thus, I find that Warshaw's responsibilities result in considerable knowledge of confidential negotiations information and she is therefore a confidential employee. See State of New Jersey; Middlesex; Scotch Plains Twp., D.R. No. 84-11, 9 NJPER 632 (¶ 14270 1983) (Scotch Plains); Old Bridge Twp.; River Dell [2].

Nancy Baughman & Dorothy Sliker

Baughman and Sliker are the secretaries in the Superintendent's office, presently occupied by Dr. Kearney, the Acting Superintendent.

Baughman was appointed secretary to the Superintendent's office in July 1985 from a level six title.

Baughman served as secretary to the previous superintendent and continued in her role under Kearney. Her responsibilities

involve typing all Kearney's correspondence, maintaining files and opening and reading his mail.

Kearney's frequency of involvement in the negotiations process necessitates a finding that Baughman is a confidential employee. The Commission's decision in City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶ 15086 1984) is applicable here where the Commission held that:

"...evidence shows that a secretary assisting a superior who has continual access to contract proposals and confidential labor relations materials and files is clearly confidential."

Dorothy Sliker is also in the Superintendent's office. Prior to her appointment in the Superintendent's office in August 1986, Sliker served as confidential secretary to the Assistant Superintendent for Pupil Personnel Services.^{11/} She became the confidential secretary to the Assistant Superintendent in Pupil Personnel Services in April 1986, and at the request of Dr. Kearny, was transferred to the Superintendent's office in August 1986.

The responsibilities common to the Superintendent's office include typing, filing and maintaining negotiations sensitive materials forwarded to Board members and the negotiating committee, all Kearney's notes and minutes from negotiations sessions, grievance information and policy related matters. Baughman and Sliker maintain Kearney's office, inclusive of typing, filing and

^{11/} Plainfield Bd. of Ed., D.R. No. 87-6, 12 NJPER 724 (¶ 17270 1986) the Commission found Sliker's previous title to be confidential.

scheduling. Kearney does not differentiate between the two and provides both equal access and knowledge of the functioning of her office.

The finding of confidential status requires a case by case examination of an employee's knowledge and exposure to information involved in the collective negotiations process. River Dell [2]. Because Kearney is directly involved in the total functioning of the district, it follows that her secretaries shall have knowledge of and be privy to information familiar to running an efficient office. Sliker does the same work as Baughman and substitutes for her should she be required to attend executive sessions or Board meetings for the purposes of taking minutes.

Evidence does not show that Sliker's responsibilities deviated from Baughman's, the existing confidential secretary. Their responsibilities were synonymous and interchangeable. Further, the Association failed to provide evidence of any changed circumstance and conditions of employment pertaining to Baughman permitting her inclusion in the bargaining unit. See Dover; Warren Twp.; and River Dell [2]. Thus, I find that Sliker and Baughman are confidential employees.

The second issue here is whether a clarification of unit petition may be used to seek inclusion of the historically excluded employees. The Commission has previously held that, absent a change in circumstances, or change in duties, an employee organization may not seek to include employees through a unit clarification

proceeding, where the organization has for a long period of time, slept on its rights to seek clarification. See Wayne Twp. Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11029 1980).

Given these circumstances, Rutgers University, D.R. No. 84-19, 10 NJPER 284 (¶ 15140 1984), (Rutgers) provides that a "Union's petition to clarify a unit to include titles that were created prior to its execution of the existing agreement should be dismissed." The Association has waived its right to bring a unit clarification petition with regard to this title, because it has existed for seventeen years. Rutgers. However, the Association has not waived its right to clarify the unit with respect to those titles that are newly created titles subsequent to the last contract year. Rutgers.

It is incumbent upon the Association to prove that circumstances have warranted a change in the titles. The Commission firmly supports its finding that the timeliness in filing a clarification of unit petition for new titles begins subsequent to the signing of a new contract. Warren Twp., D.R. No. 82-10, 7 NJPER 529 (¶ 12233 1981).

The Commission finds that where the parties agree to exclude certain titles from a unit and where subsequent recognition clauses do not specifically include those titles, and there is no evidence that the majority representative attempted to represent or negotiate for those titles or file grievances on behalf of the employees in those titles, then absent a change in circumstances, a

clarification of unit petition cannot be used to include the title in the unit. Clearview Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (¶ 14106 1977) (Clearview); and Warren Twp.

Here the facts indicate that Ann Patty's title, secretary to the school board secretary/business administrator, was created approximately seventeen years ago. The Board nor the Association alleges any significant change in circumstances which would warrant a clarification of the unit to include the title which has historically been excluded therefrom. (Wayne).

Carol Warshaw has been in her title, secretary to superintendent of personnel, since 1976. There are no evidenced changes in circumstances in Warshaw's duties and responsibilities. Therefore, absent a finding of any changes in circumstances, the conclusion necessitates a finding that the title should not be clarified into the bargaining unit. See River Dell [1 & 2] and Wayne.

The Association failed to provide evidence of any changed circumstance and conditions of employment pertaining to Nancy Baughman permitting her inclusion in the unit. See Dover; Warren Twp.; and Rutgers.

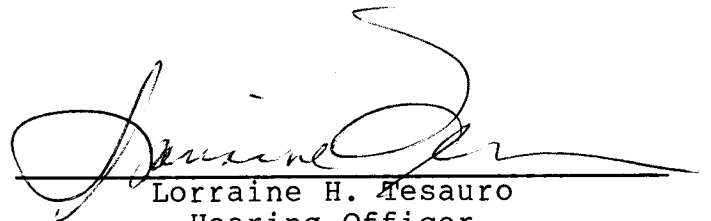
Accordingly, since all four employees are confidential employees, I recommend the petition be dismissed. But I would make the same recommendation if some of them were not confidential. Three of these titles have been in existence for some time, there have been no changed circumstances and thus a clarification of unit petition is not the appropriate petition to seek their inclusion in the unit. Wayne; Clearview; and Rutgers.

CONCLUSIONS

I conclude that Ann Patty, secretary to the business administrator/school board secretary; Carol Warshaw, secretary to the superintendent of personnel; Nancy Baughman, secretary to the superintendent of schools; and Dorothy Sliker, secretary to the superintendent of schools are confidential secretaries within the meaning of the Act and are inappropriate for inclusion in any negotiations unit.

RECOMMENDATION

I recommend that the Commission dismiss the Association's petition.


Lorraine H. Mesauero
Hearing Officer

DATED: March 18, 1988