

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-99-558-E
: (PERA-R-616-E)
CHELTENHAM SCHOOL DISTRICT :

FINAL ORDER

On February 22, 2001, Cheltenham School District (Employer) filed timely exceptions to a Proposed Order of Unit Clarification issued on February 2, 2001, in which a hearing examiner of the Pennsylvania Labor Relations Board (Board) determined that the position of personnel office clerk was not a confidential position within the meaning of the Public Employee Relations Act (PERA) and included that position in a bargaining unit represented by the Cheltenham Educational Support Personnel Association, PSEA/NEA (Association).

In its exceptions, the Employer contends that the hearing examiner erred in concluding that the personnel office clerk was not confidential within the meaning of the PERA, citing North Hills School District v. Pennsylvania Labor Relations Board, 762 A.2d 1153 (Pa. Cmwlth. Ct. 2000); petition for allowance of appeal pending, No. 793 W. D. Allocatur Docket 2000, as support for its contention that the personnel office clerk is confidential within the meaning of PERA. On February 22, 2001, the Association filed its response to the Employer's exceptions, contending that North Hills School District is factually inapplicable.

The facts as found by the hearing examiner are that Donna Franks has held the position of personnel office clerk since the position was created in September of 1999. The position was created because the Employer experienced an increased work load in the office of human resources caused by an increased number of retirement applications required to be processed due to early retirement incentive offered by the Employer and the consequential increase in the number of applications for opened positions within the school district. The hearing examiner specifically found that the personnel office clerk is not involved in the processing of negotiating meeting reports or collective bargaining agreements, does not attend school board meetings or executive sessions and does not take minutes at negotiation meetings. While the personnel office clerk does have access to personnel records, that access does not require access to the Employer's collective bargaining strategies. The director of human resources is Joseph Anderson who has held that position since January of 1997. At that time, the Employer was engaged in contract negotiations with its nonprofessional bargaining unit and Anderson served as a member of the Employer's negotiating team. However, the Employer negotiated an extension of its existing contract with its professional employees in the summer of 1999 and Anderson was not involved in those negotiations. Negotiations with the nonprofessional bargaining unit are anticipated in the near future and, at the time of the hearing, Anderson had not been advised whether he

will be a part of the Employer's negotiating team. The record also revealed that the Employer currently has four individuals excluded as confidential employees, including the secretaries to the superintendent, the assistant superintendent, the director of business affairs and Anderson's secretary (Fran Santarellis). Santarellis works, at all times, in the human resources office and is assigned three days a week solely to work for Anderson and two days a week is primarily responsible to the assistant superintendent.

The Employer's reliance on North Hills School District is misplaced. In North Hills School District, the Commonwealth Court concluded that the sole secretary to the school district's assistant superintendent, a lead member of the school district's collective bargaining team, was a confidential employee because she worked in a "close continuing relationship with" the assistant superintendent who was associated with collective bargaining on behalf of the employer. The Commonwealth Court found that the secretary to the assistant superintendent had a close continuing relationship with the assistant superintendent because she was the assistant superintendent's only secretary and testified that she typed documents from the assistant superintendent to the school board that dealt with ongoing collective bargaining negotiations.

In stark contrast to North Hills School District, the Employer's human resource director already has a confidential secretary excluded from the bargaining unit and the Employer failed to prove that the personnel office clerk has any job duties related to the Employer's collective bargaining strategies. The hearing examiner also noted that the Board has prohibited employers from distributing confidential duties among various employees to gain confidential exclusions for more employees than are necessary for an employer to conduct its collective bargaining. West Jefferson Hills School District 25 PPER ¶ 25137 (Final Order, 1994); Reynolds School District, 22 PPER ¶ 22098 (Final Order, 1991; Blackhawk School District, 10 PPER ¶ 10202 (Nisi Decision and Order, 1979; Fairview School District 8 PPER 358 (Nisi Decision and Order, 1977; Blackhawk School District, 4 PPER 76 (Nisi Decision and Order, December, 1974; Commodore Perry School District 3 PPER 335 (Order and Notice of Election, 1973). In this case, the director of human resources can assign any confidential duties that would reveal the Employer's collective bargaining strategy to his existing confidential secretary. Further, as noted by the hearing examiner, even if the director of human resources is assigned to the upcoming negotiating team, that three-member team, consisting of the director of human resources, assistant superintendent and the director of business affairs, each has available to him/her a confidential secretary to perform any confidential duties required of the negotiations.

In making confidential determinations under PERA, the Board is mindful of PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), the Supreme Court's seminal case interpreting the confidential exclusion under PERA, in which the Supreme Court affirmed a "narrow" interpretation of the confidential exclusion. In doing so, the Supreme Court noted that application of the confidential exclusion results in the denial of the salutary affects of collective bargaining rights to the excluded employees and agreed that the "underlying policy of PERA is best served by formulating a narrow test for confidential status..." 389 A.2d at 557. The application of that narrow construction of the confidential exclusion leads to the conclusion that the personnel office clerk is not a confidential employee under PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Employer and make the Proposed Order of Unit Clarification final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed in the above-captioned matter be and the same are hereby dismissed and that the Proposed Order of Unit Clarification be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this seventeenth day of April, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.