

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-16-179-E
 :
 :
 PENNDEL BOROUGH :

PROPOSED ORDER OF DISMISSAL

On June 14, 2016, the PennDEL Borough Secretarial Association (Association or Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation, pursuant to the Public Employee Relations Act (PERA), alleging that thirty percent or more of the two nonprofessional employees of PennDEL Borough (Borough) wish to be exclusively represented by the Union. On July 11, 2016, the Borough filed an answer to the petition. On July 13, 2016, the Secretary of the Board issued an Order and Notice of Hearing, directing that a hearing be held on Friday, September 2, 2016. I granted the Association's two requests for continuances and rescheduled the hearing for November 16, 2016. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. At the close of the hearing, the parties elected to present oral arguments in lieu of filing post-hearing briefs. The Board received the notes of testimony from the hearing on November 29, 2016.

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 Borough 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. The Borough does not employe a Borough Manager. (N.T. 7)
4. Marie Serota is the Borough Secretary/Treasurer. Karen Kondrk is the Borough's Assistant Secretary. Ms. Serota's office is located in the Borough Hall, in the upper offices. She is re-appointed by Borough Council every two years. She is the Borough's custodian of records and right-to-know officer. She records and maintains the Borough Council meeting minutes. Ms. Serota maintains the Borough's employe payroll and benefits records in her office. (N.T. 7, 20, 26-36, 40-46, 57; Petitioner Exhibits 1&2)
5. Ms. Serota has check-signing authority. She pays the Borough's bills, after Council approves payment, and she reconciles the Borough's checking account. These bills include, but are not limited to, workers' compensation and health insurance. She makes deposits for the Borough and issues invoices. Ms. Serota performs the duties of the Assistant Secretary when she is on leave. She pays employe contributions and maintains pension accounts. (N.T. 7-8, 20, 26-36; Petitioner Exhibit 1)
6. Ms. Serota has not seen bargaining proposals or strategies of the Borough in the context of the Borough's collective bargaining negotiations with the police union. She has only seen the completed contract. She has not attended collective bargaining meetings or negotiations. Ms. Serota did not prepare payroll data, medical insurance information or other financial data for police bargaining. The Borough Secretary and Assistant Secretary are the only employes with access to that financial data. (N.T. 16, 37-38)

DISCUSSION

In its closing argument, the Borough argued that, as a matter of law, the Borough Secretary is confidential and must be excluded from the bargaining unit. (N.T. 55). In its answer, the Borough asserted that both the Borough Secretary and the Borough Assistant Secretary, the only two employees in the proposed unit, are confidential. Therefore, the two employees are not public employees under the Act. Consequently, argued the Borough, there is an inadequate showing of interest of public employees, and the Board should dismiss the petition. I agree that the Borough Secretary is confidential as a matter of law.

In the case, **In the Matter of the Employees of Ford City Borough**, 47 PPER 51 (Final Order, 2015), the Board opined as follows:

Further, in **West Hanover Township v. PLRB**, 646 A.2d 625 (Pa. Cmwlth. 1994), the issue was whether a Township Secretary appointed pursuant to the Second Class Township Code, who was the custodian of all the township's files and whose duties included, among other things, maintaining the records of all township proceedings and personnel files and processing of the payroll should be excluded from the nonprofessional bargaining unit as a confidential employee. In concluding that the position was a confidential employee under Section 301(13) of PERA, the Commonwealth Court stated as follows:

[B]ecause the township secretary is an officer of the municipal body, the inclusion of such an appointed officer within the bargaining unit for the township workers would be just as inappropriate as the inclusion of the corporate secretary of a business corporation within a workers' bargaining unit.

...

One need not await the occurrence of actual experience in collective bargaining to conclude that placing a township officer, who functions as its official secretary, in the bargaining unit would present an impossible situation disadvantageous to all involved.

...

The township secretary, as the official custodian of *all* files of the township, is obviously essential to performance of the bargaining function on behalf of the employer municipality.

646 A.2d at 632-633 (emphasis in original). In **Borough of Ridley Park**, 27 PPER ¶ 27227 (Final Order, 1996), the Board excluded a Borough Secretary appointed pursuant to the Borough Code, who was the official custodian of all the borough's financial and personnel records, from the nonprofessional bargaining unit as a confidential employee under Section 301(13) of PERA, stating that the Court's holding in **West Hanover Township** required the exclusion of any appointed municipal Secretary whose duties include being the "official custodian of all files" of the municipality. Similarly, Ms. Bittner is responsible for processing the payroll, preparing the minutes of all Borough Council meetings and maintaining the personnel files for the Borough. (FF 12, 13). Therefore, the decisions in **West Hanover Township** and **Borough of Ridley Park** provide further support for the Hearing Examiner's conclusion that the position of Borough Secretary is confidential under Section 301(13) of PERA and should be excluded from the bargaining unit.

Ford City Borough, 47 PPER at 184.

Marie Serota, the Borough Secretary/Treasurer, is re-appointed by Borough Council every two years, pursuant to the Borough Code. She is the Borough's custodian of records and right-to-know officer. She records and maintains the Borough Council meeting minutes. Ms. Serota maintains the Borough's employee payroll and benefits records in her office. Ms. Serota has check-signing authority. She pays all the Borough's bills, and she

reconciles the Borough's checking account. These bills include, but are not limited to, workers' compensation and health insurance. She makes deposits for the Borough and issues invoices. Ms. Serota performs the duties of the Assistant Secretary when she is on leave. She pays employe contributions and maintains pension accounts. Although these duties constitute a very small sampling of the extensive and complicated duties performed by Ms. Serota, who essentially runs the Borough on a daily basis, these duties are sufficient to satisfy the standard set forth in **Ford City Borough, supra**, and support the conclusion that Ms. Serota is a confidential employe. Excluding Ms. Serota from the proposed bargaining unit as confidential would leave, at most, only one employe remaining in the proposed unit, i.e., Assistant Secretary Kondrk. The Board will not certify a bargaining unit permanently consisting of one employe. **In the Matter of the Employes of Bucks County Water and Sewer Authority**, 26 PPER ¶ 26131 (Order and Notice of Election, 1995).¹

CONCLUSION

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

1. The Borough 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 Borough Secretary/Treasurer position is a confidential employe and is thereby properly excluded from the bargaining unit.

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 Representation filed by the Union is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions 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 this fifth day of December, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

¹ Given the conclusion that Ms. Serota, the Borough Secretary, is excluded from the proposed unit as confidential, I have not and need not consider whether Ms. Kondrk is also confidential, as claimed by the Borough. And, therefore, I have not addressed the Borough's claim, in its answer, that the petitioner lacks a sufficient showing of interest.