

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-09-149-E
 : (Case No. PERA-R-96-59-E)
 :
 PHILIPSBURG-OSCEOLA AREA SCHOOL DISTRICT :

PROPOSED ORDER OF DISMISSAL

On April 20, 2009, the Philipsburg-Osceola Education Support Professionals, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include the position of open records/personnel officer in a bargaining unit of Philipsburg-Osceola Area School District (District) employes that was previously certified by the Board at Case No. PERA-R-96-59-W. On April 29, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on July 21, 2009, if the parties were unable to agree on the inclusion of the position in the unit by then. On May 29, 2009, the hearing examiner, upon the request of both parties, continued the hearing. On September 9, 2009, the hearing was held. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On November 19, 2009, each party filed a brief by deposit in the U.S. Mail.

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 April 4, 2005, the Board certified the Association as the exclusive representative of a bargaining unit that includes secretarial employes of the District. Confidential employes are excluded from the unit. (Case Nos. PERA-U-04-597-E and PERA-R-96-59-E)

2. In February 2003, a member of the unit (Leann Shaw) began working as the administrative office clerk, human resources. In that position, she reported to the District's finance director (first Kim McCully and then Michael Conte), who "sat in on" collective bargaining negotiations that the District's superintendent (Charles Young) and four members of its board of directors thereafter conducted with its teachers, custodial employes and support staff. During her tenure in that position, she prepared at Superintendent Young's request a spread sheet for him to use in determining whether or not the District wanted to change in future negotiations the amount of insurance buy-outs for teachers and support staff. (N.T. 14-16, 20-21, 26, 35-37, 53-54; Joint Exhibit 1)

3. On February 16, 2009, the District created the position of open records/personnel officer and "dissolved" the position of administrative office clerk, human resources. (N.T. 15-17, 52; Joint Exhibit 2)

4. In March 2009, Ms. Shaw began working as the open records/personnel officer. In that position, she reports to the superintendent, is responsible for matters involving the Right-to-Know Law and performs the same work she performed as the administrative office clerk, human resources, with the exception of processing utility bills and backing up the payroll clerk. During negotiations for a successor collective bargaining agreement for the teachers that were underway at the time, she provided Superintendent Young with requested information involving employe co-pays for insurance. (N.T. 17-18, 34-35, 45-46, 51-53; Joint Exhibit 2)

5. In April 2009, the District's current superintendent (Dr. Stephen Benson) assumed the position on an acting basis. He has been responsible for negotiating with the teachers ever since. (N.T. 19-21, 31-33)

6. A confidential employe (Lisa Thompson) works as the superintendent's secretary. She prepares the agenda for meetings of the board of directors and prepares letters and answers the phone for the superintendent. (N.T. 30, 54-55)

DISCUSSION

The Association has petitioned to include the position of open records/personnel officer in the bargaining unit. The Association would have the Board include the position in the unit because the current occupant of the position (Ms. Shaw) shares an identifiable community of interest with the employees already included in the unit and is not a confidential employe. The Association also would have the Board include the position in the unit because the superintendent's secretary, who already is excluded from the unit as a confidential employe, can perform any confidential duties the District may have.

The District contends that the petition should be dismissed because the opens record/personnel officer is a confidential employe and because "[t]his is not a situation where the District has created a number of specious job titles in order to clarify positions out of the bargaining unit" (Brief at 9).

Section 301(13)(ii) of the Public Employe Relations Act (PERA) defines a confidential employe as "any employe who works . . . in a close continuing relationship with . . . representatives associated with collective bargaining on behalf of the employer."

The record shows that the open records/personnel officer provided the District's former superintendent with requested information involving employe co-pays for insurance during recent negotiations he conducted for a successor collective bargaining agreement for the District's teachers (finding of fact 4). The record also shows that in her former position as the administrative office clerk, human resources, the open records/personnel officer prepared a spread sheet for the former superintendent's use in determining whether or not the District wanted to change in future negotiations the amount of insurance buy-outs for teachers and support staff (finding of fact 2). The record further shows that with exceptions not relevant here the open records/personnel officer continues to perform the duties she performed as the administrative office clerk, human resources (finding of fact 4).

On a substantially similar record 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), our Commonwealth Court held that a secretary to an assistant superintendent worked in a close continuing relationship with a representative associated with collective bargaining on behalf of the employer and thus was a confidential employe under section 301(13)(ii). In that case, the record showed that the secretary reported to the assistant superintendent and that the assistant superintendent was a member of the employer's bargaining team. See also Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order 2002)(a secretary/payroll clerk who worked for a business manager who was a member of the employer's bargaining team and prepared proposals that the employer presented at the bargaining table was a confidential employe under section 301(13)(ii)).

In light of that precedent, the same result obtains on the facts of record here.¹

The Association contends that the open records/personnel officer is not a confidential employe because her involvement with the superintendent's processing of grievances does not make her so and because her duties involving open records requests does not make her so. The Association points out that in Cameron County School District, 33 PPER ¶ 33063 (Order Directing Submission of Eligibility List 2002), a hearing examiner found that a superintendent's responsibility for handling grievances provided no basis for finding that he was associated with collective bargaining on behalf of an employer as set forth in section 310(13)(ii). See also PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), where the Court held that "the handling of grievances is not part of the 'formulation, determination, or effectuation' of an employer's labor policy" that is necessary to support a finding that a representative of the employer is associated with collective bargaining on its behalf. 480 Pa. at 157, 389 A.2d at 558. The Association also points out that under the Right-to-Know Law the District need not provide a requestor with confidential collective bargaining materials.

¹ The District contends that Ms. Shaw also is a confidential employe under section 301(13)(i) of the PERA, but the District's contention need not be addressed in light of the foregoing disposition.

As noted above, however, the superintendent has conducted collective bargaining negotiations for the District, so regardless of the superintendent's role in the processing of grievances, it is apparent that the superintendent is a representative associated with collective bargaining on behalf of an employer as set forth in section 301(13)(ii). As also noted above, the open records/personnel officer reports to the superintendent and has provided superintendents with requested information for collective bargaining, so regardless of her duties involving open records requests, it is apparent that the open records/personnel officer's relationship with the superintendent is a close continuing one as set forth in section 301 (13)(ii). Thus, the open records/personnel officer must be excluded from the bargaining unit as a confidential employe under section 301(13)(ii).

In Cheltenham School District, 32 PPER ¶ 32098 (Final Order 2001), the Board explained that it will "prohibit 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. The focus in deciding whether or not an employer has distributed confidential work to more employes than are necessary for it to conduct its collective bargaining is on whether or not it has assigned them the same kind of work. As the Board explained in Westmont Hilltop School District, supra:

"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."

33 PPER at 140. See also Penn Hills School District, 39 PPER 64 (Proposed Order of Dismissal 2008)(payroll clerk working for a business manager was a confidential employe even though the business manager's secretary already was a confidential employe where the business manager assigned them work consistent with the different functions they performed).

As the Association points out, the superintendent's secretary is excluded from the bargaining unit as a confidential employe (finding of fact 6). The record does not show, however, that the superintendent's secretary and the opens record/personnel officer perform the same work. To the contrary, the record shows that the superintendent's secretary prepares the agenda for meetings of the board of directors and prepares letters and answers the phone for the superintendent, id., while the open records/personnel officer prepares spread sheets and collates information (findings of fact 2 and 4). Thus, there is no basis for finding that the District has distributed confidential duties to more employes than are necessary for it to conduct its labor relations.

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 PERA.
2. The Association is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The open records/personnel officer is a confidential employe under section 301(13)(ii) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, 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-fifth day of November 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner