

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

NORTH CAROLINA ASSOCIATION OF EDUCATORS

Employer

and

Case 10-RC-361131

NORTH CAROLINA STAFF ORGANIZATION

Petitioner

DECISION AND ORDER

North Carolina Staff Organization (“the Petitioner”) currently represents a bargaining unit of professional¹ and associate employees² for North Carolina Association of Educators (“the Employer”). The parties most recent collective bargaining agreement covering this unit of employees went into effect July 1, 2024, and is set to expire on June 30, 2027.

On February 28, 2025, Petitioner filed a petition in this matter seeking an *Armour-Globe* self-determination election to add an employee to the existing bargaining unit.³ The petition seeks to add to the existing unit the job classification of Confidential Legal Assistant that is held by one employee, Amy Miller. The Employer argues that the Confidential Legal Assistant position is a confidential employee and should therefore be excluded from the unit. A hearing was held at the National Labor Relations Board, Region 10, Subregion 11 office located at One West 4th Street, Suite 710, Winston-Salem, North Carolina 27101 before a hearing officer on March 18, 2025. Following the hearing, the parties submitted post-hearing briefs, which I have considered.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. As explained below, based on the record and relevant Board law, I find that the Confidential Legal Assistant is a confidential employee; and thus, should be excluded from the unit.

I. FACTS

A. THE EMPLOYER’S OPERATION

¹ Professional employees include the following positions: Editor, Center for Teaching and Learning Specialist, Government Relations Specialist, Organizer, Lead Organizer, Network Systems Programmer, Member Benefits Specialist, Public Relations Coordinator, Research Specialist, UniServ Director, and Website and Technology Communications Specialist. Employer Exhibit 6.

² Associate employees refer to the following positions: Accounting Technician, Administrative Assistant, Membership and Organizing Technician, Membership Data Processing Technician, Receptionist, and Mailroom/Maintenance Technician. Employer Exhibit 6.

³ See *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

The Employer is a labor organization that represents teachers and other educational professions (“members”) in the State of North Carolina. Its principal location is at 3700 Glenwood Ave. Ste. 510, Raleigh, North Carolina. At the time of the hearing the Employer employed fifty-three (53) employees. The Employer’s Board of Directors and Governance Leadership chart shows that the organization’s operations are primarily headed by the Executive Director and is made up of various departments involving organizing, communications, membership, and legal counsel.⁴ The legal counsel operates under what is referred to as its Advocacy Center.

1. ADVOCACY CENTER

The Employer’s Advocacy Center (“the department”) consists of two (2) attorneys (Interim Lead Counsel April Adeeyo and Staff Attorney Elisabeth Jones), the Confidential Legal Assistant Amy Miller, and two (2) Uniserv Directors. The Uniserv Directors are bargaining unit positions that serve to advocate and provide information to the Employer’s members by attending local meetings and accompanying members in meetings with human resource. They may also assist attorneys with non-legal tasks. The Staff Attorney, Confidential Legal Assistant, and Uniserv Directors all report directly to Lead Counsel who is under the supervision of the Executive Director.

Prior to the date of the hearing the department was all within the same office space, wherein the attorneys each had private offices while the Confidential Legal Assistant and Uniserv Directors were in cubicles in the open floor space outside of the attorney’s offices.⁵ The floor also includes private offices occupied by the Associate Executive Director, the Confidential Executive Assistants, and other managers, along with cubicles in the open floor area occupied by an Organizer and Membership Coordinator.

Adeeyo testified that the department has three (3) main jobs: corporate counsel, human resource and labor relations management, and advising members throughout the state. Adeeyo’s duties as Interim Lead Counsel relating to the Employer’s own employees entail attending grievances, advising the Executive Director on those grievances, investigating and advising management on employee personnel matters and administration of the collective bargaining agreement, and drafting all employment contracts, separation agreements, and administrative policies and procedures. Adeeyo testified that she is currently drafting the drug testing policy for the Employer’s employee handbook.

B. CONFIDENTIAL LEGAL ASSISTANT

Sometime between 2022 and 2023, the Employer created the Confidential Legal Assistant position, and the position was filled in August of 2023 with the hiring of Amy Miller. Miller testified that her duties primarily consisted of creating case files based on calls and

⁴ The organizational chart, Employer’s Exhibit 9, appears mostly illegible. However, testimony on the record from the authenticating witness Adeeyo explains the illegible portions of the document that are relevant.

⁵ Adeeyo testified that the remaining Uniserv Director has been moved to the field as of the date of the hearing.

electronic requests from members requesting legal assistance. She would then submit a summary of their requests to the attorneys for review and assignment.

In addition to her member facing duties, Miller has also had exposure to employee side matters. On one occasion, Miller was instructed by then Lead Counsel Verlyn Chesson Porte to fill-in and take notes for the Confidential Executive Assistant, a non-bargaining unit position that reports directly to the Executive Director, during collective bargaining negotiations with the Petitioner. The meeting included a separate caucus, wherein the Petitioner's bargaining team left the room while the Employer's team remained. Lead Counsel then instructed that Miller send her notes to the Confidential Executive Assistant. Miller attended one other collective bargaining agreement, albeit it was not for the entire duration of the meeting.

Adeeyo testified that after bargaining meetings, then Lead Counsel would often discuss the status of the collective bargaining negotiations, including potential issues that management would have and potential tasks to research, during the department's weekly meetings. The weekly meetings, held every Wednesday at 10:00am, were essentially split into two (2) parts wherein the entire department would begin on the call discussing member case related information and thereafter the Uniserv Directors would be excused from the meeting leaving only the attorneys and Miller.

The discussions regarding the status of collective bargaining, in addition to other employee relations matters, were discussed at the end of the weekly meetings outside of the Uniserv Directors presence. Jones testified to two specific instances where internal personnel issues were discussed during the meetings with only the attorneys and Miller. The first example pertained to a former employee who was preparing to file a discrimination lawsuit against the Employer. Jones stated that they discussed plans on how to proceed with the litigation. The second example was discussions regarding a loyalty package, or buyout package, that Adeeyo was drafting and that had not yet been disclosed to employees and the Petitioner. In both examples Miller was present and while she was not a vocal participant in the meetings, Miller did, like in all weekly meetings, take notes. Miller testified that she took personal notes on everything, because she was responsible for reminding or following up with the attorneys on their projects to aid them in staying on task.

During the beginning of Miller's employment, she was granted access to Adeeyo's email account⁶, calendar, and SharePoint⁷ drive. The Sharepoint is divided into groups based on departments and limits access to those groups to only those within that department.⁸ Adeeyo testified that she utilizes SharePoint to store and share her drafts or proposals relating to potential discipline, settlements, separation agreements, grievances, and employee policies with the attorneys and management who may offer comments within the documents. Additionally, Adeeyo communicated with management and the attorneys through email on similar topics. On

⁶ Access to Adeeyo's email account was discontinued on or about September or October of 2024.

⁷ Both Adeeyo and Miller used the term One Drive and Sharepoint interchangeably; but for purposes of this decision the term Sharepoint will be used to describe where Adeeyo stored sensitive documents.

⁸ Adeeyo testified that to her knowledge the Uniserv Directors did not have access to the Advocacy Center's Sharepoint.

occasion Miller has been tasked with performing research, sending emails to include a separation agreement on behalf of Adeeyo, and printing and reviewing documents drafted by Adeeyo.

II. ANALYSIS

A. CONFIDENTIAL STATUS

Section 2(3) of the National Labor Relations Act does not exclude confidential employees from its definition of employee; however, the Board excludes employees who are deemed to be confidential from bargaining units. In determining whether an employee is confidential, the Board applies either a labor-nexus test and finds an employee to be confidential if he or she assist(s) and act(s) in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations (*The B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956)), or if an employee in the course of their duties, regularly has access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations (*Pullman Standard Division of Pullman, Inc.*, 214 NLRB 762, 762-763 (1974)).

In determining what constitutes confidential material, the precise nature of the allegedly confidential information is significant. *Pullman, Id.* at 763 (employees who were privy to the precise labor rates to which the employer would be likely to agree in a future collective-bargaining agreement are excluded as confidential). Employees who may prospectively gain confidential status, but who do not qualify as confidential employees at the time of the determination of that status, are not confidential employees. *American Radiator & Standard Sanitary Corp.*, 119 NLRB 1715, 1719 (1958). The party asserting confidential status has the burden of providing evidence to support its assertion. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987).

Both Petitioner's brief and the Employer's brief leave no question that based on the record that the Confidential Legal Assistant does not perform duties related in any manner to the formulation, determination, and effectuation of labor relations policies. I would, however, find Lead Counsel is a managerial employee who formulates, determines, and effectuates management policies. *B. F. Goodrich Co.*, 115 NLRB at 724. This is demonstrated by her role in bargaining, advising the Employer on personnel matters, preparing the Employer's response to employment litigation, and the drafting of employment policies.

While the Confidential Legal Assistant directly reports to Lead Counsel, Adeeyo's testimony as to the assistance Miller provided in employee relations matters were that Miller once proofread and emailed an employee separation notice, made copies of training materials for management, and took notes during meetings discussing labor relations. The mere typing of confidential labor relations material or access to such material, does not render an employee confidential. *Greyhound Lines, Inc.*, 257 NLRB 477, 480 (1981), *enfd. mem.* 673 F.2d 692 (4th Cir. 1982); *United States Postal Service*, 232 NLRB 556, 558 (1980) (secretaries are not confidential employees when they have no substantive input into the creation of the documents).

The same is true of taking notes or minutes of meetings of the board of directors, unless they document confidential labor relations discussions. *Hendricks County Rural Electric*, 236

NLRB 1616, 1619 (1978). The Employer provided no testimony as to what the notes contained as it neither solicited nor reviewed Miller's notes that she kept in a notebook; thus, the record fails to establish her as a confidential employee under the labor-nexus test by virtue of her relationship to Lead Counsel.

Therefore, the issue is whether under the *Pullman* test Miller's purported access to labor related materials and discussions warrants her exclusion from the bargaining unit. The Employer provided two (2) specific instances where Miller on more than one occasion⁹ had access to or would even potentially have access to labor-related materials. The first instance cited was Miller's access to electronically stored information, the department's Sharepoint and Adeeyo's email account.¹⁰

Miller testified that she did not know that she had access to Adeeyo's Sharepoint documents, stating she only accessed her own folders where she stored templates such as letters of engagement, and her own personnel documents. Furthermore, the testimony of Adeeyo was such that Miller sent emails on her behalf but affirmed that in the instance where Miller sent an employee separation agreement on her behalf, the email was sent from Miller's email account and not Adeeyo's. Additionally, while Miller had some advance notice of the agreement, it was in the process of being sent to the parties. See *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995) (The Board held exposure to documents relating to discipline and grievances that is in the process of being forwarded to the interested parties does not make someone a confidential employee). Miller's access to the SharePoint drive and email account is not dispositive of the question whether she is a confidential employee. The Employer provided insufficient evidence to show that Miller regularly accessed Adeeyo's email and Sharepoint information in the course of her work.

Second, the Employer cites Miller's attendance in the weekly meeting and bargaining meetings in support of its position. The Petitioner does not contest the fact that Miller has access to confidential conversations during the weekly meetings. It is also undisputed that Miller has performed the duties of the Confidential Executive Assistant in attending bargaining negotiations and the Employer caucus discussions.

Under the *Pullman* standard, to be considered a confidential employee, an employee must have "regular" access to confidential labor relations material. That Miller had access to Adeeyo's email account and has access to the department's Sharepoint is insufficient to establish that she is a confidential employee. However, I do find the Employer has met its burden based on Miller's attendance in the weekly meetings where bargaining strategies and proposals not yet disclosed to the Petitioner or employees are discussed. See *Bakersfield Californian, Id.* at 1213 (Access to labor strategy notes enough to establish a secretary was confidential under *Pullman*, as such access could "potentially give the Union an unfair advantage during future negotiations.")

⁹ Testimony regarding its intent to have the Confidential Legal Assistant eventually replace the Confidential Executive Assistant in attending bargaining and grievance meetings are merely speculative and does not meet the Employer's burden.

¹⁰ Adeeyo's testimony regarding Miller's access to her calendar did not divulge with any specificity the confidential information stored on her calendar regarding personnel matters.

Accordingly, I find that the Confidential Legal Assistant is a confidential employee and should remain excluded from the existing bargaining unit.

III. Conclusions and Findings

I have carefully weighed the record evidence and the arguments of the parties, and I conclude that it is not appropriate to hold a self-determination election for the Confidential Legal Assistant. Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employee(s) of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The petitioned-for employee of the Employer is a confidential employee and therefore does not constitute a unit appropriate for a self-determination election.

IV. ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

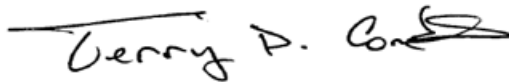
A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on April 25, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 25, 2025**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: April 11, 2025



Terry D. Combs
Acting Regional Director
National Labor Relations Board
Region 10
401 W. Peachtree Street NW, Suite 2201
Atlanta, Georgia 30308