

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PERA-U-07-438-E  
: (PERA-R-82-524-E)  
HAZLETON AREA SCHOOL DISTRICT : (PERA-R-2337-E)

**PROPOSED ORDER OF UNIT CLARIFICATION**

On October 12, 2007, the Hazleton Area School District (District) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board), seeking clarification of a unit of nonprofessional employes the District represented by the Hazleton Area Educational Support Professionals (Association) to exclude the positions of Secretary to Assistant Superintendent as a confidential employe and Coordinator of Child Accounting as a management level employe.

On November 13, 2007, the Secretary of the Board issued an Order and Notice of Hearing in which January 15, 2008, was assigned as the time and place of a telephone pre-hearing conference to resolve the matters in dispute without a hearing and February 7, 2008, in Harrisburg was assigned as the time and place of hearing, if necessary. On January 30, 2008, the parties informed the examiner assigned to the case that the case could be decided on the basis of stipulations of fact. On February 28, 2008, the Association counsel agreed to the District's proposed stipulated facts.

The examiner, on the basis of the Stipulations of Fact and from all other matters and documents of record makes the following:

FINDINGS OF FACT

1. That the Hazleton Area School District (District) is a public employer as defined in the act.
  2. That the Hazleton Area Education Support Professionals, PSEA/NEA (Association) is an employe organization as defined in the Act.
  3. That the Association is the exclusive certified bargaining representative for a group of the nonprofessional employes of the District, described as follows:  

All full-time and regular part-time bus drivers, cafeteria workers, clerical employes and aides; and excluding professional employes, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.
- (See PERA-R-2337-E, PERA-R-82-524-E)
4. That the District employs a person in the position of Secretary to Assistant Superintendent. (Stipulations of fact)
  5. That Mr. Andrews is the Assistant Superintendent currently and has been since 2003. (Stipulations of fact)
  6. That in his role as Assistant Superintendent, Mr. Andrews has been a member of the District's negotiation team for both support staff and professional staff negotiations. (Stipulations of fact)
  7. That his responsibilities concerning negotiations include being at the bargaining table, preparing proposals for consideration by the Unions and costing-out proposals to be presented by the District. (Stipulations of fact)
  8. That Mr. Andrews participates in grievance processing. (Stipulations of fact)

9. That Mr. Andrews has only one secretary assigned to him which is the position at issue. (Stipulations of fact)

10. That the secretary's cubicle is right outside Mr. Andrews's office. (Stipulations of fact)

11. That there is a significant amount of interaction between Mr. Andrews and the secretary on a daily basis. The secretary does research for Mr. Andrews relating to proposals to be presented to the Unions. The secretary types material which identifies the District's bargaining position prior to presentation to the Unions. The tasks relating to bargaining information is performed exclusively by this secretary. (Stipulations of fact)

12. That the District, with over 300 unit employes, has only two other confidential employes. (Stipulations of fact)

13. That the District employs a person in the position of Coordinator of Child Accounting. (Stipulations of fact)

14. That the Board on August 31, 2005, included the position of Coordinator of Child Accounting in the bargaining unit at PERA-U-03-402-E. (Stipulations of fact)

15. That since that time, the duties of the position have changed. (Stipulations of fact)

16. That the Coordinator of Child Accounting is located in the superintendent's office. (Stipulations of fact)

17. That the Coordinator of Child Accounting is responsible for all aspects of the child accounting reporting. (Stipulations of fact)

18. That among the responsibilities of the Coordinator of Child Accounting is designating and implementing procedures for building secretaries who process child accounting data and supervising and creating policies concerning the process. (Stipulations of fact)

19. That the Coordinator of Child Accounting is responsible for the proper tracking and reporting on approximately 200 students who are located in foster homes so that the District receives tuition reimbursement. (Stipulations of fact)

20. That the Coordinator of Child Accounting is responsible for processing tuition billings generated to non-resident students in the amount of approximately \$300,000 per year. (Stipulations of fact)

#### DISCUSSION

The District has filed a petition for unit clarification to exclude the positions of Secretary to Assistant Superintendent as a confidential employe within the meaning of Section 301(13) and Coordinator of Child Accounting as a management level employe within the meaning of Section 301(16) of the Act.

As the petitioner, the District bears the burden of proving the factual elements to meet the basis for the statutory exclusion. State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999); Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977).

For the first position, the Secretary to the Assistant Superintendent, the Act defines confidential employe 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 lead case in interpreting the confidential exclusion under PERA is PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), in which the Pennsylvania Supreme Court affirmed the Board's adoption of a narrow construction of the confidential exclusion stating that the Board was correct in reading the confidential exclusion in PERA to "exclude only those employees whose inclusion in the bargaining unit would seriously impair the employer's ability to bargain on a fair and equal footing with the union." 389 A.2d at 557.

The stipulations of fact submitted by the parties demonstrate that the Secretary to the Assistant Superintendent is a confidential employee. The Assistant Superintendent prepares collective bargaining proposals. His secretary is the one employee who assists him in preparing the proposals. She sees the proposals before the District presents them to the Association during collective bargaining. Including this position in the unit would seriously impair the District in its ability to bargain with the Association on a fair and equal footing.

Turning to the second position at issue, the Coordinator of Child Accounting, the District asserts this position should be excluded as a "management level employee," which, under Section 301(16) of the Act is defined as:

(16)'Management level employee' means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision.

43 P.S. 1101.301(16).

The Board has interpreted Section 301(16) on various occasions. In Pennsylvania Ass'n of State Mental Hosp. Physicians v. PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989) the Commonwealth Court adopted the Board's test for determining whether an employee is a management level employee under Section 301(16). This test provides that an employee will be managerial if any one of the following three factors are established: (1) the employee is involved directly in the determination of policy; (2) the employee directs the implementation of policy; or (3) the employee is above the first level of supervision. *id* at 1023. See also Lackawanna Career Technology Center, 33 PPER 33201 (Final Order, 2002).

The stipulations of fact demonstrate that the Coordinator of Child Accounting is a management level position under Section 301(16) of the Act. The position is responsible for all aspects of child accounting reporting including creating the policies concerning the central registration process. The registration process requires the accurate tracking and reporting on approximately 200 students who are located in foster homes so that the District receives tuition reimbursement. Also included in the responsibilities is processing tuition billings to non-resident students in the amount of approximately \$300,000 per year. The stipulations of fact demonstrate that the Coordinator of Child Accounting is involved directly in the determination of policy and also directs the implementation of policy, thereby making the position a management level employee under Section 301(16) of the Act.

#### CONCLUSIONS

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

1. That Hazleton Area School District is a public employer within the meaning of Section 301(1) of the Act.

2. That the Hazleton Area Education Support Professionals Association, PSEA/NEA is an employe organization within the meaning of the Section 301(3) of the Act.

3. That the Board has jurisdiction over the parties hereto.

4. That the Secretary to Assistant Superintendent is a confidential employe.

5. That the Coordinator of Child Accounting is a management level employe.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the nonprofessional bargaining unit certified by the Board at PERA-R-2337-E and amended at PERA-R-82-524-E is amended to exclude the Secretary to Assistant Superintendent as a confidential employe and the Coordinator of Child Accounting as a management level employe.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this eleventh day of March, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner