

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-14-302-E
: :
SOUTH WHITEHALL TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On September 11, 2014, Teamsters Local 773 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employe Relations Act (PERA) alleging that thirty per cent or more of the white collar nonprofessional employes of South Whitehall Township (Township), wish to be exclusively represented by the Union. On October 6, 2014, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Tuesday, November 25, 2014. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On December 9, 2014, the notes of testimony from the hearing were filed with the Board. On December 29, 2014, the Union and the Township both filed their post-hearing briefs.

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. The Township is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4)
3. Renee Bickel has been the Human Resources Manager at the Township since January 2013. (N.T. 5-8)
4. There has been no Township Manager since August 2014. (N.T. 9)
5. Howard Kutzler is the Director of Administration and Acting Township Manager. (N.T. 9, 44)
6. The Public Works department negotiated a collective bargaining agreement with the Township, effective January 1, 2013. (N.T. 13)
7. Aniko Ritchie is a Clerk 2 in Human Resources. She reports directly to Ms. Bickel. (N.T. 105-106)
8. Tracy Fehnel is the Executive Assistant to the Acting Township Manager and Director of Administration, Howard Kutzler. Ms. Fehnel's office is immediately adjacent to Mr. Kutzler's office. Both offices share a common wall. Ms. Fehnel and Mr. Kutzler interact very frequently. (N.T. 27, 46, 52, 61-62, 71-73, 102)
9. Ms. Ritchie has access to Ms. Bickel's office. (N.T. 18)
10. Ms. Bickel's office is located in the Finance Office which is a large open room with cubicles in the back. (N.T. 16-17)
11. Ms. Ritchie has access to personnel files, which are maintained in a locked cabinet. She has access to medical documents, grievances and banking information. (N.T. 19, 21-23, 116)

12. Ms. Ritchie has access to a shared Human Resources computer drive and the financial drive which contains spreadsheets for negotiations. (N.T. 20)
13. Ms. Ritchie has access to employe files and medical documents and physician information for employes, grievances and banking information. She has access to health care plan descriptions and premium information. (N.T. 21-22)
14. Ms. Ritchie performs all the payroll functions for the Township. She has access to employes' accrued paid time off and their pay history. She transfers money, pays advances, pays taxes and collects mail. She performs any scanning, copying and mailing that Ms. Bickel requires. (N.T. 21-24, 107-108)
15. Ms. Ritchie has access to the HRIS system which contains all employe information including notes, documentation, personal and insurance information pertaining to individual employes. (N.T. 24)
16. She enrolls employes in, and removes them from health insurance plans. She also notifies them of COBRA when they are removed from such plans. (N.T. 25, 107-108)
17. Ms. Bickel is on the Pension Committee, and she attends grievance meetings. Ms. Ritchie does not attend grievance meetings. Ms. Bickel was involved in negotiations for the public-works contract. (N.T. 27, 31-32, 111)
18. Ms. Ritchie has never attended collective bargaining negotiations with either the police union or the Teamsters 773. She has never prepared a Township bargaining proposal for a bargaining session. Ms. Ritchie has never prepared any data compilations for Ms. Bickel. She does not collect information for reports on salary or health coverage. She implements salary changes for the police unit when that collective bargaining agreement requires. (N.T. 33, 40-41, 109-111)
19. Mr. Kutzler, Ms. Bickel and Ms. Fehnel have access to the Executive Staff Computer File. (N.T. 28,55)
20. The Executive Staff Computer File contains final executed contracts and arbitration awards, not working or draft documents. (N.T. 28, 81-82, 98)
21. Ms. Fehnel once recorded the minutes at a Pension Committee meeting. (N.T. 42)
22. Mr. Kutzler has not been involved with any negotiations at the Township. He anticipates that he will be involved in negotiations. (N.T. 46-48)
23. Ms. Fehnel has access to Mr. Kutzler's office and the files and documents maintained therein. She does not have keys or access to the personnel files, and she has no reason to access those files. She does not have access to Mr. Kutzler's personal drive or the documents that Mr. Kutzler saves to his personal drive. (N.T. 52-53, 66-68, 80-81, 86)
24. Ms. Fehnel scans documents into the Township's computer files. She opens and routes mail. She opened the representation petition in this case and provided it to Mr. Kutzler and Ms. Bickel. She does not attend grievance meetings. (N.T. 57-60, 67, 73-74, 88)
25. She takes minutes for the Authority Board but not the Township Board. She does not attend executive sessions of the Township Board. (N.T. 73-74, 78-79).
26. None of Ms. Fehnel's duties or correspondence has related to collective bargaining. When a grievance is submitted, Ms. Fehnel scans it into the electronic grievance file. She does not see or handle grievance adjustments or settlements. (N.T. 78-80)

27. Ms. Fehnel has never attended any bargaining sessions. In October 2012, Ms. Fehnel made revisions to the collective bargaining agreement for the public works unit. She has never typed or drafted a bargaining proposal in advance of a collective bargaining meeting. She has never prepared agendas for any collective bargaining meetings. (N.T. 80-81, 92-94)
28. Ms. Fehnel has never assembled data compilations for bargaining or political decisions. (N.T. 83)
29. Jerry Gasda and John Hammer were prior Township Managers who engaged in collective bargaining negotiations on behalf of the Township prior to Mr. Kutzler assuming the position of Acting Township Manager. During those negotiations, Ms. Fehnel was not privy to any bargaining information, strategies, tactics or ideas. Ms. Fehnel did not discuss bargaining with Mr. Hammer or Mr. Gasda. She saw no documents or memos regarding negotiations, and she was never part of the meetings or discussions between Township Manager Hammer and the Township Board. (N.T. 90-91)
30. Ms. Fehnel is not privy to interactions between the Acting Township Manager and the Township Human Resources Manager. (N.T. 91)
31. Ms. Fehnel produces spreadsheets for the Township Director of Finance for Township budgets. She has made copies of pension materials for pension meetings. Ms. Fehnel does not do anything with pension information as related to the budget process. She does not access insurance costs for the budget process. (N.T. 100-102)

DISCUSSION

The Township posits that the position of Clerk 2 Human Resources and the position of Executive Assistant to the Director of Administration/Acting Township Manager are confidential within the meaning of Section 301(13)(ii) of PERA because they have a close continuing relationship with individuals directly involved in collective bargaining and therefore should be excluded from the proposed bargaining unit of employees. As the party seeking to exclude these two positions as confidential, the Township has the burden of proving the necessary facts to support the confidential exclusion. **In the Matter of the Employees of Riverview Intermediate Unit #6**, 37 PPER 106 (Final Order, 2006); **In the Matter of the Employees 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 Employees of Tunkhannock Area Sch. Dist.**, 29 PPER ¶ 29023 (Final Order, 1997).

Section 301(13) of PERA provides as follows:

"Confidential employe" shall mean any employe who works: . . .
(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 employe 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 employe 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). In this case, the Director of Administration and Acting Township Manager, Mr. Kutzler has not engaged in any collective bargaining. However, the record in this case clearly establishes that the former Township Manager did engage in collective bargaining negotiations and strategies. Those collective bargaining duties attach to the position and not the individual employe. The substantial evidence of record therefore establishes that Mr. Kutzler will be engaging in collective bargaining. The record also establishes that Ms. Fehnel has a close continuing relationship with Mr. Kutzler and that her position should be excluded under Section 301(13)(ii).

Ms. Bickel was involved in negotiations for the public works contract. The record establishes that Ms. Ritchie has a close continuing relationship with Ms. Bickel and therefore her position is properly excluded from the proposed bargaining unit of employes as confidential under Section 301(13)(ii).

CONCLUSIONS

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

1. The Township 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 employes in the proposed bargaining unit of white-collar nonprofessional employes of the Township share an identifiable community of interest.
5. The position of Executive Assistant to the Director of Administration and Acting Township Manager or Township Manager currently held by Tracy Fehnel is confidential and is properly excluded from the bargaining unit of white collar nonprofessional employes of the Township.
6. The position of Clerk 2 Human Resources reporting directly to the Human Resources Manager, currently held by Aniko Ritchie, is confidential and is properly excluded from the bargaining unit of white collar nonprofessional employes of the Township.
7. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer comprised of all full-time and regular part-time white-collar nonprofessional employes of the Township including but not limited to secretaries, clerks, typists and administrative assistants, excluding the Executive Assistant to the Acting Township Manager/Director of Administration

and the Clerk 2 in Human Resources and excluding management level employes, first-level supervisors, confidential employes, as defined in the Act.

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 Township shall within ten days of the date hereof submit to the Board and the other parties an alphabetized list of the **names and addresses** of the employes eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twelfth day of March, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner