

P.E.R.C. NO. 88-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFFSIDE PARK BOARD
OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. CU-85-47

CLIFFSIDE PARK EDUCATIONAL
SECRETARIES ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit of secretarial and clerical employees represented by the Cliffside Park Educational Secretaries Association to exclude the senior secretary to the superintendent, secretary to the Board secretary/business administrator, accounts payable clerk and bookkeeper. The Commission finds these employees are confidential. The Commission further finds, however, that the second and third secretary to the superintendent and the payroll clerk are not confidential and may remain in the negotiations unit.

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Employee Representative.

Appearances:

For the Public Employer, Gigante & Maggiano, Esqs.
(Nicholas Gigante, of counsel)

For the Employee Representative, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On February 11 and April 22, 1985, the Cliffside Park Board of Education ("Board") filed a Petition for Clarification of Unit and an amended Petition, respectively. The Board seeks to exclude all clerical employees working in the Board's main office from their existing negotiations unit. These employees are the secretaries to the Board's superintendent and secretary. They are currently included in a unit of secretarial and clerical employees represented by the Cliffside Park Educational Secretaries Association ("Association"). The Board asserts that these employees are confidential employees within the meaning of N.J.S.A. 34:13A-3(g). The Association contends they are not.

On November 25, 1985, the Director of Representation issued a Notice of Hearing. On August 26, 27, October 10 and November 21, 1986, Hearing Officer Susan Wood Osborn conducted hearings. The parties examined witnesses and introduced exhibits. The Association filed a post-hearing brief.

On May 19, 1987, the Hearing Officer issued her report and recommended decision. H.O. No. 87-19, 13 NJPER 473 (¶18175 1987). She concluded that the senior secretary to the superintendent of schools, the secretary to the Board secretary/business administrator, the bookkeeper, and the accounts payable clerk are "confidential." Therefore, she recommended that they be excluded from the existing unit. However, she concluded that the superintendent's two other secretaries and the payroll clerk are not "confidential" and therefore should remain in the existing unit.

On June 15, 1987, the Association filed exceptions. It contends that the Board did not meet its burden of proof in establishing that any employees were confidential, the occasional "back-up duties" performed by the bookkeeper (Bleichner) and the accounts payable clerk (Simeone) do not make them "confidential," and it would be contrary to public policy favoring inclusion in negotiations units to permit employers to spread confidential duties among several employees to defeat inclusion.

On June 16, 1987, the Board excepted to the recommendation that the superintendent's second secretary (Perrin) and the payroll

clerk (Siegrist) are not "confidential." It contends that both employees have functional responsibilities and knowledge in connection with the issues involved in the collective negotiations process.^{1/}

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-21) are accurate. We adopt and incorporate them here.

N.J.S.A. 34:13A-3(g) defines confidential employees as those employees of a public employer "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." In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained how we determine 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]

The Appellate Division has affirmed this approach: we are to "render a decision based on the individual's case as presented on the record, rather than rendering a decision concerning the position in

^{1/} It also submitted additional documents. We do not consider them because they were not introduced at the hearing.

general and the fear of potential conflict." Ringwood Bd. of Ed. v. Ringwood Educational Office Personnel Ass'n, NJEA, App. Div. Dkt. No. A-4740-8677 (2/18/88), aff'g P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987).

At the outset, we dismiss the Association's exception that the Board did not meet its burden. This representation proceeding is investigatory and neither party has the burden of proof. See N.J.A.C. 19:11-6.2(c).

Both the senior secretary to the superintendent, Doris Nelson, and the secretary to the Board secretary/business administrator, Mae Moronski, are confidential employees. The Hearing Officer so found and the Association's exceptions were limited to the "burden of proof" issue. We find these two employees are confidential for the reasons expressed by the Hearing Officer.

We next consider the superintendent's second secretary, Marianne Perrin. During Perrin's seven weeks as secretary, she has assumed the duty of receiving the superintendent's mail and typing memos concerning complaints. Mail marked "confidential" is brought directly to Colagreco. The files in her office contain past records (TB107-TB108). None of these records contain budget or negotiations information.

Perrin has not performed any function which would compromise the Board's confidentiality concerning the negotiations

process. There is no evidence that the responses to complaints which Perrin types are related to collective negotiations positions. Although she opens some mail, she does not open that marked "confidential" and she has not opened mail pertaining to negotiations or grievances. Compare Sayreville Bd. of Ed., P.E.R.C. No. 88-___, 14 NJPER ___ (¶___ 1988) (decided today). Other major duties included handling substitute teachers, student enrollment, applications for technical school students, and the collection of raw data.^{2/} The collection of raw data does not mandate confidential status. Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986).

Likewise, Rosemarie Bivone is not confidential. The Hearing Officer so found and, in the absence of exceptions, we agree. As a third secretary, she is primarily involved with handling substitute teachers and routine office work. Her involvement with negotiations is limited to the compilation of raw data.

We next consider whether Simeone, the accounts payable clerk, and Bleichner, the bookkeeper, are confidential. The Hearing Officer found Simeone had advance knowledge of the Board's negotiations positions through her role in preparing scattergrams. We agree that these duties make her confidential. The Hearing

^{2/} Eckoff testified that she did not perform duties associated with developing or reviewing the Board's negotiation proposals (TD32-TD34). She never heard of scattergrams before the hearing (TD34, TD41).

Officer also found Bleichner to be confidential because the Board plans to have her assist Simeone. Since it is uncontroverted that she will have the same exposure and functional responsibilities, we agree with this conclusion.

The Board's payroll clerk, Terry Siegrist, is not confidential. Siegrist's involvement with negotiations is limited to cost analysis. This knowledge of costs does not compromise the Board's negotiations strategy since she does not have advance knowledge of the Board's proposals.

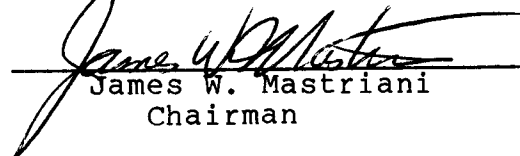
Finally, the record does not suggest that the Board assigned the various duties for the purpose of excluding employees from the Act's coverage. In any event, such a claim would be more appropriately resolved in an unfair practice proceeding. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984).

ORDER

Doris Nelson, Mae Moronski, Sophia Simeone and Barbara Bleichner are confidential employees and are excluded from the Association's negotiations unit.

Marianne Perrin, Rosemarie Bivone and Terry Siegrist are not confidential employees and shall remain in the Association's unit.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
April 27, 1988
ISSUED: April 28, 1988

H.O. NO. 87-19

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

In the Matter of

CLIFFSIDE PARK BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

DOCKET NO. CU-85-47

CLIFFSIDE PARK EDUCATIONAL
SECRETARIES ASSOCIATION

Employee Representative.

ERRATA

On the following pages and lines, replace the name Sharon
Bivone with Rosemarie Bivone:

<u>PAGE</u>	<u>LINE</u>
5	41
13	3
27	13
32	7

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SYNOPSIS

A Hearing Officer recommends that the Commission find certain employees employed by the Cliffside Park Board of Education in the Board's central office are confidential and should be removed from the clerical unit represented by Cliffside Park Educational Secretaries Association. Specifically, she recommends that the senior secretary to the superintendent of schools, the secretary to the Board secretary/business administrator, the bookkeeper, and the accounts payable clerk are confidential employees within the meaning of the Act, since their work intimately involves them in the Board's negotiations and/or budgeting strategies.

The Hearing Officer recommends that two other secretaries to the superintendent and the payroll clerk are not confidential employees.

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.

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For the Public Employer
Gigante & Maggiano
(Nicholas Gigante, of Counsel)

For the Employee Organization
Bucceri & Pincus
(Sheldon H. Pincus, of Counsel)

HEARING OFFICERS REPORT
AND RECOMMENDED DECISION

On February 11, 1985, the Cliffside Park Board of Education ("Board") filed^{1/} a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). By its Petition, the Board seeks to exclude all clerical employees working at the Board offices from the existing collective negotiations unit

^{1/} On April 22, 1985, the Board filed an amendment to the Petition to provide information required by N.J.A.C. 11-1.5.

of secretarial and clerical employees represented by the Cliffside Park Educational Secretaries Association ("Association"). The Board asserts that these employees are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association objects to the proposed unit clarification, and contends that these employees are not confidential.

On November 25, 1985, the Director of Representation issued a Notice of Hearing scheduling hearings for January 15 and 16, 1986. After several requests for adjournments,^{2/} hearings were held in this matter on August 26, August 27, October 10, and November 21, 1986, at which time both parties presented relevant evidence and examined witnesses. The Association filed a post-hearing brief on January 26, 1987.^{3/}

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The Cliffside Park Board of Education is a public employer within the meaning of the Act and is subject to its

^{2/} Delays in the scheduling of this hearing occurred because of conflicting calendars, the unavailability of necessary witnesses, and the Board's delay in answering interrogatories.

^{3/} Upon receipt of the final transcript, I set a briefing schedule. Each party requested an extension of time, and briefs were then due January 26, 1987. Thereafter, the Board requested a further extension of time. Board counsel was advised that N.J.A.C. 19:11-6.12(d) does not permit extensions of time after the deadline, but that if the late brief was filed together with an explanation, I may consider it. However, the Board did not file a brief.

provisions. It employs the employees who are the subject of the Petition.

2. The Cliffside Park Educational Secretaries Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the recognized exclusive representative of this collective negotiations unit of approximately 20 clerical employees (Exhibit J-1, TA7, TA182).^{4/} The most recent collective negotiations agreement covered the period July 1, 1984, through June 30, 1986 (Exhibit J-1).

3. The Board's central office is located at the municipal building. The superintendent of schools and the Board secretary/business administrator share a suite of offices on the third floor (TA9).

The suite consists of a large outer office containing the secretary to the Board secretary, and two small areas partially surrounded with glass enclosures, which house one secretary each. On the east side of the outer office are two private offices, one for the bookkeeper and one for the payroll clerk, and a storage

^{4/} Exhibits are designated as follows: Commission exhibits are designated as "C", joint exhibits are designated as "J", the Board's exhibits are designated as "P", and Association's exhibits are designated as "EO". Notations of the transcripts of hearings are designated as "TA"(August 26 hearing), "TB"(August 27 hearing), etc.

room. Off the west side of the main area is the Board conference room. Down a corridor extending off the west side of the main area are private offices housing the Board secretary, the superintendent's secretary, the superintendent, and another secretary assigned to the superintendent. Also off this hall is another entrance to the Board conference room. While each of the private offices have doors, the doors remain open during the day. File cabinets are unlocked, and access by all central office staff is unrestricted (Exhibits P-1, P-2, P-3, P-4, P-6, P-7, P-8; TA9-TA39, TA45, TA47, TB7, TB105-TB106).

4. As Superintendent, James Colagreco is the chief executive officer of the school district. Frank Buono is the Board secretary and business administrator. Colagreco and Buono are both involved with the preparation of the district's budget and the negotiation and administration of labor agreements. In addition to this unit, the Board also negotiates with several other units: the Teachers' Association, the Custodians' Association, the Supervisors' Association, and the Administrators' Association (TA57-TA58).

5. There is no assistant superintendent. Three of the seven central office clerks are assigned to Superintendent Colagreco. They are: Doris Nelson, Marianne Perrin and Sharon Bivone. These three secretaries have no distinctive title or job descriptions (TA79-TA81, TA144-TA146, TB4).

6. The budgeting process for a given school year begins in November of the prior school year. Colagreco testified that all

three of his secretaries assist him in putting the district's budget together and may work on typing it. Nelson agreed that all secretaries work on it together, but described their involvement in the process as follows: All schools are given an allotment for budget purposes, although she was not sure where it came from. Worksheets are sent to the schools on which teachers make budget requests for supplies, equipment and textbooks. Those requests are summarized and returned to Colagreco for approval. Approved expenditures are returned for typing of purchase orders. Colagreco approves the orders and gives them to Buono, thus completing the process. Colagreco's secretaries prepare the packages of worksheets and directions for each school, check and summarize the worksheets when they come back, and may type clean copies (TB19-TB21, TB62-TB65, TB92-TB95).

Colagreco's secretaries also assist in budgt preparation by gathering information to facilitate comparison between presently requested budget items and similar items from prior years. Colagreco gave two examples. One, his secretaries totalled the cost of substitutes for the year. Two, his secretaries gathered information on student enrollment and grant funding. Colagreco testified that while all of his secretaries were involved in collecting this information, which could result in increased or decreased staff positions, he asked Nelson to "make notations" concerning the information and the resulting decision to close a school (TA72-TA73, TA150-TA163, TA170).

7. Colagreco participates in every negotiations session for every bargaining unit. His role is to act as advisor and resource person. In preparation for negotiations, his secretaries are involved in collecting comparative information from previous contracts and other districts.

8. Colagreco is designated as the second step of the grievance procedure in all the collective negotiations agreements. Grievances are filed on a formal grievance form with a space for the superintendent's response. His response to such a grievance would likely be typed by Doris Nelson, but he testified that it could be typed by one of his other secretaries (TA175-TA177).

If a grievance is not settled, he may then discuss it with the Board but could only remember two in 15 years that went to the Board level. There have been less than five formal grievances in the last 15 years, although he occasionally receives written complaints from staff members or parents criticizing other staff members.^{5/} The results of investigations concerning such criticism would be dictated usually to Doris Nelson. Perrin has typed replies to two such complaints since she became a secretary to Colagreco. One of those complaints concerned a teacher and the other a substitute teacher. However, none of the employee organizations in the district were ever involved in any way in any such complaint (TA55-TA61, TB153-TB154).

^{5/} According to Colagreco, these complaints may have an impact on employee transfers or evaluations.

DORIS NELSON

9. Doris Nelson, the senior secretary, acts as Colegreco's personal secretary . She takes most of Colagreco's dictation. She handles personnel and teacher certification matters, and communications to/from the State and County. She types memos advising the Board about negative evaluations.^{6/} Nelson prepares the Board agenda for open meetings (TA65-TA66, TA74, TB102, TB45, TD62).

She keeps the absence records for all personnel, and calculates a contractual bonus for unpaid sick leave. While Nelson does not attend Board meetings, negotiations sessions, discussions between Colagreco and the negotiations committee, or any other meetings in which Board policy or strategies are deliberated, she transcribes Colagreco's notes of negotiations and types Board proposals. She prepares materials to be transmitted to Board members including memoranda and charts. In the context of a request for specific information, Colagreco explained Board proposals to Nelson (TB45-TB46, TB50-TB53, TB96-TB98, TB99, TB100-TB101).

10. File cabinets in Nelson's office contain personnel information on all present staff (including certifications, transcripts, evaluations,^{7/} and any memoranda, requests or letters

^{6/} While these writings are usually prepared by Nelson, Colagreco testified that "it could be any one of them."

^{7/} Copies of teacher evaluations are also kept by the building principal at each school (TA93-TA94).

concerning the employee), "current budget information", grant applications, information dealing with the County or State Department of Education, and memoranda and information sent out to the schools. Both the filing and retrieval of documents from the personnel files are done primarily by Nelson, but there have been occasions when the other two secretaries to the Superintendent have also done filing or retrieval of documents from these files. Nelson also does filing in the Board members' files, located in the Board meeting room (TA42, TA61-TA64, TA180-TA181, TB13, TB14-TB15).

11. Nelson is involved in the negotiations process to the extent that she types memoranda and proposals, and researches comparative salaries and benefits with other districts. Colagreco uses Nelson to type memoranda or notes to the negotiations committee and to gather information. When Colegreco requests additional information from Nelson or "possibly from his other two secretaries" in order to formulate counter-proposals, he shares information concerning the proposals with the secretaries, "particularly Nelson", in conjunction with his request. For instance, he testified that he discussed accumulated sick leave policy with his secretaries during the course of formulating Board proposals. However, when pressed for specifically with whom among his staff he had had such conversations he stated, "definitely Doris Nelson. I'm sure all three were involved in some phase of getting information, but definitely with her." (TA123, TA170, TA173-TA174).

MARIANNE PERRIN

12. Marianne Perrin, the former bookkeeper in the Board secretary's office, was appointed as the second secretary to the superintendent on July 1, 1986. Colagreco intends that Perrin will perform duties similar to her predecessor, Diane Eckoff (TA50).

Perrin's overall responsibilities in the Superintendent's office include answering phones, opening mail, typing, and general office work for the superintendent. Eckoff also handled the substitute teachers, student enrollment, and applications for technical school students (TA52, TA66-67, TA90, TD32-TD34).

It is primarily Perrin's responsibility to open all the superintendent's mail except pieces marked "confidential". She opens and receipts mail, categorizes it and gives it to Doris Nelson. Mail marked 'confidential' is placed unopened on Colagreco's desk. She occasionally does filing for Colagreco and has access to Nelson's files. There is no evidence that Perrin has been exposed to documents related to negotiations, or grievance strategy in the course of opening the mail or filing (TA52-TA54, TA114-TA116, TB33-TB37, TB93, TB107-TB108, TB110, TD42).

13. The file cabinets located in Mrs. Perrin's office consist of past records of handicapped and special education students, the drug program, absences, employee personal absence records, excursion permission slips, and tutoring information (2T32). Colagreco was not aware of any budget or negotiations information in her files (TA51).

14. Colagreco testified that, like Eckoff, Perrin will be involved in typing and filing of comparison charts pertaining to salary and benefits of other districts, although Perrin has not yet done so. Neither Perrin nor Eckoff have not been present when discussion of negotiations took place (TA129-TA130, 4T34). Colagreco generalized Eckoff's involvement in negotiations preparation, which he says will now fall to Perrin, as follows:

She was involved in direct memoranda, writing and analyzing our notes that we received from previous negotiating sessions, typing them, researching, if that had to be done, sending out additional information to Board members particularly committee members prior to the next meeting ... and any backup material that was needed ... whether it pertained to substituting, whether it pertained to cost analysis of materials or any other information that we used over the bargaining table. She would be involved directly whether phone calls, whether sending letters, whether gathering information and giving an analysis of comparison to other districts" (TA141-TA142).

When pressed for specificity, Colagreco indicated that Eckoff called other districts to get comparative salaries for administrators. Eckoff assisted Nelson in collecting information from the files with regard to the number of sick days used by teachers in preparation for the Board's negotiations of bonuses for non-use of sick days.^{8/} (TA142, TA174-TA175).

^{8/} Although Colagreco testified that there is no question in his mind that both Nelson and Eckoff would have been aware of what the Board's proposal was about to be and why, I do not credit this assertion as it applies to Eckoff in light of Eckoff's testimony that she was never involved in negotiations proposals. Further, there would not have been any reason for Colagreco to tell Eckoff why she was counting sick days.

Colagreco testified that Perrin will be expected to prepare memoranda for Board committees that participate in either negotiations or budgets (TA149).

Eckoff testified that during the course of her employment she never had the occasion to review or access negotiations or grievance information; nor was she requested to participate in costing out negotiations proposals. She did not type or transcribe notes associated with negotiating meetings, nor did she prepare or type confidential negotiations memoranda, nor did she prepare or assist in preparation of the actual budget. She was not involved in circulating negotiations memoranda or proposals to Board members. The extent of her involvement in preparation of the budget was limited to receiving budget requests from the various schools (TD34-TD39).

15. Eckoff acknowledged that she believed she had permission to go into the filing cabinets in Mrs. Nelson's office, in her immediate area, and the ones in the Board office and review any materials there she so desired. However, she indicated that she had never gone into the Board's files (TD41-TD42).

She was asked on two occasions to substitute for Mrs. Nelson in her absence. On those occasions, she participated in preparing for a Board meeting by doing some typing and taking some dictation from Colagreco (TD47-TD48).

Bivone

16. Sharon Bivone, was appointed to the position of the third secretary assigned to the superintendent on July 1, 1986. Muriel Riley held that position for many years prior to her retirement on that same date. Bivone's responsibilities primarily involve the handling of substitute teachers assignments. She receives absence calls and then contacts substitutes. She will also do general office work such as typing and filing (TA67-TA68, TD51).

17. While Bivone has not yet had the opportunity to participate in budget development, Colagreco anticipates that she will be working with Nelson and Perrin preparing the school budget. Specifically, as budget requests are received from the schools, she will be involved in reviewing and typing them for presentation to the Board. She may be typing memoranda or flyers to be sent to the various schools regarding the budget. Riley's responsibilities concerning the budget involved "forms coming through the teachers when they filed out what they needed" (TA68, TA89, TA150-TA152, TD54, TD69).

18. Colagreco acknowledged that Bivone has not yet been involved in costing out negotiations proposals. In preparation for negotiations, Bivone like her predecessor, will be expected to call other districts to gather comparative figures and then type them. Colagreco anticipates that she, like Riley, will participate in costing out certain negotiations or budget items, such as the cost of substitutes. Colagreco testified that in preparing for negotiations he asked his secretaries, Eckoff and Riley, to do

figures on the number of substitutes used and the cost over the course of the year, so that the Board could make negotiations proposals regarding accumulated sick leave policy (TA128-TA129, TA143-144, TA150-TA152, TD61).

However, Riley testified that she was not involved in costing out negotiations proposals, nor did she prepare, type or review Board negotiations proposals or confidential negotiations memoranda (TD52-TD54).^{9/}

19. Filing cabinets in Bivone's office contain personnel files of former staff, applications of teachers not currently employed in the district, grievances, forms, state reports, salary books for certified personnel from previous years, three drawers of Board office materials such as Board minutes, purchase orders and miscellaneous, and the substitute teacher files (TA40, TA84-TA89, TA90-TA91, TB8-TB11, TB37-TB44, TB54, TB90, TB94).

Bivone has not been involved in accessing files concerning grievance information. When asked whether she had access to files containing negotiations or grievance information, she replied that she "might have seen pieces of paper passing through, but actually not direct access." She acknowledged that she had access to the

^{9/} Colagreco testified that before the Board created the third clerical position in his office, first filled by Eckoff and now by Perrin, Colagreco used Riley and his own secretary to do all of the negotiations proposals, memoranda and budget work. However, I do not find that relevant to the present secretaries' duties, which have changed with the addition of a third person.

personnel files. Riley testified that she had occasions to go into the personnel files in Nelson's office (TA128-TA129, TD53, TD58, TD61-TD62).

20. Frank Buono has been the business administrator/Board secretary for Cliffside Park for the past five years. Buono participates in every negotiations sessions for every negotiations unit (TB209).

Since collective agreements with the various employee organizations usually have a two-year term, the Board is in negotiations every other year. Negotiations begin around January and continue until there is a settlement. During peak periods of negotiations preparation, Buono asks his staff to concentrate their time on negotiations preparation, and normal work activities are set aside. Buono stated that all of the secretaries in the Board office, except Riley, have worked on negotiations in one way or another (TB195-TB197, TB202-TB204).

21. In preparation for negotiations, Buono's staff costs out various salary proposals by developing scattergrams, a graphic display of the total cost of salaries, broken down by the number of employees at each step on a salary guide and the related cost. These scattergrams are prepared by first obtaining the information from Nelson's personnel files as to which step on the guide each employee is placed. A total base salary, upon which percentage increases can then be applied, is calculated by adding together the total salaries for the number of employees on each step of the

guide. From this total cost of base salaries, longevity payments, stipends and differentials are added (TB188-TB194).^{10/}

One purpose of the scattergrams is to cost out the expense to the Board of the annual step increments. Another is to facilitate calculation of various proposal for salary increases. Scattergrams are redone as the Board considers various increases. They are redrafted and retotalled before the Board offer is actually made, so as to determine what the offer will cost. Buono testified that the scattergrams are done "four, five or six times from January until whenever we settle...." Scattergrams are distributed to members of the Board negotiating committee in sealed envelopes (TB181-TB182, TB187, TB192, TB194).

Exhibit P-9 is a typical scattergram prepared by Buono's staff for negotiations. In addition to the figures described above, Exhibits P-9 and P-10 also show the total budgeted amount in the proposed school budget for that year.^{11/}

^{10/} Minutes of Board meetings, which are public information, show position appointments with salaries. Buono acknowledged that by taking the minutes of the Board meetings together with the collective negotiations agreement, one could extrapolate the various components of that person's salary and come up with a scattergram showing the total cost of current salaries (TC26-TC31).

^{11/} This is information that the Board wants kept confidential, but the Board believes it had been "leaked" by a member of its clerical staff before, thus showing the Board's hand in negotiations (TB192-TB193).

22. Buono also shares responsibility for preparation of the district's budget with Colegreco. The budget is prepared every year and is worked on from September through April. Buono indicated that, while the salaries part of the budget is confidential, there are other budgetary elements, that he called "semi-confidential." He continued, "I feel it strictly confidential how much money is put in the budget for salaries, custodians, cafeteria ... those types of things, specifically salaries, I have instructed the girls to not discuss at any point in time because usually negotiations are going to be based upon [those numbers]" (TB197, TB199-TB201).

23. Buono currently has four secretaries under his supervision: May Moronski, his secretary; Terry Siegrist, payroll clerk; Barbara Bleichner, the bookkeeper; and Sophie Simeone, the accounts payable clerk (TB172).

Exhibits EO-1, EO-2, EO-3 and EO-4 are job descriptions for these respective positions. They were never formally adopted by the Board, but rather were devised by the previous Board secretary. Although these descriptions have been in existence for several years, the current employees' names were added to the top of each description in preparation for the hearing. It appears that an additional item was added to each job description indicating that the employee is specifically involved in collecting information required for negotiations proposals and school district budget proposals. Buono confirmed that the employees holding the positions described by job descriptions E01 through E04 are presently performing the duties listed (TC33-TC35, TC37-TC46).

Board Office Secretary (Mae Moronski)

24. Mae Moronski is the secretary assigned to the Board Secretary, Frank Buono. Moronski's regular duties include handling the textbook orders for non-public schools, the bidding process, insurance claims, accident/liability litigation, billing and sending school districts (TC11, TD16).

Moronski types the minutes of all open and closed Board meetings and meetings of all of the Board's eight or nine subcommittees (TC10). Depending upon the committee, these minutes may include confidential information (TC10). For instance, the minutes of the personnel committee meeting may include reference to the Board contemplating hiring new staff (TC11).

Moronski serves all of Buono's dictation needs. Following negotiations, Buono typically dictates his notes and comments of the negotiations session, together with memoranda he sends to the Board, concerning negotiations. Exhibit P-14 is a typical memorandum he has sent to the Board recapping the negotiations session. It includes both parties' offers, but Board positions not yet offered. If Moronski is unavailable or too busy, Buono may ask Simeone, or occasionally Bleichner to type such negotiations notes and memoranda from long-hand (Exhibit P-14; TC5-TC8).

Because Moronski has been out ill for several weeks, Simeone has been assigned Moronski's regular duties in her absence. During Moronski's illness, Simeone has had occasions to type memoranda concerning negotiations sessions with the Secretaries

Association. Specifically, she typed the notification of meeting dates. She indicated that she saw proposals of the Secretaries Association in the folder, together with Buono's notes concerning the proposals, and his comments characterizing negotiations. She also typed a memo from Buono's long-hand notes concerning a meeting with the Board's negotiating committee (TD17-TD19, TD19-TD20).

25. Behind Moronski's desk are two sets of file cabinets. "Negotiating files" kept there contain information on all negotiations units with which the Board bargains. These negotiations files contain information pertaining to suggested settlements, copies of all notes kept by Buono from the negotiations sessions, including his personal notes and comments of Board members (TC13). Some budget information is also kept in those files (TC11-TC12, TC13, TC14).

Accounts Payable Clerk (Sophie Simeone)

26. Sophie Simeone is currently the accounts payable clerk in Buono's office. She replaced Marianne Perrin in that title on July 1, 1985. She testified that during the year she has worked there, she worked on budgeting and negotiations preparation with Marianne Perrin, then the bookkeeper.^{12/} (TC18; TD9-TD10).

Simeone's testimony describing the process of developing scattergrams confirms Buono's testimony. Simeone prepared Exhibit

^{12/} Perrin was the accounts payable clerk until July 1, 1985; she then held the bookkeeper position until July 1, 1986, when she transferred into the superintendent's office.

p-10 which is a summary of teacher's salary costs used by the Board negotiations committee in one of their first sessions with the Teacher's Association. Simeone confirmed that from time to time during negotiations the scattergrams are changed to give the Board committee information they need (TB185, TD5-TD6).

Perrin testified that while she was accounts payable clerk she prepared scattergrams. Perrin confirmed what the scattergrams show and how they are constructed. Perrin and Simeone confirmed that after the first scattergram is finished showing the total existing costs for base salaries, subsequent ones show projected increases. They are prepared using various percentage levels that Buono gives them. Scattergrams were prepared for the 1986 negotiations with the teachers' unit by Simeone and Segrist. Simeone has also prepared one for the custodial unit (TA178-TA179, TD20-TD27, TD28, TD30).

27. Simeone acts as the regular back-up for Moronski when the latter is absent or occupied with other work. As back-up, Simeone has typed minutes of Board meetings, both open and closed sessions, minutes of committee meetings, including discussions of negotiations, and Buono's negotiations notes and memoranda concerning negotiations. Such occasions arose "whenever there are negotiations." The last such occasion occurred with negotiations concerning the custodians in the spring of 1986 (TC19-TC20, TD6-TD7, TD28).

28. Simeone's involvement in the budget concerned "collecting information and working with the principals...in putting together work order for the schools." (TD9-TD10).

29. Simeone summarizes information received from the Bergen County Negotiations Data Exchange Program and then types it for submission to the Board negotiations committee. Exhibit P-11 is the cover memorandum to the Board transmitting this summary. Simeone or Moronski prepares the memorandum and the typed summary sheets (TB206-TB211).

Bookkeeper (Barbara Bleichner)

30. Bleichner is the bookkeeper who replaced Marianne Perrin on July 1, 1986. Buono acknowledged that she had not yet worked on any matters that are confidential. However, Buono has designated Bleichner to be the individual working with Simeone on scattergrams during the next period of negotiations (TC20). She specifically will also be involved in costing out salary proposals. In preparation of the budget, Bleichner will prepare a spread sheet with a breakdown on the various salary categories currently being paid.

31. Because of the lack of file space in the outer office, the minutes of the meetings together with Buono's notes from closed Board meetings are kept in Bleichner's file cabinet, and she has access to them. If Buono needs a file from that cabinet, he requests Bleichner retrieve it from the files for him (TC22).

Payroll Clerk (Terry Siegrist)

32. Although Siegrist assisted Simeone in preparing the scattergrams during previous negotiations, Buono has designated Bleichner to assist Simeone on scattergram preparation in the future (TC18).

Siegrist is involved in negotiations and budget preparation to the extent that she totals the cost of existing benefits, social security contributions and other employer payroll costs, so that the Board will know how much to budget for these purposes (TB186, TB191, TB199, TB210-TB214, TC16).

She prepared Exhibit P-13 which is a detailed break-down of the cost of existing health benefits for all non-certified staff. The current cost amount is needed by the Board since the dollar amount is capped in the contract. Thus, if the cost of the program goes up or the coverage is increased, then the Board bills the unit members for the additional cost beyond the contractual cap. There is no record evidence that Siegrist calculates projected costs (2B210-TB214, TB215-TB216).

33. Siegrist has a typewriter in her office and from time to time she types, although that is not her primary function. Buono indicated that Siegrist may from time to time type up memoranda, concerning meetings with the Board or negotiations sessions (TC17).

Personnel records of all employees are kept in Siegrist's office. Those personnel files contains information as to when the employee was hired, their health insurance records, and things of that nature (TC17-TC18).

ANALYSIS

The Board asserts that all seven clerical employees employed at the Board's central office are confidential employees and should be removed from the Association's unit. The Association maintains that none of these employees are confidential.

N.J.S.A. 34:13A-3(g) defines confidential employee:

'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 incompatible with their official duties.

The Commission's policy is to strictly construe 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).

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶ 16179 1985), the Commission explained the approach taken 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].

At the outset, I reject consideration of a blanket exclusion of all clerical employees in the Board's central office merely because they are assigned there. In State of New Jersey,

P.E.R.C. No. 86-59, 11 NJPER 714 (¶ 16249 1985), the Commission observed,

The Legislature has defined "confidential employees" in subsection 3(g) of the Act and it is our task to interpret and administer that definition. In this definition, the Legislature focused on individual employees and did not contemplate a department-wide exclusion. That definition requires us to consider more than an employer's (or department's) function. We must instead examine what each employee knows and does in connection with collective negotiations matters....[Id. at 715]

Therefore, I will examine each of these employees separately.

Superintendent Colegreco is involved in formulating negotiations proposals. He attends every negotiations session and is involved in formulating the district's budget. He is also the second step of the grievance procedure in each of the district's collective agreements with its various employee representatives.

Doris Nelson is Colegreco's personal secretary. She types Colegreco's notes of negotiations sessions and negotiations proposals, and types Colegreco's responses to formal grievances. She prepares memoranda, charts and notes at Colegreco's direction for transmittal to the Board's negotiations committee. The typing of such labor-related materials, which results in Nelson's knowledge of sensitive negotiations positions, necessitates a finding of confidential status. River Dell Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶ 15073 1984); Western Monmouth Utilities Authority, D.R. No. 82-38, 8 NJPER 140 (¶ 13061 1982); Parsippany-Troy Hills Tp. Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶ 11131 1980).

In the context of gathering information in preparation for the Board's negotiations counterproposals, Colegreco shares information with her concerning the nature of the counterproposal in conjunction with his request. Nelson is primarily responsible for filing and retrieval of documents in the personnel files located in her office, as well as the Board members' files, including negotiations files.

Clearly, the duties Nelson performs for the superintendent intimately involve her in the collective negotiations process and result in her knowledge of the Board's position on negotiations issues. I find that Nelson is a confidential employee.

Perrin has not yet had the occasion to perform confidential duties in her new role as Colegreco's second secretary, since she was only transferred to that position about seven weeks prior to the commencement of the hearing. However, the position is not new, and the Board anticipates that Perrin will perform the duties of her predecessor, Eckoff. Therefore, I will examine the position, not just the employee in that position. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1, (1978).

Neither Eckoff nor Perrin were present when discussions concerning negotiations took place. Although Eckoff was involved in collecting data, e.g., totalling the cost of substitutes for a given year in preparation for negotiations, there is no evidence that she knew what the Board's contemplated proposal would be. The collection of raw data is insufficient to conclude that the Board's

position would be compromised by her inclusion in the unit.

Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶ 17294 1986); River Dell, supra, aff'g D.R. No. 83-21, 9 NJPER 180 (¶ 14084 1983); Rahway Bd. of Ed., D.R. No. 80-12, 5 NJPER 50 (¶ 1026 1979).

This also applies to the collection of data, and the typing and filing of comparison charts with salary and benefit information from other districts. This information may be of invaluable assistance to the Board in negotiations, but Perrin's knowledge of that raw information concerning salaries and benefits in other districts does not compromise the Board's negotiations position.

Perrin opens the superintendent's mail and occasionally files in Nelson's filing cabinets. However, there is no record evidence that this function ever results in her exposure to confidential labor-sensitive documents. Access to personnel files is insufficient to find confidential status. State of N.J., P.E.R.C. No. 86-18, supra.

On occasion, Perrin has typed the superintendent's reply to written complaints from/about staff members. However, it does not appear that these complaints resulted in any involvement with the employee representatives of those employees, therefore, I find no nexus to the negotiations or administration of the collective negotiations agreement to be present.

In Nelson's absence, Eckoff assisted in preparing for a Board meeting, but there is no record evidence that she came into contact with any labor relations materials or personnel policies in doing this task.

Based upon the foregoing, I find that Perrin, whom Colagreco indicated will perform similar responsibilities to Eckoff, is neither involved in the collective negotiations process nor possessed of knowledge of labor relations issues as a result of her duties. Therefore, I find that Perrin is not a confidential employee within the meaning of the Act.

Sharon Bivone replaced Muriel Riley just seven weeks before the start of the hearing in this matter. However, like Perrin, Colegreco agreed that Bivone had not yet had any confidential duties or exposure, but indicated that Bivone will perform functions similar to those performed by Riley. Therefore, I will examine the position in addition to the employee.

Riley's involvement in the budget process was limited to distributing and collecting information from the schools. Her involvement in negotiations entailed gathering and typing raw data, such as the cost of substitutes. There is no record evidence that Riley was aware of the Board's overall financial position in conjunction with performing this task. Budget information which is not specifically relevant to the employer's bargaining position does not implicate confidential status. See Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶ 16115 1985).

Although grievances are filed in cabinets located in Riley's office, to which she has access, there is no indication in the record that she had occasion to examine those files. In previous cases, the Commission distinguished between access--the

ability to get at materials, and exposure--functional responsibility to read, type or file confidential documents, as a critical difference, with the latter being a key element in finding confidential status. In Montague Bd. of Ed., supra, the Commission found,

Access to confidential information is a relevant factor in assessing an employee's function and responsibilities, but it is not enough, standing along, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶ 11033 1980) [Id. at p. 774].

I find that Bivone, like her predecessor, does not have exposure to confidential materials involving negotiations or contract administration or budgeting. Therefore, I find that Bivone is not a confidential employee.

Moronski is Frank Buono's personal secretary. Buono, as the Board secretary, is involved in the negotiations process and is responsible for preparing the district's budget in terms of fiscal considerations. As his secretary, Moronski types minutes of open and closed Board meetings, minutes of negotiations and personnel committee meetings, These responsibilities result in her being privy to discussions concerning personnel decisions and negotiations strategies. Additionally, she types Buono's memoranda and notes concerning negotiations sessions. This results in her knowledge of the Board's position concerning negotiable items, including the Board's negotiations positions not yet offered across the table.

Moronski also maintains negotiations files for all of the districts' collective negotiations units. These files contain

Buono's notes concerning negotiations, as well as Board members' comments, and suggested settlements.

I find that as a result of these duties, Moronski is intimately acquainted with the Board's position on negotiations issues, and her inclusion in the collective negotiations unit significantly compromises the Board's position. I find that Moronski is a confidential employee within the meaning of the Act.

Simeone acts as regular back-up for Moronski. In that context alone, she becomes intimately involved in negotiations issues and the Board's proposals, just as Moronski does when she performs the functions as enumerated above.

In Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶ 10040 1979), the Director found:

Although the record may not conclusively demonstrate a continuous pattern of exposure to the collective negotiations process, the statutory definition does not make confidential status dependent upon regular involvement in labor relations.

Here, Simeone is involved frequently enough to have knowledge of the proposals involved in at least one set of negotiations.

Additionally, Simeone is the key employee upon which Buono relies to cost out the Board's negotiations proposals in preparation for negotiations. She, with some assistance, prepares "scattergrams" to total ~~the~~ existing cost of teacher salaries. I agree with the Association's argument that this cost-out, by itself, would not necessarily render her confidential, since that information is available from the combination of other sources.

However, after the first scattergram is prepared showing the present total salary cost, she, at Buono's direction, continues to prepare them using different percentage increases that the Board anticipates it may wish to propose across the table. Additionally, these documents also indicate the total available budgeted amount for salaries, a figure that would most assuredly compromise the Board's bargaining ability across the table.

Based upon Simeone's responsibilities, I find that she is involved in negotiations preparation that results in considerable knowledge of confidential negotiations information, and is therefore, a confidential employee. See, Scotch Plains Tp., D.R. No. 84-11, 9 NJPER 632 (¶ 14270 1983); Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶ 13031 1981); Old Bridge Tp., D.R. No. 82-17, 7 NJPER 639 (¶ 12287 1981); Brookdale Community College, D.R. No. 78-10, 4 NJPER 32 (¶ 4018 1977).

Bleichner replaced Perrin as the bookkeeper on July 1, 1986. She has not yet worked on confidential matters. Buono plans to have Bleichner, rather than Terry Siegrist, assist Simeone with preparation for negotiations including the development of scattergrams. For the reasons stated above, I find that the involvement in doing scattergrams will result in a knowledge of the Board's negotiations positions incompatible with her inclusion in any unit.

Further, Bleichner retains the files of closed sessions of Board meetings in her office, and retrieves them upon request from Buono.

Therefore, I find the Bookkeeper to be confidential.^{13/}

Siegrist's responsibilities to assist with preparation of scattergrams has now been transferred to the bookkeeper. She continues to prepare a total of the cost of existing benefits for Buono.

I do not find the totalling of existing benefits costs rises to the level of intimate involvement with the Board's budgeting or negotiations strategies. There is no evidence that as a product of this function, she is aware of what the Board's proposals in negotiations might be, nor is there evidence that she is aware of the total allocation for salaries in projected budgets. Therefore, I find that Siegrist is not a confidential employee.

CONCLUSIONS AND RECOMMENDATIONS

1. I conclude that Doris Nelson, senior secretary to the superintendent, is a confidential employee within the meaning of the Act. I recommend that she be removed from the collective negotiations unit. ^{14/}

^{13/} I recognize that in Wayne Bd. of Ed., P.E.R.C. No. 87-82, 13 NJPER 77 (¶ 18035 1986), the Commission noted that, in determining confidential status, "We do not look to...potential job responsibilities, rather we look to what that employee actually does." [Wayne, p. 78]. Here, however, the issue is not potential duties she may perform, but actual, existing duties which have been reassigned to her, and she will perform.

^{14/} Since these are confidential employees, I recommend that the Commission's decision have immediate effect. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

2. I conclude that Mariann Perrin, second secretary to the superintendent, is not a confidential employee. I recommend that the Board's Petition to exclude her from the unit be dismissed.

3. I conclude that Sharon Bivone, third secretary to the superintendent, is not a confidential employee. I recommend that the Board's Petition to exclude her from the unit be dismissed.

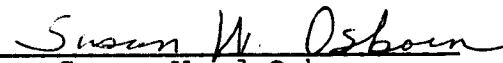
4. I conclude that the Board secretary's secretary, Mae Moronski, is a confidential employee within the meaning of the Act. I recommend that she be removed from the collective negotiations unit.

5. I conclude that the accounts payable clerk, Sophia Simeone, is a confidential employee within the meaning of the Act. I recommend that she be removed from the collective negotiations unit.

6. I conclude that the bookkeeper, Barbara Bleichner, is a confidential employee within the meaning of the Act. I recommend that she be removed from the collective negotiations unit.

7. I conclude that the payroll clerk, Terry Siegrist, is not a confidential employee. I recommend that the Board's Petition with regard to the payroll clerk be dismissed.

RESPECTFULLY SUBMITTED,


Susan Wood Osborn
Hearing Officer

Dated: May 19, 1987
Trenton, New Jersey