

E.D. No. 1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLAINFIELD BOARD OF EDUCATION

Public Employer

and

Docket No. CU-1

PLAINFIELD ASSOCIATION OF
EDUCATIONAL SECRETARIES

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DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the status of Secretaries to the Superintendent of Schools, Business Manager-Board Secretary, Assistant Superintendent of Schools for Personnel and Assistant Superintendent of Schools for Curriculum of Plainfield Board of Education a hearing was held before Hearing Officer Howard M. Golob on November 10, 1969 at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Thereafter, on February 20, 1970 the Hearing Officer issued his Report and Recommendations 1/. Exceptions were filed by the Petitioner. The Executive Director has considered the record, the Hearing Officer's Report and Recommendations, the Exceptions and on the facts in this case finds 2/:

1. The Plainfield Board of Education is a public employer within the meaning of the Act and is subject to the provisions of the Act.

1/ Attached hereto and made a part hereof.

2/ On February 24, 1970 the Executive Director transferred this case to the Commission for Decision. The Commission on April 30, 1970 transferred the case to the Executive Director to issue a decision.

2. The Plainfield Association of Educational Secretaries is an employee representative within the meaning of the Act.
3. The public employer having refused to include the aforementioned Secretaries in the unit represented by the Plainfield Association of Educational Secretaries a question concerning the unit placement of public employees exists and the matter is appropriately before the Executive Director for determination.
4. The Hearing Officer's findings and recommendations are hereby adopted.
5. The Petitioner excepts to the Hearing Officer's findings that the aforementioned secretaries, six in number, are confidential employees and excepts to his failure to include them in a unit of all secretaries.

The uncontroverted evidence reveals that each of the four management personnel are involved in the formulation of labor relations policy utilized by the members of the Board of Education in collective negotiations. The record further reveals that the six secretaries who perform work for these four individuals have access to and deal with such labor relations policy material. The labor relations material involves evaluations of salary and fringe benefits and comparisons with other school districts which are utilized to formulate labor relations policy. Additionally, the management representatives are concerned with the compilation and evaluation of personnel records, evaluation reports and related data utilized to formulate negotiating policy. They are also involved in advising the Board, preparing minutes of closed meetings and correspondence with Board members on labor relations policy.

It is axiomatic that those charged with the responsibility for negotiations or the formulation of labor relations policy may not be

included in the same unit as those affected by such negotiations or such policy. To include both sides of the negotiating table in one unit would be the clearest conflict of interest and would effectively interfere with the purpose of this Act which provides for good faith negotiations. Similarly, secretarial employees who act in a confidential capacity to a member of management's team who is involved in the formulation of labor relations policy and who is privy to information concerning such matters would have the same conflict of interest 3/.

I agree with Petitioner that the determination of which, if any, employee is to be denied inclusion in a unit because of a confidential relationship requires careful scrutiny. I have considered this matter carefully and I am satisfied that these six secretaries have a confidential relationship regarding labor relations policy matters. Furthermore, I do not view the exclusion of six secretaries in a unit of approximately 50 secretaries as an improper application of the doctrine of confidentiality herein set forth.


The Petitioner argues that since all secretaries are subject to assignment to the positions occupied by the aforementioned confidential secretaries all secretaries must be considered the same. I do not find merit in this argument. I have excluded those secretaries regularly assigned to the Superintendent, two Assistant Superintendents and Secretary to the Board. The sporadic assignment of a secretary to replace one of these regular secretaries on a temporary basis does not

3/ Petitioner contends that a community of interest exists among all secretaries. This community of interest is overridden here by a "conflict of interest".

warrant an application of this policy to all secretaries. Furthermore, the evidence reveals that such temporary personnel are not assigned the full compliment of work normally performed by the regular secretary.

I similarly reject Petitioner's contention that a past history whereby these secretaries were included with other secretaries requires their inclusion in the same unit. The record reveals dealings in 1968 for all secretaries. Without deciding whether or not this course of dealings constituted "established practice" or "prior agreement" the parties 1969-1970 agreement contains a reservation as to the classifications in dispute and refers the issue to the Commission for determination. Such determination is therefore appropriate.

Based upon all of the above the Executive Director finds that the secretaries to the Superintendent of Schools, Business Manager-Board Secretary, Assistant Superintendent of Schools for Personnel and Assistant Superintendent of Schools for Curriculum are confidential employees and are not included in the recognized unit of "Secretaries employed by the Board of Education". Accordingly, Petitioner's petition is hereby dismissed.


Louis Aronin
Executive Director

DATED: May 4, 1970
Trenton, New Jersey

In the Matter of

Plainfield Board of Education

Public Employer

and

Docket No. GU-1

Plainfield Association of Educational Secretaries

Petitioner

Appearances

Plainfield Board of Education
by Mr. Frank F. Allen
Secretary-Business Manager

Plainfield Association of Educational Secretaries
by Cassel R. Ruhlman, Jr., Esquire

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission, hereinafter called the Commission, a hearing was held before the undersigned Hearing Officer on November 10, 1969.

The Plainfield Association of Educational Secretaries, an employee organization and the Petitioner herein, has been recognized by the Plainfield Board of Education, a public employer, as the negotiating agent for the secretaries employed by the Board except for the secretaries to the Business Manager-Board Secretary, the Superintendent of Schools, the Assistant Superintendent of School for Curriculum and the Assistant Superintendent of Schools for Personnel, respectively. The exceptions of these categories were conditional upon a decision by this Commission.

The Board contends that these employees should be excluded from the secretarial unit as they have unlimited access to information of the school district and its labor relations and they are confidential employees. On the other hand, the Association contends that they should be included as they share a community of interest with the other secretaries and, furthermore, the Act does not specifically provide for their exclusion.

The testimony revealed that the secretaries in question work in the same buildings as other secretaries, work basically the same number of hours per day and week, and have the same holidays, vacation rights and other benefits.

The testimony at the hearing revealed that the secretaries in question perform the normal secretarial functions, i.e., typing letters and/or intraoffice memos, opening the mail, answering the telephones, assisting in general, etc. The only and main difference and that is the issue is that these secretaries work for the Business Manager-Board Secretary, Superintendent of Schools, Assistant Superintendent of Schools for Personnel, and Assistant Superintendent of Schools for Curriculum, respectively.

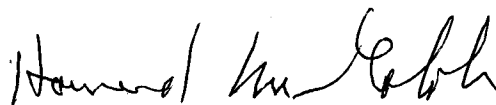
The testimony also showed that the aforementioned besides performing other tasks collectively compose the managerial team of Administrators who carry forward the policy of the Board in all matters including labor relations. The team prepares the strategy and/or is privy to the strategy of the Board of Education in matters of contract negotiations and/or grievance handling. It is true that much of the information handled by this management team is public information, but the testimony reveals that some is not public information and is not released and will not be released until the proper moment.

While it could, perhaps, be argued that the secretaries in question have a community of interest with the other secretaries I recommend, notwithstanding that there is no mention in the Act of the inclusion or exclusion of these type of employees from the negotiating unit, that they be excluded from the unit which includes other secretaries. The fact that these employees regularly assist or perform tasks for persons who formulate, determine and/or effectuate management policies in the field of labor relations sets these "confidential employees" in a class among themselves. It is unfair to both the employer and the employee herself - this is not to say that the secretaries in question have or would leak strategy to the negotiating agent-to have the "confidential employee" be represented for negotiations in a unit with nonconfidential employees.

It is true that Section 7 of Chapter 303 Laws of 1968 states, "the negotiating unit shall be defined with due regard for the community of interest..." This language, though, does not preclude a finding that other considerations can override the "due regard for the community of interest" and that certain classifications be excluded.

Accordingly, based upon the foregoing, it is recommended that Petitioner's Petition for Clarification of Unit be dismissed and the secretaries to the Business Manager-Board Secretary, Superintendent of Schools, Assistant Superintendent of Schools for Curriculum, and Assistant Superintendent of Schools for Personnel not be included in the negotiating unit of secretaries employed by the Plainfield Board of Education.

Respectfully submitted



Howard M. Golob
Hearing Officer

FEBRUARY 20, 1970