

D.R. NO. 95-27

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

In the Matter of

SUMMIT BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. RO-95-64

SUMMIT EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

Pursuant to a unit consolidation petition, the Director of Representation orders an election among secretarial/clerical staff to determine whether they wish representation in a consolidated unit with teachers or continued representation in a separate unit. A professional option election among the teachers is also ordered.

The Director excludes the Board's payroll clerk and personnel secretary, finding that they are both confidential employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g). The payroll clerk participated in the Board's labor negotiations strategy meetings; the personnel secretary had advance knowledge of the Board's positions concerning contract administration and grievance processing.

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Appearances:

For the Public Employer
Anthony Sciarrillo, attorney

For the Petitioner
New Jersey Education Association
(Mary Lou Mitchell, Field Rep.)

DECISION AND DIRECTION OF ELECTION

On October 14, 1994, the Summit Education Association, NJEA, filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission, seeking to add all secretaries and clerks employed by the Summit Board of Education to its existing unit of professional employees. The Association currently represents the secretaries and clerks in a separate negotiations unit.^{1/} The petition was timely filed and supported by an adequate showing of interest. The Board opposes the

^{1/} The Summit Secretaries Association notified us by letter that it disclaims any interest in representing the secretaries and clerks employed by the Summit Board of Education; it merged with the Summit Education Association on February 10, 1994.

petition and refuses to consent to a secret ballot election; it alleges that certain of the 35 petitioned-for titles are confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and are thus ineligible for unit membership.

We have conducted an administrative investigation into the petition and make the following findings. N.J.A.C. 19:11-2.2.

The Association seeks to combine its two negotiations units into one unit of secretaries, clerks and certificated employees, teachers, department supervisors, subject area supervisors in their capacities as teachers, special services personnel, reading specialists, nurses, librarians and part-time hourly teachers. The Board and Association agree to the inclusion of all but two secretarial positions, the payroll clerk (Karen Lister) and the personnel secretary/secretary to the assistant superintendent (Nancy Sofie).

The Board also objects to the inclusion of the part-time secretary in the Music department but this position has been abolished effective January 1, 1995; we therefore find this issue moot and decline to determine the unit status of this position.

Payroll Clerk (Karen Lister)

The payroll clerk, Karen Lister, reports to the business administrator/board secretary.^{2/} Lister prepares the payroll, and maintains all related reports and records. She assists the business administrator by costing out negotiations proposals, preparing wage scattergrams and salary schedules, and collecting other payroll information used by the Board in its preparation for collective negotiations.

The Board states that:

"During the course of preparations, the payroll secretary participates in labor strategy meetings so as to insure that members of the committee are knowledgeable as to the financial impact of items proposed during formal negotiations." (emphasis added) (Board's position statement, November 16, 1994, at page 5, para. 2.)

Negotiations are about to commence for a new agreement.

Lister was not in this position during the last negotiations in 1993. The Board stated that the payroll clerk assisted the business administrator in preparing a response to a salary appeal filed by the Secretaries' Association with the Commissioner of Education.

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.

^{2/} There are four other secretarial/clerical employees who report to the business office. Two of these employees, the business administrator's personal secretary and the account supervisor are excluded because they are confidential.

Confidential employees are excluded from the Act's definition of "employee" and do not enjoy the Act's protections. N.J.S.A. 34:13A-3(d). Consequently, the Commission has narrowly construed the term confidential employee. In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission stated that it scrutinizes 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 employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit... (11 NJPER at 510).^{3/}

See also, Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988) and 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 (1988).

Here, in addition to her day-to-day maintenance of the payroll, Lister prepares cost-impact analyses of different negotiations proposals and participates in the Board's strategy sessions. Therefore, she is likely to learn of the Board's negotiations positions before their disclosure to the Association. This advanced knowledge places the payroll secretary in a position

^{3/} The Commission there cited Parsippany-Troy Hills Bd. of Ed., D.R. No. 80-35, 6 NJPER 276 (¶11131 1980); River Dell Reg. Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984); City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶15086 1984); Tp. of Mt. Olive, P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); and Wayne Tp. v. AFSCME, etc., P.E.R.C. No. 87-82, 13 NJPER 77 (¶18035 1987), rev'd 220 N.J. Super. 340 (App. Div. 1987).

of conflicting loyalties. Accordingly, I find that the payroll secretary is confidential within the meaning of the Act and is excluded from the proposed consolidated unit. Accord, Borough of Ringwood, D.R. No. 93-19, 19 NJPER 196 (¶24093 1993) (payroll clerk was confidential employee where she sat in on confidential negotiations meetings). Compare, Cliffside Park Bd. of Ed. (payroll clerk was not confidential where she did not have advance knowledge of the Board's proposals.)

The Association argues that the Board's assertions about Lister's performance of confidential duties are conjecture and asserts that Lister was not in the payroll position during the last round of negotiations. In Wayne Bd. of Ed., P.E.R.C. No. 87-82, 13 NJPER 77 (¶18035 1986), the Commission noted that, in determining confidential status, "We do not look to...potential job responsibilities, rather we look to what that employee actually does." at p. 78. Here, however, the issue is not potential duties she may perform, but actual, duties which have been assigned to her, and which she will perform.

Personnel Secretary (Nancy Sofie)

The personnel secretary, Nancy Sofie, reports directly to the superintendent. The Board's personnel director position was eliminated in 1993. Sofie performs a significant portion of the district's personnel-related functions. The Board offered these relevant examples of work:

Sofie collected and coordinated evaluation materials, constructed a chronology of events and participated in

discussions concerning a case where an increment was withheld. The materials were prepared for use by the Board's attorney.

During 1994, Sofie assisted the superintendent in preparing for conferences with Association representatives regarding a personnel decision concerning a non-tenured employee.

In another matter involving the nonrenewal of an employee, Sofie participated in formulating the Board's position by consulting with administrators, supervisors and the Board's attorney and preparing a report for the superintendent.

Sofie regularly informs the superintendent of the Board's past application of the collective negotiations agreement. For example, when employees asked for an explanation of the holiday schedule of certain employees, Sofie provided the superintendent with the requested explanation.

Within the last six months, Sofie was involved in a request by a staff member for a benefit not specifically provided for in the negotiated agreement. She researched the issue, consulted with the Board's attorney regarding the status of the law and how the matter might be handled, and provided information to assist the superintendent in deciding the issue.

Sofie participates in determining the Board's personnel actions and knows of the Board's options before the Board acts and before the Association is informed. In River Dell Bd. of Ed., P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984) two secretaries were deemed confidential where one took notes of discussions between the superintendent and his assistant with respect to current negotiations and maintained the files which included confidential

communications with respect to negotiations. The second secretary took notes and dictation concerning negotiations progress reports and typed correspondence from the superintendent to the Board's attorney concerning grievance responses. And, in Old Bridge Tp. Bd. of Ed., D.R. No. 82-17, 7 NJPER 639 (¶12287 1981) a research assistant was deemed confidential where he assisted in various labor-relations functions, including grievance processing by keeping a record of the status of grievances and the preparation of information for processing grievances at the second step. Like the personnel secretary herein, he also had advance knowledge of the Board's positions with regard to the processing of grievances.

Accordingly, I find that the personnel secretary, Nancy Sofie, is a confidential employee and to exclude her from the proposed unit.

Based upon all of the above I order that an election be conducted in the unit described below:

Included: all secretaries and clerks employed by the Summit Board of Education to be added to the unit of certificated employees, teachers, department supervisors, subject area supervisors in their capacities as teachers, special services personnel, reading specialists, nurses, librarians and part-time hourly teachers.

Excluded: All other employees, all employees included in other negotiations units, police, firefighters, confidential employees, managerial executives, craft employees and supervisors within the meaning of the Act.

* * * *

Method of Balloting

Pursuant to N.J.S.A. 34:13A-6, professional employees will vote on whether they wish to be included in a negotiations unit with non-professional employees.

Employees currently represented in the secretarial/clerical unit will vote on whether they wish to be represented by the **Summit Education Association** in a combined unit with teachers or in a separate unit.

If both voting groups vote in favor of consolidation, we will issue a certification consolidating the units. If either group rejects consolidation, we will issue a certification confirming the existing separate unit structures.^{4/}

The election will be determined by a majority of voting employees in each unit.

* * * *

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

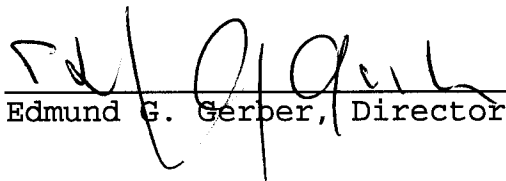
^{4/} The election ordered here is not to resolve a question concerning representation. All employees affected herein are already represented by the Summit Education Association. By conducting a secret ballot election, we are merely asking employees to express their unit configuration preference. Accordingly, this situation does not warrant placing the choice of "no representative" on the ballot, nor will this election result in a certification of representative.

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. 19:11-9.6, 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 17, 1995
Trenton, New Jersey