

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-U-05-133-W  
: (Case No. PERA-R-03-110-W)  
: :  
WESTERN BEAVER COUNTY SCHOOL DISTRICT :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On March 10, 2005, the Western Beaver Educational Support Personnel Association, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to include the position of payroll clerk in a bargaining unit comprised of Western Beaver County School District (District) employees that was previously certified by the Board at Case No. PERA-R-03-110-W. On May 24, 2005, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on August 12, 2005, if the parties were unable to agree on the matters raised in the petition by then. The hearing examiner thereafter twice continued the hearing upon the request of the Association and without objection by the District. On February 24, 2006, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On April 6, 2006, the Association filed a brief. On April 10, 2006, the District filed a brief.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On June 11, 2003, the Board certified the Association as the exclusive representative of the following bargaining unit of District employees:

"All full-time and regular part-time non-professional employees including but not limited to secretaries, teacher aides, cafeteria workers and plant service personnel; and excluding management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the [Public Employee Relations] Act [(Act)]."

(Case No. PERA-R-03-110-W)

2. Pursuant to a stipulation of the parties, the Board found the secretary to the superintendent, the business manager and the payroll clerk to be confidential employees. (Case No. PERA-R-03-110-W)

3. In the normal course of her duties, the payroll clerk performs a wide variety of tasks involving the payroll and employee benefits and accesses "classified" records containing information about employees such as dates of hire, attendance, letters of reprimand and unemployment compensation. (N.T. 10-12, 16-17; Association Exhibit 1)

4. During negotiations, the payroll clerk has provided the superintendent with the salaries paid to employees and the business manager with the costs of insurance for employees. (N.T. 13-14, 16-18)

5. During budget preparations, the payroll clerk has provided the business manager with information regarding insurance and salaries and has been aware of items that are over-budgeted. (N.T. 18-20)

6. During the past three years, the payroll clerk has substituted for the secretary to the superintendent approximately ten times. (N.T. 9)

## DISCUSSION

The only question for disposition is whether or not the payroll clerk is a confidential employe under section 301(13) of the Act, which provides as follows:

"'Confidential employe' shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer."

The District contends that the payroll clerk is a confidential employe under section 301(13)(i) because she "has access to financial information and other strategic information used by the school district during negotiations of contracts" (brief at 5). The District also contends that the payroll clerk is a confidential employe under section 301(13)(ii) because she substitutes for the secretary to the superintendent and thus works in a close continuing relationship with the superintendent as a representative associated with collective bargaining on behalf of the District.

The Association contends that the payroll clerk cannot be found to be a confidential employe under section 301(13)(i) because the record does not show that she has been privy to the District's collective bargaining strategy. The Association admits that the superintendent is a representative associated with collective bargaining on behalf of the District but contends that the payroll clerk cannot be found to be a confidential employe under section 301(13)(ii) because as a substitute for the secretary to the superintendent she does not work in a close continuing relationship with the superintendent. The Association contends that the payroll clerk should not be found to be a confidential employe in any event because the District already has enough confidential employes to service its collective bargaining needs.

In PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), the court held that section 301(13)(i) is to be narrowly construed to cover only "those employes whose inclusion in the bargaining unit would prevent the employer from bargaining with the union on even terms," 389 A.2d at 559, while section 301(13)(ii) is to be narrowly construed to cover "only those employes whose inclusion in the bargaining unit would seriously impair the employer's ability to bargain on a fair and equal footing with the union." Id. at 557. As the court opined, section 301(13) is "not intend[ed] to deny the benefits of public employe status to every employe however tangentially connected to collective bargaining negotiations." Id. The court also held that neither involvement with grievances nor access to personal files provides a basis for finding an employe to be confidential.

In Derry Township, 36 PPER 167 (Final Order 2005), the Board recently reiterated the law with respect to section 301(13)(i) as follows:

"With respect to the test under 301(13)(i), the Board has interpreted the information to which an employe must be privy in order to be excluded as a confidential employe as follows:

It is only when an employe is privy to the relevant determination of the employer's policy that the person may be found to be confidential. The collective bargaining information must be of such a definitive nature that the union would know of the employer's plan if said information is revealed.

Bangor School District, 9 PPER ¶ 9295 (Nisi Decision and Order, 1978). The Board and the Courts have required a definitive showing that an employe is actually exposed to confidential collective bargaining information to support a confidential exclusion. Penn Township, 15 PPER ¶ 15015 (Final Order, 1983); Northgate School District, 9 PPER ¶ 9220 (Final Order, 1978); Washington Township Municipal

Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), petition for allowance of appeal denied, 525 Pa. 652, 581 A.2d 577 (1990)."

36 PPER at 487. Thus, the Board found that a clerical employe who was exposed to information the employer was gathering to make a collective bargaining proposal was not confidential under section 301(13)(i) because the record did not show that her exposure to the information resulted in her being privy to the employer's collective bargaining strategy. Compare City of Bethlehem, 22 PPER ¶ 22094 (Final Order 1991)(secretary who had advance knowledge of proposals the employer presented at the bargaining table was a confidential employe).

In North Hills School District v. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 566 Pa. 653, 781 A.2d 150 (2001), the court held that there need be no showing that an employe is privy to the employer's collective bargaining strategy in order for the employe to be found to be confidential under section 301(13)(ii). As the court explained, section 301(13)(ii) "appears to assume that [an] employe [working in a close continuing relationship with a representative associated with collective bargaining on behalf of the employer] would have access to confidential information, so that their 'inclusion in the bargaining unit would seriously impair the public employer's ability to bargain on a fair and equal footing with the union.' [Altoona Area School District, *supra*, 480 Pa.] at 155, 389 A.2d at 557." 762 A.2d at 1159 (footnote omitted).

In Fox Chapel Area School District, 24 PPER ¶ 24009 (Final Order 1992), the Board noted that "[i]t is a long-standing policy of the Board that in making unit determinations, the Board will not rely upon the limited performance of confidential . . . duties when an employe is filling in for another employe." 24 PPER at 19. Thus, in North Middleton Township, 11 PPER ¶ 11025 (Order and Notice of Pre-Election Conference 1980), 12 PPER ¶ 12005 (Final Order 1980), the Board found that an employe who filled in for an employe who worked in a close continuing relationship with a representative associated with collective bargaining on behalf of the employer was not a confidential employe under section 301(13)(ii). As the Board explained, "[t]his connection with collective bargaining matters is tenuous at best and falls far short of the Act's requirements for confidential employe status." 11 PPER at 47. Compare Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order 2002)(secretary/payroll clerk who worked directly for and provided collective bargaining information to a member of the employer's bargaining team was a confidential employe).

In Cheltenham School District, 32 PPER ¶ 32098 (Final Order 2001), the Board noted that it "has prohibited employers from distributing confidential duties among various employes to gain confidential exclusions for more employes than are necessary for an employer to conduct its collective bargaining." 32 PPER at 254.

Application of the law to the facts of record leads to the conclusion that the payroll clerk is not a confidential employe under either section 301(13)(i) or section 301(13)(ii). As set forth in finding of fact 3, the record shows that the payroll clerk has access to personal and grievance information that is confidential in a generic sense, but in Altoona Area School District, *supra*, the court held that access to information of that sort provides no basis for finding an employe to be confidential as the Act defines the term. As set forth in findings of fact 4-5, the record shows that the payroll clerk has provided the superintendent and business manager with information for collective bargaining and budget preparation and has been aware of items that are over-budgeted, but the record may be searched in vain for any evidence that the payroll clerk has been privy to the District's collective bargaining strategy, so under Derry Township, *supra*, there is no basis for finding her to be a confidential employe under section 301(13)(i). See also Tunkhannock Area School District, 29 PPER ¶ 29023 (Final Order 1997)(payroll clerk who provided financial information to the business manager was not a confidential employe because she was not privy to the employer's collective bargaining strategy). As set forth in finding of fact 6, the record shows that the payroll clerk has substituted for the secretary to the superintendent on occasion, but under North Middleton Township, *supra*, the fact that she has done so provides no basis for finding that she is a confidential employe under section 301(13)(ii).

In view of the foregoing, there is no need to decide if the payroll clerk should not be found to be a confidential employe because the District already has enough confidential employes to service its collective bargaining needs.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The District is a public employer under section 301(1) of the Act.
2. The Association is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The payroll clerk is not a confidential employe under section 301(13) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the certification previously certified by the Board at Case No. PERA-R-03-110-W is amended to include the position of payroll clerk in the bargaining unit.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED and MAILED from Harrisburg, Pennsylvania, this thirteenth day of April 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner

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April 13, 2006

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WESTERN BEAVER COUNTY SCHOOL DISTRICT  
Case No. PERA-U-05-133-W

Enclosed is a copy of the proposed order of unit clarification that I have issued this date.

Sincerely,

DONALD A. WALLACE  
Hearing Examiner

Enclosure

cc: Enrico Antonini  
Pittsburgh Regional Office