

P.E.R.C. NO. 88-71

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. CU-87-34 &  
CU-87-37

SALEM COMMUNITY COLLEGE  
SUPPORT ASSOCIATION,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission dismisses a clarification of unit petition seeking to include the secretary to the director of student services in the Salem Community College Support Association's negotiations unit of all secretaries, clerk-typists, maintenance and general service aides employed by Salem Community College. The Commission finds that the secretary cannot be included in the Association's unit through a clarification of unit proceeding.

The Commission clarifies the unit to exclude the secretary to the director of institutional development and the secretary to the director of instruction from the Association's negotiations unit. The Commission finds that these positions are confidential within the meaning of the Act.

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SALEM COMMUNITY COLLEGE  
SUPPORT ASSOCIATION,

Employee Representative.

Appearances:

For the Public Employer, Jordan and Jordan, Esqs.  
(John D. Jordon, of counsel)

For the Employee Representative, New Jersey Education  
Association (Dr. Howard Parish, Consultant)

DECISION AND ORDER

On December 8, 1986, the Salem Community College Support Association ("Association") filed a petition for clarification of unit (CU-87-34) seeking to include the secretary to the director of student services in its negotiations unit of all secretaries, clerk typists, maintenance and general service aides employed by Salem Community College ("College"). The Association asserts the position is not confidential within the meaning of subsection 3(g) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On January 9, 1987, the College filed a petition for clarification of unit (CU-87-39) seeking to exclude the secretary to

the director of institutional development and the secretary to the director of instruction from the Association's negotiations unit. The College claims these positions are confidential within the meaning of the Act.

On January 27, 1987, the Director of Representation issued an order consolidating cases and a notice of hearing.

On February 26, 1987, Hearing Officer Susan A. Weinberg conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs by April 30, 1987.

On July 23, 1987, the Hearing Officer issued her report and recommended decision. H.O. No. 88-1, 13 NJPER \_\_\_\_ (¶ \_\_\_\_ 1987). She found that the secretary to the director of institutional development types and files materials related to grievance procedures, hiring and budgetary salary allocation. The Hearing Officer also found that the secretary to the director of instruction types and files confidential labor relations materials. Accordingly, she recommended their titles be excluded from the Association's negotiations unit.

In addition, the Hearing Officer found that the secretary to the director of student services was not a confidential employee, but did not, however, recommend her inclusion in the unit. She found that: (1) the certification of representation issued in December 1979 specifically excluded secretaries to the dean and that the position secretary to the director of student services was the

same as the excluded secretary to the dean of student services; (2) the Association presented no evidence it had sought to represent the title in the past, or that the present recognition clause evidences an agreement to include it; (3) the secretary's job description, duties and function have remained the same, and (4) there were insufficient changes in circumstances to permit inclusion of the title in the unit through a unit clarification petition.

Accordingly, the Hearing Officer recommended the Association's petition be dismissed.

On August 6, 1987, the College excepted to the finding that the secretary to the director of student services is not a confidential employee. The Association did not file exceptions.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-13) 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 agree with the Hearing Officer that the secretaries to the director of institutional development and the director of instruction perform duties incompatible with inclusion in the secretarial unit. Both have functional responsibilities for or knowledge of collective negotiations issues. We clarify the existing unit to exclude them.

We also agree, in the absence of Association exceptions, that the secretary to the director of student services cannot be included in the Association's unit through a clarification of unit proceeding.<sup>1/</sup> Accordingly, we dismiss the Association's petition.

#### ORDER

The negotiations unit represented by the Salem Community College Support Association is clarified to exclude the secretaries to the director of institutional development and the director of instruction.

<sup>1/</sup> In view of this holding, we need not address the College's exceptions.

The Association's petition for clarification of unit seeking to include the secretary to the director of student services is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
January 21, 1988  
ISSUED: January 22, 1988

H.O. NO. 88-1

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

In the Matter of

SALEM COMMUNITY COLLEGE,

Public Employer,

-and-

Docket Nos. CU-87-34 and  
CU-87-39

SALEM COMMUNITY COLLEGE  
SUPPORT STAFF ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer recommends that the Commission remove the titles of Secretary to the Director of Institutional Development and Secretary to the Directors of Instruction and Educational Services from a negotiations unit of all secretaries, clerk typists, maintenance and general service aides employed by Salem Community College. The Hearing Officer recommends that the Commission find that these employees are confidential as defined in the Act.

The Hearing Officer further recommends that the Commission dismiss the Association's Clarification of Unit Petition seeking to represent the Secretary to the Director of Student Services. She found that this Petition raised a question concerning representation which could not be resolved through a clarification of unit proceeding.

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.

H.O. NO. 88-1

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SALEM COMMUNITY COLLEGE  
SUPPORT STAFF ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer  
Jordan and Jordan, Esqs.  
(John D. Jordan, of counsel)

For the Petitioner  
New Jersey Education Association  
(Dr. Howard Parish, Consultant)

HEARING OFFICER'S RECOMMENDED  
REPORT AND DECISION

On December 8, 1986, the Salem Community College Support Staff Association ("Association") filed a Petition for Clarification of Unit (CU-87-34) with the Public Employment Relations Commission ("Commission") seeking a determination that the position of Secretary to the Director of Student Services be included its negotiations unit of all secretaries, clerk typists, maintenance and general service aides employed by Salem Community College ("College"). The Association asserts that this position is not 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 accordingly should no longer be excluded from the unit. The College disagrees.

On January 9, 1987, the College filed a Petition for Clarification of Unit (CU-87-39) seeking a determination that the positions of Secretary to the Director of Institutional Development and Secretary to the Director of Instruction and Educational Services be excluded from the Association's negotiations unit. The College claims that these positions are confidential within the meaning of the Act and should be removed from the unit. The Association disputes this contention.

On January 27, 1987, the Director of Representation issued an Order Consolidating Cases and a Notice of Hearing. On February 26, 1987, 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 April 30, 1987.

Based on the entire record, I make the following:

FINDINGS OF FACT

1. Salem Community College is a public employer within the meaning of the Act and employs the Secretaries to the Directors of Institutional Development, Student Services, and Instruction and Educational Services.

2. The Salem Community College Support Staff Association is a public employee representative within the meaning of the Act and represents a unit of about 16 employees including secretaries, clerk typists, maintenance and general service aides (J-1). All other employees of the College are excluded.

3. The College is headed by President William Wenzel. Reporting directly to him and forming his cabinet are the Vice President/Dean of Academic and Student Affairs (Altieri), the Vice President/Dean of Business Services (DeGaetano) and the Director of Institutional Development (Resnik) (R-1). Resnik's secretary is Connie Parris (T120).<sup>1/</sup>

Reporting to the Vice President/Dean of Academic and Student Services are three Directors: Student Services (Hannaford), Instruction (Bachmann) and Educational Services (Branon). Their secretaries are Lillian Davis and Mariann Savarese respectively<sup>2/</sup> (R-2).

4. On December 10, 1979, the Commission certified the Salem Community College Support Staff Association/N.J.E.A. as the majority representative for all secretarial and clerical employees.<sup>3/</sup>

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<sup>1/</sup> "T120" refers to the transcript of February 26, 1987, page 120.

<sup>2/</sup> Bachmann and Branon share the services of Savarese.

<sup>3/</sup> Although testimony regarding the initial formation of the unit does not appear in the record, I take administrative notice of the Certification of Representative, issued on December 10, 1979, filed with the Commission.

5. The Recognition Clause of the current agreement between the parties, covering the period July 1, 1984 through June 30, 1987 (J-1) sets forth the unit description as follows: "The Board hereby recognizes the Salem Community College Supportive Staff Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all Secretaries, Clerk Typists, Maintenance, and General Services Aide".

SECRETARY TO DIRECTOR OF INSTITUTIONAL DEVELOPMENT

6. The Director of Institutional Development is responsible for grant proposal preparation, Foundation fundraising, affirmative action programs, Middle States evaluations, self-study programs, planning, institutional research, marketing and public relations (T119). As a member of the President's Cabinet, Resnik sits at the bargaining table<sup>4/</sup> and has input into the College's proposals for both faculty and support staff negotiations (T122). Copies of all negotiations-related correspondence, including proposals and counterproposals are received by her office (T123, T137).

7. Resnik's secretary, Parris, is responsible for opening and sorting all mail, including negotiations-related material (T128, T147). Parris files this material in the general office file next

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<sup>4/</sup> Her role at the table is that of an observer, not a spokesperson or participant. She did not sit at the last round of negotiations (T130).

to her desk (T123). Only Resnik and Parris have access (and keys) to this cabinet which is locked when no one is in the office area (T126, T137, T148, T149).

8. Resnik evaluates the College's Marketing Coordinator, the Communications Assistant<sup>5/</sup> and Parris (T124). Parris is responsible for typing and filing (in the general office file) the evaluations prepared by Resnik (T124, T148).

9. Resnik is involved at the first level of the grievance procedure for bargaining unit members in her department (T125, T131-132). There is no written record of these proceedings (T132). However, if a written response to a grievance were required, Parris would type and file it (T125).

10. Resnik has input into the budget for her department, including the amount of money needed for printing and publications, advertising, travel and salaries (T126, T141). In addition, she currently oversees at least 10-12 grant projects and all College fundraising (T126, T129). Any typing or filing of material associated with these areas is done by Parris (T127).

Parris is privy to non-public donor identifications and pledge amounts (T129). She also has access to non-public, pre-funding grant proposal calculations relative to the amount and worth of instructional time to be devoted to individual grant projects (T133).

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<sup>5/</sup> The Marketing Coordinator and Communications Assistant are not members of the Support Staff bargaining unit (T124).

11. Board of Trustees minutes (both College and Foundation) and information to be used at Foundation Board meetings are also filed by Parris in the general office file (T140, T150, T152). In addition, Parris may be required to take minutes of Public Board sessions when the regular secretary is unavailable (T154).

12. As Affirmative Action Officer, Resnik is responsible for counseling individuals contemplating filing sexual harassment claims against the College. Parris files these records in the general office file (T138).

13. With regard to the hiring process, Resnik would be included in any Screening Committee formed to replace bargaining unit members in her department (T143).

14. Resnik and Parris share one office. A partition, but no door, separates their desks (T139). Due to the small space, Parris testified that it is possible to hear all conversations which take place in Resnik's office (T144).

15. The job description for Secretary to the Director of Institutional Development (J-4) includes as a minimum qualification the "ability to handle confidential information with discretion." In addition, nineteen "Performance Responsibilities" are set forth including:

- ...(2) Types memos of confidential nature regarding personnel matters to and from communications assistant, marketing coordinator and other office staff.

- ...(3) Provides supplemental secretarial support and/or reassignment to President's Office on a daily basis including periods of vacation and illness. (Duties include typing, filing, and duplication of confidential materials for Board of Trustees meetings. Such assignments include the responsibility for agenda preparation and minutes for both open and closed sessions.)
  
- ...(10) Opens, sorts and distributes all incoming mail for Office of Institutional Development, and when assigned, to Office of the President.

SECRETARY TO THE DIRECTOR OF INSTRUCTION  
AND DIRECTOR OF EDUCATIONAL SERVICES

16. The Director of Instruction supervises and evaluates all full-time faculty members, some administrative personnel and three bargaining unit support staff members (T34). All evaluations, correspondence or other written materials prepared by Bachmann are typed and filed by Savarese (T35). Office mail is sorted but not opened by Savarese (T67).

17. Bachmann has been consulted by the Vice President/Dean of Academic and Student Affairs regarding negotiations and recommendations for changes in the support staff's contract (T36). These recommendations are typed and filed by Savarese. Further, although Bachmann has not sat at the bargaining table in the past, he will do so starting with the upcoming bargaining session (T37, T43). He receives copies of all negotiations materials, including College proposals and position statements (T36-37, T43). Savarese is required to make copies of this information and file it in the general office file (T37).

18. Bachmann sits at the first step level of the grievance procedure for support staff bargaining unit members in his department. Any written response to grievances would be typed by Savarese (T38).

19. Bachmann participates in all Search Committees formed for the hiring of new faculty. Savarese is responsible for handling any correspondence connected with these faculty searches and typing Bachmann's candidate recommendations to the Vice President/Dean (T39, T44). Bachmann also has input into the hiring of his own secretary, the Title III secretary and the faculty secretary (T46).

20. Bachmann discusses departmental budgetary requirements with the Vice President/Dean, to whom he makes informal recommendations (T40). Bachmann, however, does not have final authority with regard to budgetary decisions (T45).

21. Bachmann's office is located behind Savarese's desk. His office has a door which locks, and there is a file cabinet in his office (T59, T60). This file cabinet contains copies of Bachmann's correspondence and faculty, administration and staff evaluations. The cabinet locks and the keys are kept in Bachmann's office. Other than Bachmann, only Savarese, the Vice President/Dean and his secretary and Branon have access to the cabinet (T61-62). The door to Bachmann's office is locked when no one is in the area (T63).

22. The general Academic Affairs file cabinet is located in a separate file room adjacent to the office area. Included in

that file are evaluations of faculty, administration and support staff, negotiations materials and the Dean's correspondence with the Department of Higher Education (T60, T65). Access to the file room is gained through two doors which are locked when no one is in the office. The cabinets themselves are locked at all times. Keys to these files are in the Academic Affairs office (T61, T65).

23. Savarese spends 85-90% of her time doing work for Bachmann. The remaining 10% is spent doing work for the Director of Educational Services (T41, T69).

24. The Director of Educational Services supervises the library, submits state-required basic skills reports, develops instruction and prepares supply order and transfer evaluations of students (T47).

25. Branon does not sit at the negotiations table but does consult with the Vice President/Dean regarding proposed changes in the contract (T48). To date, Branon has not submitted written negotiations recommendations (T54).

26. Branon uses the services of both Savarese (25% of the time) and Davis (75% of the time)(T55). Davis' desk is in a reception area in front of Branon's office (which has a door)(T56). Savarese is located in the Academic Affairs office which is in another building. Branon distributes work between the two secretaries based on convenience and availability (T48).

27. Branon evaluates the Resource Center Coordinator and Savarese. Savarese types these evaluations and they are filed in the Academic Affairs office files (T49).



28. Branon works with the Vice President/Dean on the budget for the Academic Affairs department. Her written recommendations are typed by Savarese (T49-50).

29. Branon participates in Search Committees with other administrators, but has no final authority regarding hiring decisions (T53). Material relating to the hiring process is kept in the Academic Affairs office file (T50).

30. Branon sits at the first step level of the grievance procedure for library staff employees. Written responses to grievances are typed by Savarese or Davis (T51).

31. Branon keeps a file cabinet in her office. Neither Savarese nor Davis have a key to this file (T57-58).

32. The job description for the Secretary to the Directors of Instruction and Educational Services (J-2) makes no mention of handling confidential material. However, included in the specific job description/responsibilities are:...(4) types and files faculty performance evaluations and...(6) types and files performance evaluations of Administrators.

SECRETARY TO THE DIRECTOR OF STUDENT SERVICES

33. The Director of Student Services supervises admissions, registration, part-time advising, guidance, all counseling activities, placement, transfer counseling, the Equal Opportunity Fund, the WISH project for student discipline, and student programs for activities, athletics and conduct (T75).

34. Hannaford has not been formally involved in the negotiations process (T86). He has, however, made oral recommendations to the Vice President/Dean. If written recommendations were to be submitted, Davis would be responsible for typing them, but she testified she could not remember typing any such material in the past (T81, T115). Hannaford opens his own mail and answers his own phone (T109).

35. Hannaford sits at the first step level of the grievance procedure for bargaining unit members in his department. To date, no grievances have been filed, but if written responses were required, Davis would type them (T82).

36. Hannaford prepares budget estimates for certain grants, which Davis types. These grant proposals are a matter of public record (T84, T87). Davis has not prepared any other budgetary materials (T115).

37. Hannaford evaluates the administrative specialists and support staff assigned to his department (T78). Davis types and files the written evaluations, which are in a locked file cabinet located in an unoccupied office in the Student Services department (T79, T102, T114). Only Hannaford and Davis have access and a key to this file (T80, T94, T103).

38. Davis informally participates in the evaluation process of non-bargaining unit (student aides and part-time secretaries) support staff in her department (T79, T80, T105, T115-116). Davis' participation is limited to giving her "feelings"

about these employees, and final authority over all evaluations rests with Hannaford (T79, T85). Davis has never made any written recommendations to hire, fire or discipline another secretary (T111, T116). Davis has no authority to approve or disapprove the sick leave or vacation requests of other secretaries, nor is she involved in the support staff grievance procedure (T117).

39. Davis oversees and distributes work to the department's student aides. She does not distribute work to the part-time secretaries or to other bargaining unit members (T77, T83, T99-100, T110).

40. Davis participates with Hannaford and another administrator in any Search Committees formed to hire non-bargaining unit, part-time secretaries (T82, T88-90, T98, T110). She has the same input as others on the Search Committees, but final authority for hiring lies with the Board of Trustees (T88, T90).

41. Davis has access to the personnel files for all administrators in the Student Services Department as well as the entire (full and part-time) support staff. She alone is responsible for filing this material (T101, T111).

42. Hannaford's office is located behind Davis' desk. His office has a door which is always locked, and to which only he and Davis have a key (T94).

43. Davis' position was in existence at the time the support staff unit was formed in 1979. At that time, by agreement of the parties, the position of Secretary to the Dean was

specifically excluded. In 1984, as a result of a reorganization, the position of Dean of Student Services (to whom Davis' reported since 1979) was changed to Director of Student Services (T96-97).

Davis testified, without contradiction, that she has had the same job description and essentially the same responsibilities through the change from Dean to Director (T97-98, T106). The only change which Davis noted is that she feels the present Director (Hannaford) expects her to take a more "administrative role", in that she now sits on Search Committees for some employees and oversees the work being done by the part-time aides (T98-100).

44. The job description for Secretary to the Director of Student Services (J-3) requires the employee to have the "ability to exercise sound judgment with reference to confidentiality." In addition, included in the "General Responsibilities" are the following:

...(3) Maintain personnel folders for Student Development administrative and clerical staff according to college policy.

...(14) Prepare annual evaluations for administrative and support staff under the direction of the dean.

...(27) Maintain confidentiality concerning personnel records and other matters so identified by the dean.

#### ANALYSIS

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/her membership in any collective negotiations unit incompatible with his/her 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), mot. to reopen den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶ 16249 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 employee's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. Id. at 510.

The Commission's policy is to strictly construe the term confidential employee. Brookdale Community College, D.R. No. 78-20, 4 NJPER 32 (¶4018 1977); State of New Jersey.<sup>6/</sup>

The Secretary to the Director of Institutional Development opens and reads (in order to file) all mail received by the Director. This includes every negotiations-sensitive document forwarded to members of the President's cabinet. Since the Director sits at the bargaining table, she is kept apprised of all non-public College proposals and counterproposals, as well as pre-bargaining strategies. That Parris is required to read and understand this material in order to perform her filing duties necessitates a finding of confidential status. River Dell; Parsippany-Troy Hills; Western Monmouth Utilities Authority, D.R. No. 82-38, 8 NJPER 140 (¶13061 1982). As was stated in Rahway Board of Education, D.R. No. 80-12, 5 NJPER 506 (¶1026 1979),

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.

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<sup>6/</sup> Although employee evaluations and budgetary information may be thought of as "confidential" in the traditional sense of the word, knowledge of such material by an employee, standing alone, is not enough to make her/him a "confidential employee" as defined by the Act. However, when this knowledge is viewed in conjunction with exposure to negotiations information, it may be seen as further evidence which would require removal from the unit.

In addition, Resnik is directly involved in the grievance procedure, hiring and budgetary salary allocation for bargaining unit support staff in her department. All typing and filing associated with Resnik's involvement in these areas is done by Parris. Accordingly, I find that the duties Parris performs for Resnik clearly result in Parris' knowledge of the collective negotiations process, and thus make her inclusion in the secretarial unit incompatible with her official duties.

The Secretary to the Director of Instruction types and files Bachmann's pre-negotiations recommendations to the Vice President/Dean regarding possible areas for change in the support staff's agreement. In addition, Savarese must copy and file all negotiations material, including College proposals and position statements, received by Bachmann. Since 85-90% of her time is spent doing work for Bachmann, Savarese's involvement in these types of duties is frequent and regular. Based on these responsibilities, which require Savarese to read and understand the negotiations material received by Bachmann, I conclude that Savarese is a confidential employee. Her exposure to this material is sufficient to require exclusion because she is expected to pay attention to it in order to perform her job functions. Rahway, River Dell, Western Monmouth and Parsippany-Troy Hills

Further, both Bachmann and Branon prepare written grievance responses, participate in hearings, and have input into budgetary

salary allocations for bargaining unit support staff in their respective departments. As their secretary, Savarese types and files information associated with these responsibilities. I find these duties, together with her exposure to negotiations-sensitive material, evidence Savarese's knowledge of the collective negotiations process and makes her inclusion in the secretarial unit incompatible with her official duties.

The Director of Student Services is not formally involved in the negotiations process. He has never made written proposal recommendations nor does he receive negotiations-sensitive correspondence from other administrators. At most, he communicates orally with the Vice President/Dean regarding his thoughts about the on-going negotiations. Further, even if negotiations material were forwarded to Hannaford, it was established that he opens his own mail, and there is nothing to suggest that Davis is either responsible for filing such material or that it is even retained in Hannaford's files. Accordingly, I conclude that Davis, as Hannaford's secretary, has no exposure to negotiations-sensitive material.

Davis has no involvement with budgetary matters related to the negotiations process. She does, however, type and file evaluations of bargaining unit members. Standing alone, such access to personnel files is insufficient to find confidential status.

State of New Jersey.



No other duties performed by Davis would require her classification as a confidential employee. The areas supervised by Hannaford for which Davis would be required to perform secretarial duties do not involve the collective negotiations process in any way. Further, although Hannaford has the authority to hear first step level grievances for bargaining unit members, he has never done so in his tenure with the College.

Ordinarily, the conclusion that a previously excluded title is not confidential would necessitate a finding that it be clarified into in the bargaining unit at the expiration of the current contract. Clearview Board of Education, D.R. No. 78-2, 3 NJPER 248 (¶14106 1977). However, the Commission has found that where the parties agreed to exclude a certain title at the inception of the unit, and where subsequent recognition clauses do not specifically include the title, and where there is no evidence that the majority representative attempted to represent or negotiate for the title or file grievances on behalf of the employee in the title, then absent changed circumstances, a clarification of unit petition cannot be used to include the title in the unit. Clearview; Warren Township, D.R. 82-10, 7 NJPER 529 (¶12233 1981). As was stated in Warren:

If the Commission were to permit a clarification of unit petition under those circumstances, it would be a procedure which might lead to the addition of the occupant of the title to the unit in the face of the illegitimate disenfranchisement of that employee's voting rights in the previously conducted representation election.  
Id. at 530.

In the instant case, the Certification of Representation, issued in December 1979, specifically excluded Secretaries to the Dean. It is undisputed that this is the same position that Davis currently holds and that it has always been excluded. Moreover, the Association presented no evidence that it sought to represent this title in the past, nor does the present recognition clause evidence an agreement to include it. Therefore, I conclude that the petition in CU-87-34 raises a question concerning representation for the Secretary to the Director of Student Services which cannot be resolved through a clarification of unit proceeding.<sup>7/</sup>

Further, there are insufficient changed circumstances which would permit inclusion of this title in the unit through a Clarification of Unit Petition. While it is true that Davis' immediate supervisor changed from a Dean to a Director, Davis acknowledged that her job description, duties and functions all remained essentially the same. The only substantive duty change noted by Davis was that the current Director (Hannaford) expected her to take a more "administrative" role. This meant that she now distributes work to non-bargaining unit student aides and participates in their hiring and evaluation. These changes have no connection whatsoever to the bargaining unit or to the negotiations process. Accordingly, I conclude that there are no changed

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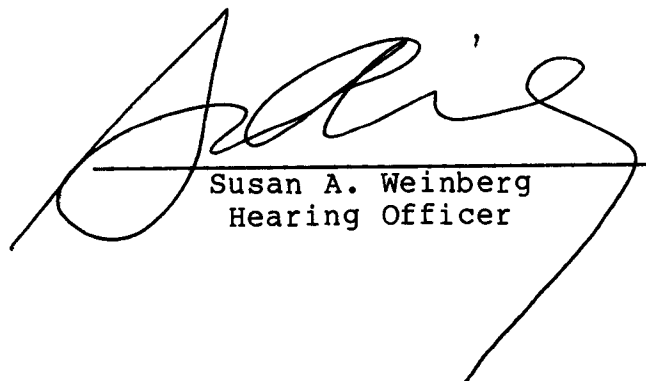
<sup>7/</sup> That question can only be resolved through a timely Petition for Certification of Public Employee Representative.

circumstances relevant to the question of Davis' inclusion in the unit through a clarification of unit proceeding. Therefore, I recommend that the Association's Clarification of Unit Petition be dismissed.

RECOMMENDATIONS

1. I recommend that the Commission find Connie Parris, Secretary to the Director of Institutional Development, and Mariann Savarese, Secretary to the Directors of Instruction and Educational Services, to be confidential employees within the meaning of the Act. I further recommend that the Commission remove these titles from the collective negotiations unit.<sup>8/</sup>

2. I recommend that the Commission dismiss the Association's Clarification of Unit Petition seeking to include Lillian Davis, Secretary to the Director of Student Services, in the collective negotiations unit.



Susan A. Weinberg  
Hearing Officer

DATED: July 23, 1987  
Trenton, New Jersey

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<sup>8/</sup> Since these are confidential employees, I recommend that the Commission's decision have immediate effect. Clearview.