

D.R. NO. 96-10

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

In the Matter of

PASSAIC COUNTY MANCHESTER REGIONAL,

Public Employer,

-and-

Docket No. RO-96-49

MANCHESTER EDUCATIONAL SECRETARIES ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation finds that the Secretary to the Board Secretary/Business Administrator and the Bookkeeper are not confidential employees within the meaning of the Act and thus directs an election in the petitioned-for unit of typists, secretaries, the guidance systems coordinator, bookkeeper, and attendance clerk employed by the Passaic County Manchester Regional High School.

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Appearances:

For the Public Employer,
Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel)

For the Petitioner,
Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 4, 1995, the Manchester Educational Secretaries Association filed a Representation Petition with the Public Employment Relations Commission seeking to represent a unit consisting of: clerk typists, secretaries, the guidance systems coordinator, bookkeeper, and attendance clerk employed by the Passaic County Manchester Regional High School.

The District opposes the petition, claiming that two of the petitioned-for titles--the Secretary to the Board Secretary/Business Administrator and the Bookkeeper--are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and must be excluded from the unit.

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

The Secretary to the Superintendent is excluded from the petitioned-for unit. She is intimately familiar with all grievances, litigation and collective negotiations matters. She forwards and receives Board responses to grievances and other personnel matters, as well as Board negotiations proposals and strategies, and maintains the locked files pertaining thereto. Accordingly, and with the agreement of the parties, she is a confidential employee within the meaning of the Act.

The Board Secretary/Business Administrator, William F. Nelson, is the Chief Financial Officer of the District. His responsibilities include building maintenance and operation, payroll, investment of district monies, budget preparation, and assistance in collective negotiations and contract administration.

Dale Currey currently holds the position of Secretary to the Board Secretary/Business Administrator and has held that position since January 1992. Her desk is located near Nelson's and the Superintendent's and she works in close proximity to the Secretary to the Superintendent. She is not privy to, nor has she ever overheard, any conversations involving the Superintendent or Board Secretary/Business Administrator, concerning contract negotiations or grievances.

The District claims Currey opens all mail, including that marked "personal and confidential" and has constant access to confidential negotiations files, scattergrams, memos to the Superintendent and District members concerning the status of negotiations, and District negotiations proposals and strategies. In support of its position, the District submitted a September 13, 1993 facsimile sent by Currey to the Superintendent which contained an Article which was missing from a Memorandum of Agreement signed by the District and the Association. However, Currey denies that she opens "confidential" mail and claims she has never seen or had access to scattergrams or any materials or data regarding contract negotiations or grievances.

Currey coordinates the health benefits program, giving her access to and knowledge of the costs of benefits per employee. According to the District, Currey also types the Board Secretary/Business Administrator's correspondence and responses to grievances and sensitive personnel matters, and receives telephone calls related thereto. The District notes she recently typed information involving two employees charged with criminal activity.

The District also claims Currey is intimately familiar with budget information, including confidential information concerning salary increase percentages, line item changes and potential positions to be eliminated. Currey, however, claims she has never obtained or utilized any personnel or budget information concerning negotiations or grievances and that her access to budget figures is only after the budgetary process has been completed.

Currey also prepares and transcribes the minutes of the regular Board meetings. She does not presently prepare and transcribe the minutes of the executive sessions where District strategies and positions regarding litigation, grievances, and labor relations matters are discussed. The District, however, claims this responsibility will be shifted to her in the future because it is in her job description.

Currey also prepares the certificated staff report and seniority list which requires her to have access to staff contracts, educational data, evaluations and personnel letters. She also assists in organizing the monthly report to Board members but such information has never concerned negotiations or grievances.

Currey also acts as the replacement to the Secretary to Superintendent when the latter is absent or on vacation. She also "backs-up" the Secretary to the Superintendent. When the Secretary to the Superintendent is absent, Currey screens the Superintendent's calls and opens the Superintendent's mail. Currey has never attended Board executive sessions or utilized any materials concerning negotiations or grievances in the Secretary's absence. Before she goes on vacation, the Secretary to the Superintendent prepares the materials for the next executive session.

Mary Ann Grosser holds the position of Bookkeeper reporting to the Board Secretary/Business Administrator and has done so for approximately 10 years. Her desk is located near the offices of the Superintendent and the Board Secretary/Business Administrator. She

has neither been privy to nor overheard any conversations regarding negotiations or grievances. Closed door conversations are held in the offices of the Superintendent and the Board Secretary/Business Administrator, but Grosser cannot hear them.

Grosser is primarily responsible for providing financial information to the Board Secretary/Business Administrator to aid in effective cash management and the preparation of monthly budget reports and budget checks. She inputs salary adjustments after Board action.

When Currey is absent or on vacation, Grosser is her replacement. While she performs some of Currey's duties, she does not type for her. When both Currey and the Secretary to the Superintendent are absent, the Bookkeeper makes and receives telephone calls and sorts mail. The District claims that Grosser opens and distributes mail marked "personal and confidential", however, Grosser denies this. The District further claims that Grosser is required to open and distribute District negotiations proposals, however, she denies she has observed or had access to any mail or materials concerning negotiations or grievances.

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's policy 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. dismiss. App. Div. Dkt. No. A-1375-85T1 (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). The burden of demonstrating confidentiality is therefore placed on the party seeking to remove an employee from the Act's protection. See State of New Jersey and CWA; State v. Professional Ass'n of New Jersey Dept. of Ed., 64 N.J. 231, 253 (1974), N.J. Const. Art. I ¶19. 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 is an employee's access to and knowledge of materials used in labor relations processes including contract negotiations, contract administration, grievance handling and assisting management in preparing for these functions. See State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

Here, I find that the Secretary to the Board Secretary and the Bookkeeper are not confidential employees within the meaning of the Act.

Secretary to the Board Secretary/
Business Administrator

The District fails to demonstrate that the Secretary to the Board Secretary/Business Administrator performs confidential labor relations duties under the Act. While the District claims Currey opens confidential mail involving negotiations and labor relations matters, it fails to provide any specific examples. Nor does it provide any examples of any conversations she might have heard by the Superintendent or Board Secretary/Business Administrator involving labor relations or negotiations matters. Simply because her office is located near those of the Superintendent and the Board Secretary/Business Administrator is not itself sufficient to warrant a finding of confidential status. State of New Jersey, P.E.R.C. No. 86-18.

Moreover, while the District claims she has constant access to confidential labor relations materials such as scattergrams and District proposals and strategies, it fails to provide any examples. The example the District did provide, the September 13, 1993 facsimile, contained information that was agreed upon by the Association after negotiations. It was not information that contained negotiations proposals, positions or strategies. Access to and knowledge of this information would not result in a finding of confidential status. Ringwood.

Further, the fact that Currey has knowledge of the cost of health benefits per employee does not make her confidential. The collection and typing of raw data which could be later used for negotiations is not sufficient for a finding of confidential status. Ibid; Cliffside Park Bd. of Ed. Further, her knowledge of the cost of the benefits does not compromise the District's negotiations strategy since she does not have advance knowledge of the District's proposals. Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986).

Currey's access to sensitive personnel information, such as that involving criminal activity by employees, does not warrant a finding of confidential status. State of New Jersey, P.E.R.C. No. 86-18. As for the District's claim she types the Board Secretary/Business Administrator's responses to grievances, no examples were provided of such.

Further, Currey prepares and transcribes the minutes of regular Board meetings, not the closed executive sessions where District negotiations strategies, labor matters and grievances are discussed. While the District claims the duty of preparing and transcribing the closed executive sessions will shift to her in the future, this is mere speculation. A finding of confidential status is based on what the employee actually does, not potential duties that may be reassigned to her. State of N.J. Office of Employee Relations and Council of N.J. State College Locals, NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989) aff'd App. Div. Dkt. No. A-1445-89T1 (1/22/91).

In addition, there is no showing that in preparing the Certificated Staff Report and in organizing the monthly report to Board members, Currey gains knowledge of confidential labor relations matters which could compromise the employer's position in the collective negotiations process. River Dell Bd. of Ed. Knowledge of personnel matters unrelated to advance knowledge of grievance or contract strategies is not sufficient to label a position confidential. Cliffside Park.

Finally, Currey's duties as a temporary replacement or "back-up" to the Secretary to the Superintendent, does not make her a confidential employee under the Act, as it does not appear that she performs any of the Secretary's duties involving collective negotiations issues. Monmouth Regional Bd. of Ed., D.R. No. 94-10, 20 NJPER 16, 17 (¶25009 1993). Further, it has not been shown that in this role, Currey is exposed to labor relations materials. Ibid.

Bookkeeper

I also find that the Bookkeeper is not a confidential employee within the meaning of the Act. Although Grosser's desk is located in close proximity to the offices of the Superintendent and the Board Secretary, it does not appear that she has been privy to any conversations regarding negotiations or grievances. Nor does it appear that she has access to such information as would compromise the District's position in the collective negotiations process. Ibid. River Dell Bd. of Ed.

Moreover, her involvement with budget information does not make her confidential under the Act. It does not appear that she is privy to any of the Board's strategies or proposals before their disclosure to the unions or that she has other direct involvement in the Board's conduct of negotiations. Access to budget information not specifically relevant to the employer's bargaining position does not indicate confidential status. Monmouth Regional Bd. of Ed.; Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985)

Further, since I do not find that Currey is a confidential employee, Grosser's role as a replacement or back-up to her does not make her a confidential employee. No specific instances were presented where Grosser has been exposed to confidential labor relations information while acting in this role. Monmouth Regional Bd. of Ed. Finally, while the District asserts that Grosser opens and distributes confidential mail, including that containing negotiations proposals, no examples were given in support of this assertion.

Based on the foregoing, the duties and responsibilities performed by the Secretary to the Board Secretary/Business Administrator and the Bookkeeper do not provide them with knowledge of confidential labor relations matters which could compromise the District's position in the collective negotiations process. River Dell. Accordingly, they are not confidential employees within the meaning of the Act and an election should be conducted among the employees in the petitioned-for unit, including the positions of Secretary to the Board Secretary/Business Administrator and Bookkeeper.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

Dated: March 7, 1996
Trenton, New Jersey