

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

In the Matter of

ORANGE BOARD OF EDUCATION,

Public Employer,

-and-

DOCKET NO. CU-76-49

ORANGE NON-CERTIFIED EMPLOYEES
ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, in agreement with the Hearing Officer's Report and Recommendation in a Clarification of Unit proceeding, finds that four administrative secretaries, who handle confidential material for three administrators regularly conducting labor negotiations for the Board, as well as the Office Manager/Payroll Clerk who takes minutes of closed Board sessions are confidential employees within the meaning of the New Jersey Employer-Employee Relations Act and, accordingly, are excluded from the non-certified employees negotiating unit.

The Director also finds that employees in bookkeeping titles as well as two other administrative secretaries are to be included in the Petitioner's unit of non-certified employees since they are not confidential employees.

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Appearances:

For the Public Employer
Beck, Reichstein & Guidone, Esqs.
(Phillip F. Guidone, Of Counsel)

For the Petitioner
Goldberg, Simon & Selikoff, Esqs.
(Gerald M. Goldberg, Of Counsel)

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of a collective negotiations unit represented by the Orange Non-Certified Employees Association (the "Association") a hearing was held before James F. Schwerin, on April 28, June 1 and June 28, 1977, at which time all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Neither party filed a brief, and the Hearing Officer issued his Report and Recommendations on September 23, 1977. A copy is annexed hereto and made a part hereof. No exceptions to the Hearing Officer's Report and Recommendations have been filed.

The undersigned has considered the entire record including the Hearing Officer's Report and Recommendations and the transcript and on the basis thereof finds and determines as follows:

1. The Orange Board of Education (the "Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), the employer of the employees involved herein, and is subject to the provisions of the Act.
2. The Orange Non-Certified Employees Association is an employee representative within the meaning of the Act and is subject to its provisions.
3. The Association is the exclusive representative of a negotiations unit consisting of all secretaries, clerk-typists, senior secretaries and other non-certified personnel employed by the Board. The Association has filed the instant Clarification of Unit Petition seeking a determination as to the status of six Administrative Secretaries, the Office Manager/Payroll Clerk, Purchasing Bookkeeper, and two Bookkeepers. The Association claims that these personnel are not confidential employees, as defined in N.J.S.A. 34:13A-3(g)^{1/} and, consequently, are includable in its negotiations unit. The Board claims that these personnel are confidential employees. Accordingly, a Clarification of Unit Petition having been filed and there existing a question concerning the composition of a negotiations unit, the matter is appropriately before the undersigned for determination.
4. The Hearing Officer found that the Superintendent of Schools, Associate Superintendent for Personnel, and the Business Manager conducted

^{1/} This subsection 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."

collective negotiations with the various employee organizations which represent the Board's employees, report on the status of negotiations, draft recommendations, and attend all Board sessions where negotiations strategy is planned. However, he found that the Associate Superintendent for Curriculum does not participate in negotiations nor does he have significant input in labor relations.

The Hearing Officer concluded that one of the two Administrative Secretaries to the Superintendent is routinely required to perform secretarial duties directly involving confidential labor relations materials prepared for and by the Superintendent. The other secretary, while performing some of the same functions as the first secretary on a semi-regular basis, is also responsible for maintain a policy file including all Board policies in the area of labor relations. Accordingly, the Hearing Officer recommended that the two Administrative Secretaries to the Superintendent be designated as confidential employees and excluded from the unit of non-certified employees.

In considering the two Administrative Secretaries to the Associate Superintendent for Personnel, the Hearing Officer found that one secretary routinely performs secretarial functions with regard to the negotiations position reports prepared by the Associate Superintendent for the Board's negotiations strategy meetings. However, it was found that the second secretary is not assigned to the preparation of confidential materials. Therefore, the Hearing Officer recommended that only the one Administrative Secretary to the Associate Superintendent for Personnel be designated as a confidential employee within the meaning of the Act.

Additionally, the Hearing Officer found that the Administrative Secretary to the Business Manager is routinely required to type proposed

settlements, draft agreements, and the Business Manager's recommendations to the Board concerning the negotiations which he conducts. Consequently, the Hearing Officer recommended that the Administrative Secretary to the Business Manager be determined a confidential employee.

In view of the finding that the Associate Superintendent for Curriculum does not participate in the formulation or administration of labor relations, the Hearing Officer recommended a determination that the Administrative Secretary to the Associate Superintendent for Curriculum is not a confidential employee.

The Hearing Officer, having found that the Office Manager/Payroll Clerk takes the minutes at closed meetings of the Board and participates in the financial aspect of developing negotiations proposals, recommended that she be determined a confidential employee.

As to the other employees in dispute, the Purchasing Bookkeeper and the two Bookkeepers, the Hearing Officer found that, while they prepare financial data which is later used by the Administration in the formulation of negotiations proposals, they are not privy to the proposals themselves. The Hearing Officer found therefore, that the Board's ability to negotiate is not compromised by the inclusion of these employees in the collective negotiations unit. Accordingly, he recommended a determination that these employees are not confidential employees.

Having reviewed the entire record, the Hearing Officer's Report and Recommendations and noting the absence of any exceptions thereto, the undersigned finds that there is ample evidence to support the Hearing Officer's findings, and these are specifically adopted. Moreover, the Hearing Officer's conclusions and recommendations that the two Administrative Secretaries to the Superintendent, one Administrative Secretary to the Associate Superintendent

for Personnel, the Administrative Secretary to the Business Manager, and the Office Manager/Payroll Clerk are confidential employees, while the other Administrative Secretary to the Associate Superintendent for Curriculum, the Purchasing Bookkeeper, and the two Bookkeepers are not confidential employees, are consistent with and in accordance with prior standards enumerated by the Commission in previous decisions involving confidential employees. ^{2/} The record reveals that the Superintendent, Associate Superintendent for Personnel, and the Business Manager play key roles in the formulation and implementation of labor relations policies which entail the preparation of confidential negotiations material, and that the two Administrative Secretaries to the Superintendent, one of the Administrative Secretaries to the Associate Superintendent for Personnel, and the Administrative Secretary to the Business Manager have, in the exercise of their duties, handled such confidential material and would be expected to continue to have access to and knowledge of such materials in the regular exercise of their secretarial duties in the future. The record further reveals that the Office Manager/Payroll Clerk, who takes the minutes at closed sessions of the Board and participates in the financial aspect of preparing negotiations proposals, has in the past, and would be expected in the future, to have access to and knowledge of confidential labor relations materials in the regular exercise of these duties. The finding that the second Administrative Secretary to the Associate Superintendent for Personnel, the Administrative Secretary to the Associate Superintendent for Curriculum, the Purchasing Bookkeeper and the two Bookkeepers

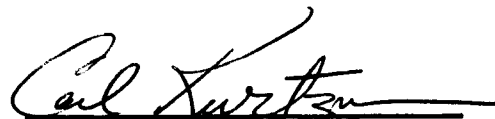
^{2/} In re Board of Education Township of West Milford, P.E.R.C. No. 56 (1971); In re Bloomfield Board of Education, E.D. No. 76-40 (1976); In re Springfield Board of Education, E.D. No. 52(1974).

do not in the regular course of their duties handle confidential materials and would not be expected to do so in the future is also supported by the record.

Accordingly, the undersigned finds that the Administrative Secretaries to the Superintendent, one of the Administrative Secretaries to the Associate Superintendent for Personnel, the Administrative Secretary to the Business Manager and the Office Manager/Payroll Clerk are confidential employees within the meaning of the Act. Inasmuch as these employees are confidential employees, they are excluded from the Association's non-certified personnel unit immediately upon this determination. ^{3/}

Additionally, the undersigned finds that the second Administrative Secretary to the Associate Superintendent for Personnel, the Administrative Secretary to the Associate Superintendent for Curriculum, the Purchasing Bookkeeper, and the two Bookkeepers are not confidential employees and, accordingly, they are to be included in the Association's non-certified personnel unit.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: December 15, 1977
Trenton, New Jersey

^{3/} In re Glearview Regional High School Board of Education, D.R. No. 78-2,
3 NJPER 248 (1977).

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SYNOPSIS

A Commission Hearing Officer in a clarification of unit proceeding recommends that employees in bookkeeping titles as well as two administrative secretaries be included in the petitioner's unit of non-certified employees as they are not confidential employees. However, he recommends that four other administrative secretaries who handle confidential material for the three administrators regularly conducting labor negotiations for the Board, as well as the Office Manager/Payroll Clerk who takes minutes of closed Board sessions be excluded from any unit because they are confidential employees.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions 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. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer, Beck, Reichstein
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(Phillip F. Guidone, of Counsel)

For the Petitioner, Goldberg, Simon & Selikoff, Esqs.
(Gerald M. Goldberg, of Counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On May 10, 1976 a petition was filed with the Public Employment Relations Commission (the "Commission") by the Orange Non-Certified Employees Association (the "Association") seeking clarification of a unit of employees of the Orange Board of Education (the "Board") for which the Association is the exclusive representative. As amended on the record, the petition seeks a determination that the administrative secretaries to certain board administrators, the purchasing bookkeeper, bookkeepers and the office manager/payroll clerk are appropriately included in its unit. Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on April 28, June 1 and June 28, 1977 ^{1/} in Newark at which all

^{1/} Reference to the transcript will be as follows: T1 - April 28; T2 - June 1; T3 - June 28.

parties had the opportunity to examine witnesses, present evidence and argue orally. Both parties waived the right to submit briefs. Upon the entire record the Hearing Officer finds:

1. The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.

2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association having filed a petition seeking clarification of its unit as including certain job titles and the Board having objected to the inclusion of those titles, a question concerning the composition of a negotiations unit exists, and it is properly before the Hearing Officer for a Report and Recommendation.

In a contract between the parties for the period July 1, 1975 - June 30, 1977, the Association was recognized as the representative of a unit consisting of secretaries, clerk typists, senior secretaries and other non-certified personnel not relevant to this proceeding. The question of whether administrative secretaries and bookkeepers belong in the unit is specifically held aside pending a Commission ruling on the matter.^{2/} It is the Association's contention that the employees in question have a community of interest with its unit members, most particularly the secretarial and clerk titles included in the unit. The Board does not contest the community of interest but rather argues that these employees are confidential employees within the meaning of the Act and therefore not entitled to any of the rights of representation accorded by the Act.

^{2/} Due to changes in the names of certain titles, the titles now at issue include administrative secretary, bookkeeper, office manager/payroll clerk, and purchasing bookkeeper. The issue is whether these titles are included in the unit. The Board argues that the title is specifically excluded from the unit.

N.J.S.A. 34:13A-5.3 excludes confidential employees from having the right to collective representation. A confidential employee is defined as one:

"...whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate unit incompatible with their official duties." ^{3/}

Woodrow Zaros, the Superintendent of Schools, testified as to the Board's procedures in the area of labor relations. Negotiations with the various units of Board employees are conducted by either the Superintendent, the Associate Superintendent for Personnel, or the Business Manager, and from year to year there may be variance in terms of who negotiates with a particular unit.^{4/} The Superintendent attends all Board sessions involving planning of strategy for negotiations, as do the two Associate Superintendents and the Business Manager who is also Board Secretary. Minutes of these sessions are kept. Reports on the status of negotiations and/or recommendations may be drafted by the Superintendent, the Associate Superintendent for Personnel, or the Business Manager.^{5/} The Associate Superintendent for Curriculum has no direct involvement in the negotiations process.^{6/} This

^{3/} N.J.S.A. 34:13A-3(g). Prior to the legislative adoption of this definition, the Commission had promulgated its own definition which was used in decisions on this subject. N.J.A.C. 19:10-1.1 - now superceded - defined a confidential employee as "any employee for whom a principal duty is to assist and act in a confidential capacity to persons who formulate, determine and effectuate management policy in the area of labor relations...The term 'confidential employee' shall be narrowly construed." This is consistent with the legislative definition, and decisions under this standard are still viable precedent.

^{4/} T2:50, T3:4.

^{5/} T2:51.

^{6/} T3:15.

description was not challenged by the Association, and identifies the three administrators who formulate labor relations policy.

Turning first to the two Administrative Secretaries to the Superintendent, the undersigned concludes that they are confidential employees. Elizabeth Slade prepares the agenda for all Board meetings including closed sessions at which negotiations strategy may be discussed. The material she may annex includes items such as correspondence from attorneys, drafts of negotiations proposals, and grievances. She is the one who most often takes dictation from and types correspondence for the Superintendent.^{7/} Antoinette Alfieri, in addition to performing some of the same duties as Slade, on a semi-regular basis, is responsible for maintaining a policy file of all Board policies including those in labor relations, and she participates in the formulation of those policies in discussions with the Superintendent based on her knowledge of the district's history.^{8/} These duties are similar in nature to those of the employees found to be confidential in In re Board of Education of the Township of West Milford, P.E.R.C. No. 56 (1971).

The second administrator formulating labor policy is the Associate Superintendent for Personnel, Mr. Patrick Pelosi. He testified that there are two administrative secretaries in his office - Rosa Manuel and Josephine D'Alessio. Manuel is responsible for the typing of the Associate Superintendent's input for the Board agenda described above including positions on labor negotiations. In addition, she handles his correspondence.^{9/} D'Alessio, on the other hand, while she may type the final drafts of already negotiated agreements, does not get involved with the confidential materials for which

^{7/} T2:22-41.

^{8/} T2:62, 76, 82, T3:35.

^{9/} T3:82, 84.

Manuel is responsible.^{10/} The Hearing Officer finds that Rosa Manuel is a confidential employee within the meaning of the Act, but Josephine D'Alessio is not.

The Business Manager has an administrative secretary named Elaine Henry. She would handle the typing for draft agreements and proposals as well as his correspondence and other communications. Recommendations by the Business Manager to the Board regarding a unit with which he was negotiating would go through her.^{11/} She is a confidential employee.

Eleanor Fineran is the Office Manager/Payroll Clerk. As a part of her duties, she attends closed sessions of the Board and takes the minutes. She also works with the Business Manager in costing out and developing proposals.^{12/} There is no question that these duties relate directly to labor relations and involve regular work with confidential information. The undersigned finds her to be a confidential employee.

None of the rest of the employees at issue have any demonstrated regular duties involving confidential labor relations material. As noted earlier, the Associate Superintendent for Curriculum does not participate in negotiations or have significant input in labor relations. Therefore her administrative secretary - Alice Lynch - does not fit the definition of a confidential employee. The Purchasing Bookkeeper (Head of Bookkeeping) - Jean Tindall - and the Bookkeepers - Josephine Rella and Joanne Lowe - are responsible for generating the data that the administrators need and the processing of bills.^{13/} West Milford, supra, makes clear that mere assembling of data which may later be used in determining labor policy does not

^{10/} T3: 83-4.

^{11/} T3:16, 22, 81.

^{12/} T2:51, T3:16.

^{13/} T3:28.

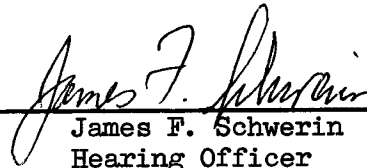
render an employee confidential inasmuch as management's position will not be compromised.

As there is currently no contract between the parties and the dispute was reserved and referred to the Commission in the recently expired contract, the recommended clarification of this unit may be immediately effective if approved by the Director of Representation. In re Clearview Reg. High School Board of Education, D.R. No. 78-2, 3 NJPER ____ (1977).

RECOMMENDATION

For the above stated reasons, the undersigned recommends that the Association unit be clarified to include the Administrative Secretary to the Associate Superintendent for Curriculum, the Administrative Secretary to the Associate Superintendent for Personnel found not to be confidential (D'Alessio), the Purchasing Bookkeeper and Bookkeepers, and to exclude the Administrative Secretaries to the Superintendent, the other Administrative Secretary to the Associate Superintendent for Personnel (Manuel), the Administrative Secretary to the Business Manager, and the Office Manager/ Payroll Clerk.

RESPECTFULLY SUBMITTED,


James F. Schwerin
Hearing Officer

DATED: Trenton, New Jersey
September 23, 1977