

P.E.R.C. No. 87-148

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RINGWOOD BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-85-17

RINGWOOD EDUCATIONAL OFFICE
PERSONNEL ASSOCIATION, NJEA,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit of all secretarial and office employees of the Ringwood Board of Education and represented by the Ringwood Educational Office Personnel Association, NJEA, to include the executive secretary. The Commission finds that the executive secretary is not a confidential employee. The Commission declines, however, to clarify the unit to include the accounting assistant/computer operator. The Commission finds that she is a confidential employee and therefore is ineligible for representation in any negotiations unit.

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Petitioner.

Appearances:

For the Public Employer, Corcoran & Higgins, Esqs.
(William P. Higgins, of counsel)

For the Petitioner, New Jersey Education Association
(Carl W. Dohm, Consultant)

DECISION AND ORDER

On October 11, 1984, the Ringwood Educational Office Personnel Association ("Association") filed a Petition for Clarification of Unit. The Association seeks to include the executive secretary and the accounting assistant/computer operator in the negotiations unit of all secretarial and office employees of the Ringwood Board of Education ("Board"). The Board asserts that both titles are confidential within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On April 24, 1985, the Director of Representation issued a Notice of Hearing. On October 27 and 28, 1985, Hearing Officer

Jonathan Roth conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs and replies by November 25, 1985.

On January 9, 1987, the Hearing Officer issued his report and recommendations. H.O. No. 87-8, 13 NJPER 111 (¶18049 1987). He found that the accounting assistant/computer operator is a confidential employee within the meaning of the Act. She keeps complete records of the Board's financial transactions including calculations of proposed wage increases for unit personnel. Also, he found that the executive secretary is not a confidential employee. While she substitutes for the board secretary/business administrator in her absence, she excuses herself from any meetings where the Board discusses confidential collective negotiations matters.

On January 20, 1987 the Board filed exceptions. It claims that: (1) under a job description the executive secretary becomes the board secretary/business administrator in her absence and that the board secretary/business administrator is a confidential employee; (2) the accounting assistant/computer operator reports to the executive secretary when the board secretary/business administrator is absent; (3) in a memorandum to the Board president the executive secretary conceded that she has confidential duties, and (4) the executive secretary testified that she takes confidential minutes and files them in a confidential book.

The Association did not file exceptions.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-7) are accurate. We adopt and incorporate them here.

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 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. [Id. at 510]

We have reviewed the record in light of these principles and conclude, in agreement with the Hearing Officer, that the executive secretary is not a confidential employee. She does not have "functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process." We do not look to the employee's title or job description alone in making

that determination; rather, we look to what that employee actually does.

The job description for the executive secretary states that in the absence of the board secretary, the executive secretary will be acting board secretary and will be in charge of the operation, management and business functions of the board secretary/business office and the supervision of the personnel there. In addition, it states that the executive secretary will attend all regular and special meetings of the Board and record the minutes of these meetings. When required, the executive secretary will attend any executive or work sessions. The record reveals, however, that when the executive secretary does attend Board meetings, she excuses herself or is excused from any confidential labor relations discussions. She takes notes at negotiations meetings, but these are meetings jointly attended by the Association and the Board and the minutes are distributed to both parties.^{1/} She never discusses labor relations with the board secretary. She never checks data for labor relations purposes, never types confidential labor relations material and never has access to advance information

^{1/} In her August 13, 1984 memorandum, the executive secretary stated that she attends joint negotiations sessions and formulates and types new contracts. However, she also stated that these duties do not give her inside information pertaining to negotiations with the secretarial unit.

regarding the Board's confidential positions in negotiations or grievances.^{2/} The board secretary does her own filing and opens her own mail. While the executive secretary may have access to unlocked labor relations files, mere access does not make an employee confidential. Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986); Little Ferry Bd. of Ed., D.R. No. 80-19, 6 NJPER 59 (¶11033 1980).

The executive secretary testified that she takes confidential minutes at Board meetings and files them in a confidential file. However, it is apparent from the record that these confidential minutes, dealing with matters like student suspensions, are not confidential duties of the type that would exclude such an employee from coverage under the Act. They do not involve knowledge in connection with the issues involved in the collective negotiations process.

The Board points out that in the absence of the board secretary, the accounting assistant/computer operator would report to the executive secretary. There is no evidence to suggest that this temporary situation would create a conflict of interest sufficient to exclude the executive secretary from the existing unit. See Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971).

^{2/} In its exceptions, the Board quotes that part of the Superintendent's testimony in which he states that the executive secretary types Board negotiations proposals. The executive secretary denied typing any confidential labor relations material. The Superintendent later testified that he only had firsthand knowledge that proposals were typed but did not know who typed them.


On this record, we are not convinced that the executive secretary's responsibilities require her to know about or work on issues in the collective negotiations process. Accordingly, we hold the executive secretary is not a confidential employee.

Under all the circumstances, and in the absence of exceptions, we also adopt the Hearing Officer's recommendation that the accounting assistant/computer operator is a confidential employee.

ORDER

The negotiations unit represented by the Ringwood Educational Office Personnel Association, NJEA is clarified to include the title executive secretary.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
May 20, 1987
ISSUED: May 21, 1987

H.O. NO. 87-8

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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Public Employer,

-and-

DOCKET NO. CU-85-17

RINGWOOD EDUCATIONAL OFFICE
PERSONNEL ASSOCIATION, NJEA,

Petitioner.

SYNOPSIS

A Hearing Officer recommends that a computer operator/accounting assistant employed by the Ringwood Board of Education is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. He also recommends that the executive secretary to the Board Office is not a confidential employee. Accordingly, he determines in response to Ringwood Educational Office Personnel Association's Clarification of Unit Petition that the former title should be excluded from and the latter title included in the Association's secretarial unit.

H.O. NO. 87-8

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(Carl W. Dohm, Consultant)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On October 11, 1984, the Ringwood Educational Office Personnel Association ("Association" or "REOPA") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Association seeks a determination that the executive secretary to the Business Office and the accounting assistant/computer operator be included within the negotiations unit of all secretarial and office employees of the Ringwood Board of Education ("Board").

The Board asserts that both titles are confidential within the meaning of subsection 13A-3(g) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and that the Association waived its right to clarify the titles into the unit. The Association denies both allegations.

On April 24, 1985, the Director of Representation issued a Notice of Hearing. On August 27 and 28, 1985, I conducted a hearing. The parties were given the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Both parties filed post-hearing briefs by December 24, 1985.

Based on the entire record, I make the following:

FINDINGS OF FACT

1. The Ringwood Board of Education is a public employer within the meaning of the Act and employs the executive secretary to the Board Secretary/Business Administrator and the accounting assistant/computer operator.

2. The Ringwood Educational Office Personnel Association is a public employee representative within the meaning of the Act and represents a unit of about 15 employees including clerk/typists, general secretaries, personnel secretaries, secretary to building principal, special services secretary and payroll employees (J-2). All others are excluded. The Association began representing the unit in the spring of 1984 and executed a collective negotiations agreement with the Board on May 7, 1984 to take effect from July 1, 1984 through June 30, 1986.

3. Ringwood Schools operate under a "unit control system." The Superintendent reports directly to the Board and various supervisors including the cafeteria and building/grounds supervisors and the Board Secretary/Business Administrator report to the Superintendent. The Board Secretary is responsible for all financial records of the Ringwood School District (TA 19).^{1/} Specifically, she prepares the budget and allocates monies for maintenance and transportation systems and takes notes at and prepares minutes for Board meetings (TB 79). She also takes minutes at all negotiations sessions and maintains a labor relations file (TA 35). Finally, the Board Secretary/Business Administrator rules on grievances filed by cafeteria workers, bus drivers and secretaries (TA 49). I heard no testimony concerning the filing or resolution of specific contractual grievances.

4. The accounting assistant/computer operator title was created on October 3, 1983. Among the responsibilities of the title listed in the job description are maintaining a complete and systematic set of records of all district financial transactions, compiling necessary statistical data for budget preparation, entering financial transactions into the computer system, and assisting principals, supervisors and other directors in procedures for administering allocations of funds (J-4). The description also

^{1/} "TA" refers to transcript of August 27, 1985 and "TB" refers to transcript of August 28, 1985.

states that the title is accountable to and evaluated by the Board Secretary. (See TA 19).

Ms. Concetta Major filled the position since its inception. She previously had been employed by the Board as a bookkeeper, a title which had been included in the secretarial unit until 1984 (TB 5). Although the job goals in the bookkeeper and accounting assistant/computer operator job descriptions are identical, the latter title requires computer expertise and the former carries no specific budgetary responsibilities (J-4, J-5).

5. During collective negotiations the Board's bargaining committee meets privately with the secretarial and teacher units to discuss proposals and counterproposals. Those proposals are usually presented to the respective majority representatives in writing (TA 31). Rudolph Selletti is Superintendent of Schools and testified that Major "does not punch anything into the computer until things are settled..." and that proposals and counterproposals are not revealed to her (TA 32-33).

Labor relations files are kept in both the Superintendent's and the Board Secretary/Business Administrator's offices. Sellitti's files contain negotiations proposals and counterproposals and are kept under lock and key (TA 34, 35). He did not know where the Board Secretary/Business Administrator kept her labor relations file (TA 34). He stated that Ms. Major has direct access to the Board Secretary/Business Administrator's office (TA 74).

The accounting assistant/computer operator has greater access to all the district's financial transactions (through the computer system) than does the bookkeeper (TA 20). Sellitti stated that Major is the most knowledgeable employee in the district about the Board's budget (TA 30).

Major was employed as a bookkeeper by the Board from 1981 to 1983. She also was chief negotiator and shop steward for the former majority representative. During those years she had advance knowledge of percentage wage increases the Board set aside for collective negotiations units (TB 18). Although she neither attended work sessions at which the Board determined its economic proposals nor compiled data for the Board concerning negotiations matters, she "...saw the papers, the accounting, the extensions of the monies for different accounts" (TB 18). She denied ever using her advance knowledge to the former majority representative's advantage.

Major was removed from the unit in April 1984, about six months after her promotion to her current position and at the same time REOPA became the majority representative (TB 26). With respect to budget preparation, Major annually compiles expenditures on utilities, services and payroll. She sometimes prepares the material for the Board president who, during negotiations, directs her to calculate through the computer system a percentage increase for secretarial and teacher units (TB 38). Major also knows which accounts include monies that may have to be used for collective

negotiations (TB 39, 40). Moreover, she knows "...where to find extra money..." in the various accounts (TB 39-40).^{2/}

The executive secretary to the business office job description was approved by the Board in 1982. The "job goal" of the position is to "assist and relieve the Board Secretary of paperwork and impediments so that he/she may devote maximum attention to the central problem of educational administration" (J-3). The executive secretary is required to substitute for the Board Secretary/Business Administrator in his or her absence; those duties include attendance at all regular and special meetings and executive and work sessions of the Board and the recording of minutes. The executive secretary's regular duties include taking dictation and typing Board correspondence (J-3). The Superintendent explained that in private Board sessions, the executive secretary could take dictation concerning discipline and negotiations matters (TA 60). Sellitti also testified that the executive secretary took minutes at some negotiations sessions attended by the employer and

^{2/} The Association alleged on the record and in its post-hearing brief that Ms. Major is "hostile" to the organization because the unit employees were embittered by the assistance which the former majority representative rendered to her in securing her current job title and increased salary. In response, they allegedly changed their majority representative. Their allegation was not substantially supported by other evidence. Even if the petitioner proved the allegation and implicated the veracity of Major's testimony, it must present facts concerning actual job duties of petitioned titles. See Township of Willingboro Board of Education, D.R. No. 84-4, 9 NJPER 527 (¶14215 1983).

majority representative when the Board Secretary was absent for three months. She was excused from all caucus sessions of the Board's negotiations team (TA 67). Sellitti had no direct knowledge of the executive secretary ever having typed any Board negotiations proposal(s) to the Association concerning terms and conditions of employment for teachers (TA 36). The executive secretary has typed notes of Board meetings concerning litigation filed by a custodial employee in response to his discharge (TA 62).

The Association submitted a copy of minutes taken on March 8, 1984 by the executive secretary at a secretarial unit negotiations session with the Board (P-1). The minutes recite the negotiations proposals offered by the Association and some preliminary responses by the attending Board negotiations team. Marion Knapp has been the executive secretary for about four and one-half years. She has taken minutes at joint negotiations sessions and distributed typed conformed copies of them to representatives of both the Board and the Association (TB 51). She denied ever having access to Board negotiations or grievance positions in advance of the scheduled sessions or hearings (TB 58). She acknowledged that when she substituted for the then-ill Board Secretary, she took minutes at "confidential" meetings, none of which concerned labor relations (TB 61-63). Knapp does not open or file the Board Secretary/Business Administrator's mail as part of her daily responsibilities (TB 57). She and Major have access to the Board Secretary/Business Administrator's office.

ANALYSIS

I. THE ASSOCIATION HAS NOT WAIVED ITS RIGHT TO HAVE THE COMMISSION PROCESS ITS CLARIFICATION OF UNIT PETITION.

The Board first alleges that REOPA waived its rights to have the Accounting Assistant.Computer Operator included in the secretarial unit. The waiver is based upon the former majority representative's acquiescence to Major's reclassification and removal from the unit and from the recognition article in J-2, which does not include the new title among the list of recognized titles and excludes "all other office personnel."

The Commission has found that when an employee organization "sleeps on its rights" for a significant period of time, it may not seek to include previously excluded employees in its negotiations unit by a clarification of unit proceeding. See generally, Clearview Board of Education, D.R. No. 78-2, 3 NJPER 248 (¶14106 1977), Wayne Board of Education, P.E.R.C. No. 80-94, 6 NJPER 64 (¶11028 1980), affm'g D.R. No. 89-6, 5 NJPER 422 (¶10221 1979), Bergen Pines County Hospital, D.R. No. 82-20, 6 NJPER 61 (¶11034 1980). In Bergen Pines, the Director held that a representative must exercise "due diligence" in searching out employees who are within the scope of the collective negotiations unit:

Ordinarily, due diligence on the part of a representative during the term of its first collective negotiations agreement with the employer requires searching out and identifying all unit employees who may have been inadvertently overlooked during the initial formation of the unit.... The representative's execution of a second collective negotiations agreement precludes the representative from later

seeking to add employees into its unit through a clarification of unit petition. Id. at 63.

See also, Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284 (¶15140 1984), Atlantic County College, P.E.R.C. No. 85-64, 11 NJPER 30 (¶16015 1984).

REOPA filed its petition within six months of its execution of its first agreement with the Board. The Association has exercised "due diligence" in searching out and identifying the two titles in dispute. Furthermore, the recognition article of the agreement (J-2) states that the REOPA is the exclusive representative, "...for all employees of the Board under the classification of Secretarial and Office personnel." The second section states:

Included in the Agreement are:

Clerk/Typist
General Secretary
Personnel Secretary
Secretary to the Building Principal
Special Services Secretary
Payroll

All other office personnel are excluded.

In Clearview, the Director delineated policy considerations which balance the rights of parties to obtain clarification of composition of negotiations units with the overall goal of achieving stability in contractual relationships. The Director stated:

...the Commission's clarification of unit procedure should not be utilized in a manner disruptive of the contractual or negotiations responsibilities. This change in unit composition mandated by clarification of unit determination should not be permitted to alter

the parties' contractual commitments. If the parties have negotiated a contract that includes without reservation certain persons or titles, the Commission must assume that the written agreement is the result of good faith negotiations in which the parties have imparted finality to their give and take. This agreement to include or to exclude certain persons or titles in a contract may have involved concessions by both parties in the negotiation of the final terms and conditions of employment. A party to the agreement should not be permitted to gain additional profit from resort to the Commission's processes after the contract is executed. Id. at 250.

Although the recognition article J-2 expressly includes certain titles, it does not exclude "without reservation certain persons or titles...." Moreover, the article recognizes "...all...secretarial and office personnel." Accordingly, I find that under Bergen Pines and Clearview, the Association has not waived its right to represent the petitioned-for titles.

II. THE ACCOUNTING ASSISTANT/COMPUTER OPERATOR IS A CONFIDENTIAL EMPLOYEE AND THE EXECUTIVE SECRETARY TO THE BOARD SECRETARY/BUSINESS ADMINISTRATOR IS NOT A CONFIDENTIAL EMPLOYEE WITHIN THE MEANING OF THE ACT.

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

The Act bars confidential employees from the right to join, form or be represented by any employee organization. N.J.S.A. 34:13A-5.3.
A finding of confidential status requires a case-by-case examination

of an employee's access and exposure to information involved in the collective negotiations process. River Dell Regional Board of Education, P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984) affm'g D.R. No. 83-21, 9 NJPER 180 (¶14084 1983); Parsippany-Troy Hills Board of Education, D.R. No. 80-35, 6 NJPER 276 (¶11131 1980). Furthermore, such a finding does not require regular or continuous involvement with the collective negotiations process; it requires that the extent of the employee's involvement renders his membership in any collective negotiations unit incompatible with his job duties. Township of Dover, D.R. No. 79-19, 5 NJPER 61 (¶10040 1979).

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985) 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. Id. at 510.

The Board Secretary/Business Administrator supervises both titles at issue in this case. She attends all negotiations sessions, including the Board's caucus meetings, records the minutes, takes notes, directs employees to type minutes and enter negotiated wage increases into the computer system. Together with the Board president, she executed the 1984-86 collective

negotiations agreement covering terms and conditions of employment for the secretarial unit (J-2). Her managerial functions include preparing annual budgets, overseeing proper expenditures of appropriated funds and authorizing specifications for bids on maintenance jobs. I conclude that the Board Secretary/Business Administrator is involved significantly in the managerial and labor relations functions of the Board.

The accounting assistant/computer operator and executive secretary report to and are evaluated by the Board Secretary/Business Administrator. Applying the standard for determining the confidentiality of positions, I find that the accounting assistant/computer operator is a "confidential employee" within the meaning of the Act. Major keeps complete and systematic records of the Board's financial transactions. To this end, she maintains cost statistics including figures necessary for budget preparation in the Board's recently acquired computer system. Major's familiarity with wage increases set aside by the employer for collective negotiations dates to 1981 when she was bookkeeper. The Association failed to rebut her testimony that in her current position she calculates through the computer system proposed wage increases for unit personnel. Even assuming that she does not "punch anything into the computer until things are settled..." her access to all Board accounts and knowledge of actual expenditures enable her to determine which accounts, if any, have funds available for collective negotiations. Considering Major's acknowledged expertise

in all budgeting matters and access to all Board accounts in the course of her daily responsibilities, I determine that her inclusion in the secretarial unit is incompatible with her official duties. See Township of Scotch Plains, D.R. No. 84-11, 10 NJPER 632 (¶14270 1983). Accordingly, I recommend that the accounting assistant/computer operator is a "confidential employee" and that the Association's unit should be clarified to exclude the title.^{3/}

The most persuasive evidence offered concerning the confidential status of the executive secretary is the responsibility to substitute for the Board Secretary/Business Administrator in her absence. This duty requires the executive secretary to attend joint negotiations sessions and public and private meetings of the Board.

^{3/} That Major has "seen" negotiations proposals and counterproposal notes taken by the Board Secretary/Business Administrator is not dispositive of the issue of the confidentiality of her position. In Rahway Board of Education, D.R. No. 80-12, 5 NJPER 506 (¶1026 1979), the Director stated:

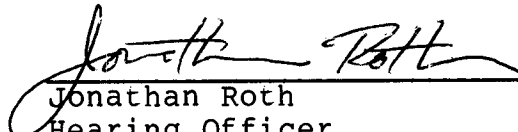
It is not inconceivable that any employee would be exposed to confidential material and would be of a certain mind frame that would not involve consciously absorbing the contents of the material. The element of exposure is in itself sufficient to ascribe confidentiality if the employee is in any way expected to pay attention to the contents of the material in order to perform the job function. Id. at 507.

No testimony suggested that Major is expected to read the notes or enter them into the computer system in the course of her daily responsibilities. Accordingly, I do not base my recommendation to remove her from the unit on her limited exposure to the notes.

Knapp has attended and taken notes at joint negotiations sessions. The Superintendent asserted that notes which the executive secretary takes at private meetings could (my emphasis) involve discipline and negotiations.

The executive secretary has never attended a caucus meeting where the Board discussed collective negotiations proposals. Whenever Knapp could have taken notes at caucus sessions, she either excused herself or was excused from the room where the session was conducted. Her exclusion from the sessions and the absence of any testimony demonstrating that she has typed or filed notes of the sessions distinguishes this case from River Dell. There, the Business Administrator indiscriminately assigned labor relations and other secretarial tasks to the "confidential" secretary. The Commission determined that her responsibilities and functions were incompatible with her membership in a collective negotiations unit. Here, the Board has evidently not assigned labor relations and/or negotiations materials to Knapp. Moreover, when the Board Secretary was absent for three months, the executive secretary was not called upon to take dictation at any confidential labor relations session. Her typing of materials concerning litigation filed by a discharged employee constitutes only peripheral involvement with labor relations matters. That Knapp prepares termination notices to nontenured teachers who are not rehired and types financial records fails to demonstrate any incompatibility with her presence in a negotiations unit and official job duties.

Finally, her access to the Board Secretary's office suggests at most a superficial and occasional exposure to confidential material. Such exposure does not support a finding of confidential status. See Willingboro at 528. Accordingly, I recommend that the executive secretary to the Business Office be clarified into the Association's clerical unit as of June 30, 1986, the expiration date of the parties' collective negotiations agreement in effect on the date the petition in this matter was filed. Clearview Board of Education, D.R. No. 78-2, 3 NJPER 248 (1977).


Jonathan Roth
Hearing Officer

DATED: January 9, 1987
Trenton, New Jersey