

D.R. NO. 93-7

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

In the Matter of

NEW MILFORD BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. CU-92-54

NEW MILFORD ASSOCIATION OF  
EDUCATIONAL SECRETARIES,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies a unit of secretarial and clerical personnel to exclude the position of Secretary to the Supervisor of Instruction with collateral assignment to the Superintendent of Schools. The Director finds that the position is confidential within the meaning of the Act.

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Appearances:

For the Public Employer  
Gerald L. Dorf, attorney

For the Employee Organization  
Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION

On May 27, 1992, the New Milford Board of Education filed a Petition for Clarification of Unit with the Public Employment Relations Commission to clarify the existing unit of secretarial and clerical personnel represented by the New Milford Education Association to exclude the position of Secretary to the Supervisor of Instruction with collateral assignment to the Superintendent of Schools. The Board asserts that the position is confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and should be excluded from the unit.

The Association opposes the petition and seeks its dismissal. The Association claims that the Board has not given any

reason why the Superintendent does not use his own secretary to perform confidential duties. It further asserts that the alleged confidential duties are being given to the Secretary to the Supervisor of Instruction for the purpose of removing her from the negotiations unit rather than for any managerial need. Finally, the Association contends that the Board has not submitted any factual proffer indicating regular use of or involvement by the Secretary to the Supervisor of Instruction in confidential matters.

We have conducted an administrative investigation into the issues raised by this petition. N.J.A.C. 19:11-2.6. These facts appear.

Dr. Mario Volpe is the Superintendent of Schools and is involved in grievance processing, preparation for and participation in collective negotiations, arbitration cases, and personnel matters including tenure proceedings, hiring, promotion, discipline, and termination. He also participates in the establishment of personnel and labor relations policies and prepares materials for Board meetings.

Susan Tietjen holds the position of Secretary to the Supervisor of Instruction with collateral assignment to the Superintendent of Schools. Tietjen's work for the Supervisor of Instruction consists of standard secretarial duties and includes work involving grant applications, purchase order preparation, and policing the expenditure of grant funds.

Tietjen's work for the Superintendent includes filling in for his regular secretary when she is absent. Moreover, her duties as described in her job description include typing personnel-related reports, collecting and preparing personnel and labor relations materials for Board meetings and preparing confidential information for Board members. Tietjen also collects and prepares materials for use by Board representatives in grievance arbitration matters; prepares, files and maintains the Superintendent's collective negotiations records; types reports and recommendations from the Superintendent to Board members regarding personnel and collective negotiations meetings; and receives and files the Superintendent's reports regarding the status of negotiations, pending grievances and other personnel and labor relations matters.

In addition, according to Tietjen's statement, she prepared a Work Stoppage Plan for the school district in November 1991 and typed the Superintendent's notes made during contract negotiations. She also has access to the Superintendent's locked desk drawer containing labor relations and personnel information and district personnel files.

#### ANALYSIS

Confidential employees may not be included in any negotiations unit. N.J.S.A. 34:13A-5.3. N.J.S.A. 34:13A-3(g) defines confidential employees as those employees:

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

The Commission narrowly construes the term confidential employee. See Brookdale Comm. Coll., D.R. No. 78-10, 4 NJPER 32 (¶4018 1977); State of N.J. and CWA (successor to NJCSA/NJSEA), P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985) app. disp. App. Div. Dkt. No. A-1375-85T (1/9/87); Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd App. Div. Dkt. No. A-4740-86T7 (2/18/88); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). A finding of confidential status requires a case-by-case examination of each alleged confidential employee's knowledge of information which could compromise the employer's position in the collective negotiations process. See River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Ringwood. The key to confidential status rests upon an employee's knowledge of and responsibility for performing work involving materials used in labor relations processes including contract negotiations, contract administration, grievance handling and assisting management in preparing for these activities. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983). However, a finding of confidential status does not require regular or continuous involvement with the collective negotiations process; it requires that the extent of the employee's involvement in these functions renders membership in any collective negotiations unit incompatible with the employee's job duties. Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979).

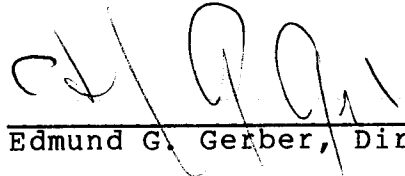
Here, Tietjen performs duties for the Board which are directly involved in the employer's preparation for and administration of its collective negotiations processes. Tietjen is responsible for collecting and preparing materials for use by the Board representatives in grievance arbitration; preparing and maintaining the Superintendent's collective negotiations records; and typing and filing various correspondence between the Superintendent and the Board concerning collective negotiations. More specifically, Tietjen typed a Work Stoppage Plan for the district in November 1991 and the Superintendent's notes taken during contract negotiations. Given knowledge of this information, her inclusion in a negotiations unit could compromise the Board's position in the collective negotiations process. River Dell; Cliffside Park. The Commission has found that such duties indicate confidential status. Oakland Bd. of Ed., D.R. No. 91-8, 16 NJPER 500 (¶21220 1990); River Dell; Cliffside Park.

Based upon the foregoing, the duties which Tietjen performs for the Board provide her with knowledge of confidential labor relations matters which could compromise the Board's position in the collective negotiations process. Accordingly, I find that Tietjen is a confidential employee within the meaning of the Act and that the secretarial/clerical unit is hereby clarified to exclude the position of Secretary to the Supervisor of Instruction with

collateral assignment to the Superintendent, effective immediately.

See Clearview.<sup>1/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: December 7, 1992  
Trenton, New Jersey

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<sup>1/</sup> The Association challenges the employer's motivation in assigning Tietjen confidential duties. However, an unfair practice charge is the proper forum in which to question whether an employer has intentionally and improperly distributed confidential work to an employee in order to exclude the employee from an otherwise appropriate unit. See Morris Bd. of Ed., P.E.R.C. No. 89-42, 14 NJPER 681 (¶19287 1988); aff'd App. Div. Dkt. No. A-2191-88T2 (11/16/89).