

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
WILLIAMSPORT AREA SCHOOL DISTRICT : Case No. PERA-U-07-510-E

**PROPOSED ORDER OF DISMISSAL**

On December 3, 2007, the Williamsport Area School District (District) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification (Petition) seeking to exclude as confidential the position of Payroll Officer from the bargaining unit of nonprofessional employees of the District, exclusively represented by the Williamsport Area Education Support Professionals (Union). On January 4, 2008, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Thursday, January 31, 2008, at the District in Williamsport, Pennsylvania. During the hearing on that date, both parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

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

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3).
3. Michelle Winter is the District's Payroll Officer. Ms. Winter telephones and e-mails Debbra Savage, the Director of Human Resources for the District, and the other personnel in the Human Resources Office, to obtain information about individual employes. This information concerns overtime, compensation time, employe benefits, insurance co-pays and disability status for individual employes' salary determinations and calculations. Ms. Winter contacts Human Resources to determine whether overpayments have been made to employes and to determine the FMLA status of employes. Ms. Winter also deals with employe purchase of retirement service, life insurance and timesheets for payroll purposes. Ms. Winter rarely visits Ms. Savage in person for any purpose. (N.T. 10-11, 14-15, 17, 32, 37, 39, 47).
4. The information Ms. Winter seeks and obtains from Human Resources is for payroll purposes only and not for reviewing or preparing collective bargaining strategy on behalf of the District. Ms. Savage and Ms. Winter have not at any time discussed bargaining strategies. The District has not at any time asked Ms. Winter to review or contribute to the District's bargaining strategy. (N.T. 28, 31, 34).
5. Ms. Winter corroborated, with her testimony, that the job description that she prepared accurately reflects her actual job duties. Ms. Winter's daily job duties as Payroll Officer include the following: she obtains information from District secretaries regarding employe hours and leave; she obtains information from school board agendas regarding new hires and terminations or changes in the status of individual employes; she produces payroll reports; she contacts Human Resources to obtain necessary missing information required for the preparation of payroll. She has also developed a time keeping system to account for administrative days off of employes for payroll purposes. (N.T. 35-36; Union Exhibit A-1).
6. Ms. Savage works with the school board and counsel to formulate bargaining strategies for negotiations. She did not participate in any pre-petition negotiations. (N.T. 13, 30-31).

7. Ms. Winter does not work near the office of Ms. Savage. Ms. Winter's office is located on the second floor of the District's administration building whereas Ms. Savage's office is located on the first floor of the administration building. Ms. Savage has three assistants working in her office and all three are excluded from the bargaining unit. (N.T. 28, 35).

8. Ms. Winter does not see the budget either before or after it is approved. She accesses budgetary information after the budget has been approved to prepare and modify the payroll. Ms. Winter has access to raw data, but she has no access to the District's collective bargaining strategies. (N.T. 40-41, 46, 53).

9. Mr. Peterson is the District's Business Manager, and he has been on the District's negotiating team in the past. Ms. Winter's office is not part of Mr. Peterson's office. Ms. Winter meets with the Business Manager approximately twice per month when she has a payroll question. Ms. Winter e-mails the Business Manager to produce a record of a request or transaction between her and the business office. The Business Manager has not at any time provided Ms. Winter with the District's bargaining strategy. (N.T. 45-48, 52-53).

10. Ms. Winter has in the past provided payroll information to the Union negotiating team containing information on employe wages, hire dates as well as pay and pay-step information. (N.T. 49-51).

#### DISCUSSION

In its unit clarification petition, the District alleges that the Payroll Officer, currently held by Ms. Winter, should be excluded from the non-professional bargaining unit. The District generally claims that an examination of Ms. Winter's job duties satisfies both of the statutory criteria for a confidential employe under PERA. As the party seeking to exclude the Payroll Officer position from the non-professional bargaining unit, the District has the burden of proving the facts necessary to support the conclusion that the Payroll Officer position is confidential. In the Matter of the Employes of Riverview Intermediate Unit #6, 37 PPER 106 (Final Order, 2006); In the Matter of the Employes of State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999); In the Matter of the Employes of Tunkhannock Area Sch. Dist., 29 PPER ¶ 29023 (Final Order, 1997). The Board relies on the actual job duties of the position in question to make bargaining unit determinations. In the Matter of the Employes of Elizabeth Township, 33 PPER 33053 (Final Order, 2002), aff'd unreported, Elizabeth Township v. PLRB, 1521 C.D. 2002 (Pa. Cmwlth. March 17, 2003); Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1989). Written job descriptions alone, without corroborative testimony establishing actual job duties, are insufficient to establish factual support for the exclusion. Elizabeth Township, supra. Therefore, speculative employe conduct and post-petition conduct will not support a statutory exclusion from the bargaining unit under PERA. Washington Township, supra. Moreover, the District has the burden of proving the exclusion by clear and convincing evidence before the employe's rights under PERA will be deprived. In the Matter of the Employes of Bangor Area Sch. Dist., 9 PPER ¶ 9295 (Nisi Decision and Order, 1978).

Section 301(13) of PERA provides the statutory requirements for removing a confidential employe from the bargaining unit 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.

43 P.S. § 1101.301(13). The confidential exclusion "balance[s] the right of employes to be represented with the right of the employer to formulate its labor policies with the assistance of employes not represented by the union with which it deals." PLRB v. Altoona Area Sch. Dist., 480 Pa. 148, 389 A.2d 553, 556 (1978). PERA granted extraordinary rights

and protections to public employees that will not be lightly taken. Id. In light of the policies and mandates of PERA and binding caselaw, the record reveals that the District has not met its burden of proving that the Payroll Officer is confidential within either of the two standards under Section 301(13) of PERA.

### Section 301(13)(i)

The District maintains that, pursuant to Section 301(13)(i), the Payroll Officer is confidential because she "has access to reports and documents on the computer system which can be utilized to gain access to personnel information." (District Brief at 2).<sup>1</sup> The District further contends that the confidential exclusion applies here because Ms. Winter has access to numerous files that would have impact on negotiations. "This information includes salary, benefits, leaves of absences as well [as] proposals and reports which outline information used in preparing for collective bargaining by the District." (District Brief at 3).

The term "confidential," as used in Section 301(13) of PERA, has been narrowly defined by court and Board case law. Altoona, supra. That definition is significantly at variance with the manner in which the term is used in common parlance. The uniquely distinguishing element of PERA confidentiality is that the confidential employee has access, either actual under Section 301(13)(i) or assumed under (ii) to the employer's collective bargaining strategies and/or policies.<sup>2</sup> The Board has long held that an employee who accesses, uses and compiles raw personal, private employee data for purposes of generating payroll, like Ms. Winter in this case, is not confidential within the meaning of Section 301(13)(i). In the Matter of the Employees of Bangor Area Sch. Dist., 9 PPER ¶ 9295 (Nisi Decision and Order, 1978). The payroll clerk in Bangor, as the District's Payroll Officer in this case, prepared all aspects of employee payroll and insurance with the use of private, personal employee information. However, the Board determined that the payroll clerk was not confidential because she did not see, review, prepare or formulate the employer's bargaining policies or strategies with respect to that information. The Board and the courts have long placed paramount emphasis on the fact that the employee in the position sought to be excluded as confidential under Section 301(13)(i) must at be privy to the employer's collective bargaining strategies or policies. Tunkhannock, supra. This means that the employee must at least see or hear those strategies or policies. Accessing raw data or compiling reports that may ultimately be used by the employer in the formulation of its collective bargaining strategy is insufficient to remove a person from the bargaining unit and deprive them of their rights under the statute. Tunkhannock, supra.

In Columbia/ Snyder/ Montour/ Union Mental Health/ Mental Retardation Program v. PLRB, 383 A.2d 546 (Pa. Cmwlth. 1978), the Commonwealth Court affirmed the decision of the Board and held that an employee was not confidential even though that employee would have access to and knowledge of budgets, allocations of funds, salaries and memoranda detailing proposed salary increases before that information was made known to the union in bargaining. Also, the Board has held that an accounting supervisor, who priced fringe benefit proposals on behalf of his employer and performed payroll duties, was not privy to specific bargaining strategies that would seriously impair the employer's bargaining position if such information was revealed to the union. Tunkhannock Area Sch. Dist., supra. Also, in In the Matter of the Employees of Western Beaver County Sch. Dist., 37 PPER 53 (Proposed Order of Unit Clarification, 2006), the hearing examiner held that the payroll clerk was not confidential, even though the clerk had access to payroll, grievances, personal information and had compiled information for collective bargaining and budget preparation, because the payroll clerk was not privy to the employer's bargaining strategy.

---

<sup>1</sup> Although the District's post-hearing brief did not contain page numbers, the examiner has taken the liberty of sequentially numbering the pages.

<sup>2</sup> Under Section 301(13)(i), there are two elements that must be satisfied: (1) that the employee work in the "personnel offices" of the public employer and (2) that the employee have access to information subject to use by the employer in bargaining. In the Matter of the Employees of Bangor Area Sch. Dist., 9 PPER ¶ 9295 (Nisi Decision and Order, 1978). There is no dispute in this case that Ms. Winters works in the "personnel offices" of the District, which has been defined as the offices of the public employer "in which central personnel record-keeping functions are performed." Bangor, 9 PPER at 532.

The record demonstrates that Ms. Winter performs the following job duties: she obtains information from District secretaries regarding employe hours and leave; she obtains information from school board agendas regarding new hires and terminations or changes in the status of individual employes; she produces payroll reports; she has developed a time keeping system to account for administrative days off; she also contacts Human Resources to obtain personal, private information about individual District employes for the purpose of preparing and generating employe payroll only. This information concerns overtime, compensation time, employe benefits, insurance co-pays and disability status for individual employes' salary determinations and calculations. Ms. Winter also contacts Human Resources to determine whether overpayments have been made to employes and to determine the FMLA status of employes. Ms. Winter also deals with employe purchase of retirement service, life insurance and timesheets for payroll purposes. Ms. Savage and Ms. Winter have not at any time discussed bargaining strategies.

The District has not at any time asked Ms. Winter to review or contribute to the District's bargaining strategy. Although Ms. Winter has in the past provided the Union negotiating team information on employe wages, hire dates as well as pay and pay-step information, this raw data does not reveal the District's collective bargaining strategies or policy information. Ms. Winter does not see the budget either before or after it is approved. She accesses budgetary information after the budget has been approved to prepare and modify the payroll. The record in this case clearly shows that Ms. Winter does not review, formulate, see or hear the District's collective bargaining policies or strategies. Therefore, Ms. Winter's association with the Union does not "seriously impair" or even compromise the District's collective bargaining position. Accordingly, the District did not meet its burden of proving that the Payroll Officer "has access to information subject to use by the public employer in collective bargaining" within the meaning of Section 301(13)(i).

#### **Section 301(13)(ii)**

The District maintains that, pursuant to Section 301(13)(ii), "[t]he Payroll Officer at the District has continually contacted the Human Resources Department as well as the Business Office to perform her duties." (District Brief at 4). Both the Human Resources Director and the Business Manager, argues the District, are on the bargaining team in negotiations with the Union, and PERA assumes access to confidential information when such a relationship is established. (District Brief at 4-5). In North Hills Sch. Dist. v. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000), the Commonwealth Court indeed opined that PERA assumes access to confidential information when an employe "works in a close continuing relationship with . . . representatives associated with collective bargaining." However, while the record establishes that both the Human Resources Director and the Business Manager are associated with collective bargaining on behalf of the District, the record also supports the conclusion that Ms. Winter does not work in a close continuing relationship with either one of them.

Ms. Winter does not work near the office of Ms. Savage. Ms. Winter's office is located on the second floor of the District's administration building whereas Ms. Savage's office is located on the first floor of the administration building. Ms. Savage has three assistants working in her office and all three are excluded from the bargaining unit. Mr. Peterson is the District's Business Manager and he has been on the District's negotiating team in the past. Ms. Winter's office is not part of Mr. Peterson's office. Ms. Winter meets with Business Manager directly approximately twice per month when she has a payroll question. Ms. Winter e-mails the Business Manager to produce a record of a request or transaction between her and the business office. The Business Manager has not at any time provided Ms. Winter with the District's bargaining strategy. The examiner does not agree with the District's argument that, because Ms. Winter telephones and e-mails the Business Manager and Human Resources Director for the purpose of obtaining necessary payroll information, Ms. Winter has a "close continuing relationship" with either one within the meaning of Section 301(13)(ii) of PERA. Because the District failed to meet its burden of proving that Ms. Winter works in a close continuing relationship with either Ms. Savage or Mr. Peterson, the District also failed to meet its burden of establishing that Ms. Winter should be excluded as a confidential employe under Section 301(13)(ii). Ms. Winter lacks

even a tangential association with either the District's collective bargaining strategies or persons involved with bargaining strategies for the District.

**CONCLUSIONS**

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The position of Payroll Officer is not confidential within the meaning of Section 301(13) of PERA.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the petition for unit clarification is dismissed.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

SIGNED, DATED AND MAILED this second day of May, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

\_\_\_\_\_  
JACK E. MARINO, Hearing Examiner