

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
 : Case No. PERA-U-10-296-E  
 : (PERA-R-07-245-E)  
 : (PERA-R-07-246-E)<sup>1</sup>  
HOUSING AUTHORITY OF THE :  
CITY OF SHAMOKIN :

**PROPOSED ORDER OF UNIT CLARIFICATION AND  
PROPOSED ORDER OF AMENDMENT OF CERTIFICATION**

On August 24, 2010, the Housing Authority of the City of Shamokin (Authority) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification and amendment of certification pursuant to the Public Employees Relations Act (PERA). The Authority is seeking to clarify the bargaining unit of nonprofessional employes by excluding the position of administrative assistant from the unit as confidential. The Authority also seeks to amend the certification by changing the name of the Authority from the way it appears in the Board certification to the way it appears in the caption above. The Board certified exclusive collective bargaining representative of the unit is the International Brotherhood of Electrical Workers, Local Union No. 607 (Union).

On September 1, 2010, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on December 8, 2010, in Harrisburg. On October 13, 2010, I rescheduled the hearing for December 21, 2010. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The Authority is a public employer within the meaning of Section 301(1) of PERA. (43 P.S. § 1101.301(1); Union Exhibit 1; Joint Request for Certification, Case Nos. PERA-R-07-245-E and PERA-R-07-246-E).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Union Exhibit 1; Joint Request for Certification, Case Nos. PERA-R-07-245-E and PERA-R-07-246-E).

3. The petition for unit clarification and amendment of certification filed by the Authority designated the Authority as the "Housing Authority of the City of Shamokin." The Authority's letterhead designates the Authority as the "Housing Authority of the City of Shamokin." (Employer Exhibits 4 & 5; Union Exhibit 4).

4. On August 3, 2007, the Board certified a bargaining unit of employes at the Authority consisting of the following:

All full-time and regular part-time nonprofessional employes including but not limited to maintenance employes and clerical staff; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in [PERA].

(Union Exhibit 1).

5. The Board certified the unit of nonprofessional maintenance and clerical employes pursuant to a joint request for certification wherein the parties agreed to the

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<sup>1</sup> These case numbers appeared incorrectly in the order and notice of hearing.

composition of the bargaining unit. (Union Exhibit 1; Joint Request for Certification, PERA-R-07-245-E and PERA-R-07-246-E).

6. Ronald Miller is the executive director of the Authority. (N.T. 10-11).

7. Renee Draugelis is the only administrative assistant to the executive director of the Authority. The administrative assistant is a civil service position. The placement of the administrative assistant position in the bargaining unit was not a litigated determination by the Board. (N.T. 11-12; Union Exhibit 1).

8. Mr. Miller is Ms. Draugelis's direct supervisor. Ms. Draugelis's office adjoins Mr. Miller's office; both offices are connected by a door. (N.T. 15, 17, 46).

9. Ms. Draugelis assists Executive Director Miller with the preparation of budgets for the Authority. Mr. Miller utilized those budgets to prepare for negotiations. She completes all administrative typing for Mr. Miller. She accesses and maintains all personnel files in Executive Director Miller's office. (N.T. 14-15, 27, 50).

10. Ms. Draugelis prepares the documents that the Authority presents at bargaining, but she voluntarily sits with the Union negotiating team during bargaining. Ms. Draugelis has continual involvement in collecting monthly data used by Executive Director Miller in collective bargaining negotiations through all stages of negotiation until an agreement is signed. She has access to comparable salaries from other housing authorities which the Authority uses to determine its bargaining strategy and proposals regarding wages. (N.T. 16-17, 36, 39).

11. Ms. Draugelis prepares the agendas and keeps the minutes for monthly Authority board meetings. She assembles all monthly expenditures of the Authority from its master fund and compiles them in a list for approval by the Authority's board. She also prepares the Authority's payroll. (N.T. 19-20, 23-24, 48; Employer Exhibits 3 & 4).

12. Ms. Draugelis types evaluations. She sees promotions and memos given to employees. (N.T. 27).

13. The Authority's employees' health plan is administered by Geisinger Health Plan. Geisinger and the Authority agreed to change the plan to save the Authority money. The Authority did not bargain with the Union over these changes. The changes resulted in increased deductibles. The Authority switched back to the original plan. The Geisinger Health Plan is the subject of negotiations for the new contract and was specifically discussed during negotiations in August 2010. On September 21, 2010, Ms. Draugelis sent the Authority's attorney Geisinger's proposed Health Plan changes.<sup>2</sup> (N.T. 28, 38, Employer Exhibit 5).

14. Executive Director Miller and Raymond Splane, Authority board Chairperson, are members of the Authority's negotiating team for the current contract negotiations. Mr. Miller and Mr. Splane have participated in actual contract negotiations for the new contract. Mr. Miller formulates the Authority's bargaining proposals. In 2007, Mr. Miller did not attend contract negotiations. He did, at that time, develop proposals to be presented by the Authority's negotiating team to the Union. (N.T. 14-16, 55, 62, 66-67; Employer Exhibit 4).

15. Gerald Bogetti is the Union's organizer and market development director. He is in charge of the Authority for the Union. In November 2010, Mr. Bogetti requested that Mr. Miller provide a table of organization for the Authority. Ms. Draugelis typed a table of organization of the Authority on behalf of Mr. Miller and forwarded it to Mr. Bogetti. (N.T. 29, 53, 65; Employer Exhibit 6).

16. Ms. Draugelis typed a letter on behalf of Executive Director Miller addressed to the National Electrical Benefit Fund (Fund). The Fund is a pension fund for bargaining

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<sup>2</sup> Post-petition evidence is admissible where there has been no showing that the employer changed job duties merely to influence the Board's determination regarding the placement of the position in question. In the Matter of the Employees of Westmoreland County, 40 PPER 35 (Final Order, 2009).

unit employes who are also members of the Union. The November 16, 2010 letter requests a description of the Fund plan. (N.T. 30-31).

17. Ms. Draugelis directly contacts the Union on Mr. Miller's behalf. During negotiations, Ms. Draugelis may contact the Union on a daily basis and less frequently at other times. All Authority correspondence goes through Ms. Draugelis's office. E-mails from the Union for Mr. Miller come to Ms. Draugelis, which she answers when able. (N.T. 32, 46-47, 48-50; Employer Exhibit 8).

18. Ms. Draugelis has regular access to Executive Director Miller's Union file. Part of Mr. Miller's Union file remains on Ms. Draugelis's desk. Ms. Draugelis places handwritten notes in the Union file memorializing her contact with the Union regarding specific personnel matters. (N.T. 33).

19. The Authority board members discuss bargaining strategy during executive sessions. Ms. Draugelis prepares the documents for those sessions. (N.T. 40).

20. The parties' expired collective bargaining agreement was effective November 1, 2007, through September 30, 2010. Section 5.06 of the collective bargaining agreement outlines job duties of the administrative assistant and provides, in relevant part, as follows:

All work performed [by the administrative assistant] involves a staff relationship to the Executive Director. Work includes carrying out all policies adopted by the Housing Authority in regard to any of the functions of the Authority. Work is subject to review by the Executive Director.

(N.T. 68-69; Union Exhibit 2).

## **DISCUSSION**

### **1. Amendment of Certification**

In the petition, the Authority seeks to amend the certification by having its name changed from the "City of Shamokin Housing Authority" to the "Housing Authority of the City of Shamokin." The Authority's petition in this matter designated the Authority as the "Housing Authority of the City of Shamokin." Also, the Authority's letterhead designates the Authority as the "Housing Authority of the City of Shamokin." In its post-hearing brief, the Union stipulated to this change. (Union's Post-hearing Brief at 1). Accordingly, the Authority's petition to amend certification to designate the Authority as the "Housing Authority of the City of Shamokin" is granted.

### **2. Unit Clarification**

As the party seeking to exclude the position of administrative assistant as confidential and change the composition of the bargaining unit as certified by the Board, the Authority has the burden of proving the necessary facts to support the confidential exclusion. In the Matter of the Employes of Riverview Intermediate Unit #6, 37 PPER 106 (Final Order, 2006); In the Matter of the Employes of the State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999); In the Matter of the Employes of Tunkhannock Area Sch. Dist., 29 PPER ¶ 29023 (Final Order, 1997). In the case In the Matter of the Employes of Northeastern Educational Intermediate Unit No. 19, 11 PPER 11232 (Nisi Order of Unit Clarification, 1980), the Board stated that it has "routinely entertained unit clarification petitions seeking to litigate for the first time the status of questioned employes previously resolved by agreements of the parties," provided that at least one full year passes from certification of the agreed upon unit before the status of certain positions in the unit are challenged through litigation. Id. at 404. In this case, as the Union recognized in its post-hearing brief, the parties filed a joint request for certification wherein they agreed to the unit description that the Board certified on August 3, 2007. (Union's Post-hearing Brief at 2). Therefore, the status of the administrative assistant was not previously litigated, and the unit certification was more than one year ago. Accordingly,

the Authority does not have the burden of showing a material change in job duties for the administrative assistant position. Northeastern Educ. Intermediate Unit No. 19, supra.

#### **a. Union's Defense**

The Union argues that a petition for unit clarification cannot be utilized to remove the administrative assistant position where the parties agreed in their collective bargaining agreement to place this position in the bargaining unit. (Union's Post-hearing Brief at 3). The Union further contends that the Board has not addressed this issue and, therefore, guidance from federal authority is appropriate. (Union's Post-hearing Brief at 3). Accordingly, the Union relies on Goddard Riverside Community Center, 351 N.L.R.B. 1234 (2007) for the proposition that a unit clarification petition is not appropriate "for upsetting an agreement or established practice of a union and employer concerning the unit placement of various individuals." (Union's Post-hearing Brief at 7) (quoting Goddard, supra). However, contrary to the Union's argument, the Board has previously addressed this issue and has expressly rejected the position advanced by the Union here, as properly noted by counsel for the Authority. (Authority's Post-hearing Brief at 6).

Over twenty years ago, in the case, In the Matter of the Employees of Chambersburg Area Sch. Dist., 20 PPER ¶ 20149 (Final Order, 1989), the Chambersburg Area School District relied on National Board precedent and argued on exceptions that the unit clarification to include positions in the unit was barred by the collective bargaining agreement between the district and the union. The National Board limits the filing of unit clarification petitions to a period of time shortly before contract expiration to encourage the parties to negotiate position placement. The Board, however, rejected National Board precedent and stated the following:

The Board has been since the inception of PERA in 1970, processing unit clarification petitions at any time during the contract period with no indication that the processing of such petitions causes inordinate disruption of the collective bargaining relationship. In view of the Board's twenty years of experience processing these unit clarifications, we see no need to now restrict the rights of parties to raise unit determination issues at any time.

Id. at 405. The Board, in Chambersburg, further opined that the adoption of NLRB policy would permit employers and unions to bargain away rights guaranteed to employees. Id. The Board also emphasized that there is no reason to restrict employees' rights until the collective bargaining agreement expires, which in some instances can be as long as six years.

In recognizing the differences between the National Labor Relations Act, where employers may recognize units of employees, and PERA, where the Board is statutorily required to certify bargaining units, the Chambersburg Board noted that "PERA places the exclusive authority to determine the appropriateness of bargaining units upon the Board." Id. "Under PERA, the Board is charged with duty to determine the appropriate bargaining unit and an arbitrator may only decide whether employees fall within the unit as described by the Board." Accordingly, the Board has held that it has jurisdiction under PERA to determine the appropriateness of bargaining units at any time (i.e., any time beyond the one-year bar for stipulated unit descriptions). Unlike the National Act, which permits employers and unions to negotiate and agree to units, PERA places the exclusive authority to determine the appropriate unit with the Board.

Again relying on National Board Precedent, the Union further contends that unit clarification proceedings are only appropriate in circumstances regarding ambiguity or confusion about the placement of entire classifications of employees, not individual positions. However, National Board precedent is inapplicable here also. The express provisions of PERA, which protect the unique needs and responsibilities of public employers, require different analyses and results than that of the private sector. Specifically, PERA requires the exclusion of confidential employees. 43 P.S. § 1101.301(2). The confidential exclusion applies to individual positions based on job duties or an employee's relationship to an employer's representative involved in collective bargaining. 43 P.S. § 1101.301(13). The confidential exclusion thereby permits

the clarification of bargaining units to exclude individuals proven to be serving in that capacity, not entire classifications.

In fact, the Board loathes broad exclusions of confidential employees and prohibits the distribution of confidential duties to deprive multiple employees of their rights and protections under PERA. In the Matter of the Employees of Cheltenham School District, 32 PPER ¶ 32098 at 254 (Final Order 2001) (explaining that the Board will "prohibit 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"). The very individual nature of the confidential exclusion, therefore, undermines the Union's argument that unit clarifications are limited to determining the status of entire classifications of employees.

The Union's argument also fails in this case because Ms. Draugelis is the only employee in the position of administrative assistant. Therefore, this unit clarification proceeding does apply to an entire classification. Accordingly, I must, as the Board has in the past, reject the Union's procedural defense to the unit clarification petition proceedings.

#### **b. Confidential Exclusion**

Section 301(13) of PERA provides the statutory requirements for removing a confidential employee from the bargaining unit as follows:

"Confidential employee" shall mean any employee 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).

In North Hills Sch. Dist. v. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000), Petition for allowance of appeal denied, 566 Pa. 653, 781 A.2d 150 (2001), the Commonwealth Court opined as follows:

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 employee who works...in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

....

[S]ection 301(13)(ii) of the PERA does not even mention the content of the information accessible to the employee; rather, in that second category of confidential employee, the focus is upon the level of association that the public officer or representative has with the employer's collective bargaining process.

....

Where an employee has a close continuing 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 fair and equal footing with the union." [PLRB v. Altoona Area Sch. Dist., 480 Pa. 148, 389 A.2d 553 (1978)].

Id. at 1158-1159 (emphasis removed). The record in this case clearly establishes that the administrative assistant has a close continuing relationship with the executive director. The record also establishes that the executive director is a member of the Authority's negotiating team and has been involved in developing bargaining strategies and proposals since the 2007 contract negotiations.

The Authority established that Ms. Draugelis has an office that adjoins with Mr. Miller's office and that she freely and frequently enters Mr. Miller's office to access personnel and union files. Indeed, she personally supplements the Union file with handwritten notes for Mr. Miller. She does all of Mr. Miller's typing and retrieves and answers his e-mails. She collects and assembles monthly data and salary comparables that are used by Mr. Miller in collective bargaining. Ms. Draugelis also prepares documents for the Authority board members for executive sessions which serve as the basis for bargaining strategy discussions during those sessions. She also directly contacts the Union and the Union pension fund on behalf of Mr. Miller for personnel and bargaining matters. For example, in November 2010, Ms. Draugelis prepared and forwarded the completed table of organization to Union Organizer Bogetti. She also had access to proposed changes in the Geisinger Health Plan for bargaining unit employees before the expiration of the 2007-2010 collective bargaining agreement, which became a bargaining issue for the current negotiations.

Moreover, the Authority established that Mr. Miller has no other assistants who have access to him, his office, his files, his data or his strategies, as does Ms. Draugelis, which establishes the "close continuing relationship" recognized by Section 301(13)(ii). North Hills, supra. Mr. Miller has an open, symbiotic relationship with Ms. Draugelis, his only assistant. In fact, the parties' collective bargaining agreement expressly provides that the work performed by the administrative assistant "involves a staff relationship to the Executive Director," and that the "[w]ork includes carrying out all policies adopted by the Housing Authority in regard to any of the functions of the Authority." (F.F. 20). This statement is corroborated by both Ms. Draugelis's and Mr. Miller's testimony. On this record, the law assumes that Ms. Draugelis is privy to confidential information under Section 301(13)(ii). North Hills, supra. Accordingly, the position of administrative assistant is confidential and must be excluded from the bargaining.

#### CONCLUSIONS

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

1. The Authority is a public employer within the meaning of section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of administrative assistant is a confidential position and is thereby properly excluded from the bargaining unit.
5. The appropriate unit for the purpose of collectively bargaining wages, hours and terms and conditions of employment is a subdivision of the employer unit comprised of all full-time and regular part-timenonprofessional employes including but not limited to maintenance employes and clerical staff; and excluding the administrative assistant, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in PERA.
6. The proper designation for the Authority is the "Housing Authority of the City of Shamokin."

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the bargaining unit of employes certified by the Board at PERA-R-07-245-E and PERA-R-07-246-E is amended to exclude the administrative assistant as a confidential employe.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that the certification at PERA-R-07-245-E and PERA-R-07-246-E is amended to designate the Authority as the "Housing Authority of the City of Shamokin."

**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 second day of March, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner