

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: Case No. PERA-U-01-88-W  
: (PERA-R-1322-C)  
WESTMONT HILLTOP SCHOOL DISTRICT :

**FINAL ORDER**

On December 6, 2001, the Westmont Hilltop Educational Support Personnel Association, ESPA/PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a Proposed Order of Unit Clarification issued on November 19, 2001, in which a hearing examiner of the Board concluded that the position of secretary/payroll clerk was confidential within the meaning of the Public Employe Relations Act (PERA) and excluded that position from the bargaining unit of Westmont Hilltop School District (Employer) employes represented by the Association. After a thorough review of the record and the exceptions, the Board makes the following:

**AMENDED FINDING OF FACT**

4. In December 2000, the District and the Westmont Hilltop Education Association (WHEA) began negotiations for a successor collective bargaining agreement covering teachers employed by the District. The District's solicitor, its superintendent, its business manager (Gregory T. Sanford) and three members of its board of directors comprised its bargaining team for the negotiations. Mr. Sanford's role on behalf of the District in collective bargaining negotiations has increased over the years, from acting as a resource person for a previous Superintendent, Dr. Estadt, to being a member of the District's bargaining team at the negotiations table. In the WHEA negotiations that began in December 2000, Mr. Sanford prepared proposals the District presented to the WHEA at the bargaining table. His secretary (Margaret Rizzo) typed up some of those proposals. He also analyzed proposals the WHEA presented to the District at the bargaining table. The District's secretary/payroll clerk at the time (Anne Pompanella) prepared spreadsheets of wages and benefits that he used to analyze WHEA's proposals. Mr. Sanford did not use Ms. Pompanella to prepare spreadsheets and analyze the District's bargaining proposals to WHEA because Ms. Pompanella's husband was a member of the WHEA bargaining unit. (N.T. 5-6, 8-14, 17, 19-21, 24-25, 28, 36-37, 39-40)

**DISCUSSION**

In the Proposed Order of Unit Clarification the hearing examiner concluded that the position of secretary/payroll clerk (Vikki Cramer) is confidential within the meaning of section 301(13)(ii) of PERA. That section of PERA provides that an employe is confidential if the employe works "in a close, continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer." 43 P.S. §1101.301(13)(ii). The record revealed that Ms. Cramer works with the Employer's Business Manager (Gregory Sanford), who is a member of the Employer's bargaining team and prepares proposals that the

Employer presented at the bargaining table. The Business Manager's secretary (Margaret Rizzo) has typed some of those proposals. The previous secretary/payroll clerk (Anne Pompanella) prepared spreadsheets of wages and benefits that Mr. Sanford used to analyze the Association's proposals. In February 2001, Ms. Pompanella retired and Ms. Cramer was hired as her replacement. Ms. Cramer's involvement in collective bargaining negotiations was expanded and included preparation of not only the spreadsheets that analyzed the Association's proposals, but also spreadsheets used to prepare the Employer's proposals that were presented at the bargaining table. Mr. Sanford did not use Ms. Rizzo to prepare these spreadsheets because it was "too much" for her to prepare the spreadsheets and type proposals for him at the same time and it was "more practical" to have Ms. Cramer prepare these spreadsheets because Ms. Cramer was more familiar with the payroll information than Ms. Rizzo, as Ms. Rizzo in the regular course of her duties did not have access to or regularly work with the payroll information.

Based upon this record, the hearing examiner concluded that the secretary/payroll clerk worked in a close continuing relationship with the Business Manager and therefore was excluded as confidential within the meaning of section 301(13)(ii). In doing so, the hearing examiner cited North Hills School District vs. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, \_\_\_ Pa. \_\_\_, \_\_\_ A.2d \_\_\_ (2001). In that case, the Commonwealth Court construed Section 301(13)(ii) of PERA to exclude an employe as confidential as long as that employe works in a close continuing relationship with an employer representative associated with collective bargaining.

In its exceptions, the Association contends that the hearing examiner erred in (1) concluding that the secretary/payroll clerk was confidential within the meaning of section 301(13) of PERA; (2) making various findings of fact; (3) failing to conclude that the Employer inappropriately spread confidential work among its employes to exclude them from the bargaining unit; (4) failing to reject the Employer's confidential exclusion based upon the fact that the Business Manager already has a confidential secretary; and (5) failing to require that the Employer prove that it was unable to cost out their proposals using only the Business Manager's secretary.

The Association's exceptions are without merit. The Board has examined the findings of fact made by the hearing examiner and determined that, on the whole, they accurately reflect the evidence of record. Finding of fact 4 has been amended to reflect the expanded role of Mr. Sanford in the collective bargaining negotiations on behalf of the District and the fact that Mr. Sanford did not use Ms. Pompanella to assist with respect to the District's proposals to WHEA because her husband was a member of the WHEA bargaining unit. With respect to finding of fact 5, the Association contends that the hearing examiner incorrectly found that Ms. Cramer was aware that she was preparing spreadsheets for use in the Employer's bargaining proposals. However, finding of fact 5 makes no reference to Ms. Cramer's knowledge regarding the use of the spreadsheets that she prepared, although Mr. Sanford did testify that "if she's perceptive, she could figure that out." (N.T. 28) The Association also claims that finding of fact 4 does not accurately reflect that the previous secretary/payroll clerk was a member of the bargaining unit when she prepared spreadsheets used to analyze union proposals during previous negotiations. The very nature of the petition for unit clarification

presupposes that the position that the Employer seeks to exclude from the bargaining unit is and has been included in the bargaining unit. The Association also contends that the hearing examiner erred in finding of fact 6 in which the hearing examiner credited Mr. Sanford's reasons for assigning the preparation of the spreadsheets to Ms. Cramer rather than his own secretary, Ms. Rizzo. Mr. Sanford testified that it was more practical to assign this work to Ms. Cramer because Ms. Rizzo was, at the same time, typing the Employer's negotiation proposals. Additionally, unlike Ms. Rizzo, Ms. Cramer had access to and worked with the payroll information in the regular course of her duties. The Association contends that Ms. Rizzo had been the secretary/payroll clerk prior to Ms. Pompanella and was familiar with payroll work. However, the fact that Ms. Rizzo happened to previously hold the secretary/payroll clerk position does not undermine Mr. Sanford's testimony that the work was more practically assigned to the present occupant of that position. Accordingly, the findings made by the hearing examiner will not be amended.

The Association also contends that the hearing examiner erred in concluding that the secretary/payroll clerk works in a close continuing relationship with the Business Manager. The Association argues that the only thing close and continuing about the relationship between Ms. Cramer and Mr. Sanford is that their work areas are in close proximity to each other. However, Ms. Cramer not only works in close proximity to Mr. Sanford, but also is involved with Mr. Sanford's collective bargaining responsibilities on behalf of the Employer. Such job duties are indicative of the type of close and continuing relationship directly related to collective bargaining that would justify a confidential exclusion. In PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978) our Supreme Court recognized that the confidential exclusion under PERA results in the denial of the salutary affects of collective bargaining rights to the excluded employees. Accordingly, the Supreme Court affirmed the Board's interpretation of the confidential exclusion as a narrow one that should only be invoked where the exclusion of the position allows the employer to conduct its negotiations on a fair and equal footing with the union. The Supreme Court's admonition in this regard requires that in order for an individual to be excluded as confidential, that individual's work with the employer representative associated with collective bargaining must be directly related to that individual's collective bargaining responsibilities on behalf of the employer. The secretary/payroll clerk's duty with respect to the preparation of spreadsheets used in the Employer's proposals is just the type of job duty that substantiates a close continuing relationship.

The Association finally contends that because the Business Manager's secretary is already excluded from the bargaining unit as confidential, the use of the secretary/payroll clerk for the preparation of collective bargaining materials amounts to an inappropriate disbursement of confidential duties in order to gain the exclusion of additional positions from the bargaining unit. However, as the hearing examiner found, the Business Manager credibly testified that he assigned this work to Ms. Cramer because she was more familiar with the payroll information. Ms. Cramer, unlike Ms. Rizzo, had access to and worked with the payroll information in the regular course of her duties. There also exists the unique factual situation here of Mr. Sanford's expanded role in negotiations on behalf of the Employer and the fact that Mr. Sanford was constrained in assigning this work to the previous occupant of this position because that person's husband was a member of the bargaining unit

with which the Employer was negotiating. The hearing examiner correctly noted that this is not a case where the employer is merely dividing the same work among different individuals in order to exclude more positions from the bargaining unit. Rather, this is a case where the Employer is assigning job duties consistent with the different functions performed by the Business Manager's secretary and the secretary/payroll clerk. Fairview School District, 8 PPER 358 (Nisi Decision and Order, 1977). In such circumstances, the fact that the Business Manager already has a confidential employe working for him does not preclude the finding that an additional employe in the same office is confidential. A different conclusion would result if, for example, the testimony had revealed that the Business Manager assigned his secretary and the secretary/payroll clerk to each type a portion of the proposals that he was preparing for negotiations. See West Jefferson Hills School District, 25 PPER ¶ 25137 (Final Order, 1994)(employe who provided secretarial services to the business manager was not confidential where another employe provided the same services to the business manager); Commodore Perry School District, 3 PPER 35 (Order and Notice of Election, 1973)(same); Blackhawk School District, 4 PPER 76 (Nisi Decision and Order, 1974)(three of five secretaries in a secretarial pool found not to be confidential despite the fact that any pool employe may be assigned confidential work). As noted above, our Supreme Court in Altoona Area School District has affirmed the Board's interpretation of the confidential exclusion as a limited exclusion to be applied only where the inclusion of the employe in the bargaining unit would impair the employer's ability bargain on a fair and equal footing with the union. In implementing the Supreme Court's decision, the Board is committed to closely scrutinizing the facts when an employer's assignment of job duties among various employes results in additional employes being removed from a bargaining unit and denied all rights under PERA. We agree with the hearing examiner that the unique facts in this case do not support the conclusion that the Employer is scattering confidential duties in order to gain more confidential exclusions than are necessary to conduct its collective bargaining negotiations on a fair and equal footing.

After a thorough review of the exceptions, the brief in support of exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Association 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 by the Association in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Order of Unit Clarification issued by the hearing examiner 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, and L. Dennis Martire, Member, this nineteenth day of March, 2002. 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.