

D.R. NO. 92-28

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

In the Matter of

GREENWICH TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. CU-91-22

GREENWICH EDUCATION ASSOCIATION,

Employee Organization,

SYNOPSIS

The Director of Representation finds that the Secretary to the Board Secretary and the Secretary to the Business Administrator are not confidential employees under the Act and thus may remain in the existing unit of support staff employees represented by the Greenwich Education Association.

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Appearances:

For the Petitioner  
Capehart & Scatchard, attorneys  
(Alan R. Schmoll, of counsel)

For the Employee Organization  
Selikoff & Cohen, attorneys  
(Steven R. Cohen, of counsel)

DECISION

On November 13, 1990, the Greenwich Township Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to remove the positions of Secretary to the Board Secretary and Secretary to the Business Administrator from an existing collective negotiations unit of support staff employees. The Board asserts that these positions are confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g) ("Act") and must be excluded from the unit. The Association opposes removing the positions from the unit, claiming that the employees in the positions do not perform confidential duties within the meaning of the Act.

We have conducted an administrative investigation into the issues raised by this petition. The following facts appear.

The Greenwich Township Education Association ("Association") has been the majority representative of a unit of support staff containing custodial, maintenance, secretarial and clerical personnel and classroom aides for approximately the past ten years. The parties' collective negotiations agreement expires on June 30, 1992.

Ann Murphy holds the position of Board Secretary/Business Administrator. She is responsible for gathering and disseminating to the Board all information required for the collective negotiations process. She attends all open and closed Board meetings and prepares informational packets for Board members which include labor relations, personnel and litigation matters. She also handles all correspondence and communications to the Board and maintains such correspondence in her office as well as contracts, records, and documents belonging to the Board. Murphy has direct supervisory responsibility over food services, buildings and grounds, transportation and the secretaries assigned to her.

The transportation and food service employees of the Board are not formally organized. These groups each have a group liaison with whom Murphy and other administrators meet to discuss terms and conditions of employment. She has served on the Board's negotiations team and is responsible for developing and implementing the Board's discussion strategy and proposals with respect to these

groups. She also hears the first level grievances of these employees. The Board characterizes these discussions as negotiations. However, as these groups are not represented by a certified or recognized majority representative, it is misleading to characterize such discussion as negotiations. See Lullo v. IAFF, 55 N.J. 409 (1970).

The teachers and support staff are formally organized, as they are represented by the Association. Since their respective collective bargaining agreements were settled prior to Murphy's employment, she was not involved in their negotiations. She, however, claims that she will become involved in negotiations for successor agreements when the present contracts expire in June. She will be responsible for developing and costing out Board proposals before they're placed on the negotiations table. She also responds to first level grievances from support staff and teachers.

Murphy possesses and exercises the authority to hire, discharge, discipline and evaluate support staff, transportation and food service employees. In addition, she handles personnel matters, such as denying or approving time off.

The placement of Murphy's two secretaries, Mary Scarpa and Terri Lambertson, is in dispute. Scarpa holds the position of Secretary to the Business Administrator while Lambertson holds the position of Secretary to the Board Secretary.

Scarpa has been with the Board since February 1990. According to Scarpa's affidavit and job description, she is

responsible for typing the minutes of grievance hearings for transportation employees and cafeteria workers, the grievance responses and any related correspondence. During the 1990-91 school year, she took notes at meetings in which discipline of a transportation employee was discussed. She also typed information pertaining to the discussions between bus drivers, cafeteria workers and the Board in the 1990-91 school year including the Board's salary and benefit proposal for the transportation employees and the drafts and final understanding between the transportation employees, the cafeteria workers and the Board. She assists the Business Administrator in collecting information such as salary data and proposed percentage increases for discussions pertaining to these employees. Her responsibilities also include receiving, photocopying and filing personnel related correspondence, actual or potential proposals, Murphy's notes of committee meetings and Board minutes relate to discussions with employees in the unorganized unit.

Scarpa also assists in the preparation of the informational packets for closed Board meetings and speaks with Board members concerning the contents of these packets. In addition, she types evaluations of the employees Murphy supervises, including support staff. On occasion, Scarpa has taken messages from Board members, the Board's attorneys, and the Superintendent of Schools which contained information regarding litigation, personnel, discussions and grievance matters. Moreover, Scarpa has unrestricted access to Murphy's files which contain discussion proposals and notes,

grievance documents, personnel files and employee evaluations. Finally, Scarpa will have responsibility for typing Board proposals containing actual or potential strategies of the Board in upcoming discussion with both support staff and teachers and it is anticipated that she will take notes at upcoming discussions.

According to her job description, Lambertson types the minutes of Board personnel committee meetings and closed Board meetings. She also collects information for the Board Secretary in dealing with negotiated agreements between the Board and teachers and support staff. She types the minutes of grievance hearings for teachers and support staff and correspondence related thereto and types information related to negotiations between these units and the Board.

Lambertson has unrestricted access to Murphy's files, including those pertaining to confidential labor relations, personnel and litigation matters. Moreover, she is privy to conversations between Murphy, the Superintendent and Board attorneys regarding labor relations, personnel and litigation matters. During the 1990-1991 school year, Lambertson typed the Board's negotiation proposal for the food service employee negotiations prior to that proposal being presented to the group's liaison.

Lambertson has also assisted Murphy in costing out benefit items of the Board's proposals with respect to negotiations with the food service and transportation employees. She will also have these responsibilities with respect to upcoming teacher and support staff negotiations.

Confidential employees may not be included in a 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. 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). 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).

The Board fails to demonstrate that the Secretary to the Business Administrator performs confidential labor relations duties under the Act. There is no showing that the open and closed session minutes typed by Scarpa or the materials collected by her in preparation for Board meetings contain the Board's labor relations strategies or information regarding the Board's confidential position in grievances and negotiations. Ringwood; 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). Moreover, the fact that Scarpa types grievance responses does not make her confidential, as these responses are disclosed to the Association. See City of Jersey City, NJPER Supp. 678 (¶177 1979); Ringwood.

Further, although Scarpa took notes at meetings wherein discipline of a transportation employee was discussed and typed the Board's salary and benefit proposals for transportation employees which revealed the Board's position, these employees are not represented by an exclusive majority representative. Therefore, they do not engage in collective negotiations and accordingly, Scarpa's duties and responsibilities with respect to them cannot be



considered confidential labor relations duties under the Act. N.J.S.A. 34:13A-3(g). While the Board claims that Scarpa will have these duties in the future with respect to the organized support staff and teachers unit, this does not render her a confidential employee now.<sup>1/</sup> State of New Jersey (Office of Employee Relations).

Further, the fact that Scarpa has free access to Murphy's files, including those relating to confidential labor relations matters, does not, without more, make her confidential. Montague Township Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986). Nor does the fact that she types evaluations render her confidential. Access to personnel information such as evaluations, standing alone, is insufficient for a finding of confidential status. State of N.J. and CWA. Moreover, while the Board alleges that Scarpa receives, photocopies and files labor relations correspondence and documents, actual or potential proposals, Murphy's notes of negotiations committee meetings and Board minutes, it fails to show that these documents contain confidential collective negotiations materials under the Act.

Finally, while the Board alleges that Scarpa takes message from the Board's attorney, the Superintendent and Board members which, occasionally, contain "confidential" labor relations matters,

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<sup>1/</sup> When Scarpa is given confidential duties with respect to organized units, the Board is free to file a new clarification of unit petition.

the Board fails to describe this information or otherwise show how Scarpa's knowledge of it would compromise the Board's position in the collective negotiations process. See River Dell; Ringwood. Also, the Board fails to demonstrate that the grievance and labor relations matters which Scarpa distributes to Board members and Board attorneys involve undisclosed proposals or strategies of the Board regarding negotiations or grievance processing. See City of Jersey City; State of New Jersey (Office of Employee Relations).

With respect to Lambertson, the Board claims that she types the minutes of the Board personnel committee meetings, closed Board meetings and grievance sessions, but fails to demonstrate that this results in her having knowledge of information which would compromise the Board's position in the collective negotiations process. In addition, the Board makes blanket assertions that the individual types all information involving teachers and support staff negotiations. However, the Board Secretary has not yet been involved in teacher and support staff negotiations. The Board also claims that Lambertson collects information for the Board Secretary for the purpose of dealing with negotiated agreements, but fails to describe this information or show how access to it would make membership in the unit incompatible with her official duties. The collection and processing of raw data for negotiations or contract administration is not enough to make an employee confidential. Cliffside Park Bd. of Ed.; Montague Township Bd. of Ed.

The Board further points out that Lambertson typed its negotiations proposal for food service employee discussions, prior to it being presented to the group's liaison. However, these food service employees are not represented by an exclusive majority representative and therefore, the referenced discussions do not rise to the level of collective negotiations under the Act. Accordingly, her duties and responsibilities with respect to this group cannot be considered confidential labor relations duties. Moreover, what Lambertson typed was a proposal that was disclosed to the group liaison and did not amount to any undisclosed Board negotiations strategy or position. See City of Jersey City.

The Board also states that Lambertson has assisted Murphy in costing out benefit items of Board proposals with respect to the food service employee group. Again, this is not a confidential labor relations duty, as this group is not formally organized. Further, the fact that she will have this responsibility with respect to upcoming negotiations with the organized units cannot support the Board's assertion that she is a confidential employee now. See State of New Jersey (Office of Employee Relations).

Moreover, the Board alleges that Lambertson is privy to conversations between Murphy, Carpenter, and Board attorneys concerning labor relations, personnel and litigation matters but fails to describe the type of labor relations matters discussed or how Lambertson's knowledge of them would compromise the Board's position in the collective negotiations process. Moreover, the fact

that Lambertson has access to confidential labor relations, litigation and personnel files, standing alone, does not make her confidential. Ringwood; Montague Township Bd. of Ed.

Accordingly, the Board has not demonstrated that the employees in the disputed positions are confidential employees within the meaning of the Act and thus should not continue to be included in the existing collective negotiations unit. Hence, the Board's petition is dismissed.<sup>2/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director

DATED: April 10, 1992  
Trenton, New Jersey

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<sup>2/</sup> If the disputed titles begin to perform confidential labor relations duties under the Act, the Board can initiate a reexamination of the titles by filing another Clarification of Unit petition.