

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 :

FINAL ORDER

On March 2, 2010, the Neshannock Education Support Professionals, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) challenging a Proposed Order of Dismissal (POD) issued on February 12, 2010. After receiving an extension of time from the Secretary of the Board, the Association filed a brief in support of the exceptions on April 1, 2010. The Neshannock Township School District (District) filed a response to the Association's exceptions on March 25, 2010, and filed a supporting brief on April 23, 2010. In the POD, the Board's Hearing Examiner dismissed the Association's Petition for Unit Clarification and determined that the positions of Secretary to the Superintendent, Secretary to the Assistant Superintendent, Secretary to the Director of Pupil Services and Accounts Payable Clerk are properly excluded from the nonprofessional bargaining unit as confidential employees under Section 301(13)(ii) of the Public Employee Relations Act (PERA). The Hearing Examiner's Findings of Fact (FF) are summarized as follows.

In 2007, the District negotiated a successor collective bargaining agreement with the exclusive representative of its professional employees. 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 the 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.

On January 2, 2008, the Board, pursuant to a joint request of the parties, accreted secretaries and paraprofessionals into an existing unit of nonprofessional employees represented by the Association. Confidential employees were excluded from the unit. In 2008, the District negotiated a successor collective bargaining agreement with the Association for the overall nonprofessional unit. 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.

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. Muraca also typed proposals for Dr. Todora to present at the bargaining table and agendas of the points Dr. Todora wanted to present at future negotiating sessions.

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.

The Secretary to the Director of Pupil Services (Lori Kaufman) 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.

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 District's professional employees, Ms. Arrow provided Dr. Roppa with data regarding Title I and Title II grants available to offset employe salaries. In May 2009, Ms. Muraca began working as Dr. Todora's secretary.

In the POD, the Hearing Examiner concluded that the four positions meet the definition of confidential employe set forth in Section 301(13)(ii) of PERA. In its exceptions, the Association does not challenge the Hearing Examiner's determination that the secretaries to the Superintendent and the Assistant Superintendent are confidential employees. Rather, the Association argues that the Hearing Examiner erred by concluding that the Secretary to the Director of Pupil Services and the Accounts Payable Clerk should be excluded from the unit as confidential employees.

Section 301(13) of PERA 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."

In North Hills School District v. Pennsylvania Labor Relations Board, 762 A.2d 1153 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 566 Pa. 653, 781 A.2d 150 (2001), the issue was whether a secretary (Dougherty) to an Assistant Superintendent (Santillo) was a confidential employe. In concluding that Dougherty was a confidential employe, the Commonwealth Court stated that:

... PERA defines **two** distinct categories of confidential employees. Section 301(13)(ii) of the PERA, which applies here, defines a confidential employee in broad terms as "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) (emphasis added). Here, 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 employees. (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 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).

The Association contends that the Secretary to the Director of Pupil Services (Ms. Kaufman) is not a confidential employe because: (1) she does not work in a close continuing relationship with the Director of Pupil Services; (2) the Director of Pupil Services is not an employer representative associated with collective bargaining; and (3) there is no evidence that Ms. Kaufman is privy to confidential information. However, the Director of Pupil Services is clearly "associated with collective bargaining on behalf of" the District because she serves on the District's bargaining team and meets with the other team members in determining matters to be addressed at the bargaining table. In contrast, in the case cited by the Association, Cameron County School District, 33 PPER ¶ 33063 (Proposed Decision and Order, 2006), the district's Superintendent had not participated in contract negotiations, and accordingly there was no basis to find that he was an employer representative associated with collective bargaining. Ms. Kaufman also clearly works in a close continuing relationship with the Director of Pupil Services because she is the Director's only secretary and has provided her with data for use in analyzing bargaining proposals. Finally, under the Commonwealth Court's decision in North Hills, supra, an

employee may be deemed confidential under the second prong of Section 301(13) of PERA without evidence that the employee became privy to the employer's collective bargaining strategy. As the Commonwealth Court stated in that case:

As interpreted by the PLRB, the exclusion under section 301(13)(ii) is limited to employees who work in a close continual relationship with "managerial personnel who actually participate in the collective bargaining in [sic] behalf of the public employer," Altoona Area School District, 480 Pa. at 155, 389 A.2d at 557, in other words, those who actually formulate, determine or effectuate the employer's labor policy. Id.

Where 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." Id. at 155, 389 A.2d at 557

762 A.2d at 1159.

The Association excepts to the Hearing Examiner's determination that the Accounts Payable Clerk (Ms. Arrow) is confidential because: (1) she works for the District's Business Manager, who has not been involved in collective bargaining; (2) her work of providing the Superintendent and Assistant Superintendent with cost calculations and data considered in formulating collective bargaining proposals is too infrequent to demonstrate a close continuing relationship; (3) there is no evidence that she became privy to the District's collective bargaining strategy; and (4) she was previously within the certified unit through a prior joint request for certification.

However, even if the Accounts Payable Clerk was initially included in the unit by means of a joint stipulation of the parties, that would not preclude the employer from contesting the position's inclusion based on the actual duties performed more than a year after certification of a representative, as occurred here. Moreover, as with the secretary to the director of pupil services, there is no need under North Hills, supra, for actual evidence that Ms. Arrow became privy to the employer's collective bargaining strategy to support a confidential exclusion under the second prong of Section 301(13) of PERA. Furthermore, while Ms. Arrow may report directly to the Business Manager, who is not involved in collective bargaining, she also provides vital information to District bargaining representatives that is utilized in analyzing bargaining proposals. Ms. Arrow's performance of these job duties is sufficient to establish a close continuing relationship for purposes of Section 301(13)(ii) of PERA. Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order, 2002). In Westmont Hilltop School District, a Secretary/Payroll Clerk (Ms. Cramer) provided information to a member of the district's bargaining team (Business Manager Gregory Sanford) for use in analyzing bargaining proposals. In concluding that the Secretary/Payroll Clerk was confidential, the Board stated:

The Association also contends that the hearing examiner erred in concluding that the secretary/payroll clerk works in a close continuing relationship with the Business Manager. The Association argues that the only thing close and continuing about the relationship between Ms. Cramer and Mr. Sanford is that their work areas are in close proximity to each other. However, Ms. Cramer not only works in close proximity to Mr. Sanford, but also is involved with Mr. Sanford's collective bargaining responsibilities on behalf of the Employer. Such job duties are indicative of the type of close and continuing relationship directly related to collective bargaining that would justify a confidential exclusion. In PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978) our Supreme Court recognized that the confidential exclusion under PERA results in the denial of the salutary [e]ffects of collective bargaining rights to the excluded employees. Accordingly, the Supreme Court affirmed the Board's interpretation of the confidential exclusion as a narrow one that should only be invoked where the exclusion of the position allows the employer to conduct its negotiations on a fair and equal footing with the union. The Supreme Court's admonition in this regard requires that in order for an individual to be

excluded as confidential, that individual's work with the employer representative associated with collective bargaining must be directly related to that individual's collective bargaining responsibilities on behalf of the employer. The secretary/payroll clerk's duty with respect to the preparation of spreadsheets used in the Employer's proposals is just the type of job duty that substantiates a close continuing relationship.

33 PPER at 140.

Similarly here, in two recent contract negotiations, the Accounts Payable Clerk provided District bargaining team members (the Superintendent and Assistant Superintendent) with information that they utilized to analyze bargaining proposals. The Accounts Payable Clerk's performance of such duties demonstrates that she has a close continuing relationship with District representatives associated with collective bargaining. Therefore, she is confidential under the second prong of Section 301(13). Westmont Hilltop School District, supra.

The Association also argues that, from a purely mathematical perspective, the District has achieved more confidential exclusions than is normally allowable. While citing no authority for its contention in this regard, the Association goes on to state a "rule of thumb" that there should be no more than two confidential employes per twenty-five secretaries. Thus, the Association argues, the District's four confidential exclusions out of a group of ten secretaries is excessive. First, there is no such "rule of thumb". Second, although employers are not permitted to scatter confidential duties among employes in order to obtain more confidential exclusions than necessary to conduct bargaining, Cheltenham School District, 32 PPER ¶ 32098 (Final Order 2001), there is no evidence that the District has done so in this case.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Association's exceptions and make the Proposed Order of Dismissal final.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Order of Dismissal be and the same are hereby dismissed and the Proposed Order of Dismissal be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twentieth day of July, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.