COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PERA-U-09-137-W
	:	(Case No. PERA-R-07-523-W)
	:	
NESHANNOCK TOWNSHIP SCHOOL DISTRICT	:	

PROPOSED ORDER OF DISMISSAL

On April 13, 2009, the Neshannock Education Support Professionals, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include four positions (the secretary to the superintendent, the secretary to the assistant superintendent, the secretary to the director of pupil services and the accounts payable clerk) in a bargaining unit comprised of Neshannock Area School District (District) employes. On April 22, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on July 29, 2009. On May 29, 2009, the hearing examiner, upon the request of the Association and without objection by the District, continued the hearing. The hearing examiner rescheduled the hearing to October 7, 2009. The hearing was held as rescheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On January 15, 2010, 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. In 2007, the District negotiated a successor collective bargaining agreement with the exclusive representative of its professional employes. The District's superintendent (Dr. Mary Todora), assistant superintendent (Dr. Kathleen Roppa) and director of pupil services (Concetta Fiorante) were members of its bargaining team and sat at the bargaining table. Dr. Todora was its chief negotiator. Prior to the negotiations, Dr. Todora, Dr. Roppa and Ms. Fiorante met to review the expiring collective bargaining agreement word for word to identify problems they wanted to address at the bargaining table. During the negotiations, Dr. Todora sometimes met with the chief negotiator for the Association on a one-to-one basis. Dr. Roppa took notes at the bargaining sessions. (N.T. 15, 33-34, 56-57, 77-79, 82, 124, 162, 164, 169-171)

2. On January 2, 2008, the Board, pursuant to a joint request of the parties, certified the Association as the exclusive representative of a bargaining unit comprised of non-professional employes, including secretaries and paraprofessionals, employed by the District. Confidential employes are excluded from the unit. (Case No. PERA-R-07-523-W)

3. In 2008, the District negotiated a successor collective bargaining agreement with the Association. Dr. Todora, Dr. Roppa and Ms. Fiorante were members of the District's bargaining team and sat at the bargaining table. Dr. Todora was the District's chief negotiator. Prior to the negotiations, Dr. Todora, Dr. Roppa and Ms. Fiorante met to review the expiring collective bargaining agreement word for word to identify problems they wanted to address at the bargaining table. During the negotiations, Ms. Fiorante formulated a life insurance proposal. Dr. Roppa took notes at the bargaining sessions. (N.T. 33-37, 57, 80-81, 113-114, 132-134, 142-143, 164, 169-171)

4. During the negotiations with the Association, a secretary (Sharon Muraca) who had been performing special assignments for Dr. Todora because Dr. Todora valued her competence typed up a spread sheet that the District's bargaining team used to analyze bargaining proposals, proposals for Dr. Todora to present at the bargaining table and agendas of the points Dr. Todora wanted to present at the bargaining table. (N.T. 51-54, 58-63, 86-87, 94-96, 99-106, 168-169; District Exhibit J)

5. The secretary to the assistant superintendent (Jeanne Ann Hunt) reports directly to the assistant superintendent (Dr. Roppa) and is responsible for her typing and for organizing her files. During both sets of negotiations, Ms. Hunt typed up Dr. Roppa's notes from the bargaining sessions. (N.T. 107, 110, 114, 118-120, 166-167, 170)

6. The secretary to the director of pupil services (Lori Kaufman)[1] reports directly to the director of pupil services (Ms. Fiorante) and is responsible for keeping track of the hours worked by paraprofessionals. During the negotiations with the Association, Ms. Kaufman provided Ms. Fiorante with data regarding the hours worked by paraprofessionals. Ms. Fiorante included that data in the spreadsheet that the District's bargaining team used to analyze bargaining proposals. (N.T. 43, 58, 130, 132-139, 141-142, 150-151)

7. The accounts payable clerk (Gisela Arrow) reports directly to the business manager (Melissa Morosky) and is responsible for any matters related to accounts payable, including the payment of bills and reimbursements for Title I and Title II grants. During the negotiations with the Association, Ms. Arrow prepared for Dr. Todora a cost analysis of an insurance proposal that Dr. Todora presented at the bargaining table. During the negotiations with the exclusive representative of the professional employes, Ms. Arrow provided Dr. Roppa with data regarding Title I and Title II grants available to offset employe salaries. (N.T. 43-44, 156-157, 159-161, 164-165)

8. In May 2009, Ms. Muraca began working as Dr. Todora's secretary. (N.T. 58-59, 63-64, 84, 180)

DISCUSSION

The Association has petitioned to include four positions (the secretary to the superintendent, the secretary to the assistant superintendent, the secretary to the director of pupil services and the accounts payable clerk) in the bargaining unit. According to the Association, all four positions should be included in the bargaining unit because the employes working in them share an identifiable community of interest with the members of the bargaining unit and are not confidential employes. In the alternative, the Association contends that three of the four positions should be included in the bargaining unit because the District only needs one confidential employe to conduct its collective bargaining.

The District contends that the petition should be dismissed because all four positions are occupied by confidential employes.

Section 301(13) of the Public Employe Relations Act (PERA) provides as follows:

> "'Confidential employe' shall mean any employe who works (i) in the personnel offices of a public employer and have 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."

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 (Shirley Dougherty) to an assistant superintendent (Richard Santillo) was a confidential employe under section 301(13)(ii). As the court explained,

> "Santillo is a member of the School District's negotiation team, sits at the bargaining table during negotiations and has assumed an intense role in negotiations with the teacher's union, custodians and the Act 93 employes. (*See* PLRB's Findings of Fact, No. 17; R.R. at 78a.) Thus, Santillo indisputably qualifies as a 'representative associated with collective bargaining' on behalf of the School District. Further, as Santillo's only secretary, Dougherty clearly has a

[1] Although Ms. Kaufman testified that she is the administrative assistant to the director of pupil services (N.T. 146), she also referred to herself as a secretary. Id. Other witnesses referred to her as a secretary, too (N.T. 28, 35, 130), as have both parties. For the sake of consistency, the hearing examiner has referred to her as a secretary as well.

> close continuing relationship with Santillo and, thus, appears to have fully satisfied the PERA's ***second*** definition of a confidential employee."

Id. at 1158-1159 (emphasis in original).

As set forth in findings of fact 1 and 3, the record shows that during the last two rounds of negotiations conducted by the District the superintendent (Dr. Todora), the assistant superintendent (Dr. Roppa) and the director of pupil services (Ms. Fiorante) were members of the its bargaining team, sat at the bargaining table and met to review expiring collective bargaining agreements word for word to identify problems they wanted to address at the bargaining table. Thus, as was the case with Mr. Santillo in North Hills School District, Dr. Todora, Dr. Roppa and Ms. Fiorante each indisputably qualifies as a "representative associated with collective bargaining" on behalf of the District. As set forth in findings of fact 4, 5, 6 and 8, the record also shows that Dr. Todora's current secretary (Ms. Muraca), Dr. Roppa's secretary (Ms. Hunt) and Ms. Fiorante's secretary (Ms. Kaufman) are their only secretaries, so Ms. Muraca, Ms. Hunt and Ms. Kaufman clearly have a close continuing relationship with them as Ms. Dougherty did with Mr. Santillo in North Hills School District. As set forth in finding of fact 7, the record further shows that the accounts payable clerk (Ms. Arrow) provided Dr. Todora and Dr. Roppa respectively with cost calculations and data they used in collective bargaining, so she clearly has a close continuing relationship with "a representative associated with collective bargaining" on behalf of the District, too. Accordingly, the same result as in North Hills School District obtains, and the petition must be dismissed.[2]

In support of its contention that the secretary to the superintendent (Ms. Muraca) is not a confidential employe, the Association points out that the District has not engaged in any collective bargaining since she became the secretary to the superintendent and cites Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), appeal denied, 525 Pa. 652, 581 A.2d 577 (1990), for the proposition that as a matter of law an employe cannot be found to be confidential if the employer has yet to engage in collective bargaining. The Association overlooks, however, that during the last round of collective bargaining in 2008 Ms. Muraca typed up a spread sheet that the District's bargaining team used to analyze bargaining proposals, proposals for Dr. Todora to present at the bargaining table and agendas of the points Dr. Todora wanted to present at the bargaining table (finding of fact 4).

The Association also points out that Ms. Muraca's predecessor as secretary to the superintendent (Cathy Snyder) performed no collective bargaining functions. If the current occupant of a position has no work history, the Board looks to the track record of the prior occupant(s) of the position in order to determine the status of the position. Lower Providence Township, 16 PPER ¶ 16117 at n. 1 (Final Order 1985). As noted above, however, the record shows that Ms. Muraca has a work history. Thus, the fact that Ms. Snyder performed no collective bargaining functions is irrelevant.

The Association next submits that Ms. Muraca cannot be a confidential employe because she was not privy to the District's bargaining strategy. In North Hills School District, supra, however, the court held that whether or not an employe is privy to the employer's bargaining strategy is only relevant in deciding whether or not the employe is confidential under section 301(13)(i). As the Court explained, under section 301(13)(ii),

> "[w]here an employee has a close relationship with such involved management personnel, the PERA appears to assume that that employee 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.' [PLRB v. Altoona Area School District, 480 Pa.] at 155, 389 A.2d at 557."

762 A.2d at 1159 (footnote omitted).

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[2] The District contends that Ms. Muraca, Ms. Hunt, Ms. Kaufman and Ms. Arrow also meet the definition of confidential employe under section 301(13)(i), but given the foregoing disposition, the District's contention need not be addressed.

The Association would have the Board ignore North Hills School District as incorrectly decided. Focusing on the court's use of the phrase "the PERA appears to assume that that employee would have access to confidential information," the Association submits that "fundamental legal principles require that the law be interpreted based on facts, not conjecture." Brief at 16. The Board, however, is bound by appellate authority, incorrectly decided or not. Thus, the Board may not ignore North Hills School District.

The Association next submits that Ms. Muraca cannot be a confidential employe because she was a member of the bargaining unit during the last round of collective bargaining. According to the Association, "[h]ence, by definition, the work she performed was bargaining unit work and not confidential work." Brief at 14. In School District of the Township of Millcreek v. Millcreek Education Association, 440 A.2d 673 (Pa. Cmwlth. 1982), however, the court explained that "[t]he purpose of a unit clarification procedure under the PERA is to determine whether certain job classifications are properly included in a bargaining unit, based upon the actual functions of the job." Id. at 675. The instant proceeding, therefore, is to determine whether or not she is to be excluded from the unit because of the work she performs. If she is a confidential employe, then by definition her position must be excluded from the bargaining unit.

The Association finally submits that Ms. Muraca is not a confidential employe because the District should have assigned her confidential duties to another employe. The Association cites Cheltenham School District, 32 PPER ¶ 32098 (Final Order 2001), for the proposition that the Board 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." Id. at 254. In Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order 2002), the Board explained that the prohibition applies when "the employer is merely dividing the same work among different individuals in order to exclude more positions from the bargaining unit" but not when the employer has "assigned work to employes based on the different functions they perform." Id. at 140.

As set forth in finding of fact 4, the record shows that Ms. Muraca had been performing special assignments for Dr. Todora before she typed up a spread sheet that the District's bargaining team used to analyze bargaining proposals, proposals for Dr. Todora to present at the bargaining table and agendas of the points Dr. Todora wanted to present at the bargaining table. Thus, it is apparent that the District assigned duties to Ms. Muraca consistent with the functions she performs. Under the circumstances, the prohibition does not apply. See Westmont Hilltop School District, supra (where a business manager assigned confidential work to his secretary and to a secretary/payroll clerk consistent with the different functions they performed, the secretary and the secretary/payroll clerk were both confidential employes); Penn Hills School District, 39 PPER 64 (Proposed Order of Dismissal 2008)(same).

In support of its contention that the secretary to the assistant superintendent (Ms. Hunt) is not a confidential employe, the Association submits that the assistant superintendent (Dr. Roppa) does not qualify as a "representative associated with collective bargaining" on behalf of the District. According to the Association, "[i]t is evident that Dr. Todora serves as the chief negotiator. The other administrators appear to have no substantive role in negotiations other than to provide moral support to the Superintendent." Brief at 21. The Association's contention finds no support in the record, however. As noted above, the record shows that during the last two rounds of negotiations Dr. Roppa was a member of the District's bargaining team, sat at the bargaining table and met with other members of the team to review expiring collective bargaining agreements word for word to identify problems they wanted to address at the bargaining table.

The Association also points out that Ms. Hunt was not privy to the employer's bargaining strategy, that the District did not present bargaining notes that she typed and that her typing of employe evaluations, improvement plans and discipline reports was not confidential as PERA defines the term. Again, however, under North Hills School District, supra, whether or not an employe is privy to the employer's bargaining strategy is only relevant in deciding whether or not an employe is confidential under section 301(13)(i). Moreover, the District did not need to present the bargaining notes she typed. As the court explained in North Hills School District, an employer need not

present material of that nature where "the record contains ample indication of their content." Id. at n. 15. As set forth in findings of fact 1, 3 and 5, the record shows that the bargaining notes Ms. Hunt typed were taken by Dr. Roppa during negotiations. The Association did not prove otherwise. Thus, the record contains ample indication of the content of the notes. Furthermore, given that Ms. Hunt is Dr. Roppa's only secretary and that she typed up Dr. Roppa's bargaining notes, the fact that her typing of employe evaluations, improvement plans and discipline reports was not confidential as PERA defines the term is hardly dispositive.

The Association further submits that the District should have assigned Ms. Hunt's confidential duties to another employe. As set forth in finding of fact 5, however, the record shows that Ms. Hunt is responsible for Dr. Roppa's typing. Thus, the record shows that the District assigned the typing of Dr. Roppa's bargaining notes to Ms. Hunt consistent with the functions she performs. Under the circumstances, as was the case with Ms. Muraca, there is no basis for finding that the District has distributed confidential duties among various employes to gain confidential exclusions for more employes than are necessary for it to conduct its collective bargaining.

In support of its contention that the secretary to the director of pupil services (Ms. Kaufman) is not a confidential employe, the Association submits that the director of pupil services (Ms. Fiorante) does not qualify as a "representative associated with collective bargaining" on behalf of the District because she, too, only provided moral support to Dr. Todora. The Association's contention finds no support in the record, however. As noted above, the record shows that during the last two rounds of negotiations Ms. Fiorante, like Dr. Roppa, was a member of the District's bargaining team, sat at the bargaining table and met with other members of the team to review expiring collective bargaining agreements word for word to identify problems they wanted to address at the bargaining table.

The Association also points out that Ms. Kaufman was not privy to the employer's bargaining strategy and that her exposure to complaints that might lead to employe discipline does not make her confidential as PERA defines the term. Again, however, under North Hills School District, supra, whether or not an employe is privy to the employer's bargaining strategy is only relevant in deciding whether or not an employe is confidential under section 301(13)(i). Moreover, given that Ms. Kaufman is Ms. Fiorante's only secretary and that she provided Ms. Fiorante with information for use in collective bargaining (finding of fact 6), the fact that her exposure to complaints that might lead to employe discipline does not make her confidential as PERA defines the term is not dispositive.

In support of its contention that the accounts payable clerk (Ms. Arrow) is not a confidential employe, the Association points out that she works with the District's business manager (Melissa Morosky) who has performed no role in collective bargaining for the District to date, that she was not privy to the District's bargaining strategy and that her exposure to the budget does not make her confidential as PERA defines the term. As noted above, however, the record shows that Ms. Arrow has worked for Dr. Todora and Dr. Roppa, both of whom played a role in collective bargaining for the District. Moreover, again, under North Hills School District, supra, whether or not an employe is privy to the employer's bargaining strategy is only relevant in deciding whether or not an employe is confidential under section 301(13)(i). Furthermore, as also noted above, the record shows that Ms. Arrow provided Dr. Todora and Dr. Roppa respectively with cost calculations and data they used in collective bargaining, so the fact that her exposure to the budget does not make her confidential as PERA defines the term in not dispositive.

In support of its contention that three of the four employes should be included in the bargaining unit because the District only needs one employe to conduct its labor relations, the Association posits that "[a]s a simple rule of thumb, there should be no more than two confidential employees per twenty-five secretaries." Brief at 12. The Board, however, follows no such rule of thumb. As the Board explained in Westmont Hilltop School District, supra, in deciding whether or not an employer has distributed confidential duties among various employes to gain confidential exclusions for more employes than are necessary for it to conduct its collective bargaining, the focus is on whether "the employer is merely dividing the same work among different individuals in

order to exclude more positions from the bargaining unit" or has "assigned work to employes based on the different functions they perform." 33 PPER at 140.

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 secretary to the superintendent, the secretary to the assistant superintendent, the secretary to the director of pupil services and the accounts payable clerk are confidential employes 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 twelfth day of February 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner