

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: PERA-U-14-50-W
: (PERA-R-03-242-W)
RACCOON TOWNSHIP :

PROPOSED ORDER OF DISMISSAL

On February 21, 2014, Raccoon Township (Township or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) requesting that the Board exclude the position of assistant township secretary from a unit of nonprofessional employees certified by the Board at Case No. PERA-R-03-242-W.

On March 4, 2014, the Secretary of the Board issued an Order and Notice of Hearing in which April 9, 2014, was assigned as the time of a telephone pre-hearing conference and May 8, 2014, in Pittsburgh 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 a full 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. Raccoon Township is a public employer within the meaning of Section 301(1) of PERA.
2. Raccoon Township is organized under the Second Class Township Code, 53 P.S. § 65101, et seq. (N.T. 4-5, Board Exhibit 1, p. 36)
3. The International Union of Operating Engineers, Local No. 66, 66A, B, C, D, O & R is an employe organization within the meaning of Section 301(3) of PERA.
4. On February 25, 2004, the Board certified the Union as the exclusive representative of a unit of "all full-time and regular part-time nonprofessional employes including but not limited to road workers, group leaders, operators, laborers, roadmasters, mechanics, parts people, trash bin attendants, cleaning personnel and *assistant township secretary-treasurer*¹; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act." (N.T. 4-5, Board Exhibit 1, italics added)
5. In the hearing on the Union's representation petition, the parties litigated the status of the assistant secretary-treasurer. The hearing examiner found that the position of assistant secretary-treasurer shared a community of interest with the employes in the unit and was not a management level employe within the meaning of Section 301(16) of the Act, 43 P.S. § 1101.301(16). (N.T. 4-5, Board Exhibit 1)
6. The Township and the Union have been parties to three collective bargaining agreements (CBAs) for the employes in the certified unit. The most recent CBA is for a period of January 1, 2012 to December 31, 2015. Article One of the CBA, "Recognition", includes the position of assistant township secretary-treasurer. (N.T. 6, Union Exhibit 2)

¹ In this case, the parties referred to the assistant township secretary-treasurer as the assistant township secretary or assistant secretary.

7. In the hearing on this petition for unit clarification, the parties stipulated that the assistant township secretary is not a confidential employe within the meaning of Section 301(13) of PERA, 43 P.S. § 1101.301(13). (N.T. 18)
8. The assistant township secretary is Pamela Sue Petrella. (N.T. 18)
9. In 1993, Petrella began her employment with the Township as a part-time clerical employe. (N.T. 19)
10. In 1995, the Township's Board of Supervisors and the Hopewell Area School District's Board of Directors appointed Petrella to the position of tax collector to fill an unexpired term of the elected tax collector. In 1996, Petrella successfully ran for election to the position in the next general election. Since then, she has successfully stood for reelection four times, the most recent being in November, 2012. (N.T. 19-20, 30)
11. In 2001, the Township appointed Petrella to the position of assistant township secretary. (N.T. 21)
12. For the Township, the tax collector collects a real estate tax and a fire hydrant assessment from township property owners. The Township pays her \$3 per tax bill. She also collects a per capita tax, and receives a 5% commission on what she collects from the per capita tax. (N.T. 27-28, 29)
13. For the School District, the tax collector collects a property tax. The School District pays the tax collector \$4 per tax bill sent. (N.T. 28, 29)
14. Petrella's total pay from the Township and the District for the tax collector position is \$15,000 per year. (N.T. 29)
15. The rate of pay for the assistant township secretary is \$13.40 an hour. (N.T. 29-30)
16. The position of tax collector is not a bargaining unit position. (N.T. 12)
17. The Board of Supervisors decided that Petrella's office space for both the assistant secretary and tax collector would be in the same space in the Township building. (N.T. 24-25, 27)
18. Petrella's hours as assistant secretary are Monday through Friday, 9 a.m. to 4 p.m. (N.T. 23)
19. Petrella has no set number of hours to perform the job of tax collector. (N.T. 24)
20. The busiest time of the year for the tax collector is during the statutory discount period for each governmental entity. The Township's discount period is in April; the School District's discount period is in August. During the discount period, 90% of Petrella's time is spent on assistant secretary work and 10% of her time is spent on tax collector work. (N.T. 26, 30)
21. The Township allows Petrella to collect taxes from taxpayers who walk into the building during her office hours as assistant township secretary. (N.T. 23)
22. At no time during the negotiations for the three CBAs did the Township raise an objection to Petrella serving as the elected tax collector while holding a bargaining unit position. (N.T. 22-23)
23. Petrella is the union's steward and sits on the union's negotiating team. (N.T. 23)

DISCUSSION

The Township's unit clarification petition seeks to remove the position of assistant township secretary from the nonprofessional bargaining unit. The petition states "The Township Tax Collector is also the Assistant Township Secretary. The Township would like clarification to determine if she is permitted to be a member of the Union while holding an elected position."

At the hearing in this matter, the Chairman of the Township's Board of Supervisors, Edward Malloy, explained that the Township filed the petition because residents had asked if it was legally appropriate for the assistant township secretary to be in the bargaining unit because she is also the tax collector, an elected official.

Section 401 of PERA states, in part, that "[i]t shall be lawful for **public employes** to organize, form, join or assist in employee organizations..." 43 P.S. § 1101.401. Section 301(2) of PERA defines a "public employe" as

" . . . any individual employed by a public employer but shall not include **elected officials**, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, clergymen or other persons in a religious profession, employes or personnel at church offices or facilities when utilized primarily for religious purposes and those employes covered under the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers;. . ."

43 P.S. § 1101.301(2) (Emphasis added by Hearing Examiner)

Since 1995, Pamela Sue Petrella has held the position of tax collector, an elected office that serves the Township and the Hopewell Area School District, pursuant to the Second Class Township Code. In 2001, the Township appointed Petrella to the position of assistant secretary. In 2005, the Board certified a bargaining unit of nonprofessional employes that included the assistant township secretary. Despite holding these two positions simultaneously for thirteen years, the Township did not raise an objection until now. In that period, the Township negotiated three collective bargaining agreements and did not raise the issue in those negotiations. The present petition is the first time that Petrella's elected office has been made an issue as to her continued inclusion in the bargaining unit.

Where the parties have had a full opportunity to litigate the position, the Board will entertain a unit clarification petition only if the petitioner can show a change in the job duties. **Northeastern Educational Intermediate Unit 19**, 11 PPER ¶ 11232 (Nisi Order of Unit Clarification, 1980), **North Manheim Township**, 9 PPER ¶ 9162 (Final Order, 1978).

The parties have had a full opportunity to litigate the status of the assistant secretary. In 2003, at the time of the hearing on the petition for representation, the parties litigated the question of whether the assistant secretary should be included in the bargaining unit. I was the examiner in that case and found that the position shared a community of interest with the other nonprofessional positions in the unit and was not a management level employe within the meaning of Section 301(16) of PERA. The Township chose not to litigate the "elected official" exclusion, although Petrella was the elected tax collector at the time.

Also, the Township has not shown a change of job duties with respect to either position since the 2003 litigation. Accordingly, since there has been no change of duties, the petition of unit clarification should be dismissed.

CONCLUSIONS

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

1. Raccoon Township is a public employer within the meaning of Section 301(1) of PERA.
2. The International Union of Operating Engineers, Local No. 66, 66A, B, C, D, O & R is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The assistant secretary is properly included in the unit of nonprofessional employes certified by the Board at Case No. PERA-R-02-242-E.

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 petition for unit clarification is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this thirtieth day of July, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner