

D.R. NO. 90-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

WEST ESSEX REGIONAL SCHOOL DISTRICT,

Public Employer,

-and-

Docket No. CU-89-1

WEST ESSEX EDUCATIONAL SECRETARIES'
ASSOCIATION,

Employee Representative-Petitioner.

SYNOPSIS

The Director of Representation clarifies a unit of secretarial employees employed at the West Essex Regional School District to include the position of Administrative Assistant to the Board Secretary. The Director was not persuaded by the Board's assertion that because the administrative assistant helped develop a computer program for cost data and impact analysis she would obtain information likely to compromise the Board's negotiations position.

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Appearances:

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

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

DECISION

On July 5, 1988, the West Essex Educational Secretaries Association ("Association") filed a Petition for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to clarify its unit of secretarial employees to include the positions of Administrative Assistant to the Board Secretary, Assistant Payroll Secretary and Computer Assistant/Board Office Floater employed by the West Essex Regional School District ("Board"). At an investigatory conference conducted on September 7, 1988, the parties entered into a settlement agreement resolving the unit status of the Assistant Payroll Secretary and Computer Assistant/Board Office Floater. The Administrative Assistant to the Board Secretary ("administrative assistant") remains in dispute.

The Board claims that the administrative assistant position is a confidential employee within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and is thus not eligible for inclusion in the Association's unit.^{1/}

I have conducted an administrative investigation pursuant to N.J.A.C. 19:11-2.6. These facts appear.

The Association represents a unit of secretarial and clerical employees. The parties' most recently expired agreement covered the period from July 1, 1986 through June 30, 1988. The parties recently reached a tentative agreement on a successor contract. The Association represents a unit composed as follows:

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

The Secretary to the Superintendent, the Assistant Board Secretary and the Secretary to the Board Secretary/Business Administrator are excluded from the unit.

^{1/} On the date of the informal conference, the administrative assistant position was vacant. It was filled on October 24, 1988. The Commission staff agent was notified of this change on or about February 14, 1989. On April 5, 1989, the Board submitted a list of the duties the administrative assistant had actually performed. On August 22, 1989, I wrote to the parties informing them of my factual preliminary findings and provisional intention to clarify the Association's unit to include the administrative assistant. No responses to that letter were received.

The administrative assistant position was created in November 1987 and filled in October 1988. The administrative assistant reports to Board Secretary Gerard Gruenfelder.

The administrative assistant's job description requires that she prepare and process the payroll and maintain payroll records. She is responsible for deduction of employee contributions for benefits and is required to "perform confidential salary and contract analyses vis-a-vis negotiations with all bargaining units."

The administrative assistant has prepared partial payrolls but has never prepared an entire payroll. She will do so when she is more experienced. The administrative assistant maintains payroll records, a task which requires that she examine salary and personnel information used to prepare payroll worksheets. She also reviews the payroll worksheets after they are returned by the payroll processing company.

The administrative assistant is required to maintain books, records and accounts payable for annual audits. Since there has not been an audit since the administrative assistant was hired, she has not yet prepared for one.

In the absence of the payroll processor, the administrative assistant will substitute for her. She will also assume responsibility for the student activity account. The administrative assistant also maintains the vendor file and processes bills and claims on a monthly basis.

The administrative assistant helped develop a Lotus computer program which assisted the board secretary/business administrator in preparing an impact analysis and cost data for use in budget work related to negotiated agreements. The administrative assistant has calculated what dollar amounts must be provided in the budget to cover increased salary costs that result from negotiated settlements. In upcoming negotiations, the same calculations will be made to forecast costs and determine negotiations strategies.

At the request of the Board Secretary/Business Administrator, the administrative assistant has also done comparative contract analyses of employee salary guide placements and of the salary guides themselves, for both the teachers' and secretaries' negotiations units. The administrative assistant has never participated in grievance processing or in the preparations for grievance processing or handling disciplinary matters; however, the Board Secretary/Business Administrator has indicated that he intends to enlist her assistance in such matters when they arise in the future.

ANALYSIS

N.J.S.A. 34:13A-3(g) defines a confidential employee as an employee

...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 is to narrowly construe 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); Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988).

The key to confidential status is an employee's access to and knowledge of materials used in labor relations processes, including contract negotiations, contract administration, grievance handling and the preparation for these functions on management's behalf. State of New Jersey (Division of State Police), D.R. No. 84-9, 9 NJPER 613 (¶14262 1983); County of Essex, D.R. No. 84-7, 9 NJPER 574 (¶14239 1983). 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).

Because the administrative assistant position is newly created and was only recently filled, the experience of having a person performing the duties of the position is limited. Many of the listed duties have not been performed to date. However, based upon the materials presented, it does not appear certain that the duties of the administrative assistant have given her access to and knowledge of confidential labor relations materials.

The salary and benefit level information required to complete the payroll is not confidential information within the meaning of the Act. Preparing the payroll only requires the administrative assistant to apply contractually agreed-upon salary rates to employee work time. Access to payroll information is not, without more, sufficient to sustain a claim of confidential status. Cliffside Park Bd. of Ed., P.E.R.C. No. 88-108, 14 NJPER 339 (¶19128 1988). While the administrative assistant may substitute for the payroll processor, there is no indication that the payroll processor is a confidential employee or is otherwise exposed to confidential information. There is no evidence that preparing the Board's records for audit, maintaining the student activity accounts and the vendor file, or processing bills will yield confidential information.

Although the administrative assistant assisted in developing a computer program which can prepare impact analysis and budget cost data for negotiated agreements, it appears that the business administrator prepares these analyses. Further, in using the program to analyze the effects of negotiated (i.e., finalized) agreements on the district's budget, the knowledge which the administrative assistant might attain in this regard would not necessarily compromise the Board's position in contract negotiations, as it seems that the union would already know the information with which the administrative assistant is working. No specific facts were provided which indicate that the administrative

assistant has gained access to and knowledge of confidential materials in this regard. Finally, the Board states that the program will be used in future negotiations to help forecast negotiations strategies and costs. There are no facts in the record which indicate how the computer program will be used in future negotiations, what specific role the administrative assistant would play in those negotiations or whether she would in fact gain access to and knowledge of confidential labor relations information.

Since it appears that the administrative assistant does secretarial/clerical tasks, works with other secretarial/clerical employees and is not a confidential employee within the meaning of the Act, I clarify the Association's secretarial/clerical unit to include the Administrative Assistant to the Board Secretary.^{2/}
See Pennsauken Bd. of Ed., D.R. No. 89-15, 15 NJPER 119 (¶20055 1989).

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: September 18, 1989
Trenton, New Jersey

^{2/} In reaching this conclusion, I considered the Hearing Examiner's findings of fact 14 through 25 in West Essex Reg. School Dist. Bd. of Ed., H.E. No. 89-37, 15 NJPER 321 (¶20143 1989), aff'd P.E.R.C. No. 89-138, 15 NJPER _____ (¶ _____ 1989). Those findings suggest that the administrative assistant might have access to and knowledge of confidential information. However, those findings are not conclusive. The parties were afforded an opportunity to provide additional information but none was provided. Based upon the record before me, I do not find that the administrative assistant has access to and actual knowledge of confidential information.