

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : PERA-U-11-412-E  
 : (PERA-R-89-230-E)  
SALISBURY TOWNSHIP SCHOOL DISTRICT :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On November 29, 2011, the Salisbury Township School District PSEA (District or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) requesting that the Board exclude the position of Secretary for PIMS/ACCESS/Cost Accounting from the unit of nonprofessional employes represented by the Salisbury Educational Support Professional Association, PSEA (Association) and certified by the Board at Case No. PERA-R-89-230-E.

On December 20, 2011, the Secretary of the Board issued an Order and Notice of Hearing in which January 25, 2012 was assigned as the time of a telephone pre-hearing conference and April 30, 2012 in Allentown was assigned as the time and place of hearing, if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary and was held as scheduled, at which time all parties in interest were afforded an opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the evidence presented at the hearing and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. Salisbury Township School District is a public employer within the meaning of Section 301(1) of the Act. (N.T. 7, Board Exhibit 1)
2. Salisbury Educational Support Professional Association, PSEA (Association) is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 7, Board Exhibit 1)
3. On January 3, 1990, at Case No. PERA-R-89-230-E, the Board certified the Association as the exclusive representative of a unit of District employes comprised of

All full-time and regular part-time nonprofessional employes including but not limited to secretaries, clerks, teacher aides, maintenance personnel, custodians, cafeteria personnel, district couriers and aides; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

(N.T. 7, Board Exhibit 1)

4. The District contains an administration building, two elementary school buildings, a middle school and a high school. (N.T. 20)

5. The District and the Association are parties to a collective bargaining agreement for the nonprofessional employes for the period of July 1, 2008 to June 30, 2012. (N.T. 13, 60, District Exhibit 1)

6. At the time of the filing of this petition, the District was preparing for negotiations with the Association for a successor agreement for the nonprofessionals. The negotiations began in January, 2012. (N.T. 26, 35, 47-48)

7. In addition to the collective bargaining agreement with the Association, the District also has a collective bargaining agreement with the Salisbury Education Association (SEA) for the professional employees. (N.T. 26)

8. The District and the SEA concluded their negotiations for a new collective bargaining agreement in September, 2011. (N.T. 26, 35)

9. Janet Smith is employed by the District as secretary for PIMS/ACCESS/Cost Accounting. She began in that position in September, 2010, after being bumped from a full-time middle school secretary position. When Smith started in the position, she worked three hours a day. She works in the administration building. (N.T. 19-22, 36-37)

10. In September, 2010, when Smith began as secretary for PIMS/ACCESS/cost accounting, she originally reported solely to Randy Ziegenfuss, Director of Data and Technology. She assisted Ziegenfuss in the collection and reporting of an array of student enrollment data that was required by the Pennsylvania Department of Education for reimbursement purposes. (N.T. 9-11, 36, 42, 47, 60, District Exhibit 3)

11. After working solely for Ziegenfuss on PIMS/ACCESS matters in the 2010-2011 school year, in September, 2011, Smith began assisting Christine Stafford, the District's business administrator and Board Secretary. She now equally divides her time between the two administrators. (N.T. 33, 36-37)

12. On September 14, 2011, at a public meeting of the District's Board of Directors, the District made Smith's position a Confidential Secretary not to exceed 4.5 hours a day. She works five (5) days a week. (N.T. 19-20, 46, 60, District Exhibit 2, page 6)

13. Stafford is directly involved in the District's labor negotiations with both of the bargaining units. She sits at the bargaining table. She is joined by two School Board members and a professional negotiator, Paul Blunt. (N.T. 24, 28)

14. The District is currently engaged in collective bargaining with the Association for a successor agreement. The parties have had two bargaining sessions. The District has prepared a counter proposal in response to the Association's proposal. (N.T. 31)

15. In 2011, Stafford had a full-time secretary, Pat Vsezpremi, who was designated as confidential. However, Stafford needed extra help with the nonprofessional unit bargaining that was about to begin in the fall of 2011. (N.T. 40-42)

16. Smith had access to a District bargaining proposal before the proposal was made. (N.T. 30-32)

17. Stafford has asked Smith to compile data to be used for bargaining proposals and to determine the cost of District bargaining proposals. (N.T. 29-32)

18. The District does not employ a human resources director. Instead human resources matters are divided between the superintendent, the assistant superintendent and the business administrator. (N.T. 27)

#### **DISCUSSION**

The District's petition for unit clarification seeks to exclude the position of secretary for PIMS/ACCESS/cost accounting as a confidential position within the meaning of Section 301(13) of PERA. The position is held by Janet Smith. As outlined in the findings of fact, Smith is a part-time employe. She works for two different administrators, the director of data and technology, Randy Ziegenfuss, and the business administrator and Board Secretary, Christine Stafford. The District contends that Smith's

work for the business administrator is work that falls within the definition of confidential employe.

Section 301(13) of the PERA defines a confidential employe 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.”

43 P.S. 1101.301(13)

As the party seeking the exclusion, the District has the burden of proving the facts necessary to show by substantial evidence that the secretary for PIMS/ACCESS/cost accounting meets the exclusion. **School District of Phila. v. Pa. Labor Relations Bd.**, 719 A. 2d 835, 840. (Pa. Cmwlth. 1998).

As for subsection (i), the evidence shows that the District does not have a separate personnel office. Instead, the District has divided the work of personnel administration among three administrators, one being the business administrator, Christine Stafford. In 2011, Stafford had a full-time secretary who was designated as confidential. However, Stafford needed extra help with the collective bargaining with the nonprofessional unit that was about to begin in the fall of 2011. Stafford used Smith from that point on to collect information for bargaining and to help Stafford prepare for the bargaining sessions. Stafford testified that Smith has access to bargaining proposals. On these facts, the District proved that Smith meets the subsection (i) definition of confidential employe.

As for subsection (ii), the evidence shows that Stafford is a member of the four-person District bargaining team. As a member of the team, she develops bargaining proposals and then sits with the District's team to negotiate with the Association at the negotiating table. From this evidence, it is clear that Stafford is an employe who is "associated with collective bargaining on behalf of the employer." On these facts, the District has satisfied its burden of proof that Smith's position meets the test of a confidential employe under subsection (ii) as well.

The Association argues that Smith's work of gathering data related to collective bargaining was minimal, minor and insufficient to qualify her as being in a "close continuing relationship" with one who is involved in collective bargaining. The Association argues that the case is analogous to **Neshannock Township School District v. PLRB**, 22 A.3d 1103 (Pa. Cmwlth. 2011), where the Commonwealth Court held that an accounts payable clerk was not a confidential employe under section 301(13)(ii) because her providing financial information to members of the employer's bargaining team on two occasions was insufficient to establish that she worked in a close continuing relationship with them, especially since her immediate supervisor was not a member of the bargaining team.

However, in this case, Stafford testified that she is an active member of the negotiating team, unlike the administrator in **Neshannock Township School District, supra**. Smith works directly for Stafford on collective bargaining matters. Furthermore, as stated above, Smith had access to a District bargaining proposal before it was presented to the Association.

#### 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 for PIMS/ACCESS/Cost Accounting is a confidential employe under section 301(13) 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 Nisi Order of Certification at Case No. PERA-R-89-230-E is amended to exclude the position of secretary for PIMS/ACCESS/Cost Accounting.

**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-first day of September, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner