

P.E.R.C. NO. 93-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GREENWICH TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. CU-91-22

GREENWICH EDUCATION ASSOCIATION,

Employee Organization.

SYNOPSIS

The Public Employment Relations Commission finds that the secretary to the business administrator of the Greenwich Township Board of Education is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act. The Commission further finds that the secretary to the board secretary is not a confidential employee. The negotiations unit represented by the Greenwich Education Association is clarified consistent with the Commission's decision.

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Appearances:

For the Petitioner, Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel)

For the Employee Organization, Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On November 13, 1990, the Greenwich Township Board of Education filed a petition for clarification of unit. The Board seeks to remove the secretary to the board secretary, Terry Lambertson, and the secretary to the business administrator, Mary Scarpa, from the collective negotiations unit of support staff. The Board asserts that these employees are confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(g). The Greenwich Education Association, majority representative of the support staff, opposes the Board's petition.

The Director of Representation conducted an administrative investigation and on April 10, 1992, dismissed the Board's petition. He found that the Board had not demonstrated that the two employees are confidential employees and thus should not continue to be included in the existing unit.

On April 27, 1992, the Board requested review of the Director's decision. It claimed that the Director made substantial factual and legal errors. On May 6, the Association filed a reply claiming that there were no compelling reasons to grant review.

On May 19, 1992, the Chairman granted the Board's request for review and invited the parties to file briefs or rely on their earlier submissions. Both parties filed additional argument.

On August 20, 1992, we reopened the record to consider the duties Lambertson had performed since the parties' last submissions. We invited the Board to submit any further evidence and a statement of position and offered the Association an opportunity to respond. On October 1, the Board informed us that it has no additional evidence or statement of position concerning Lambertson. By contrast, it submitted an additional affidavit, documents and statement of position concerning the duties Scarpa performed during the parties' last round of negotiations. It claims Scarpa performed duties that gave her knowledge of confidential labor relations materials. Specifically, it claims that Scarpa typed numerous performance evaluation reports, maintained a confidential negotiations binder, typed a grievance response, typed minutes of the Board's caucus meetings, costed out benefits and salary information, and typed the negotiations impressions of the Board's attorney and negotiator. The Association claims that since the record was not reopened as to Scarpa, we should not consider the Board's new information. It nevertheless responds to the Board's submission in case we decide to consider it.

N.J.S.A. 34:13A-5.3 affords public employees the right "to form, join and assist any employee organization." Confidential employees, however, 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).

N.J.S.A. 34:13A-3(g) defines "confidential employees" as:

[E]mployees 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.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained our approach to 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 employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. 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). We cannot look to title alone, but rather must look to the particular facts concerning the individual involved. See, e.g., Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988) (four of seven secretaries in board's main office found confidential). Titles sometimes belie duties. See, e.g., Ringwood Bd. of Ed. (executive secretary not confidential). A determination that an

employee is confidential and therefore excluded from the Act's protections should not be based on speculation about what an employee might do. State of New Jersey, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd App. Div. Dkt. No. A-1445-89T1 (1/22/91).

Ann Murphy is the board secretary/business administrator. She is a member of the Board's negotiations team for the support staff and the teachers. She was hired after the completion of negotiations for agreements in 1989. As of October 1991, she anticipated having responsibility for developing and implementing the Board's negotiations strategy when those agreements expired on June 30, 1992.

We have reviewed the Board's previously submitted evidence concerning Mary Scarpa's duties and list those duties relevant to our determination as to whether she is a confidential employee. Scarpa types minutes of open and closed session Board meetings from Murphy's notes. Parts of those minutes relate to labor relations matters. According to Murphy, Scarpa is expected to type Board proposals containing actual or potential strategies or positions that will be taken by the Board in negotiations with both support staff and teachers. As of April 1992, Scarpa had typed minutes of negotiations committee meetings and internal negotiations committee memoranda. Scarpa also receives, photocopies and files grievance determinations, actual or potential negotiations proposals, and Murphy's notes of negotiations committee meetings. She also takes

messages concerning negotiations and has distributed negotiations proposals from files to Board members and Board attorneys.

Based on this evidence concerning Scarpa's duties, we find that she is a confidential employee within the meaning of the Act. We did not, and will not now, reopen the record as to Scarpa. There is sufficient information in the previously submitted evidence to convince us that her responsibilities and knowledge of the Board's position in labor relations matters would compromise the Board's right to confidentiality concerning the collective negotiations process if her inclusion in the Association's unit were continued.

We have reviewed the evidence concerning Terry Lambertson's duties and list those duties relevant to our determination as to whether she is a confidential employee. Although we did not need to consider the Board's recent submission to decide that Scarpa is a confidential employee, we cannot ignore that the submission indicates that Scarpa, not Lambertson, performed the confidential labor relations duties during the recent contract negotiations. As of October 1991, Murphy expected Lambertson to cost out benefit items in the upcoming negotiations for teachers and support staff and to type minutes of the Board's closed sessions, minutes of grievance sessions and correspondence to grievants.^{1/} Despite Murphy's expectation, however, Scarpa, not Lambertson costed out salary and benefit information during recent negotiations and

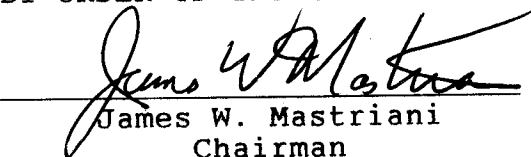
^{1/} Costing out benefit items does not necessarily involve access to confidential labor relations material. See Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

Scarpa, not Lambertson, typed the Board's minutes and grievance response. Finally, because of the setup of her office, as of October 1991, Murphy also expected Lambertson to be privy to conversations about labor relations matters. We invited the Board to tell about Lambertson's experience since October 1991 and it has declined. Mere access or proximity does not make an employee confidential and we conclude, under the circumstances of this case, that the chance that Lambertson might someday overhear confidential conversations is too speculative to deny her the protections of the Act. Based on this evidence concerning Lambertson's duties, we find that she is not a confidential employee within the meaning of the Act. If Lambertson's duties change materially, the Board may remove her from the Association's unit or follow the preferred route of filing another petition. Passaic Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976).

ORDER

The negotiations unit of support staff represented by the Greenwich Education Association is clarified to exclude Mary Scarpa, the secretary to the business administrator, and to include Terry Lambertson, the secretary to the board secretary.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 22, 1992
Trenton, New Jersey
ISSUED: October 22, 1992