

D.R. No. 2010-11

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

In the Matter of

PARK RIDGE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-2010-005

PARK RIDGE EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit represented by the Park Ridge Education Association to include a newly created title, "confidential administrative secretary." The Director finds that the title has had no opportunity to exercise any supervisory functions and therefore was not a supervisor within the meaning of the Act. The Director also determined that the title's inclusion in the negotiations unit would not create a conflict of interest with any other title in that unit. Recognizing that the title is new, if the confidential administrative assistant exercises any supervisory functions in the future the Board may file a clarification of unit petition seeking to exclude the title from the negotiations unit.

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Appearances:

For the Public Employer,  
Kenney, Gross, Kovats & Parton, attorneys  
(Michael J. Gross, of counsel)

For the Petitioner,  
Bucceri and Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION

On August 3, 2009, the Park Ridge Education Association (PREA) filed a clarification of unit petition seeking to clarify a negotiations unit of classroom teachers, nurses, guidance counselors, librarians, special education personnel, coordinators, secretaries, and others employed by the Park Ridge Board of Education (Board). PREA seeks to clarify the unit to include the newly-created title of confidential administrative assistant for the department of special programs and student services. The Board opposes the petition, contending that the disputed title is a supervisor within the meaning of the New

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, which generally prohibits the inclusion of supervisory and non-supervisory employees in the same negotiations unit.<sup>1/</sup>

We have conducted an administrative investigation of the facts. N.J.A.C. 19:11-2.2 and 2.6. The parties have filed letters, briefs and certifications. On October 29, 2009, I issued a letter tentatively approving the petition. On November 9, 2009, the Board filed a reply, accompanied by an affidavit from District Superintendent, Dr. Patricia Johnson. The parties' submissions reveal the following facts.

The recognition clause in the parties' 2006-2008 collective negotiations agreement specifies that "secretaries", "department chairmen" and "supervisors" are included in the negotiations unit. On May 6, 2009, the parties signed a memorandum of agreement setting terms and conditions of employment from July 1, 2008 through June 30, 2011. Although the parties ratified the memorandum, a complete negotiations agreement has not been signed.

On July 13, 2009, the Board filed a clarification of unit petition (CU-2010-002) seeking to clarify the unit to exclude

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<sup>1/</sup> This section of the Act provides that except where established practice, prior agreement or special circumstances dictate the contrary, "no supervisor who has the power to hire, discharge, discipline, or to effectively recommend the same" shall have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

department chairmen and department supervisors. The Board wrote that the titles were supervisory and should not be included in the same unit with non-supervisory personnel. On July 28, 2009, PREA notified us that it would not contest that petition. On August 3, 2009, the Board withdrew its petition, signifying that the unit was clarified to exclude the two titles.

Sometime in July 2009, the Board posted a vacancy notice for a "confidential administrative assistant [in] the department of special programs and student services." The job description for the title sets forth these duties, among others:

Bookkeeping and financial skills required to address federal and state entitlement grants;

Substantial facility to use computer programs as would be required for office organization, paperless activities, and IEP production;

Demonstrates skills in office organization, including but not limited to filing systems, distribution systems, and setting priorities;

Ability to multi-task;

Maintains confidentiality as required and appropriate;

**SUPERVISES/EVALUATES: Secretarial positions associated with the department**<sup>2/</sup>

**JOB GOAL: To coordinate the office activities for the Department of Special Programs and Student Services and to serve as the assistant to the Director/Supervisor**

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<sup>2/</sup> The copy of the Board's job description submitted by PREA does not include the word "evaluate" in this section. The remainder of the descriptions are identically worded.

Coordinates efforts with consultants, private schools and out-of-district placements including but not limited to, preparing applications, arranging transportation, preparing purchase order for tuition supplies, materials and equipment;

Correlates all child study team reports and documentation before and after child study team meetings and distributes them . . . .

As appropriate do research and prepare reports on all special education litigations and acts as the liaison to the board attorney;

Maintains child study team scheduled and coordinates meetings . . . .

Maintains an appropriate active and archival student filing system for both confidential student records and non-confidential documents and records and readily retrieves items through the use of this system;

Performs office routines and practices, such as processing mail, operating the office equipment, responding to and routing telephone calls routine e-mails, and other messages;

Assists Director of Special programs and Student Services in data collection and preparation of state reports and grants;

**EVALUATION: This is a confidential position, which cannot be included in the bargaining unit. Performance of this job will be evaluated annually in accordance with provisions of board policy.** [emphasis added]

The position was filled on or about August 17, 2009.

PREA President Kelly Weber certifies that before the confidential administrative assistant position was filled, the director of student services and the supervisor of special

services assigned work to negotiations unit secretary Patricia Cozzitorto. The Board does not assert that Cozzitorto's position is confidential or supervisory. Weber also certifies that on August 17, 2009, Julianne Huettinger was hired in the disputed title and that she performs only those duties previously performed by Cozzitorto. Disputing the applicability of the word "confidential" in the title, Weber certifies that neither the director of student services nor the supervisor of special services participates in collective negotiations or plays any role in the labor relations process. She certifies that "confidential" matters in these departments likely concern special education and student records and not labor relations matters.

Robert Wright, Board Business Administrator and Secretary, certifies that confidential secretaries are excluded from the unit. No contract provision excludes employees from the unit. Wright also certifies that in July 2009, the parties agreed to remove department chairs and department supervisors from the unit and that in the same month, the notice for the confidential administrative assistant position was posted. Wright confirms that the duties required of this position are accurately set forth in the July 2009 job description posting.

Johnson certifies that the confidential administrative assistant position is "required to supervise" the PREA unit

member in the department of special programs and student services. She also wrote that the employee chosen for the position began her employment on August 17, 2009, and has not had the opportunity to evaluate the PREA unit secretary or to hire, recommend discipline or discipline any other secretaries.

The Board argues that the confidential administrative assistant is required ". . . to supervise the secretary in the department of special programs and student services." No examples have been provided, nor documents proffered showing that Huettinger supervises any employee or has been involved in confidential labor relations matters on behalf of the Board.

#### ANALYSIS

The Board asserts that the confidential administrative assistant has supervisory authority over a secretary in the department of special programs and student services. The PREA asserts that Weber's duties comprise no more than a sharing of workload with the current unit secretary.

N.J.S.A. 34:13A-5.3 provides in a pertinent part:

[E]xcept where established practice, prior agreement or special circumstances dictate the contrary, . . . any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, [shall not] have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership . . . .

In Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 425-427 (1971), the New Jersey Supreme Court held that public employees who exercise significant power and responsibilities over other personnel should not be included in the same negotiations unit as their subordinates because of the conflict of interest between those employees and their supervisors.

In Lakeland Regional High School Bd. of Ed., D.R. No. 88-34, 14 NJPER 417 (¶19169 1988), the Director found that a newly-created title should be included in the unit where it was undisputed that no supervisory authority had been exercised by the employee in the title. The employer in Lakeland argued that when the opportunity would arise for the employee to exercise supervisory functions his recommendations would carry significant weight. The Director found no indication that those functions were likely, particularly given the title's placement in the chain of command and the layers of authority above the title.

In Somerset County Guidance Center, D.R. No. 77-4 2 NJPER 358, 360 (1976) the Director wrote that there should be evidence that the disputed employee regularly exercises supervisory authority and that "mere possession of authority does not sustain



a claim of supervisory status."<sup>3/</sup> See also, Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1984).

In Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981), the Director found that a revised job description for department chairpersons created new duties demonstrating that the title would "clearly" be supervisory, despite the fact that the chairpersons had not performed those duties at the time the Board filed the clarification of unit petition. The chairpersons' duties were expanded, pursuant to requirements imposed upon boards of education by the New Jersey State Department of Education to comply with "thorough and efficient" education standards established by legislation in 1975 and 1979. In light of the mandated and expanded duties for department chairpersons, the Director determined that those duties would create a potential substantial conflict between chairpersons and teachers and the chairpersons should not be included in the negotiations unit with teachers.

Board Administrator Wright certifies that the confidential administrative assistant is required to supervise the secretary in the department of special programs and student services. That function is also set forth in the July 2009 job description

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<sup>3/</sup> The Board cites Gloucester Bd. of Ed., D.R. No. 97-4, 22 NJPER 382 (¶27203 1986). In Gloucester however, the Director found that the disputed chief custodian was not new and that there was significant evidence that it exercised supervisory authority.

(" . . . supervises/evaluates - secretarial positions associated with the department"). No other specific supervisory responsibilities or tasks are set forth in the job description or Wright's certification. No documents show that the position has actually exercised any supervisory function, i.e., evaluated, hired, disciplined or effectively recommended any of these actions, regarding the department secretary or any other negotiations unit member. Similarly, Johnson's certification reiterates the characterization set forth in the job description, specifically, that the confidential administrative assistant has the ability and duty to evaluate, hire, and discipline secretaries and/or effectively recommend any of those actions. At the time of Johnson's certification, however, the assistant had not had the opportunity to do more than "oversee and supervise" the one other secretary in the same department. No facts indicate what is meant by "oversee and supervise" and no specific examples demonstrate that those tasks were actually performed. Finally, no document indicates what weight or effect, if any, personnel recommendations or evaluations made by the confidential administrative assistant would have upon either the Director/Supervisor of Special Programs and Student Service or the Board.

Accordingly, I find that the confidential administrative assistant is not a supervisor within the meaning of the Act and

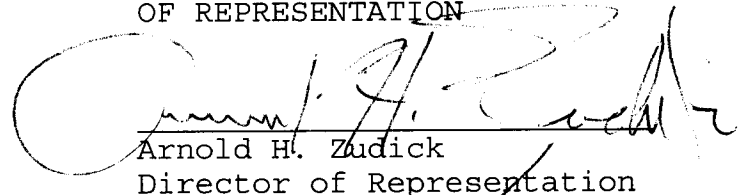
that the title's inclusion in the negotiations unit would not create a conflict of interest with any other title in that unit.

We note that the disputed title is newly-created. If the confidential administrative assistant exercises any of the supervisory functions described in this decision in the future, the Board may file a clarification of unit petition seeking to clarify the negotiations unit to exclude the title.

ORDER

The Park Ridge Education Association's unit is clarified to include the confidential administrative assistant.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director of Representation

DATED: February 1, 2010  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by February 11, 2010.