

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SIERRA SANDS UNIFIED SCHOOL DISTRICT))	Case No. LA-R-710
Employer)	
)	
and)	
)	EERB Decision No. 2
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION SIERRA SANDS CHAPTER)	October 14, 1976
#188, Employee Organization)	
)	
)	
)	

Appearances: James S. Brian, Attorney (O'Melveny and Myers), for Sierra Sands Unified School District; William D. Dobson, Attorney (California School Employees Association), for California School Employees Association.

Before Alleyne, Chairman; Gonzales and Cossack, Members.

OPINION

PROCEDURAL HISTORY

On April 1, 1976, California School Employees Association, Chapter 188, filed with the Sierra Sands Unified School District a request for recognition as the exclusive representative of a unit of specified classified employees. It subsequently filed an amended request for recognition as the exclusive representative of a unit of "all classified employees excluding noon duty supervisors and those positions which can lawfully be declared management, confidential, and supervisory." The district notified the Educational Employment Relations Board that it doubted the appropriateness of the unit described by CSEA, Chapter 188, filed a petition with the Board alleging that it had filed a request for recognition with the district and that the request had been denied, and requesting the Board to investigate and to determine the appropriateness of the unit. On August 11, 1976, a formal hearing was held before a Board agent for the purpose of determining the appropriate bargaining unit. This is the first case on "confidential" employees to come before the Board.

ISSUE

The issue in this case is whether or not certain classified employees of the Sierra Sands Unified School District are "confidential employees" within the meaning the Act, Government Code Section 3540.1(c). The employees and positions designated as "confidential" by the district are the Senior Secretary to the

Assistant Superintendent for Educational Services, Senior Account Clerk, Payroll Clerk, Bookkeeper and Account Clerk - Payroll.

With the exception of the five disputed employees, the district and CSEA, Chapter 188, stipulated that the appropriate unit is "all classified employees, excluding all management employees as designated by the district, all supervisory employees, all noon duty aides, all short term and emergency employees and all confidential employees." Stipulated as "confidential" are the following employees:

Superintendent Secretary
Secretarial Aide to the Superintendent
Senior Secretary to the Assistant Superintendent for Business
Senior Secretary to the Assistant Superintendent for
Personnel and Administrative Services
Personnel Technician
Research and Classified Personnel Technician
Secretary to the Assistant Business Manager
School Secretary for Burroughs High School

The Board adopts the stipulations of the parties without inquiry, but is not required to make similar findings in contested cases.

DISCUSSION

Government Code Section 3540.1(c) states that "Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations." It is noted further in subsection (j) of the same section that "confidential employees" are not to be considered public school employees for the purposes of employer-employee relations within the meaning of the Act.

Presumably, the Legislature denied certain rights to "confidential" employees for the sole purpose of guaranteeing orderly and equitable progress in the development of employer-employee relations.

The assumption is that the employer should be allowed a small nucleus of individuals who would assist the employer in the development of the employer's position for the purposes of employer-employee relations. It is further assumed that this nucleus of individuals would be required to keep confidential those matters that if made public prematurely might jeopardize the employer's ability to negotiate with employees from an equal posture.

It is further assumed that the denial of representation rights to the employees designated as "confidential" is overshadowed by the greater benefit to be gained by the employer, the employee organizations and the public when a fair balanced approach to employer-employee relations is guaranteed.

The underlying assumption then, is that the employer, in order to fulfill its statutory role in its employer-employee relations, must be assured of the undivided loyalty of a nucleus of staff designated as "confidential employees".

Senior Secretary

The first employee in issue is the Senior Secretary to the Assistant Superintendent for Educational Services. We conclude that she is a "confidential employee".

The specific duties of the Assistant Superintendent for Educational Services are the development of curriculum and instructional programs and educational pupil personnel services; however, he also serves in three other capacities for the district.

He is a member of the Superintendency Team; he is a member of the Management Team; and he is the chief representative of the Board of Education and the Superintendent on the Consulting Team.

As a result of his participation in any one of these three groups, he would be a crucial element in the employer's negotiation strategy. Inasmuch as he serves not just in one group, but in all three, there can be little doubt that his role is vital in his employer's employer-employee relations process.

As a member of the Superintendency Team, composed of the Superintendent and the other two Assistant Superintendents of the district, he has been involved in developing recommendations of the team to the Board of Education on negotiation matters for both classified and certificated employees.

As a member of the Management Team, composed of all other district administrators and the Board of Education, he also participates in the development of positions to be taken in negotiation matters.

And finally, as chief representative of the Board of Education and the Superintendent on the Consulting Team, he consults with the representatives of the teachers' employee organization on the matters set forth in Section 3543.2 of the Act.

The evidence clearly demonstrates that the Senior Secretary to the Assistant Superintendent for Educational Services handles most of the correspondence, dictation and appointments for the Assistant Superintendent. Additionally, she maintains all of his files and does research on projects the Assistant Superintendent is developing. She frequently and as a routine matter has access to and handles files which contain materials relating to classified and certificated employees. She also testified that she was aware of the materials regarding classified employees that originated in the Superintendent's office, and that such

material and minutes of the Superintendency Team meetings were filed by her in the course of her duties. Since her supervisor also participates in the Management Team and heads up the Consulting Team, it can be concluded from her testimony that she develops and handles materials relevant to meetings of these groups as well. There appears to be no doubt that the Senior Secretary to the Assistant Superintendent of Educational Services regularly has access to or possesses information relating to her employer's employer-employee relations.

Senior Account Clerk, Bookkeeper, Payroll Technician, Account Clerk - Payroll

The Senior Account Clerk, Bookkeeper, Payroll Technician and Account Clerk - Payroll are all supervised by the Assistant Business Manager who has been designated by the governing board as "Management". In the 1975-76 school year, the Assistant Business Manager served on the Meet-and-Confer Team for classified employees. In the current year 1976-77, he is on the Negotiations Team for both classified and certificated employees. In both capacities he has sometimes been called upon to analyze the cost of district and employee organization bargaining proposals, including district proposals that were not yet placed on the bargaining table.

The Assistant Business Manager indicated that at various times he has asked one of the four individuals in dispute to assist him analyzing the cost of proposals; however, it is important to note that he can recall requesting the assistance of only the Bookkeeper and the Account Clerk - Payroll in particular instances. In response to a question by district counsel as to whether or not he made a request of each and every one of them or of one in particular, he responded:

It's hard to recall an looking back at last year's work,
I can 't really, I don't think I could really say
wheather I've asked all four of them at different
occasions to help

In another response to a question from the hearing officer on the same general matter, he answered:

As I said, last year's meet-and-confer process - to be honest, I can't recall who I have. I've, I had people ask them for specific information or for their assistance.

And Further:

So you try to grab the people that are oh, know how to use the calculator that can know how to read salary schedules and you grab whoever is available.

The Assistant Business Manager did not provide any evidence that convincingly showed tht any of the four employees in

question, during the regular course of their duties, have access to or possess information relating to their employer's employer-employee relations. Rather, it appears that the Assistant Business Manager chose one or another interchangeably in the preparation of his data for the employer. The mere fact that these four employees are interchangeably called upon to do cost calculatins duty because they are equally competent in the use of a calculator hardly suggests that they perform cost evaluations in the regular course of their duties.

Specifically, with reference to the Senior Account Clerk, the Assistant Business Manager did no t recall a single instance of requesting her to analyze to cost of proposals. He stated he would have asked her but that she was on vacation at the time he needed the work done. No evidence was provided that she has ever done a cost evaluation. Further, the duty statementt for the Senior Account Clerk indicates that her duties primarily involve recording transactions that have already taken place. There was no evidence presented that any of the work performed by this individual was of a "confidential" nature under the meaning of the statute.

With reference to the Bookkeeper, she stated that she had done cost evaluations relating to certificated proposals. The testimony of the Assistant Business Manager, however, demonstrates the casual nature of any such assignments:

I grabbed the Bookkeeper as I said, the Senior Account Clerk was gone and wasn't able to ask her, and the Accounting Clerk, for the Account Clerk for Payroll to help.

This hardly suggests that the Bookkeeper performed cost proposals for the negotiations in the regular course of her duties. And though there is some reference to the fact that she was told that some of her work was of a confidential nature, counsel for the district failed to demonstrate that "confidential" in this circumstance meant "confidential" under the terms of the Act.

The situation of the Payroll Technician appears to be equally as weak as that of the Senior Account Clerk and Bookkeeper. The Assistant Business Manager ould not recall that he had requested her to perform cost evaluations of proposals in the 1975-76 school year. He further stated that this year he did not ask her assistance because she was too busy. Nothing in the record suggests that in her role of Payroll Technician she regularly performed duties that would be considered "confidential" under the definition of the statute.

And finally, the Account Clerk - Payroll, who did not appear as a witness, was not shown to have performed, in the regular course of her duties, functions that related to her employer's employer-employee relations. In fact, the opposite is true. The Assistant Business Manager testified that he had asked her to do

an evaluation three weeks previous to the hearing only because her immediate supervisor, the Senior Account Clerk, was on vacation. This hardly attests to the regular nature of her duties or the confidentiality of her work.

The major duties of the four employees involved record keeping. The Senior Account Clerk schedules, organizes and performs the financial record keeping operations of the district. The Bookkeeper works with the daily accounting processes of the district's business department. The Payroll Technicians performs clerical activities involved in the processing of payrolls. The Account Clerk assists in preparing payroll registers for all classified and certificated personnel and maintains all payroll and employment records. The record did not demonstrate that these regular duties of the four employees related to the employer's employer-employee relations in that the information the employees handle does not expose the employer's positions in negotiations or other matters of employer-employee relations.

Finally, the fact that the four employees may calculate the cost of proposals hardly suggests that they perform cost evaluations giving them information relating to their employer's employer-employee relations. The evidence did not show that any of the four employees did more than simple mechanical cost calculations. The mechanical act of calculating costs does not necessarily provide clerical support personnel with confidential knowledge pertaining to the employer's position on bargaining matters or other information relating to the employer's employer-employee relations.

CONCLUSION

We have considered the cases mentioned by the parties in their briefs. Although there is case history on similar issues under other statutes, there appears to be little reason for the Board to rely on them inasmuch as the statutes to which they refer are not similar enough to our statute to have bearing on this case. The Board finds that the Senior Secretary to the Assistant Superintendent for Educational Services is a "confidential employee" under the terms of the Act. It further finds that the Senior Account Clerk, the Payroll Clerk, the Bookkeeper and the Account Clerk - Payroll, are not "confidential employees" under the terms of the Act, and shall be included in the unit of classified employees petitioned for by CSEA, Chapter 188.

ORDER

The Educational Employment Relations Board directs that:
1. The following unit appropriate for the purposes of meeting and negotiating, providing an employee organization becomes the exclusive representative of the unit:

Including: All classified employees

Excluding: All management employees as designated by the district

- All supervisory employees
- All noon duty aides
- All short term and emergency employees
- All confidential employees

2. The following employee is "confidential" within the meaning of Section 3540.1(c) of the Act:

Senior Secretary to the Assistant Superintendent for Educational Services

3. The following employees are not "confidential" within the meaning of Section 3540.1(c) of the Act:

- Senior Account Clerk
- Bookkeeper
- Payroll Technician
- Account Clerk - Payroll

4. If the district does not extend voluntary recognition to CSEA, Chapter 188, within twenty-one (21) calendar days following the date of this decision, the regional director shall conduct an election to determine whether or not CSEA, Chapter 188, shall be the exclusive representative of the appropriate unit.

by: Raymond J. Gonzales, Member Reginald Allyene, Chairman

Date: October 14, 1976

Jerilou H. Cossack, Member, dissenting in part.

I concur with the decision of my colleagues that the Senior Secretary for Educational Services is a confidential employee within the meaning of the Act. However, I disagree with the implicit assumption of the majority that "employer-employee relations" is limited to those matters within the area of collective bargaining or labor relations. While I do not agree with the majority's assumption, I do agree that the record in this case does not provide a basis for a broader finding. The mere access to bare piecemeal statistical information, none of which was established to relate to confidential employer-employee relations matters, is insufficient to establish confidential status. Assuming, however, that the definition is restricted as in the majority opinion, I conclude that there is ample justification to hold one of the remaining employees as confidential. The record establishes that in prior years

management has relied on at least one of the four disputed employees to actually perform the costing out of various negotiating proposals. The fact that no one of these employees regularly performed this function but rather than any one of them might be called upon, in no way diminishes management's need to have someone to perform this task. To preclude management from this type of assistance because it has failed to confer the function on one particular individual at a time when it had no reason to do so, in my view, runs contrary to the obvious intent of the legislature in carving out a category of confidential persons. Given management's articulated preference for using the Senior Account Clerk for this function, I would find that person to be a confidential employee.

Jerilou H.Cossack, Member