

P.E.R.C. NO. 89-138

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ESSEX REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent-Petitioner,

-and-

Docket No. CO-H-88-100
CU-H-88-39

WEST ESSEX EDUCATIONAL SECRETARIES'
ASSOCIATION,

Charging Party-Employee Organization.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority granted to him by the full Commission in the absence of exceptions, dismisses a Complaint based on an unfair practice charge filed by the West Essex Educational Secretaries' Association and clarifies the Association's unit to exclude the secretary to the board secretary/business administrator. The charge alleged that the West Essex Regional School District Board of Education violated the New Jersey Public Employer-Employee Relations Act when it unilaterally removed the secretary from the Association's unit. A clarification of unit petition sought to exclude the secretary as a confidential employee.

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ASSOCIATION,

Charging Party-Employee Organization.

Appearances:

For the Respondent, Schwartz, Pisano, Simon, Edelstein &
Ben-Asher, Esqs. (Nicholas Celso, III, of counsel)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Reba Carmel, of counsel)

DECISION AND ORDER

On October 14, 1987, the West Essex Educational Secretaries' Association ("Association") filed an unfair practice charge alleging that the West Essex Regional School District Board of Education ("Board") violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

et seq., when it unilaterally removed the secretary to the board secretary/business administrator from the Association's negotiations unit.

On February 11, 1988, a Complaint and Notice of Hearing issued.

On February 16, 1988, the Board filed a petition for clarification of unit seeking to clarify the Association's unit to exclude that secretary. Its petition as well as its Answer to the Complaint assert that this secretary is a confidential employee under N.J.S.A. 34:13A-3(g).

On February 19, 1988, the Director of Representation consolidated the petition and Complaint for hearing.

On July 6 and August 16, 1988, Hearing Examiner Charles A. Tadduni conducted a hearing.^{2/} The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs and replies by October 7, 1988.

On May 15, 1989, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 89-37, 15 NJPER ____ (¶ 1989). He found that the Board did not violate the Act because the secretary to the board secretary/business administrator is a confidential employee and may not be included in any collective negotiations unit. He recommended that the Association's unit be clarified to exclude that title.

^{2/} This matter had been scheduled for hearing on March 1 and 10, 1988, but was adjourned at the charging party's request.

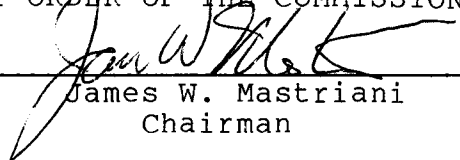
The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before May 30, 1989. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-15) are accurate. I incorporate them. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I agree that the Complaint should be dismissed and order the Association's unit clarified to exclude the secretary to the board secretary/business administrator.

ORDER

The Complaint is dismissed. The Association's unit is clarified to exclude the secretary to the board secretary/business administrator.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
June 27, 1989
ISSUED: June 27, 1989

H.E. NO. 89-37

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ESSEX REGIONAL SCHOOL DISTRICT
BOARD OF EDUCATION,

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-and-

Docket Nos. CO-H-88-100
CU-H-88-39

WEST ESSEX EDUCATIONAL SECRETARIES'
ASSOCIATION,

Charging Party-Employee Organization.

SYNOPSIS

A Commission Hearing Examiner recommends that the Commission find that the West Essex Regional School District Board of Education ("Board") did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and dismiss the complaint in its entirety. Charging party, West Essex Educational Secretaries Association ("Association") alleges that the Board violated the Act when it unilaterally removed the Secretary to the Board Secretary/Business Administrator from the Association's unit. The Board contends that this employee is a confidential employee within the meaning of the Act and may not be included in any negotiations unit. Through its clarification of unit petition, the Board seeks to have its secretarial unit clarified as excluding the Secretary to the Board Secretary/Business Administrator position.

The Hearing Examiner finds the Secretary to the Board Secretary/Business Administrator is a confidential employee and therefore may not be included in any negotiations unit. Even assuming arguendo that the Board did unilaterally remove the Secretary to the Board Secretary/Business Administrator from the Association's unit, the Hearing Examiner finds no violation of the Act occurred because the employee removed from the unit (Secretary to the Board Secretary/Business Administrator) is a confidential employee and may not be included in any collective negotiations unit. The Hearing Examiner further recommends that the Commission clarify the secretarial unit as excluding the Secretary to the Board Secretary/Business Administrator.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Respondent

Schwartz, Pisano, Simon, Edelstein & Ben-Asher, Esqs.
(Nicholas Celso, III, of counsel)

For the Charging Party

Oxford, Cohen, Blunda, Friedman, LeVine & Brooks, Esqs.
(Reba Carmel, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

The West Essex Educational Secretaries' Association ("charging party" or "Association") filed an Unfair Practice Charge (Docket No. CO-88-100) with the Public Employment Relations Commission ("Commission") on October 14, 1987, alleging that the West Essex Regional School District Board of Education ("Board" or "respondent") violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

("Act")^{1/} when it unilaterally removed the position of Secretary to the Board Secretary/Business Administrator from the negotiations unit.

A Complaint and Notice of Hearing was issued on February 11, 1988. The Board filed a Petition for Clarification of Unit (Docket No. CU-88-39) on February 16, 1988, seeking to clarify the secretarial/clerical unit represented by the West Essex Educational Secretaries' Association to exclude the position of Secretary to the Board Secretary/Business Administrator. The Board contends that the Secretary to the Board Secretary/Business Administrator is a confidential employee within the meaning of the Act and should not be included in any negotiations unit. On February 19, 1988, the Director of Representation issued a Notice of Hearing on the Petition for Clarification of Unit and an Order consolidating the charge and the petition for hearing.

The Board filed an Answer to the Unfair Practice Complaint on March 4, 1988. This matter was originally scheduled for hearing on March 1 and 10, 1988, respectively. On March 1 and 7, 1988, at charging party's request, the hearing was adjourned. After making

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

several attempts to reschedule the hearing, I conducted a prehearing conference on June 29, 1988 and held hearings on July 6 and August 16, 1988. By October 7, 1988, the parties had filed briefs and reply briefs.^{2/}

Positions of the Parties

The Association contends that, historically, the Secretary to the Board Secretary/Business Administrator has been included in the secretarial/clerical negotiations unit; and that on September 4, 1987, the Board unilaterally determined the position was confidential and removed it from the negotiations unit. The Association argues that the position is not confidential, that the Board violated the Act when it unilaterally removed the position from the unit and that the position of Secretary to the Board Secretary/Business Administrator should be restored to the Association's secretarial/clerical negotiations unit.

^{2/} On March 2, 1988, the Association filed a Petition for Clarification of Unit (Docket No. CU-88-45) seeking to clarify its secretarial/clerical unit to include the Administrative Assistant to the Board Secretary/Business Administrator, the Crehley computer room position and the Girak position. On April 28, 1988, that matter was deemed withdrawn. On July 11, 1988, the Association filed another Petition for Clarification of Unit (Docket No. CU-89-1) seeking to clarify its secretarial unit to include the positions of Administrative Assistant to the Board Secretary/Business Administrator, Assistant Payroll Secretary and Computer Assistant/Board Office Floater. That case is pending before a Commission staff attorney, for investigation. The parties have discussed the unit placement of various disputed secretarial titles over an extended period of time. While they have resolved some of their unit composition disputes, they were unable to resolve the unit status of the Secretary to the Board Secretary/Business Administrator, thus necessitating this hearing (2T73-2T83).

The Board denies committing an unfair practice. It contends that the position of Secretary to the Board Secretary/Business Administrator is confidential within the meaning of the Act and therefore, may not be included in any negotiations unit. Even assuming arguendo that the Secretary to the Board Secretary/Business Administrator is found not to be confidential, the Board argues that no unfair practice lies in this case because the position which had been included in the Association's unit -- the Secretary to the Board Secretary -- was abolished. A new position -- Secretary to the Board Secretary/Business Administrator -- was created; it is the latter position which is the subject of the charge and the clarification of unit petition and which the Board argues should be excluded from the unit. Thus, the Board asserts that it did not unilaterally remove a position from the negotiations unit. Further, the Board contends that it was willing to and did negotiate with the Association concerning the unit status of this and several other clerical positions.

The Issues for Determination --

Underlying both the clarification of unit and unfair practice charge cases is the issue of confidentiality: is the Secretary to the Board Secretary/Business Administrator a confidential position within the meaning of the Act? If the answer is "yes," then the Board did not violate the Act by removing the position from the unit. If the answer is "no," I must consider whether the Secretary to the Board Secretary/Business Administrator

is a "new position" or whether it is a position which was included in the unit. If it is a new position, there may have been no unilateral, unlawful removal; if it is not a new position, then an unfair practice may lie in this matter.

Findings of Fact

(1) The administrative structure of the West Essex Regional School District begins with the Board of Education, the public employer of the employees at issue here. Reporting directly to the Board is the Superintendent, the School Treasurer and Board Counsel. The Board Secretary/Business Administrator position is a combination of two distinct positions: the Board Secretary and the School Business Administrator. In West Essex, Gerald Gruenfelder fills the combined Board Secretary/Business Administrator position. In his capacity as Board Secretary, Gruenfelder reports directly to the Board and performs functions directly for the Board. In his capacity as Business Administrator, Gruenfelder reports to the Superintendent (1T1-1T10, 1T23-1T26).

(2) Next are three Directors -- of Guidance, Athletics and Special Services -- who each have district-wide responsibilities and report to the Superintendent.

(3) There are two school buildings in the District -- a high school and a junior high school. There is a principal and three assistant principals at each school. The principals report to the Superintendent. There are department chairpersons at each school in charge of the various departments; they report to the

building principal. There is also a Supervisor of Buildings and Grounds and a Cafeteria Director; they report to the Board Secretary/Business Administrator.

(4) There are approximately 18-20 secretaries employed by the Board. Two secretaries have been historically excluded from the secretarial/clerical unit -- the Superintendent's Secretary and the Assistant Board Secretary^{3/} -- on the ground that they are confidential employees. The position of Secretary to the Board Secretary was included in the secretarial/clerical negotiations unit (Exhibit J-1, p.2; 1T23-1T26).

(5) The Board has five major personnel groupings -- three are formally organized collective negotiations units; the other two groups deal with the Board on an "informal" basis to set their terms and conditions of employment. The teachers, secretaries and administrators are organized in separate collective negotiations units. The teachers and secretaries are represented by NJEA affiliates; the administrators are represented by an independent organization. The custodial and maintenance employees and the cafeteria employees are "informally" organized -- that is, it appears that no employee organization has been formally recognized or certified as the majority representative of these two employee groups (1T6-1T12).

^{3/} The Board contends that at least two other recently created positions are also confidential: the Secretary to the Board Secretary/Business Administrator and the Administrative Assistant to the Board Secretary/Business Administrator.

(6) The Association is the recognized majority representative of a unit composed as follows:

Included -- All full-time contractual employees who are secretarial, clerical or other office staff members employed by the West Essex Regional School District Board of Education including: Secretary to the Board Secretary, Secretary to Department of Student Personnel Services, Secretary to Director of Guidance, Secretary to Principals, Secretaries to Principal's offices, Secretaries assigned to Superintendent's and Board Secretary's offices and switchboard operator.

(7) Gerald Gruenfelder was hired by the Board as the Board Secretary/Business Administrator in approximately August 1987. In June 1987, while Gruenfelder was interviewing for the position, he noted that the Secretary to the Board Secretary was a 10-month position. He subsequently discussed with the Superintendent the need to have that position be a 12-month position. The Superintendent agreed and recommended that the Board create a 12-month position to provide secretarial services to Gruenfelder (1T10-1T20). Accordingly, the Board subsequently created a new, 12-month position of Secretary to the Board Secretary/Business Administrator (1T16-1T17). In August 1987, Gruenfelder developed the job description for the new 12-month position of Secretary to the Board Secretary/Business Administrator (1T16-1T18; Exhibit R-1). The Board posted this position at both the junior and senior high schools in approximately September 1987, and provided a copy of the job description to the Association (1T15-1T20, 2T72-2T75).

(8) Sometime in late summer 1987, Malkiewich, then the Association president, applied for, and was selected to fill the Secretary to the Board Secretary/Business Administrator position (1T1-1T5, 2T80-2T84). In late September/early October 1987, Malkiewich called Jack Spear, an NJEA consultant who advised the West Essex secretarial unit, and asked him if she could continue as Association president while filling the new title which the Board had designated on the posting as confidential. Spear told her she could not (2T84-2T87). In late September/early October 1987, the Board took Malkiewich, then recently designated as the Secretary to the Board Secretary/Business Administrator, out of the secretarial unit. The Association filed its charge in October 1987.

(9) In March 1988, the Board and Association commenced negotiations for a successor to their collective negotiations agreement which terminated on June 30, 1988. During these negotiations, the Association raised the unit status of the Secretary to the Board Secretary/Business Administrator and several other secretarial positions. The parties discussed these unit status issues but were unable to resolve them (2T73-2T86). This litigation then proceeded.

(10) Board Secretary/Business Administrator Gruenfelder is the chief financial officer of the Board and his responsibilities include: plant maintenance and operations, supervising the school lunch program, payroll, accounts payable, purchasing, investment of Board monies, budget preparation, assistance in collective negotiations and contract administration (1T1-1T15).

(11) Gruenfelder was directly and indirectly involved in the most recent round of collective negotiations between the Board and its various negotiations units. Gruenfelder was a "resource person" for negotiations with the administrators' unit and the secretaries' unit. He did not sit at the table during these negotiations but rather, was given the unions' proposals and potential Board counterproposals to analyze and evaluate for financial and other impacts on the Board (1T8-1T12). He also discussed the negotiations with the Board's chief negotiator and the Superintendent, who was a member of the Board's negotiations team (1T10, 1T38-1T40). Gruenfelder also collected and prepared data for the Board to use during negotiations (1T8-1T12). Malkiewich assisted him in this task by assembling data for Gruenfelder to work on, some of which she took from files containing confidential materials, and typing the finished product (1T7-1T18, 1T26-1T33, 1T38-1T44). Because Gruenfelder also participated in preparing the budget, he knew how much money had been reserved for contract settlements (1T11-1T13). Thus, some of his discussions with the Board's chief negotiator (a Board member) and the Superintendent addressed whether the Board could afford to pay for certain proposals and/or how they could pay for them. Gruenfelder helped develop Board proposals and counterproposals for negotiations (1T8-1T17).

(12) During negotiations with the teachers' unit, Gruenfelder was both a resource person and sat at the negotiations

table with the Board's chief negotiator. In the informal negotiations with the custodial and maintenance employees and the cafeteria employees, Gruenfelder and the Superintendent conducted "informal negotiations" -- that is, with these employee groups, there were no face-to-face negotiations sessions. Rather, the parties exchanged written proposals and eventually settled on a written contract. (1T9-1T18, 1T26-1T33, 1T38-1T44).

(13) After negotiations sessions in which Gruenfelder participated and after closed session and/or public Board meetings where the Board discussed various topics, Gruenfelder sometimes dictated memos containing ideas about following through on certain approaches to an issue considered by the Board (2T19-2T23). These memos sometimes involved confidential labor relations issues and the possible approaches which the Board might take to them (1T10-1T15, 1T38-1T43, 2T20-2T21).

(14) Gruenfelder attends all public and closed session meetings of the Board. At its closed sessions, the Board discusses and/or decides issues concerning personnel, the budget, various actual and potential litigations involving the Board, employee grievances and contract negotiations (1T11-1T14, 1T36-1T39, 1T51-1T52, 2T30-2T34).

(15) Gruenfelder also does evaluations of those employees who work directly for him -- Secretary to the Board Secretary/Business Administrator, Assistant Board Secretary, Administrative Assistant to the Board Secretary/Business

Administrator, Secretary/Receptionist, the Supervisor of Buildings and Grounds and the Cafeteria Director (1T14-1T16, 1T48).

(16) The office of the Board Secretary/Business Administrator is located in the high school. Immediately outside the Board Secretary/Business Administrator's office is the office of the Secretary to the Board Secretary/Business Administrator. Across the hall from these two offices is the Superintendent's office and a secretarial work area which includes the Superintendent's secretary, the Assistant Board Secretary, the Administrative Assistant to the Board Secretary/Business Administrator and the Secretary-Receptionist (1T12-1T16, 1T19-1T22, 1T53-1T55, 2T34-2T36).

(17) There is a combination-lock safe in the secretarial work area across the hall from the Board Secretary/Business Administrator's office. Confidential documents and a petty cash fund, among other things, are kept in the safe. Six Board employees are allowed unrestricted access to the contents of the safe: Superintendent, Board Secretary/Business Administrator, Superintendent's secretary, Secretary to the Board Secretary/Business Administrator, Assistant Board Secretary and the Administrative Assistant to the Board Secretary/Business Administrator (2T35-2T38). The Superintendent's secretary usually opens the safe in the morning and closes it before she leaves at night. The safe is left open all day, as long as an employee is in the office. A seventh employee -- the Secretary/Receptionist -- has

limited access to the safe to deposit and remove money from the petty cash account (2T30-2T37, 2T56-2T61, 2T63).

(18) The Secretary to the Board Secretary/Business Administrator, Joan Malkiewich, types all correspondence and other documents created by the Board Secretary/Business Administrator. Some of this material concerns collective negotiations (1T38-1T41, 2T3-2T8). Malkiewich files documents in and retrieves them from various Board files. Some of the documents entered into and retrieved from the files and some of the files she puts into and takes from this filing cabinet contain confidential labor relations information (1T9-1T17). Malkiewich screens all calls and visitors to the Board Secretary/Business Administrator; she is able to help some callers herself. The balance of the calls are referred to the Board Secretary/Business Administrator. He then either takes the calls or instructs Malkiewich on how to help the caller (2T3-2T9, 2T15-2T18).

(19) Malkiewich also opens, reads and sorts all mail received by the Board Secretary/Business Administrator; she answers some of the mail. She then takes the rest of the mail and reviews it with Board Secretary/Business Administrator Gruenfelder. He prepares the responses to some of this correspondence; with some, he directs Malkiewich to prepare a response (2T3-2T10).

(20) Malkiewich types the draft and final versions of evaluations of the employees whom Gruenfelder directly supervises. Thus, she sees these evaluations prior to their being finalized and

before the evaluation conference at which Gruenfelder gives the employee his/her evaluation (1T14-1T16, 1T48, 2T40-2T41).

(21) Malkiewich prepares the agenda materials mailed to each Board member which includes each resolution to be discussed and/or voted upon at upcoming meetings; any background materials for the resolutions; and any other items for discussion by the Board. She prepares the agenda mailings for both the public Board meetings and the private session (closed) Board meetings (2T20-2T26). Malkiewich also telephones Board members with last minute changes and/or additions to meeting agenda materials. The Superintendent or Board Secretary/Business Administrator frequently ask Malkiewich to poll Board members' opinions, by telephone, about issues on upcoming agendas (2T6-2T9).

(22) At closed session Board meetings, the Board discusses and considers evaluations and other personnel issues, litigation and potential litigation involving the Board, and collective negotiations. They discuss strategy to be followed by the Board negotiations team, what proposals and counterproposals to make and how to deal with union proposals (1T11-1T14, 1T34-1T37, 2T6-2T12, 2T38-2T42, 2T45-2T55). The closed session meetings of the Board are attended by the Board members, the Superintendent, the Board Secretary/Business Administrator and the Secretary to the Board Secretary/Business Administrator, Malkiewich. She is never asked to leave the closed session meetings (2T10-2T15). Malkiewich takes notes of what was said at both the public session and the closed

session Board meetings. She later transcribes the notes of the meetings, proofreads them and keeps custody of the Board meeting minutes (2T5-2T12, 2T20-2T29). Malkiewich transcribes the meeting minutes on a word processor. While she is working on the meeting notes, they are kept on a computer disk which she locks in a file cabinet at night. After the notes are typed and printed, the disk is locked in the file cabinet where meeting notes are kept; she later reuses the disk to store the typed version of minutes from the next Board meeting (2T36-2T40). The typed Board meeting minutes from the past two years are kept in a locked file cabinet in the Board Secretary/Business Administrator's outer office (2T33-2T38). The minutes of older meetings are kept in locked file cabinets across the hall in the office area occupied by the Assistant Board Secretary, the Administrative Assistant to the Board Secretary/Business Administrator and the Secretary/Receptionist. Only the Superintendent, the Board Secretary/Business Administrator, Superintendent's Secretary, Secretary to the Board Secretary/Business Administrator, Assistant Board Secretary and Administrative Assistant to the Board Secretary/Business Administrator are permitted access to the closed session minutes (1T52-1T56, 2T10-2T12).

(23) Malkiewich actually prepares some Board resolutions -- she prepares some resolutions by taking language from old resolutions and appropriately reusing it; at other times, Gruenfelder dictates the language of resolutions to Malkiewich. The

resolutions sometimes deal with confidential labor relations matters (2T20-2T27).

(24) Malkiewich has routine access to files -- in the Board Secretary/Business Administrator's office and Superintendent's office -- where collective negotiations information and budgetary information are kept. In doing her job, she regularly goes to these files to pull material out and put new information in (1T14-1T16, 2T9-2T14).

(25) Because she works with the Board Secretary/Business Administrator and is frequently in his office, she is privy to many of his conversations with the Superintendent, Board members, the Administrative Assistant to the Board Secretary/Business Administrator and other Board employees. Some of these conversations are about confidential labor relations matters (1T48, 2T12).

Discussion of Law

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.

Underlying all of the Commission's confidential employee status determinations is the requirement that the alleged confidential employee be linked in some manner -- directly or indirectly -- to management's workings vis-a-vis the collective negotiations process. In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), the Commission stated:

...employees working on management's labor relations should not be included in units with the employees affected by that function. The employer's right to confidentiality in collective negotiations matters is essential to ensure the stable, good faith negotiations that the Act was designed to promote....The Act...looks...to the work an employee does and the knowledge of labor relations issues he or she has as the keystones to confidentiality. (Id. at 514).

See also Ringwood Bd. of Ed. v. Ringwood Educational Office Personnel Ass'n, NJEA, App. Div. Dkt. No. A-4740-86T7 (2/18/88), slip op. at 5, aff'g P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987).

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 employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. In re Township of Mount Olive, P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); In re City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶15086 1984); In re River Dell Regional Board of Education, D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); In re Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶ 11131 1980); In re Jersey City Board of Education, D.R. No. 80-36, 6 NJPER 278 (¶ 11132 1980); In re Board of Education City of Rahway, D.R. No. 80-12, 5 NJPER 506 (¶10261 1979); In re Jersey City Board of Education, D.R. No. 78-35, 4 NJPER 139 (¶4065 1978); In re Board of Education of the Township of West Milford, P.E.R.C. No. 56 (1971); In re Plainfield Board of Education, E.D. No. 1 (1970). This approach is consistent with subsection 13A-3(g) and with the NLRB's labor-nexus test, a test the United States Supreme Court approved in NLRB v. Hendricks, 454

U.S. 170, 108 LRRM 3105 (1981).

State of New Jersey, at 510.

See also State of New Jersey and State Troopers NCO Assn., H.O. No. 84-3, 9 NJPER 514, 516 (¶14210 1983), adopted by D.R. No. 84-9, 9 NJPER 613 (¶14262 1983).

In Bd. of Ed. of West Milford, P.E.R.C. No. 56 (1971), the Commission, finding three secretaries to be confidential employees, stated:

"These three secretaries work for and with those at a management level who share with the Board responsibility for personnel and labor relations policies, and by virtue of that relationship [they] have, in the course of their normal duties, access to and knowledge of such policy information."

West Milford, slip op. at p. 4.

Analysis

Based upon the record herein, I conclude that West Essex Board Secretary/Business Administrator Gruenfelder is extensively involved in formulating, modifying and carrying out the Board's labor relations policies and proposals. He is either directly or indirectly involved in collective negotiations with all employee units.

Malkiewich types all of Gruenfelder's correspondence and other documents, including those which deal with labor relations matters. Malkiewich opens and reads all of Gruenfelder's correspondence. She is present in or about his office during his conversations with other Board personnel; some of these

conversations have concerned labor relations matters. Malkiewich assists Gruenfelder in preparing various reports and materials for use by Board negotiators (including Gruenfelder) in collective negotiations. In doing this, Malkiewich works with files and materials containing confidential labor relations information. Malkiewich prepares the Board meeting agenda materials for mailing to members of the Board of Education; the agenda materials contain proposed resolutions and background information and other information which the Administration deems necessary to communicate to the Board. Malkiewich attends and records the proceedings at both public and closed Board of Education meetings and later types the recorded proceedings. At the closed meetings, Board members discuss collective negotiations strategies, the Board's own potential and actual proposals and union proposals. They also discuss litigation and budget matters. There is limited access to the records of closed Board meetings.

The record shows that in her position as Secretary to the Board Secretary/Business Administrator, Malkiewich has exposure to and knowledge of the Board's confidential labor relations matters and other matters affecting labor relations concerns. Accordingly, Malkiewich is a confidential employee within the meaning of the Act and should not be included in any collective negotiations unit.

Accordingly, even assuming that the Board did unilaterally remove Malkiewich from the negotiations unit, because she is a confidential employee and may not be included in any collective

negotiations unit, I find that the Board did not violate subsections 5.4(a) (1) & (5) of the Act.^{4/}

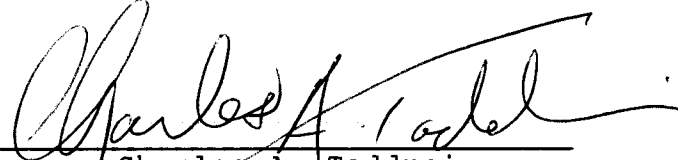
Conclusions and Recommended Order

Accordingly, based upon the above findings and analysis, I recommend that the Commission make the following determinations and ORDER:

1. That the Secretary to the Board Secretary/Business Administrator of the West Essex Regional School District Board of Education is a confidential employee within the meaning of the Act and thus is not appropriate for inclusion in any negotiations unit; that the Board's petition seeking to clarify the Association's secretarial/clerical negotiations unit to exclude this title is granted and given immediate effect; and

^{4/} Before matters such as this one escalate into unfair labor practices, the Commission prefers that parties unable to resolve unit status issues file a clarification of unit petition inasmuch as the clarification procedure is a more amicable means of resolving such disputes. See Passaic County Reg. H.S. Dist. No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 2 NJPER 268 (1976). Further, inasmuch as I have concluded that Malkiewich is a confidential employee within the meaning of the Act and, therefore, may not be included in any negotiations unit, I do not determine whether the Secretary to the Board Secretary/Business Administrator is a new position which had not previously been included in the Association's unit.

2. That accordingly, the Board did not violate subsections 5.4(a)(1) and (5) of the Act and the Complaint is dismissed in its entirety.



Charles A. Tadduni
Hearing Examiner

DATED: May 15, 1989
Trenton, New Jersey