

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PERA-U-07-26-W
: (PERA-R-7525-W)
: (PERA-R-03-250-W)
PENN HILLS SCHOOL DISTRICT :

PROPOSED ORDER OF DISMISSAL

On January 12, 2007, the Penn Hills Educational Support Personnel Association, ESPA/PSEA/NEA (Association or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the position of payroll officer in the unit of white-collar non-professional employes of the Penn Hills School District (District or Respondent) represented by the Association and certified by the Board at PERA-R-7525-W.

On February 9, 2007, the Secretary of the Board issued an order and notice of hearing fixing April 30, 2007, in Pittsburgh as the time and place of hearing. The hearing was continued and held on August 15, 2007.

At that time, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Penn Hills School District is a public employer within the meaning of Section 301(1) of the Act. (N.T. 8)
2. That the Penn Hills Educational Support Personnel Association, ESPA/PSEA/NEA is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 8)
3. That the Association is the exclusive representative of all full-time and regular part-time white collar non-professional employes including but not limited to secretaries, secretary to the parenting program, clerical employes, key punch operators, data processing clerks, computer aides, health room aides, instructional student aides, computer tech aides and inclusion aides; and excluding management level employes, supervisors, first level supervisors, first level supervisors, confidential employes and guards as defined in the Act. (Case No. PERA-R-7525-W and PERA-R-03-250-E). (N.T. 4-5)
4. That in 1987, this hearing examiner issued a Proposed Order of Dismissal in PERA-U-87-125-W, dismissing an Association Petition for Unit Clarification seeking to include the payroll officer in the white-collar non-professional unit. The Proposed Order of Dismissal found, inter alia, that the payroll officer, Evelyn Kinsey, was on the District's negotiating team and was privy to collective bargaining proposals in advance of their presentation to the Association. The Order found the payroll officer position was confidential within the meaning of Section 301(13) of the Act. (N.T. 6-7, Board Exhibit 1)
5. That the Association and the District are parties to a collective bargaining agreement governing the terms and conditions of employment for the employes in the nonprofessional unit. (N.T. 11-13, Association Exhibit 1)
6. That the District now employs Paul Schrecengost in the position of payroll officer. (N.T. 38)
7. That Mr. Schrecengost has held the position since March, 2007. He is the fourth person to hold the position since its status as a confidential position was litigated in 1987. Evelyn Kinsey held the position from 1983 to 2002. Ramona Pope held it from 2002 to 2006. Shawn Lewis held it from July, 2006 to December, 2006. The District hired Mr. Schrecengost in March, 2007. (N.T. 39)

8. That Mr. Schrecengost is supervised by Bruce Dakan, the Business Manager. (N.T. 35, 39)
9. That Mr. Dakan has been Business Manager since July 1, 2003. (N.T. 35)
10. That the payroll officer has his own office but shares the same communal area with the business manager. (N.T. 63)
11. That Mr. Dakan supervises four employes: the payroll officer; an accounting supervisor; an accounts payable supervisor and a secretary (Sandy Arrigo). (N.T. 35)
12. That presently, the District employs approximately thirty-nine (39) secretaries (N.T. at 11).
13. That in addition to the payroll officer, three of the 39 secretaries are confidential employes under Section 301(13) of the Act: Donna Lord-Liberto, secretary to the superintendent; Anita Vestri, secretary to the assistant superintendent; and Ms. Arrigo, secretary to the business manager. (N.T. 11, 35, 64)
14. That while the payroll officer deals specifically with payroll issues, many of the job functions-such as data processing, file maintenance, telephone communications and correspondence preparation- are comparable to those performed by secretarial members of the unit. (N.T. 39, 62, 71, 83, Exhibits D-3 and A-1).
15. That akin to other members who work in the district's business office, the payroll officer works 8:30 a.m. to 4:30 p.m. (N.T. 18).
16. That the payroll officer also frequently interacts with other bargaining unit members through his or her work. (N.T. 19-20).
17. That Mr. Dakan is the District's main representative for negotiating collective bargaining agreements with the District's four unions. (N.T. 36-38)
18. That Evelyn Kinsey, who was subject of the 1987 Board proceedings, continued to work in the position of payroll officer until 2002. (N.T. 54-85).
19. That Ms. Kinsey did, at times, attend negotiation sessions. (N.T. 85-86).
20. That Gary Koser, Mr. Dakan's predecessor as Business Manager, shared information with Ms. Kinsey that would have been easily understood as going into proposals. He told Ms. Kinsey about payroll proposals that the District intended to make in collective bargaining. (N.T. 44-45, 87, 90-91)
21. That in 2002, Ramona Pope succeeded Ms. Kinsey as payroll officer. Her supervisor was business managers Gary Koser, then Bruce Dakan. In that position, she was privy to the District's collective bargaining strategy. Mr. Dakan shared collective bargaining information with Ms. Pope to review for accuracy and to advise him. (N.T. 65)

DISCUSSION

The Association has petitioned the Board to include the position of payroll clerk in the bargaining unit of white-collar non-professional employes. This hearing examiner, in 1987, dismissed a similar Association petition and determined the position was confidential within the meaning of Section 301(13) of the Act. position.

As the petitioning party, the Association must prove two elements. First, the Association has the burden of showing that the positions at issue share an identifiable community of interest with the positions in the unit. Amalgamated Transit Union, Local 89 v PLRB, 493 A.2d 485, (Pa. Cmwlth. 1985). In determining whether an identifiable community of interest exists, the Board takes into consideration a variety of factors including the employes' skills, duties, areas of work, working conditions, interchange of employes, supervision, grievance procedure, hours of work, trade requirements, pay scales and employe desires. Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). Such factors

as the type of work performed, educational and skill requirements, benefits and bargaining history would also be considered by the Board in deciding if there was an identifiable community of interest. State System of Higher Education, 757 A.2d 442, at 447 (Pa. Cmwlth. 2000), appeal denied, 565 Pa. 659, 771 A.2d 1293 (2001). However, an identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, conditions of employment and other factors. Western Psychiatric Institute v PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974); In the Matter of the Employes of Intermediate Unit 1, 35 PPER ¶ 1 (Proposed Order of Unit Clarification, 2004).

Based on a review of all of the evidence of record, the Association has satisfied its burden of proving that an identifiable community of interest exists between the payroll clerk and the other members of the bargaining unit. There are substantial similarities between the position of payroll clerk and the other positions in the unit in terms of skills, hours of work, interaction with unit employes and chain of supervision.

Now we turn to the second element the Association must prove. Since the position was excluded as a confidential employe in the 1987 proposed order of dismissal, the Association must prove there has been a change in job duties since that time. Northeastern Intermediate Unit No. 19, 11 PPER ¶ 11232 (Nisi Order of Unit Clarification, 1980). The Association must show that the duties no longer meet the statutory test for confidential employe, defined in Section 301(13) of the Act, 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 thrust of the Association's argument is that the payroll officer no longer performs duties that would make the position privy to its collective bargaining proposals, thereby not qualifying for Section 301(13)(i) confidential status. Two of the last four people who held the payroll officer position testified. Evelyn Kinsey, who left the position in 2002, testified that she continued to sit in negotiations for the secretaries, the custodians and cafeteria workers. She testified that the business manager Mr. Koser would discuss with her proposals that involved payroll issues. By her own testimony, then, it does not appear that her confidential duties changed. Ramona Pope, who held the position from 2002 to 2006 testified that she had no advance knowledge of the District's bargaining proposals. However, Mr. Dakan, her supervisor, rebutted this, testifying that he shared information with her that would have revealed the District's proposals and strategy. In this conflict of evidence, having observed the demeanor of both witnesses, I found Mr. Dakan a more credible witness. Accordingly, the Association has not proven that the payroll officer's duties changed to with respect to Section 301(13)(i) of PERA.

Even if the Association had proven the duties no longer qualify for Section 301(13)(i) status, the Association's petition must also be viewed against subsection (ii), which excludes as confidential "any employe who 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).

In North Hills School District v. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000), the Commonwealth Court addressed the question of whether the district had proven that an additional position, secretary to the assistant superintendent (Richard Santillo) should be excluded as confidential. The Court found that the assistant superintendent was associated with collective bargaining on behalf of the district because he was a member of the district's bargaining team and sat at the bargaining table during negotiations. The court found that the secretary to the assistant superintendent was a confidential employe under the second prong of Section 301(13) of PERA because "as Santillo's only secretary, Dougherty clearly has a close continuing relationship with Santillo" Id. at 1158-1159.

The District argues that the payroll officer is also confidential on the basis of Section 301 (13)(ii) because Mr. Dakan is the administrator who is primarily responsible for collective bargaining and the payroll officer works closely with him in collective bargaining. The Association argues that Mr. Dakan's role as the District's main person responsible for collective bargaining negotiations should not result in an automatic finding that the payroll officer is still confidential. The Association points out that Mr. Dakan already has a confidential secretary, Ms. Arrigo. Additionally, there are also two other confidential secretaries, one for the superintendent and another for the assistant superintendent.

The Association points to Reynolds School District, 22 PPER ¶ 22098 (Final Order, 1991), where the Board found that two employees were not confidential and noted that "employer cannot scatter confidential job duties among various employees to secure confidential exclusions for more employees than area necessary for the employer to conduct its bargaining." Id. at 224. Later, in Cheltenham School District, 32 PPER ¶ 32098 (Final Order 2001), the Board noted that it "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." 32 PPER at 254.

But the facts of those cases are distinguishable from the present situation. Both those cases involved newly created positions doing work that the Board found could be done by other persons who were already designated as confidential. In Reynolds School District, the Association was seeking to include two new positions in the central administration offices. In Cheltenham School District, the Association was seeking to include a newly created personnel clerk position in the unit. In the present case, the payroll officer position at issue is an existing position that has been excluded from the unit for the past 20 years. The District is not scattering job duties to more employees than are necessary to conduct collective bargaining.

The Board will not automatically conclude that the existence of another confidential employee means that an employer is scattering job duties. In Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order, 2002) the Board found that the fact that the business manager already had a confidential employee working for him "does not preclude the finding that an additional employee in the same office is confidential." Id at 140. The additional employee was more familiar with payroll issues and the Board found that the business manager testified credibly that he assigned confidential work to this employee because of her familiarity with the payroll. A similar situation exists in the present case where the business manager, the administrator principally responsible for collective bargaining, uses the payroll officer for confidential tasks because of familiar. The business manager is not unnecessarily scattering confidential work to the payroll officer.

CONCLUSIONS

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

1. That the Penn Hills School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the Penn Hills Educational Support Personnel Association ESPA/PSEA/NEA is an employee organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties.
4. That the position of payroll officer is confidential within the meaning of 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 petition is dismissed.

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 twenty-second day of April, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner