

D.R. NO. 89-15

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

In the Matter of

PENNSAUKEN BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket Nos. CU-88-40
CU-88-44

PENNSAUKEN ASSOCIATION OF
EDUCATIONAL SECRETARIES,

Employee Representative-Petitioner.

SYNOPSIS

The Director of Representation clarifies the position of Secretary to the Director of Elementary Education out of the unit represented by the Pennsauken Association of Educational Secretaries. The Director found that the Secretary was confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., because her duties involved the preparation of sensitive labor relations information before it was released to the Association. The Director declined to clarify the Assistant Computer Operator/Payroll Secretary out of the unit, finding that this position's duties did not include access to confidential labor relations materials; that neither mere access to payroll and personnel documents nor close proximity to another excluded position are sufficient to justify removal from the unit. Finally, the Director dismisses a petition seeking to clarify the position of Secretary to the Director of Adult Education and Federal Programs finding no dispute as to the status of this position.

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Appearances:

For the Petitioner
Capehart & Scatchard, Esqs.
(Betsy G. Liebman, of counsel)

For the Employee Representative
Selikoff & Cohen, Esqs.
(Carol F. Laskin, of counsel)

DECISION

On February 16, 1988, the Pennsauken Board of Education ("Board") filed a Petition for Clarification of Unit, Docket Number CU-88-40, with the Public Employment Relations Commission ("Commission") seeking to clarify the unit represented by the Pennsauken Association of Educational Secretaries ("Association") to exclude two positions, Secretary to the Director of Elementary Education and Assistant Computer Operator/Payroll Secretary ("Payroll Secretary"). On February 29, 1988, the Association filed a Petition for Clarification of Unit, Docket Number CU-88-44, seeking to clarify its unit of secretarial/clerical employees to include the position of

Secretary to the Director of Adult Education and Federal Programs. The Board contends that the two positions which are the subject of its petition are confidential employees within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A et seq. ("Act"). The Association objects to the Board's petition and claims that the two positions sought to be excluded are not confidential.

We conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.2(a).^{1/} From our investigation, the following facts appear.

The Board and Association have been parties to successive collective negotiations agreements since about 1970. The parties' current agreement expires on June 30, 1990. The recognition article of the agreement contains the following:

A. . . . [the Board]. . . recognizes the Pennsauken Association of Educational Secretaries as the exclusive representative for the purpose of collective negotiations concerning terms and conditions of employment for all individuals under contract with the Board performing secretarial or clerical work, including the

^{1/} On October 3, 1988, we wrote to the parties advising them of our findings of fact and of our intention to issue a decision based on the facts and law. Both were given time to respond to our letter and to each other. Both responded. The Board replied on both October 20 and 27, supporting our conclusion, in part, and requesting our reconsideration of another part of the tentative decision. The Board also submitted an affidavit of Rosemary Gennaro, Director of Elementary Education. The Board stated that the affidavit "was necessary to address some of the factual inaccuracies found in the Association's letter brief." The Association replied on October 20 and 26, supporting our decision in part, objecting in part and also submitting an affidavit of Barbara DeFranco, President of the Association.

assistant computer operator; provided, however, the following individual job classifications shall be excluded from such representation and individuals filling such classifications shall not be recognized as members of such unit:

1. Superintendent's Secretary
2. Assistant Superintendent's Secretaries
3. Secretary to the Board Secretary
4. Senior Payroll Clerk
5. Accounts Payable Clerk
6. Head Computer Operator
7. Individuals employed on an hourly basis by the Board.

The Board and Association agree that the two titles which are the subject of petition Docket Number CU-88-40, the Secretary to the Director of Elementary Education and the Assistant Computer Operator/Payroll Secretary, were included within the recognition provision prior to the filing of these petitions.

At the informal conference, the parties agreed that the title which is the subject of petition Docket Number CU-88-44, the Secretary to the Director of Adult Education and Federal Programs, is presently vacant but that if filled with a full-time employee would properly be a unit position. The parties further agreed that if the position is filled by an hourly employee, then that employee would be excluded from the unit by the terms of the contractual recognition clause.

In addition to the secretarial unit, there are five other units in the Pennsauken school district. These are the educational aides unit, the bus drivers/bus aides unit, the certified teachers unit, the custodial and maintenance unit, and the administrators unit.

The Board's team for negotiations with the secretarial unit consists of the Superintendent, one member of the Board of Education,

the Board's attorney, and the Director of Elementary Education ("Director"). The Director does not participate in negotiations with any of the other units. In her negotiations role, the Director participates in all pre-negotiations team meetings and, during negotiations sessions, participates in Board team caucuses. The Director's primary job responsibility is the direction and supervision of all elementary education programs. In this capacity, she exercises supervisory control over the members of the Association's unit. She was consulted by the Superintendent in the case of a grievance filed by the Association, but her title is not one of the official "steps" in the grievance procedure.

The Secretary to the Director of Elementary Education is the personal secretary to the Director and is responsible for typing and filing all correspondence and reports, including those documents relating to the Director's participation in negotiations. These include negotiations progress reports prepared by the Director for the Board and for administrative meetings. The Secretary photocopies and conveys the Director's notes concerning negotiations to the Assistant Superintendent. She also takes all telephone messages for the Director, including those from the Board's labor relations attorney. However, these messages do not contain substantive information about negotiations issues.

During the most recent contract negotiations with the Association, the Secretary to the Director of Elementary Education was more involved in the negotiations process than she had been in the

past. Specifically, she typed up two written proposals which were later presented to the Association. She also gathered and prepared salary and benefit information which the Board's team used in preparing salary proposals. The information collected by the Secretary is available to the Association. She also prepared changes to the agreement, but these were post-ratification changes.

The Assistant Computer Operator/Payroll Secretary ("Payroll Secretary"), Evelyn Gotterup, reports officially to the Board Secretary but works most closely with the Senior Payroll Clerk. Everyone in Gotterup's work environment, including the Senior Payroll Clerk, is excluded from the unit. Gotterup's duties are payroll-related. She maintains personnel records, assists in updating changes to the payroll, and handles such things as wage garnishment and payroll deductions. Finally, the Board asserts that Gotterup may help with contract negotiations in the future by providing payroll and wage information.

The Board contends that the two positions it seeks to have excluded are confidential because of their duties and responsibilities and in the case of the Payroll Secretary, because of her close proximity to other confidential employees.

The Association claims that the primary function of the Director of Elementary Education is the supervision of elementary education programs and teachers and not handling sensitive labor relations matters. It asserts that the Director's secretary should remain in the unit because the small amount of time devoted labor

relations matters does not justify classifying this secretary as a confidential employee.

The Association asserts that Gotterup's job duties are not related to collective negotiations activity, but have to do with personnel records. It also asserts that the data to which this employee has access is information which describes present costs, not projected costs of alternative negotiations proposals being considered by the Board. Finally, the Association points out that the information to which she has access is public and not confidential.

ANALYSIS

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

'Confidential employees' of a public employer means 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's policy is to narrowly 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); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

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]

Here, the Secretary to the Director of Elementary Education works as personal secretary for a member of the Board's negotiating team. The secretary has recently typed two of the Board's proposals prior to their introduction to the Association's negotiating team. However, the Association argues that the primary job of the Director is to supervise elementary education programs and because the Director and her secretary have minimal involvement with collective negotiations, removing the secretary from the unit is not warranted.

The Association correctly states that the Commission's policy favors wide employee representation rights; that policy dictates that the term "confidential status" be construed narrowly to include only those who "assist persons who exercise managerial functions in the field of labor relations." Ford Motor Co., 66 NLRB 1317, 17 LRRM 394 at 1322 (1946). The policy surrounding confidential status is that it exists to protect both employees and the public employer from inherent conflicts of interest arising from duties which involve knowledge of the employer's positions in negotiations and contract administration. The employer is entitled to have such knowledge kept from employee organizations prior to its scheduled release. Thus, the test for confidential status considers whether the employee's duties would put

her in a position of compromising the Board's position in negotiations. Here, as a member of the Board's negotiations team, the Director performs managerial functions in the field of labor relations. The Director's secretary has typed two Board negotiations proposals before they were released to the Association during negotiations. Thus, certain of this secretary's duties, although infrequently performed, create such a conflict of interest -- between her loyalty to and participation in the Association and performance of her duties for the Board -- as to warrant her removal from the unit.

In Tp. of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979), the Director of Representation found the Police Chief's secretary to be confidential where she typed and filed all his work including labor-related materials. We noted there that:

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. Id. at 62 (emphasis added).

We find that the duties performed by this secretary relating to her supervisor's negotiations responsibilities would compromise the employer's right to confidentiality since they involve her access to and preparation of sensitive labor relations information before it is presented to the Association. As we noted in Dover, the fact that the confidential duties are not "primary" or continuously and regularly performed will not preclude a determination of confidential status.

Based upon the record in this matter, the Secretary to the Director of Elementary Education is a confidential employee within the meaning of the Act. Accordingly, we clarify the Association's clerical/secretarial unit to exclude this position, effective immediately. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

As to the position of Assistant Computer Operator/Payroll Secretary ("Payroll Secretary"), the Board identified the position's duties as payroll and personnel-related and stated that the employee works in an office where almost everyone else is excluded from all units. The Board noted that this employee has access to confidential personnel and payroll records and, in the future, will have a greater role in supplying the Board's negotiations team with information in preparation for negotiations.

The Board has not demonstrated that the types of payroll and personnel documents to which the Payroll Secretary allegedly has access are confidential labor relations materials. Access to payroll information is not, by itself, sufficient to support a claim of confidential status. Cliffside Park Bd. of Ed. Moreover, the confidential status of other employees in the workplace is not determinative of an employee's status. In determining confidential status, each position must be examined separately to determine whether that employee is confidential. State of New Jersey; Cliffside Park Bd. of Ed. Even assuming the Payroll Secretary will supply the Board with "information in preparation for negotiations",

that is not necessarily reflective of confidential status. There is no assertion and no showing that the type of information she will collect in the future will be sensitive, confidential information or that the information will be unavailable to the public and compromising of the Board's negotiations positions. The Payroll Secretary has never actually performed these duties. Accordingly, we determine that the Payroll Secretary is not a confidential employee within the meaning of the Act and decline to remove the employee from the Act's coverage based only upon projections of conflicts by the Board.^{2/}

With regard to the status of the Secretary to the Director of Adult Education and Federal Programs, the parties agreed that the

^{2/} In its response to our October 30, 1988 correspondence, the Board did not offer any new information as to why this conclusion is wrong but reiterated its argument that since the Payroll Secretary performs most of the same functions as the excluded Senior Payroll Clerk, logically, the Payroll Secretary should be excluded also. The Board cited Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1982), as authority for finding confidential a position which maintains financial accounts and personnel records. We find Linden is inapposite to this case. The record in Linden was rich with examples of the duties of the Principal Account Clerk which gave her access to confidential labor relations data. The Principal Account Clerk compiled data for the Library's budget; in doing that task, the employee learned, from the City Treasurer's Office, what cost-of-living raises the City planned to offer employees, and what promotions might be effected in the coming year. The Principal Account Clerk received this information before it was made public. In closed meetings with the Library Board of Directors, the employee provided data concerning the cost of contract proposals and made suggestions modifying various (Board) proposed contractual provisions. The record here does not show that the Payroll Secretary has similar knowledge or duties.

then-vacant position of Secretary to the Director of Adult Education and Federal Programs should be included in the unit if filled by a full-time employee. The Board had once filled the position with an hourly employee; both the Board and Association agreed that hourly employees are excluded from the unit. Thus, there is no dispute about the status of future occupants of this title. Accordingly, we dismiss the petition as to this title.^{3/}

Based upon the record in this matter and the foregoing, we clarify the existing unit to exclude the position of Secretary to the Director of Elementary Education and decline to clarify the Association's unit as excluding the Assistant Computer Operator/Payroll Secretary. We dismiss petition Docket Number CU-88-44 as there is no dispute concerning the unit status of the Secretary to the Director of Adult Education and Federal Programs.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: January 26, 1989
Trenton, New Jersey

^{3/} N.J.S.A. 34:13A-5.3 states: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute."