

D.R. NO. 93-12

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

In the Matter of

MONTGOMERY TOWNSHIP BOARD  
OF EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. CU-93-11

MONTGOMERY TOWNSHIP EDUCATION  
ASSOCIATION,

Employee Organization.

SYNOPSIS

The Director of Representation finds that the newly-created position of payroll manager is confidential within the meaning of the Act and excludes the payroll manager from the existing negotiations unit represented by the Association.

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Appearances:

For the Public Employer/Petitioner  
Stiles & Wallace, attorneys  
(David A. Wallace, of counsel)

For the Employee Organization  
New Jersey Education Association  
John A. Thornton, Jr., UniServ Rep.)

DECISION

On August 5, 1992, the Montgomery Township Board of Education and the Montgomery Township Education Association jointly filed a Petition for Clarification of Unit seeking a determination as to whether the payroll manager's duties are confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The Association asserts that the payroll manager should be included in the existing, broad-based negotiations unit. The Board opposes including the payroll manager in the unit, contending that the duties are confidential within the meaning of the Act.

We have conducted an administrative investigation into the issues raised by the petition. There are no substantial and material facts in dispute warranting a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

The Association is the exclusive majority representative of a broad-based negotiations unit including certificated employees, secretaries, custodians and maintenance and grounds employees. Specifically excluded from the unit are three confidential secretaries: secretary to the superintendent, personnel secretary, and the secretary to the school business administrator/board secretary. The current collective negotiations agreement runs from July 1, 1992 through June 30, 1995.<sup>1/</sup>

The payroll manager is a new position created by the Board on June 22, 1992. The position is not yet filled because the Board first seeks a determination as to whether the ascribed duties make the position confidential; however, the Board will be filling this position soon.

The payroll manager will report to the school business administrator and to the director of personnel and pupil services. The payroll manager will operate the computerized payroll and related accounting functions for the business and personnel offices. The payroll manager will also prepare financial

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<sup>1/</sup> The Board also recognizes the Association of Principals and Supervisors as the exclusive majority representative for a unit of administrators whose contract runs from July 1, 1990 through June 30, 1993.

information used by Board representatives in negotiations and grievance processing.<sup>2/</sup> This position requires training and expertise in computerized payroll systems.

The payroll manager will handle all mail, telephone correspondence and bank transfers related to payroll. The payroll manager will prepare payroll summaries, prepare and distribute paychecks and hand-out paychecks when necessary. All employee records are organized, maintained and reconciled on the computer concerning regular and summer payroll and the appropriate salary deductions. The payroll manager will also prepare W-2 forms for employees annually.

Additional accounting functions involve accurate reconciliation and preparation of various documents and reports on social security, federal withholding tax, unemployment, pensions, contributory insurance and other employee payroll deductions. The payroll manager also will maintain disability records and sick pay deductions. Additionally, checks must be appropriately deposited or forwarded to agencies and/or banks for various accounts.

The payroll manager, in reporting to the business administrator and to the director of personnel and pupil services, will prepare confidential financial information used by them in negotiations and grievance administration. The payroll manager will prepare cost information and an analysis concerning payroll,

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<sup>2/</sup> The duties of this new position were described in a job description adopted by the Board on June 22, 1992.

salaries, benefits and other employee salary deductions. The payroll manager's regular duties will require access to confidential personnel records giving the payroll manager specific knowledge of the Board's positions on fiscal matters with respect to negotiations and grievances.

The school business administrator oversees all non-instructional functions of the district, including the preparation and implementation of the Board's budget. The administrator oversees transportation, food services, accounts payable and receivable, insurance, investments, health benefits, payroll and buildings and grounds. The administrator's labor relations duties involve active membership on the Board's negotiating team and serving as the management representative for second step grievances filed by custodians, grounds and maintenance employees.

The Board recently created the director of personnel and pupil services position to coordinate the district's personnel services and manage the personnel office. All aspects of permanent and summer staff recruitment, selection, assignments and evaluations are handled by the director. The director monitors personnel files and records which may include attendance and other leave balances. The director prepares personnel reports for the Board concerning personnel actions and generally, acts as a resource to the Board on contract interpretation and grievance administration issues; provides research on wage and salary issues for grievances and

negotiations; and will be an active member of the Board's negotiations team. The payroll manager will assist the director in all of these areas. Additionally, the director develops and oversees programs for students with special needs, including special education, home instruction, supplemental instruction services and student guidance services.

N.J.S.A. 34:13A-3(g) defines confidential employees as those employees of a public employer "...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."

It is the policy of the Commission 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, the Commission explained its approach in determining 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 collective negotiations process if the employee was included in a negotiating unit. 11 NJPER at 510

See also 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).

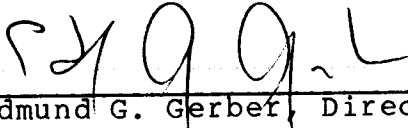
A finding of confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position in the collective negotiations process. River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984), affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980).

The Board argues that the payroll manager should be excluded from the unit based upon a projected involvement in labor relations. The Commission is cautious when considering excluding an employee from the protections of the Act. Where a confidential status determination relies upon "speculation or conjecture as to job function," the Commission has generally concluded that such circumstances are insufficient to warrant excluding an employee from a negotiations unit. Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). However, where future job functions are clear and the implementation of changes is certain, then future contingencies may be acceptable. Commercial Tp., D.R. No. 91-9, 16 NJPER 511 (¶21223 1990); Cinnaminson Tp. Bd. of Ed., D.R. No. 81-39, 7 NJPER 274 (¶12122 1981); West Paterson Bd. of Ed., NJPER Supp. 333 (¶77 1973)

Here, the payroll manager reports to two members of the Board's negotiations team who are intimately involved in the Board's labor relations functions. The Board intends to have the payroll manager's immediate responsibilities include access to and analysis

of computerized fiscal data in preparation for upcoming negotiations. See Commerical Tp.; Passaic Bd. of Ed., D.R. No. 88-21, 14 NJPER 37 (¶19014 1987); Cliffside Park Bd. of Ed.; Montague Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986). The position's duties will require more than merely generating raw budget data. See Northern Highlands Reg. Bd. of Ed., D.R. No. 88-2, 13 NJPER 629 (¶18234 1987); Sayreville Bd. of Ed., P.E.R.C. No. 88-109, 14 NJPER 341 (¶19129 1988), aff'd App. Div. Dkt. No. A-4297-87T1 (4/21/89); Willingboro Bd. of Ed., D.R. No. 84-4, 9 NJPER 527 (¶14215 1983). Since an employee's access to and knowledge of materials used in labor relations processes is the key to confidential status, based upon the foregoing, I find that the payroll manager position is confidential and should be excluded from the existing negotiations unit. State of New Jersey (Div. of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).<sup>3/</sup> Commercial Tp.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: January 7, 1993  
Trenton, New Jersey

3/ After an appropriate period of time under this arrangement, if the payroll manager is not performing duties which give the employee access to and knowledge of confidential labor relations materials, the Association may file a clarification of unit petition seeking to clarify the instant unit to include the payroll manager.