

P.E.R.C. NO. 87-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTAGUE TOWNSHIP BOARD
OF EDUCATION,

Public-Employer-Petitioner,

-and-

Docket No. CU-86-28

MONTAGUE SCHOOL PERSONNEL
ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit of secretaries and custodians represented by the Montague School Personnel Association to exclude the Assistant to the Board Secretary because she is a confidential employee. The Commission declines, however, to exclude an administrative secretary or her husband.

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ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer-Petitioner, Morris, Downing &
Sherred, Esqs. (Richard M. Valenti, of Counsel)

For the Employee Representative, New Jersey Education
Association (John Davis, UniServ Staff Representative)

DECISION AND ORDER

On November 12, 1985, the Montague Township Board of Education ("Board") filed a Clarification of Unit Petition. The Board seeks a determination that three employees - the Assistant to the Board Secretary, the Administrative Secretary, and the husband of the Administrative Secretary - are confidential employees pursuant to N.J.S.A. 34:13A-3(g) and therefore should be excluded from the negotiations unit of secretaries and custodians represented by the Montague School Personnel Association ("Association").^{1/}

^{1/} The Board does not argue that the husband of the Administrative Secretary works on issues involved in the

On March 17, 1986, a Notice of Hearing issued.

On May 13, Hearing Officer Ira W. Mintz conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by July 23.

On July 31, the Hearing Officer issued his report and recommended decision. H.O. No. 87-3, 12 NJPER 633 (¶17239 1986) (copy attached). He found that Sharon Reiners, Assistant to the Board Secretary, was a confidential employee, but that Eleanor Pollara, Administrative Secretary, and Robert Pollara, her husband, were not confidential employees.

On August 13, the Board filed exceptions. It asserts that the Hearing Officer should have found that Eleanor Pollara handles and files all documents of Charles Lusto, the Chief School Administrator, and was a confidential employee.

We have reviewed the record. The Hearing Examiner's findings of fact are thorough and accurate. We adopt and incorporate them here.

We add Lusto's testimony that he is a "non-file person" who works with open files on his table or desk. Periodically, Eleanor

1/ Footnote Continued From Previous Page

collective negotiations process in his capacity as maintenance and security employee. Rather it argues that if his wife is a confidential employee, he should be excluded since she might share confidential information with him which he could use in his capacity as Association president.

Pollara will ask him for a file and she will put everything in the appropriate file folders and handle all his documents. She may not file any papers with which he is working. Lusto also testified that Pollara is not required to do anything with his notes related to negotiations. Pollara testified that she does all Lusto's filing. However, he files evaluation documents himself, as well as most of his handwritten notes and grievance documents. There are no files pertaining to negotiations, grievances or budgeting in Pollara's office.

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization...." Confidential employees, however, are excluded from the Act's definition of "employee" and therefore do not enjoy the Act's protections.

N.J.S.A. 34:13A-3(d).

N.J.S.A. 34:13A-3(g) defines "confidential employees" as:
employees 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.

When it adopted this definition requiring a nexus linking an employee's functions and responsibilities to the negotiations process, the Legislature rejected a broader definition which would have excluded employees with "access to confidential personnel files or information concerning the administrative operations of the public employer." State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 516 n. 3 (¶16179 1985), recon. denied, P.E.R.C. No. 86-59, 11

NJPER 714 (¶16249 1985), appeal pending App. Div. Dkt. No. A-1375-85T1. Access to confidential information is a relevant factor in assessing an employee's functions and responsibilities, but it is not enough, standing alone, to make an employee confidential. Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

Under all the circumstances of this case, we agree with the Hearing Officer that Eleanor Pollara is not a confidential employee. Her functions and responsibilities do not involve issues in the collective negotiations process. She does not type or transmit Lusto's negotiations recommendations nor does she type or transmit his responses to grievances. She typed one letter to the Board's attorney which asked him to review a memorandum of an agreement the Board wanted to ratify, but this document is isolated and of minor significance. She types the agenda for Board meetings, but merely lists the heading Lusto gives her on a yellow sheet of paper. Her role in budget preparation is minimal; she collects and tabulates teachers' requests for supplies, but Reiners types the budget work sheets and assists the Board secretary in responding to the Board's requests for budget information. She files papers for Lusto, but not systematically and without any need or responsibility to read the documents. Indeed Lusto files evaluations and many of the grievance documents and his handwritten notes himself. She has never seen a negotiations file in her office and does not maintain the custody of grievance files. Lusto did not specify any

negotiations or grievance documents she may have filed concerning the non-professional unit. On this record, we are simply not convinced that Pollara's functions and responsibilities regularly require her to know about or work on issues involved in the collective negotiations process concerning the unit of non-professional employees.^{2/}

Under all the circumstances, and in the absence of exceptions, we also adopt the Hearing Officer's conclusions that Sharon Reiners is a confidential employee and Robert Pollara is not.

ORDER

Sharon Reiners, the Assistant to the Board secretary, is a confidential employee and is excluded from the negotiations unit represented by the Montague School Personnel Association.

^{2/} The record in Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276, 278 (¶11131 1980) indicated that a secretary to an assistant superintendent had a "certain potential for knowledge of negotiations proposals and personnel files." The record in Little Ferry Bd. of Ed. demonstrated that a secretary to the secretary/business administrator typed recommended budgets and typed and costed out negotiations proposals. These cases are distinguishable. Given Lusto's non-systematic work habits and a record lacking specific evidence of Pollara seeing proposals or grievances concerning the non-professional unit, we find no such certainty and no such functional responsibilities related to the collective negotiations process.

Eleanor Pollara, the Administrative Secretary, and Robert Pollara, her husband, are not confidential employees and are not excluded from the Association's negotiations 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. Commissioner Hipp abstained. Commissioner Reid was not present.

DATED: Trenton, New Jersey
September 25, 1986
ISSUED: September 26, 1986

H.O. NO. 87-3

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

In the Matter of

MONTAGUE TOWNSHIP BOARD OF
EDUCATION,

Public Employer-
Petitioner,

-and-

Docket No. CU-86-28

MONTAGUE SCHOOL PERSONNEL
ASSOCIATION,

Employee Representative.

SYNOPSIS

A Hearing Officer recommends that the Public Employment Relations Commission find that the Secretary to the Board Secretary employed by the Montague Township Board of Education is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act. The Hearing Officer recommends, also, that the Commission find that the Board's Administrative Secretary and the husband of the Administrative Secretary are not confidential employees within the meaning of the Act.

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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Appearances:

For the Public Employer-Petitioner, Morris, Downing &
Sherred, Esqs. (Richard M. Valenti, Of Counsel)

For the Employee Representative, New Jersey Education
Association (John Davis, UniServ Staff Representative)

HEARING OFFICER'S
REPORT AND RECOMMENDATION

On November 12, 1985, the Montague Township Board of Education ("Board") filed a Clarification of Unit Petition. It seeks to exclude, as confidential employees, the Assistant to the Board Secretary, Administrative Secretary and husband of the Administrative Secretary, employed by the Board, from the negotiations unit represented by the Montague School Personnel Association ("Association"). The Association opposes the Board's Petition.

On March 17, 1986, a Notice of Hearing issued. On May 13,

1986, I conducted a hearing at which both parties examined witnesses and introduced exhibits. They argued orally and filed post-hearing briefs by July 16, 1986. On July 23, 1986, the Board filed a response.

Based on the entire record, I make the following:

FINDINGS OF FACT

1. The Montague Township Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and is the employer of the employees who are the subject of the Petition.

2. The Montague School Personnel Association is an employee representative within the meaning of the Act. The Association is the certified majority representative of a collective negotiations unit of all secretaries, custodians, aides and bus drivers employed by the Board. The Association was certified on September 17, 1985 after a secret ballot election held on September 9, 1985..

3. Prior to the election, the Board indicated it would challenge the unit eligibility of the Administrative Secretary and her husband. It did not then challenge the eligibility of the Assistant to the Board Secretary.

Assistant to the Board Secretary

4. Sharon Reiners, the Assistant to the Board Secretary, was hired by the Board on a full-time basis in July 1985. She had previously worked as a typist on a part-time basis.

5. The job description for the Assistant to the Board

Secretary generally describes the position as follows: shall maintain and manage the office of the Board Secretary; assist the Board Secretary in all matters; assume the responsibilities of the Board Secretary in the Board Secretary's absence and perform all duties as prescribed.

6. At the direction of the Board Secretary, Vivian Edwards, Reiners prepared a document outlining her job duties. (Exhibit E-10) It lists a series of specific duties under the sub-headings Assistant to the Board Secretary, Child Study Team Secretary, Purchasing/Accounts Payable and Miscellaneous. Included in her listed duties is taking the Board Secretary's place in her absence at Board meetings and workshops (including closed sessions).

7. The job description for the Board Secretary (Exhibit E-5) generally describes the position as follows: shall be custodian of all documents and records of the Board; be the general accountant; act as official purchasing agent; audit all claims, invoices and demands against the Board; prepare the payroll and maintain records; be responsible for all bids and contracts; attend all meetings of the Board and record all proceedings; handle correspondence; be responsible for all meetings of the voters; notify Board members of meetings; present an annual financial report and assist the Chief School Administrator in the preparation of all data, personnel records and research in the preparation of contracts, agreements and negotiations of the Board.

8. Most of Reiners' time is spent on purchasing and accounts

payable. (Tr. 137) In addition, she types, files and handles phone calls for Edwards. (Tr. 130-131) All correspondence, legal matters and personnel matters that come before the Board are in those files. (Tr. 88)

9. The Board has regular public meetings which Edwards, Reiners or both attend. Before the meetings begin, the Board has workshop sessions. During the course of workshop or regular meetings, the Board sometimes calls closed sessions. (Tr. 137-139) Either Reiners or Edwards takes minutes at both the public and private sessions. (Tr. 92, 129) Both usually sign the minutes when both attend. (Tr. 149)

10. Reiners has typed negotiations proposals, photocopied negotiations worksheets (Tr. 88-90) and assisted in the preparation of computer printouts for proposed salary increments. (Tr. 85)

11. Although Reiners has never seen a negotiations proposal or sat in on negotiations, she has attended approximately three closed sessions where negotiations was discussed. At those sessions, the Board's personnel chairman reported on the progress of negotiations (Tr. 122) and the Board indicated its position on negotiations proposals. Reiners testified that if a negotiations matter arose in Edwards' absence, she would have to handle it. (Tr. 142)

12. Reiners types all school budget worksheets and has been instructed to open all mail except that marked personal. (Tr. 90-91)

13. Edwards testified that after a review of her retirement

plans and in light of her accumulated vacation time, she was asked by the Board to train Reiners in every aspect of Edwards' job so Reiners could carry on Board matters in Edwards' absence. (Tr. 91) According to Edwards, Reiners is being trained to replace Edwards as Board Secretary. (Tr. 116)

Administrative Secretary

14. Eleanor Pollara is the Board's Administrative Secretary. Her office is approximately 30 feet from that of the Chief School Administrator, Charles Lusto, separated by the school's main entrance. (Tr. 76-77) She does not have a key to Lusto's office or his files. (Tr. 48-49) The only time she would be in his office when he is absent would be to file attendance reports.

15. The job description of the Administrative Secretary (Exhibit E-2) generally describes the position as follows: shall maintain and manage the office of the Chief School Administrator; maintain and file personnel records; perform general office duties; maintain attendance records; prepare enrollment reports; assist attendance officers and school nurse; arrange for substitutes; prepare purchase orders; assist Chief School Administrator in preparing Board meeting agenda; issue and send reports on working papers; maintain school lunch program records; distribute lunches; maintain bulletin board; assist students, staff and parents, and maintain the school calendar and prepare flyers for students and staff.

16. Upon Lusto's instructions, Pollara developed her own

list of responsibilities and duties. (Exhibit E-7) It closely tracks the language of the official job description.

17. The Chief School Administrator's job description (Exhibit E-1) generally describes that position as follows: shall administer all aspects of the school district; prepare recommendations for the negotiations of all Board contracts; assign staff; recommend changes in instructional patterns or staffing; recommend all appointments; evaluate employees and prepare required reports.

18. As part of his duties, Lusto has prepared recommendations to the Board for negotiations with the Association and the Montague Education Association, which represents the Board's certified personnel. (Tr. 13, 41) He has occasionally attended negotiations sessions, at the request of either party, but is not a regular participant. (Tr. 41) He makes recommendations to the Board's negotiating team, but is not notified in what way they have or have not been incorporated into the Board's negotiations proposals. (Tr. 42-43) Lusto testified that he occasionally typed his own recommendations and that he could not recall that Pollara typed them. (Tr. 43) He further testified that her only involvement might be in the filing of documents from his desk. (Tr. 21)

19. At Lusto's direction, Pollara once sent a copy of a proposed contract between the Board and the Association to the Board attorney with a cover letter (Exhibit E-4) asking him to review it

to see if there were any problems that would prevent the Board from ratifying it. (Tr. 30-31)

20. Lusto is the first step in the parties' negotiated grievance procedure. (Tr. 14) The parties' contract requires grievances to be kept in separate files, not part of the Board's permanent records. (Tr. 21) Pollara has access to the files (Tr. 75), but her contact, if any, is limited to her normal filing duties. (Tr. 76) Pollara testified that to her knowledge, she had never seen a grievance, although she had seen a folder marked "grievances." (Tr. 185)

21. Pollara types the Board meeting agendas. She and Lusto discuss the items that go into the agenda and the order in which they go in. (Tr. 27) The agenda is derived from Lusto's notes of both public and closed workshop sessions. Lusto testified that he had no evidence to indicate that Pollara has read his notes. (Tr. 52) Pollara testified that structuring of the agenda did not entail her review of closed session notes. (Tr. 171)

22. Lusto has never instructed Pollara whether or not to open his mail. On occasion, when he is away, she opens correspondence. (Tr. 29) Pollara could not think of a situation where she opened confidential mail. (Tr. 180)

23. Pollara compiles all initial budget requests from staff. Lusto then reviews the requests for adequacy, instructional program and to make sure there are no overexpenditures. (Tr. 64) He also makes recommendations to the Board as to what he thinks the

total budget will support for staff salaries. (Tr. 64) Though salary figures are indicated as total sums, Lusto testified that having those figures published prior to negotiations would affect the Board's strategic point of view. (Tr. 71)

24. As a receptionist, Pollara processes employment applications, but does not sit in on interviews. (Tr. 63-64) She does not sit in on or type staff evaluations. She has access to the files, but has never filed evaluations. (Tr. 33, 45-46, 176)

Husband of the Administrative Secretary

25. The parties stipulated that Robert Pollara's alleged confidential status derives from his marital relationship with Eleanor Pollara and matters that flow from that relationship and not from his employment relationship with the Board. There was, therefore, no testimony as to any alleged confidential duties nor was there testimony from his superior as to the nature of his duties.

26. Robert Pollara's duties include the maintenance and security of the school building. He is a member and president of the Association and a member of the Association's negotiating team. (Tr. 157) He has discussed negotiations with his wife, (Tr. 159) including the Board's negotiations committee's reaction to Association proposals. (Tr. 160) They have discussed school policies and may have discussed Lusto's attitude toward those policy areas. (Tr. 162-163)

27. Robert Pollara testified that he did not get any advance information from his wife that would be helpful to him in

negotiations. (Tr. 166) Nor did he ever obtain from his wife any information about Lusto's negotiations recommendations to the Board.

ANALYSIS

Public employees are afforded the right "to form, join and assist any employee organization or to refrain from any such activity." N.J.S.A. 34:13A-5.3. Confidential employees, however, are excluded from the Act's definition of "employee." N.J.S.A. 34:13A-3(d).

At the conclusion of the hearing, the Association argued that a "certification bar" precludes consideration of the Board's attempt to exclude Sharon Reiners from the unit as a confidential employee. A secret ballot election was held on September 9, 1985 and the Board did not challenge Reiners' right to vote either before or immediately after the election. A negotiations unit was certified on September 17, 1985. N.J.A.C. 19:11-2.8(b) precludes consideration of a petition for certification or decertification if during the preceding 12 months an employee organization has been certified as the exclusive representative. There is no similar procedural bar to the filing of a unit clarification petition. Such petitions seeking a determination that a particular employee is a confidential employee can be filed at any time and the final determination is effective immediately. Clearview Regional High School Bd. of Ed., D.R. No 78-2, 3 NJPER 248 (1977); cf. Passaic County Regional High School District No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

N.J.S.A. 34:13A-3(g) provides:

"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 negotiating unit incompatible with their official duties.

A series of decisions has applied this definition to various attempts to exclude certain school board employees as confidentials.

In River Dell Regional Board of Education, P.E.R.C. NO. 84-95, 10 NJPER 148 (¶15073 1984), the Chairman, acting under delegated authority, adopted the recommendation of the Hearing Officer that a secretary/switchboard operator was a confidential employee. The Hearing Officer found, H.O. No. 84-7, 10 NJPER 79 (¶15045 1983), that the employee had continual exposure and access to grievances, budget proposals, collective negotiations matters and written communications to the Board attorney concerning such confidential matters. Id. at 81.

In an earlier decision in the same case, the Director of Representation found that the Secretary to the Assistant Superintendent and the Second Secretary to the Superintendent were confidential employees. D.R. No. 83-21, 9 NJPER 180 (¶14084 1983). The secretary to the assistant superintendent typed all of the assistant superintendent's correspondence, calculated the cost of Association proposals and typed memoranda concerning the school budget. She took notes of discussions between the assistant superintendent and the superintendent concerning negotiations and maintained files which included confidential communications on negotiations matters, nonpublic Board meetings, staffing, budget and personnel matters. The secretary had keys to the

locked files and her work required her to inspect the contents of the files on a daily basis. The second secretary to the superintendent had significant exposure to negotiations materials and typed correspondence to the Board attorney regarding grievances.

In Willingboro Board of Education, D.R. No. 84-4, 9 NJPER 527 (¶14215 1983), the Director found that a personnel clerk was a confidential, but that a head payroll clerk and a clerk to the Board's secretary/business administrator were not. The personnel clerk handled negotiations and grievance materials in the course of performing her normal duties. The head payroll clerk's functions principally concerned payroll, absence and insurance records and calculations of employee pensions. The clerk to the Board's secretary/business administrator's duties involved, only, public board meeting minutes.

In Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980), the Director held that a secretary to an assistant superintendent was a confidential employee. Through her filing responsibilities, the secretary had access to negotiations proposals, personnel files and information related to grievances. The assistant superintendent reviewed negotiations proposals and the secretary then filed them.

In Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980), the director excluded as confidential, a secretary to the secretary/business administrator. She typed recommended budgets, had access to negotiations and grievance files and assisted the board secretary in costing out negotiations proposals. The director did not,

however, exclude the superintendent's secretary who had access to locked files which contained some confidential labor relations notes. He found that such access, absent additional significant factors, was not sufficient to render her a confidential employee.

Applying the statutory definition, as interpreted, I find that Sharon Reiners is a confidential employee and recommend the Commission exclude her title from the negotiations unit. Not only does Reiners stand in the shoes of the Board Secretary during her more than occasional absences, but she is being trained to replace Edwards as the Board Secretary. She attends Board meetings where negotiations is discussed and has typed negotiations proposals. She types all school budget worksheets and opens all Board mail except that marked personal. As a whole, both her functional responsibilities and her knowledge in connection with the collective negotiations process make her membership in the unit incompatible with her official duties.

Eleanor Pollara, on the other hand, plays almost no role in the collective negotiations process. Although Lusto has made negotiations recommendations to the Board, Pollara did not type them. At most, she may have filed them. In any event, the recommendations were not Board proposals but only his suggestions.

Pollara's role in budget preparation is also limited. At most, she types Lusto's non-binding recommendations to the Board. While she may have some knowledge of Lusto's salary recommendations, his figures are total ones which are not necessarily used by the Board.

The letter to the Board attorney (Exhibit E-4) that Pollara typed was not confidential in that it merely indicated the Board's desire to ratify a contract that the Board had already tentatively agreed to.

As in Little Ferry, Pollara has "access" to files, but access alone is not sufficient to meet the statutory definition. She testified that she had never seen a grievance, opened confidential mail or filed evaluations. Lusto does his own typing of confidential materials and places the materials in the file folders. Unlike Parsippany-Troy Hills, there is no "certain potential for knowledge of negotiations proposals and personnel files." 6 NJPER at 278.

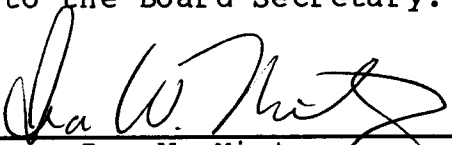
Thus, Pollara has neither the functional responsibilities nor the knowledge to warrant exclusion from the negotiations unit.

Finally, the Board seeks to exclude Robert Pollara as a confidential employee solely because of his wife's alleged confidential status. I have previously found that Eleanor Pollara is not a confidential employee. Therefore, neither is Robert Pollara.

However, even if Eleanor Pollara were a confidential employee, it is apparent from the record that her husband gets from her neither advance negotiations information nor information about Lusto's negotiations recommendations. There is nothing in the record to suggest that Robert Pollara has any collective negotiations knowledge which would make his continued membership in the collective negotiations unit incompatible with his official duties.

RECOMMENDATIONS

I recommend the Commission find that Sharon Reiners is, and Eleanor and Robert Pollara are not, confidential employees within the meaning of the Act. I further recommend the Commission clarify the existing unit to exclude the title Assistant to the Board Secretary.



Ira W. Mintz
Hearing Officer

DATED: Trenton, New Jersey
July 31, 1986