

P.E.R.C. NO. 88-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. CU-87-52

SAYREVILLE EDUCATION ASSOCIATION,

Employee Organization.

SYNOPSIS

The Public Employment Relations Commission clarifies a negotiations unit of teachers, cafeteria workers and clerical employees represented by the Sayreville Education Association to exclude the clerk-secretary and clerk-typist. The Commission finds these employees are confidential. The Commission further finds, however, that the payroll processor is not confidential and may remain in the negotiations unit.

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Appearances:

For the Public Employer, Hutt, Berkow &
Jankowski, P.C. (Michael F. Kaelber, of counsel)

For the Employee Organization, Oxfeld, Cohen,
Blunda, Friedman, LeVine & Brooks, Esqs.
(Arnold S. Cohen, of counsel)

DECISION AND ORDER

On March 10, 1987, the Sayreville Board of Education ("Board") filed a Clarification of Unit petition. The Board seeks to exclude the positions of payroll processor, clerk-secretary and clerk-typist from the existing collective negotiations unit of teachers, cafeteria workers and clerical employees represented by the Sayreville Education Association ("Association"). The Board contends these employees are "confidential" within the meaning of N.J.S.A. 34:13A-3(g). The Association disagrees.

On April 29, 1987, the Director of Representation issued a Notice of Hearing.

On June 25, 1987, Hearing Officer Joyce M. Klein conducted a hearing. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On November 4, 1987, the Hearing Officer issued her report. H.O. No. 88-2, 13 NJPER 824 (¶18318 1988). She found the clerk-secretary to be "confidential" because of her role in preparing the budget and maintaining grievance files. Therefore, she recommended that position be excluded from the negotiations unit. However, she concluded that the clerk-typist was not "confidential" because there was no evidence that she "learned confidential information from opening and sorting the mail." She also concluded that the payroll processor was not "confidential" because her primary responsibility was limited to collecting raw data for grievances.

On November 19, 1987, the Board excepted to the recommendation that the clerk-typist and the payroll processor are not confidential. It argues that the clerk-typist is exposed to confidential material when she opens the mail and has access and exposure to labor relations files and that the payroll processor also has access and exposure to confidential matters, specifically payroll and timekeeping records.

On November 30, 1987, the Association excepted to the recommendation that the clerk-secretary is confidential. It contends that only the clerk-secretary has access to labor relations material and her budgetary tasks are merely clerical.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-8) are accurate. We adopt and incorporate them here.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), we explained how we determine 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 note, specifically, that an employee's responsibilities may establish confidentiality independent of an employee's knowledge.^{1/}

We agree with her findings with respect to the clerk-secretary and the payroll processor. The clerk-secretary is confidential because she has advance knowledge of the monies the Board intends to appropriate for salary increases and because she has advance knowledge of grievance responses. Conversely, the payroll processor is not confidential because the type of information she is exposed to -- raw payroll, attendance and benefits data -- would not compromise the Board's position in negotiations. We disagree, however, with the Hearing Officer's

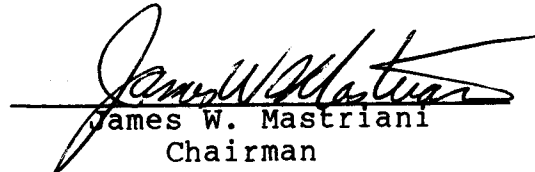
^{1/} We also add that the Appellate Division has since affirmed a case cited by the Hearing Officer: Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987), aff'd, App. Div. Dkt. No. A-4740-36-T7 (2/18/88).

conclusion that the clerk-typist is not a confidential employee. She opens and distributes the mail, including confidential labor relations materials. This is a "functional responsibili[ty]" that makes her membership in a negotiations unit incompatible with that duty. N.J.S.A. 34:13A-3(g). Mt. Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985); River Dell Reg. Bd. of Ed., D.R. No. 83-21, adopted P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984). Her testimony that she does not read the mail, but simply opens it does not change this result. In re Tp. of Wayne, 220 N.J. Super. 340 (App. Div. 1988).

ORDER

The Sayreville Education Association's negotiations unit is clarified to exclude the clerk-secretary and clerk-typist in the Superintendent's office and to include the payroll processor.

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
April 27, 1988
ISSUED: April 28, 1988

H.O. NO. 88-2

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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SAYREVILLE BOARD OF EDUCATION,

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-and-

Docket No. CU-87-52

SAYREVILLE EDUCATION ASSOCIATION,

Employee Organization.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission finds the twelve month clerk-secretary employed by the Sayreville Board of Education is a confidential employee. She also finds that the ten month clerk-typist position and the payroll processors are not confidential positions within the meaning of the Act and should appropriately be included in a unit of teachers, cafeteria workers and clerical employees.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

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(Michael F. Kaelber, of counsel)

For the Employee Organization
Oxford, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs.
(Arnold S. Cohen, of counsel)

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On March 10, 1987, the Sayreville Board of Education ("Board") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission"). The Board seeks to exclude the positions of payroll processor, clerk-secretary and clerk-typist from the existing collective negotiations unit of teachers, cafeteria workers and clerical employees represented by the Sayreville Education Association ("Association"). 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-1

et. seq. ("Act"). The Association objects to the proposed clarification and contends that the employees are not confidential.

On April 29, 1987 the Director of Representation issued a Notice of Hearing. I conducted a hearing on June 25, 1987. The parties examined witnesses and introduced exhibits. The parties waived oral argument and after a delay in receipt of the transcript, submitted briefs by September 24, 1987.

Based upon the entire record, I make the following:

Findings of Fact

1. The Sayreville Board of Education is a public employer within the meaning of the Act and is subject to its provisions. It employs the employees who are the subject of this petition.

2. The Sayreville Education Association is an employee representative within the meaning of the Act and is subject to its provisions. The Association is the exclusive representative of the collective negotiations unit of teachers, cafeteria and clerical employees. The most recent collective negotiations agreement extends from July 1, 1986 through June 30, 1989. (J-1)^{1/}

3. The payroll processor, clerk-secretary and clerk-typist work in the superintendent's office. It is a suite divided into small offices surrounding a large center area. Four secretaries work in the center. The clerk-secretary and the clerk-typist work in the

^{1/} Exhibits are designated as follows: Joint exhibits are designated as "J", Board exhibits are designated as "P" and Association exhibits are designated as "R". Citations to the transcript of the June 25, 1987 hearing are designated as "T".

center with two additional secretaries (T6). The superintendent, her confidential secretary, the assistant superintendent, the transportation coordinator and the payroll processor have offices around the perimeter of the suite. Each has a private office with four walls and a door (T76). All files, including personnel files, are kept in filing cabinets in the center area (T7). The files are accessible to all employees in the superintendent's office. Personnel files contain employment contracts, dates of employment, evaluations and other materials employees want in their files (T44). Only the principals' personnel files contain reprimands, unless the superintendent issues the reprimand or is copied by the individual's superior (T44).

4. The payroll processor, the clerk-typist and the clerk-secretary report to Marie Parnell, the superintendent (T31). She is the first step in the grievance procedure for her secretarial staff and the second step for the rest of the unit (J-1). According to the job description, her responsibilities include recommending employees for appointment to district staff, making recommendations to the Board insuring all employees fair and equitable treatment, directing development of the district's annual budget and performing other duties required to manage the district (J-5). Parnell serves as a liason between the Board and its attorneys and prepares negotiations materials at the Board's direction (T13).

Parnell's confidential secretary, Arlene Hahn, is primarily responsible for typing grievance responses, the Board's negotiation

proposals and correspondence to Board attorneys (T10, T11, T13). According to Parnell, other secretaries may type information regarding negotiations, but she does not remember anyone other than Hahn typing that material (T24). Hahn also files evaluations (T87).

Parnell communicates with the Board by sending them a weekly newsletter and a "Board Supergram" (T34, T35). The newsletter contains personnel, negotiations, transportation and cost information, communications from Board counsel and grievance responses (T26, T35, T40, T87). She uses the Supergram to inform the Board about personnel interviews and recommendations (T35).

Parnell prepares scattergrams. They are typed by any available secretary (T31). Scattergrams are available to the negotiator, the Board and the Association (T39, T46).

5. Payroll processor is a twelve month position whose responsibilities include keeping attendance, overtime and extra payment records; maintaining workers compensation claims for the professional staff; preparing a yearly statement of service and benefit forms; preparing building permits; assisting the paymaster in payroll procedures and computer operation (J-6).

The payroll processor gathers and prepares material for Parnell who uses the documents in deciding payroll or leave time grievances (T10, T11, T59, T60). Parnell asked the payroll processor to compile data on teacher absences during a work stoppage (T33). In grievances where the payroll processor compiles data, the superintendent's confidential secretary types the response (T20).

Gloria Tishler has been the payroll processor since October 1986. As payroll processor, Tishler is not involved in other areas of grievance processing (T60). She has compiled information about sick leave granted to one individual (T67). The raw data she gathered included the date of employment, the number of personal days and sick days allotted, how many were used, and whether they were receiving workers' compensation and had monthly sick leave before that. She does not know how the information was used (T67).

6. Tishler held the twelve month clerk-secretary position for twelve years before she became payroll processor. Since then, several individuals have held the position. At the time of the hearing, Geraldine Kearney had held the position since March 23, 1987.

The clerk-secretary's primary responsibility is preparing the school district's budget.^{2/} As clerk-secretary, Tishler spent the summer months preparing budget forms sent to principals and department chairpersons. She then considered last year's budget and Board reports in compiling some segments of a new budget proposal. In some years, Tishler was able to simply multiply the previous staffing budget by the contractually provided figure to determine teacher's salaries (74). When the salary has not yet been set by a

^{2/} The Board submitted a job posting for the clerk-secretary position dated March 13, 1987 (P-1). Though it is dated after this Petition was filed, the responsibilities listed in the posting are consistent with Tishler's and Kearney's testimony about their responsibilities.

collective negotiations agreement, the superintendent told her what percentage the Board has given her to work with (T78). According to Tishler, anyone who helps type or proof the budget would be aware of that figure (T78, T79).

Each October, the principals submit budget proposals. The clerk-secretary reviews requests from the principals, sifts through the information and corrects wrong accounts. Parnell reviews each account with the clerk secretary (T62). Parnell decides what appears in the budget and what does not (T14). The staffing section of the budget is prepared in Parnell's office (T14, T15). Only Parnell and the clerk-secretary determine the cost of each staffing contract and account.

The clerk-secretary types the budget. She copies the submissions, puts them into the appropriate accounts and prepares the budget for submission to the Board. Other secretaries help the clerk-secretary prepare budget booklets for the Board. Other clericals help compile the budget booklets (T63).

The clerk-secretary also prepares the superintendent's weekly newsletters to the Board, which often contain information unavailable to the public until the Board acts (T25). Kearney has copied grievance responses and attached them to the newsletter (T96, T98).

The clerk-secretary also keeps records of substitute teachers and teacher reimbursements, maintains lists of resumes and applications and enrollment data and is responsible for purchasing

orders (T92, T102). The clerk-secretary opens the mail when Hospidor, the clerk-typist is absent (T101).

The clerk-secretary types general correspondence, assists the superintendent's secretary when requested and maintains the grievance file. Parnell dictates grievance responses to Hahn. Hahn asks the clerk-secretary to make copies for the files and the newsletter and return the original to her. Hahn files the copies when the clerk-secretary is unavailable (T99). Kearney, the clerk-secretary at the hearing date, has not typed grievance information, she has only filed subsequent correspondence (T100).

The clerk-typist, a ten month position held by Jo Hospidor since September 1986, is responsible for opening mail. She also date stamps, sorts and forwards it when necessary. Items in the mail may include correspondence from Board counsel (T88). The clerk-typist files, maintains building permit records, keeps a log of professional day reports and folders of notices to personnel during the year and practice teacher placement and personnel lists. She also works on the annual retirement dinner and provides additional help where needed (J-7).

Hospidor files certificates that teachers want in their files, letters from parents or professional reports and other materials in the personnel files. Hospidor generally files during the last half hour of the work day when she is alone in the office. She locks the files when she leaves for the day (T85).

The clerk-typist's responsibilities also include assisting the superintendent's confidential secretary and the clerk-secretary when necessary. Hospidor has typed Parnell's weekly newsletter once when the clerk-secretary was absent (T83). Hospidor did not recall what was included in the newsletter though she was aware of the general type of information that is usually included (T83, T87). She may file evaluations if the superintendent's confidential secretary has too much work (T87). On one occasion, Hospidor proofread re-employment letters for teachers which included the teacher's salary (T85). Hahn told her that the information was confidential (T85). Teacher salaries can be found on the contractually provided guides (J-1). Hospidor assisted the clerk-secretary with the budget by typing and collating budget materials (T82, T83). The clerk-typist is not regularly involved in clerical duties required to process grievances (T36).

Analysis

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 its 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.

The Commission's policy strictly construes the term "confidential employee." Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶ 4018 1977); State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶ 16249 1985) ("State of New Jersey"). The burden is therefore placed on the party seeking to remove an employee from the Act's protection. See State of New Jersey; State v. Professional Assn of New Jersey Dept. of Ed., 64 N.J. 231, 253 (1974), N.J.Const. Art. I. ¶19. 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. [Id. at 510]

See also Ringwood Bd. of Ed., P.E.R.C. No. 87-148, 13 NJPER 503 (¶18186 1987) appeal pending App. Div. Dkt. No. A-4740-36-T7.

Finding confidential status requires a case-by-case examination of each employee's knowledge of information which would compromise the employer's position 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). Therefore, I will examine each position.

The Superintendent supervises each title at issue. She manages the district at the direction of the Board. She directs the development and compilation of the district's budget, serves as a liason between the Board and its counsel and prepares material for negotiations. The superintendent is the first step in the grievance procedure for secretaries in her office and the second step for the remainder of the unit.

The clerk-secretary is primarily responsible for the preparation of the district's budget. She works directly with the superintendent and carries out her directives. When salaries are not already determined by collective negotiations agreements, she prepares the staffing accounts, using salary figures given to the superintendent by the Board.

The clerk-secretary also maintains the grievance files. In this capacity she has knowledge of grievance responses before they are sent to the Association. That knowledge compromises the Board's position in the collective negotiations process. State of New Jersey.

I find that the clerk-secretary is a confidential employee based on her intimate knowledge of the budget and her responsibility to maintain the grievance files.

The clerk-typist's responsibilities, however, are insufficient to support a finding of confidential status. Her knowledge of confidential information is merely hypothetical. The clerk-typist opens the mail, date-stamps it, replaces it in the

envelopes and forwards it if necessary. Correspondence may be from the Board's counsel or the Association. The clerk-typist does not read the mail. She only opens it, stamps it and puts it back in the envelope. She is aware that mail comes from the Association and the Board's counsel, but does not appear to know the contents of those communications. There is no evidence that the clerk-typist has learned confidential information from opening and sorting the mail. The mere possibility that the clerk-typist might notice that a letter to Parnell contains confidential information is not sufficient.

In Mount Olive Tp., P.E.R.C. No. 85-113, 11 NJPER 311 (¶16112 1985), River Dell Regional Bd. of Ed., D.R. No. 83-21 NJPER 180 (¶14084 1983), aff'd P.E.R.C. No. 84-95, 10 NJPER 148 (¶15073 1984) and Linden Free Public Library, D.R. No. 82-32, 8 NJPER 76 (¶13031 1981) employees who opened mail were found to be confidential. In each case, however, the employee either read confidential materials as a result of opening mail or had other responsibilities that resulted in their knowing confidential information.

The deputy clerk in Mount Olive Tp. was found to be confidential where she was required to open, read, copy and file all correspondence including materials pertaining to collective negotiations. The deputy clerk attended an executive session of the Town Council where the collective negotiations agreement with the labor organization she belonged to was adopted.

In Linden Free Public Library, the secretary to the director typed preliminary negotiations proposals and counterproposals and circulated them to Board members for comment in addition to opening the mail. In River Dell, the second secretary to the superintendent took dictation and typed notes of negotiations progress reports and conversations with Board members about negotiations. The Commission found both positions confidential.

Here, the clerk-typist does not read the mail or have knowledge of confidential material. She typed one newsletter for Parnell. That newsletter did not contain confidential information, though it may, on occasion, contain such material. The clerk-typist only prepares the newsletter when the clerk-secretary is unavailable. She has not, to date, prepared a newsletter containing confidential material. There is no guarantee that she will ever do so.

Most of the information is not public knowledge, but it is irrelevant to the Board's position with respect to labor relations. Though newsletters may include information from the Board's counsel, there is no evidence that counsel's thoughts or recommendations concerning labor relations have been communicated through the newsletter. Personnel matters communicated through the newsletter generally involve information available to the individual employee. Grievance responses may have been sent to the Association when they are included in the newsletter. When Parnell communicates personnel recommendations through the newsletter, the clerical employee

preparing the newsletter may learn confidential information. Some newsletters may contain confidential material . The possibility however that the clerk-typist may be required to type a newsletter containing confidential information in clerk-secretary's absence is too remote to remove her from the Act's protection. See State of New Jersey; Brookdale Community College.

The clerk-typist's responsibilities also include maintaining personnel files. The documents she places in personnel files include certificates, awards, letters from parents or professional reports. Parnell's confidential secretary files evaluations. Knowledge of the contents of personnel files, however, is insufficient to find confidential status. State of New Jersey. As clerk-typist, Hospidor assisted Hahn by proofing re-employment letters including salary information. Since salary information can be found on the contractually-provided salary guides, that information did not compromise the Board's ability to administer the contract.

Though the clerk-typist assists confidential titles, there is no indication that she has knowledge of material which would compromise the Board's position in labor relations matters. Last year the clerk-typist assisted with typing and collating the budget materials. There is no indication that she learned any confidential information from typing and collating budget materials. Only the staffing accounts contain information which might compromise the Board's position. Only Parnell and the clerk-secretary prepare

those accounts. Budget information which is not specifically relevant to the employer's negotiations position does not require confidential status. Orange Tp., D.R. No. 85-23, 11 NJPER 317 (¶16115 1985).

The payroll processor's primary responsibility is to keep payroll, attendance and benefit records. She gathers raw data concerning attendance and payroll grievances, but Parnell's confidential secretary types the responses. For example, the payroll processor gathered raw material for the grievances and litigation arising out of a work stoppage, but there is no evidence that she did more than that. As payroll processor, Tishler gathered information about sick leave granted to one individual. She did not know how the information was used. Additionally, the information she compiled--date of employment, the amount of leave time allotted and used, and whether the individual was receiving workers compensation--is all information available to the individual. That information is not public knowledge, but it is not confidential within the meaning of the Act in the sense that knowledge of that information does not compromise the Board's position. The collection of raw data is insufficient to conclude that the Board's position would be compromised by her inclusion in the unit.

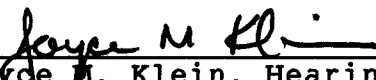
Montague Tp. Bd. of Ed., P.E.R.C. No. 87-36, 12 NJPER 773 (¶17294 1986); River Dell; Rahway Bd. of Ed., D.R. No. 80-12, 5 NJPER 506 (¶10261 1979).

I do not find the collection of raw data used in grievance processing to constitute significant involvement with the Board's contract administration strategies. There is no evidence that the payroll processor knows how the data is used. I therefore find the payroll processor is not a confidential employee.

CONCLUSIONS AND RECOMMENDATIONS

1. I conclude that the twelve month clerk-secretary position is confidential within the meaning of the Act. I recommend the position be removed from the collective negotiations unit immediately. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

2. I conclude that the ten-month clerk-typist position and the payroll processor are not confidential within the meaning of the Act. I recommend the Board's Petition with respect to these positions be dismissed.



Joyce M. Klein, Hearing Officer

DATED: November 4, 1987
Trenton, New Jersey