

D. R. NO. 80-12

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

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF RAHWAY,

Public Employer/Petitioner,

-and-

DOCKET NO. CU-79-35

RAHWAY EDUCATION ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation, agreeing with the recommendations of a Hearing Officer, determines that the Chief Clerk Typist in the office of the Assistant Superintendent of Schools is a confidential employee and excludes the employee from representation within a unit of secretarial employees represented by the Association. The Director finds that the Chief Clerk Typist handles confidential negotiations material prepared by the Assistant Superintendent and would continue to have access and knowledge of such material in the exercise of her secretarial duties in the future. The Director concludes that the extent of the Chief Clerk Typist's access to and exposure to the collective negotiations process renders her membership in any appropriate negotiating unit incompatible with her official duties.

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Appearances:

For the Public Employer/Petitioner
Magner, Abraham, Orlando, Kahn & Pisansky
(Leo Kahn, of Counsel)

For the Employee Representative
Zazzali, Zazzali & Whipple
(Albert Kroll, of Counsel)

DECISION

On February 2, 1979, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Board of Education of the City of Rahway (the "Board") seeking to exclude a certain employee from the collective negotiations unit currently represented by the Rahway Education Association (the "Association"). ^{1/} Specifically, the

1/ Article I Recognition of the Agreement between the parties for the period July 1, 1977 to June 30, 1979, includes: Classroom Teachers, Special Education Teachers, Guidance Counselors, Librarians, Nurses, Social Workers, Clerk-Typists, Custodians, Coaches, Maintenance Personnel, and Learning Disability-Teacher Consultants.

Board seeks to exclude the Chief Clerk Typist in the office of the Assistant Superintendent of Schools 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 Rescheduling Hearing dated May 2, 1979, a hearing was held before Hearing Officer Steven P. Weissman on May 7, 1979 in Newark, New Jersey, at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Both parties elected not to file briefs.

On July 23, 1979, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. No exceptions to that report have been filed.

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

1. The Board of Education of the City of Rahway is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

2. The Rahway Education Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Board filed the instant Petition seeking to exclude the above-named secretarial title, currently occupied by Dolores Jedic, from the existing unit arguing that Ms. Jedic performs confidential duties which make her inclusion in the unit inappropriate. On the other hand, the Association maintained that Ms. Jedic is not a confidential employee. Accordingly, there is a question concerning the composition of a collective negotiations unit and the matter is properly before the undersigned for determination.

4. The Hearing Officer concluded that Ms. Jedic is a confidential employee within the meaning of the Act. Initially, the Hearing Officer examined the duties of the Assistant Superintendent, the individual for whom Ms. Jedic works. The Hearing Officer found that, due to a reorganization by the Board in the fall of 1978, the Assistant Superintendent is responsible for assisting the Superintendent in the preparation and administration of the budget, for assisting in the preparation and research for negotiations, for participating in negotiations and for assisting in grievance hearings. Hence, the Hearing Officer found the Assistant Superintendent is intimately involved in the formulation and administration of labor relations policies and that his secretary, Ms. Jedic, in the course of her duties and functions, has access to and handles confidential labor relations materials.

Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and noting the lack of any party's

exceptions to the Report, the undersigned finds that there is ample record evidence to support the Hearing Officer's findings, and these are specifically adopted. Moreover, the Hearing Officer's conclusion and recommendation that the employee in dispute is a confidential employee is consistent with and in accordance with prior decisions rendered by the Commission involving confidential employees. ^{2/} The record reveals that the Assistant Superintendent performs functions on behalf of the Board which entail the preparation of confidential negotiations material, and that the secretary assigned to the Assistant Superintendent has, in the exercise of her duties, handled such confidential material and would be expected to continue to have access to and knowledge of such material in the exercise of her secretarial duties in the future. The undersigned is satisfied that the extent of Ms. Jedic's access and exposure to the collective negotiations process renders her membership in any appropriate negotiating unit incompatible with her official duties. ^{3/}


Accordingly, the undersigned finds that the secretary to the Assistant Superintendent is a confidential employee within the meaning of the Act. Inasmuch as this employee is a confidential

2/ In re Board of Education, Township of West Milford, P.E.R.C. No. 56 (1971); In re Bloomfield Board of Education, E.D. No. 76-40 (1976); and In re Springfield Board of Education, E.D. No. 52 (1974).

3/ In re Township of Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979).

employee, she is excluded from the Association's secretarial unit immediately upon this determination. ^{4/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 30, 1979
Trenton, New Jersey

4/ In re Clearview Regional High School Board of Education,
D.R. No. 78-2, 3 NJPER 248 (1977).

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

In the Matter of

RAHWAY BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-79-35

RAHWAY EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

A Commission Hearing Officer, in a Clarification of Unit proceeding, recommends that the Chief Clerk Typist in the office of the Assistant Superintendent 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 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 Public Employer
Leo Kahn, Esq.

For the Petitioner
Zazzali, Zazzali & Whipple, Esqs.
(Albert Kroll, of Counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On February 2, 1979, a Clarification of Unit Petition was filed with the Public Employment Relations Commission (the "Commission") by the Board of Education of the City of Rahway (the "Board") seeking to exclude certain employees from the collective negotiations unit currently represented by the Rahway Education Association (the "Association"). ^{1/} Specifically, the Board seeks to exclude the Chief Clerk Typist in the office of the Assistant Superintendent of Schools from the Association, as a confidential employee within the meaning of N.J.S.A. 34:13A-3(g).

Pursuant to a Notice Rescheduling Hearing dated May 2, 1979, a hearing was held before the undersigned Hearing Officer on May 7, 1979 in Newark, New Jersey, at which all parties were given an opportunity to examine and cross examine witnesses, to present evidence, and to argue orally. Both parties elected not to file briefs

^{1/} The scope of the unit is set forth in the Recognition clause of the parties collective negotiations agreement. See Exhibit J-1.

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

1. The Board of Education of the City of Rahway is a Public Employer within the meaning of the Act, and is subject to its provisions and is the employer of the employees included in this proceeding.

2. The Rahway Education Association is an Employee Representative within the meaning of the Act and is subject to its provisions.

3. The Board filed the instant Petition seeking to exclude the above named secretarial title, currently occupied by Dolores Jedic, from the existing unit arguing that Jedic performs confidential duties which make her inclusion in the unit inappropriate. On the other hand, the Association maintained that Jedic is not a confidential employee. Accordingly, there is a question concerning the composition of the negotiations unit and the matter is properly before the Hearing Officer for Report and Recommendations.

BACKGROUND

The Association has represented instructional and clerical personnel in the Rahway School District since 1968. ^{2/} Presently there are approximately 33 clerical employees in the district, including CETA employees. ^{3/} In 1974 the Association agreed to exclude the secretaries of the Superintendent and Board Secretary/Business Administrator from the unit; however, the Assistant Superintendent's secretary remained in the Association. At that time, the Assistant Superintendent was primarily responsible for the areas of curriculum and instruction and had only minimal input into the formulation of labor relations policy. ^{4/} However, due to an increase in the volume of work pertaining to labor relations, a decision was made by the Board prior to September, 1978, to divide the responsibility for the formulation and implementation for labor relations policy amongst the three

^{2/} T. 32. Although the recognition clause in the parties agreement indicates that the Association represents other titles as well, it is not clear from the record at what point these additional titles were included in the unit.

^{3/} T. 28.

^{4/} T. 32, 33.

top administrators in the District; the Superintendent, the Business Administrator, and the Assistant Superintendent. ^{5/} A revised job description was promulgated on December 1, 1978, which delegated to the Assistant Superintendent responsibility in the following areas: assisting the Superintendent in the preparation and administration of the budget; assisting the Superintendent in the preparation and research for negotiations and in taking an active part in negotiations; and assisting the Superintendent in grievance hearings. ^{6/} A revised job description for the Chief Clerk Typist assigned to the Assistant Superintendent was also issued December 1, 1978 which lists the preparation of the "necessary confidential information and research for the Superintendent in regards to negotiations with the various bargain-units" as one of the Chief Clerk Typist's duties. ^{7/} As a result of the modification of the duties of the Assistant Superintendent and his secretary, the within petition was filed.

FRAMEWORK FOR ANALYSIS

The undersigned notes that the Commission is charged with the responsibility of determining the confidential status of public employees based upon the definition which appears at N.J.S.A. 34:13A-3(g). ^{8/} Thus, in reviewing the record herein, the undersigned must consider whether or not Jedic's job functions permit her access to or knowledge of issues involved in the collective negotiations process so as to make her membership in the existing unit, represented by the Association, 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 question, the involvement of the individual to which she or he is assigned in collective negotiations process must

^{5/} T. 34.

^{6/} See Exhibit CLC.

^{7/} See Exhibit CLB.

^{8/} Subsection 3(g) provides that: "Confidential employees" of a public employer means 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.

be examined. ^{9/} If it is established that such individual performs managerial or confidential functions, then inquiry must be made into the nature of the duties which his or her secretary performs. If the clerical types recommendations regarding negotiations, the disposition of grievances, ^{10/} budgetary allocations, or personnel matters then such employee may be classified as confidential. Other factors which must be considered are whether or not the clerical types the minutes of, or the agenda for private Board sessions, opens confidential correspondence or has access to files containing confidential material.

DISCUSSION

A thorough review of the record reveals that the Assistant Superintendent, Nicholas DelMonaco, is intimately involved in the formulation and administration of labor relations policies and that his secretary, in the regular course of her clerical duties, has access to and handles confidential labor relations materials and can be expected to continue to have access to and knowledge of such materials in the future.

Uncontroverted evidence substantiates that DelMonaco regularly attends negotiations sessions and prepares various reports and memoranda, which Jedic types, for the Superintendent and the Board's negotiating team concerning projected salary increases, possible staff reductions and program cuts. ^{11/} During the past year, DelMonaco had major responsibility for the preparation of the 1979-80 budget, ^{12/}

^{9/} See In re Dover Township, D.R. No. 79-19, 5 NJPER 61, (para. 10040, 1979); Cranford Bd. of Ed., D.R. No. 78-20, 3 NJPER 352 (1977).

^{10/} See In re Passaic County Regional High School Dist. No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976), wherein the Hearing Examiner found that the Assistant Superintendent's role as the Board representative on second step grievances under the contract with the office workers association provided his personal secretary with intimate knowledge of the Board's position on employee grievances. This fact when coupled with the Assistant Superintendent's role in negotiations was viewed by the Hearing Examiner as sufficient to classify the disputed title as confidential. The Commission adopted the Hearing Examiner's recommendations as to the confidential status of the Assistant Superintendent's secretary.

^{11/} T. 9, 17, 29, 30.

^{12/} Due to the Business Administrator's illness, DelMonaco assumed a greater amount of responsibility for budget preparation than he ordinarily would. See T. 15.

a major portion of which was typed by Jedic before it became public knowledge.^{13/}

In addition to his involvement in negotiations and budget preparation, DelMonaco handles grievances relating to curriculum and instruction.^{14/} Recently, DelMonaco heard a grievance concerning the Board's contractual obligation to supply its physical education staff with uniforms.^{15/} In relation to this grievance, Jedic researched and compiled certain factual information and prepared a report of her findings for DelMonaco.^{16/} Moreover, Jedic testified that she researched a grievance pertaining to the work performance of a high school custodian.^{17/} Her research entailed locating the pertinent files, reviewing the information contained therein, and discussing the matter with the Assistant Superintendent. She has also typed DelMonaco's recommendations to the Superintendent regarding the disposition of a grievance.^{18/} Record evidence further establishes that Jedic has prepared several reports for arbitration hearings where the withholding of an increment was being contested. Additionally, Jedic files Board responses to grievances prior to their formal adoption at Board meetings.^{19/}

As a result of the Assitant Superintendent's role in the implementation of personnel policies,^{20/} Jedic has been assigned to type those portions of the Board's private agenda which pertain to personnel matters.^{21/} While Jedic testified that she would not open mail marked confidential unless she was specifically instructed to do so, the record indicates that Jedic routinely opens all unmarked correspondence,

^{13/} As was noted by the Hearing Officer in his Report and Recommendations in Bd. of Ed., Township of West Milford, Docket No. RO-80, affirmed P.E.R.C. No. 56, (1971), the process of budget preparation has a direct bearing on negotiations.

^{14/} T. 24. See also Exhibit C1C, Number 18 under duties.

^{15/} T. 25.

^{16/} T. 52.

^{17/} T. 45, 46.

^{18/} T. 49.

^{19/} T. 12. (Presumably such responses might be modified prior to formal adoption. Therefore, the contents of said responses should remain confidential until such time as the Board decides to make its position known to the grievant).

^{20/} DelMonaco testified that he is responsible for posting jobs, drafting job descriptions, interviewing candidates for vacancies, recommending the dismissal and the transfer of staff. See T. 12, 13, 24.

^{21/} T. 12, 23.

reads it, classifies it and files it. ^{22/} Thus, Jedic might inadvertently obtain confidential information from an unmarked letter. Moreover, record evidence indicates, that Jedic types drafts of Board policies and administrative rules, ^{23/} and that she and the secretaries assigned to the Superintendent and Business Administrator are the only clericals who have access to files containing personnel information. ^{24/}

The undersigned has reviewed several cases dealing with clerical positions similar to the one at issue in the instant matter. In In re Cranford Board of Education, supra, the Director of Representation upheld the Hearing Officers findings that the secretaries to the Assistant Superintendent for Personnel were confidential employees since they had typed negotiations related material. ^{25/} In another case In re Bloomfield Board of Education, E.D. No. 76-40, 2 NJPER 194, (1976), the Executive Director affirmed the Hearing Officer's finding that the secretaries to the Superintendent, Board Secretary/Business Administrator, and the Assistant Board Secretary/Director of Buildings and Grounds were confidential employees because they handled material relating to negotiations.

The evidence contained in the record irrefutably establishes that Jedic 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. It is clear that Jedic assists the Assistant Superintendent, who is statutorily designated as a managerial executive, ^{26/} by typing: 1) negotiations related material; 2) sections of private Board agendas; 3) recommendations as to the disposition of grievances; and 4) drafts of Board policies. Moreover, she has access to files containing confidential personnel records and certain grievances. Accordingly, the undersigned finds that the Chief Clerk Typist in the office of the Assistant Superintendent performs

^{22/} T. 50, 9.

^{23/} T. 12.

^{24/} T. 50, 51.

^{25/} In Cranford , supra, the parties had stipulated prior to hearing that the secretaries to the Superintendent and Board Secretary were confidential employees.

^{26/} N.J.S.A. 34:13A-3(f).

confidential functions and should be excluded from the existing unit represented by the Rahway Education Association.

RECOMMENDATION

Based upon the entire record and the foregoing discussion, the undersigned Hearing Officer recommends that the Chief Clerk Typist in the office of the Assistant Superintendent be found to be a confidential employee within the meaning of the Act and therefore inappropriate for inclusion in any negotiations unit.

Respectfully submitted,



Steven P. Weissman
Hearing Officer

DATED: July 23, 1979
Trenton, New Jersey