

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-18-107-E
:
:
MOUNT CARMEL TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 4, 2018, AFSCME District Council 86 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation, pursuant to the Public Employee Relations Act (Act or PERA), alleging that thirty percent or more of the nonprofessional employees in Mount Carmel Township (Township) wish to be exclusively represented by the Union. On May 23, 2018, the Secretary of the Board notified the Union that the Board was unable to process the petition because records showed that the Board previously certified the International Union of Operating Engineers, Local 542, as the exclusive bargaining representative on May 5, 1989, at Case No. PERA-R-88-526-E. The Secretary of the Board also informed the Union that further processing of the petition required the Union to amend its petition to clarify whether the certified representative had been providing representation. On June 1, 2018, the Union filed a letter with the Board informing the Secretary of the Board that the Operating Engineers have never provided representation or bargained a collective bargaining agreement on behalf of the employees and that there is currently no such agreement in place.

On June 29, 2018, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Friday, August 17, 2018, in Harrisburg. After two continuances, the hearing was scheduled for and held on Wednesday, September 19, 2018. 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. On November 13, 2018, the Union filed its post-hearing brief. On November 14, 2018, the Township filed its post-hearing brief.

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. 6)
2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6)

3. The parties stipulated and agreed that the three laborers are included together in the proposed bargaining unit. Their names are as follows: Edward Amarose, William Beaver and Sean Zanella. (N.T. 6-7)

4. Marian Klingerman is the appointed Township Secretary. The parties stipulated and agreed that the Township Secretary is excluded from the proposed bargaining unit. As the appointed Secretary of a second-class township, Ms. Klinger is a confidential employee as a matter of law. (N.T. 7, 25, 72; Township Exhibit 1)

5. The Township is a second-class township. The parties stipulated and agreed that the International Union of Operating Engineers, Local 542, has not represented employees or negotiated on their behalf for more than 8 years. (N.T. 7, 14)

6. There are three members of the Township Board of Supervisors, and their names are as follows: Chairman Aaron Domanski, Supervisor Richard Mychak, who is also the Roadmaster, and Supervisor Matthew Susnoskie. As an elected official, Mr. Mychak is not an employee covered by the Act, under Section 301(2) of PERA. The duties of the Roadmaster position were not litigated in this case. (N.T. 12-14, 19-20)

7. The Township Treasurer is Lisa Fiamoncini. Ms. Fiamoncini was first appointed to the full-time Township Treasurer position in January 2015, and she has been reappointed every year since, as required by the Second-Class Township Code. She receives a \$600 annual stipend, in addition to her regular pay, to attend public meetings of the Board of Supervisors. She reports directly to the Supervisors, but she is not an assistant to any one of them or on anyone's personal staff. (N.T. 20-22, 56, 70-72, 77; Township Exhibits 1 & 2)

8. In addition to the Supervisors, the Solicitor, Ms. Klingerman, Ms. Fiamoncini, the Police Chief and the Code Enforcement Officer all attend Board of Supervisors meetings. (N.T. 53)

9. The Second-Class Township Code generally provides the duties and responsibilities of a second-class township treasurer. Section 704 of the Second-Class Township Code provides, in relevant part, as follows:

Treasurer' s Duties. - -The township treasurer shall:

(1) Receive all moneys due the township and deposit them promptly in a designated depository in the name of the township.

(2) Keep distinct and accurate accounts of all sums received from taxes and other sources, which accounts shall be open to the inspection of the board of supervisors and any citizen of this Commonwealth. Pay out all moneys of the township only on direction by the board of supervisors.

(3) Annually state the accounts and make them available to the board of auditors for settlement.

(4) Preserve the account books, papers, documents and other records of the office and turn them over to the successor in office.

(53 P.S. §65704; N.T. 24-25; Township Exhibit 2)

10. Ms. Fiamoncini answers the phone and deals with the public daily regarding trash, sewer matters and residents' bills; she works on the Treasurer's Report; she pays Township bills and tracks bank accounts by ensuring that checks have cleared; she does payroll and pays quarterly payroll taxes; she completes year-end reports and generates year-end W-2s. Ms. Klingerman makes all bank deposits for the Township. (N.T. 79-80)

11. Ms. Klingerman does the correspondence for the Supervisors. Ms. Fiamoncini occasionally does correspondence in Ms. Klingerman's absence, if necessary. Ms. Fiamoncini occasionally signs building permits upon receipt of the permit fee when Ms. Klingerman is absent. This is not a discretionary act. The permit is then forwarded to the Code Enforcement Officer for review and approval. (N.T. 37, 45-46, 84-85)

12. In February 2018, Supervisor Susnoskie requested that Ms. Fiamoncini give him the Township budgets for the last three years so he could provide the information to the Police union leadership who requested it. (N.T. 10, 88)

13. None of the Supervisors have office space at the Township Building. Supervisor Susnoskie gets to the Township Building once or twice per week. He emails Ms. Fiamoncini frequently and talks to her approximately once per week. Supervisor Mychak is in the Township Building daily because he is the Roadmaster. He does not have an office in the Township Building. He uses the Township conference room to perform Roadmaster duties involving phone calls and paperwork. (N.T. 25, 58, 77-79)

14. Upon entering the Township Building, there is a counter on the right and filing cabinets on the left. Behind the counter is open space where Ms. Fiamoncini and Ms. Klingerman have their desks. Ms. Fiamoncini does not have a private office. Beyond the counter and the filing cabinets is a break room on the left where there are open mailboxes for the Supervisors. Further back from the break room is the Code Enforcement Officer's office, and after that is the public meeting room. The Police Department is located at another nearby facility. (N.T. 59-61, 71-72, 77)

15. There are three filing cabinets that are locked. These cabinets contain liquid fuels information, agency files, payroll information and timesheets. Some financial records are not locked. Any employee with access to the Township Building can access the filing cabinets. Personnel files are unlocked. (N.T. 92-93)

16. The personnel files for the employees are in the Code Enforcement Officer's office which has a door. Purchase orders are left inside a manila envelope. Supervisors access, sign and return the purchase orders to the envelope. All Supervisors, the Chief, Ms. Klingerman and Ms. Fiamoncini have keys to the closet. (N.T. 61-62, 73)

17. Ms. Fiamoncini has access to all employee information. She signs paychecks and bills for payment. All payments, bills and expenses are approved by the Supervisors. She knows employees' salaries. She is a notary for the Township, and she is the liaison for the Keystone Tax Service. (N.T. 27-28, 36-37, 49)

18. Ms. Fiamoncini's computer has access to Township computer files. The Chief of Police can access any employee's computer. Only Ms. Fiamoncini has the passwords to the Township bank accounts. The Supervisors do not currently have any of the bank account passcodes, but they could have those passcodes. Ms. Klingerman has access to the wastewater account. (N.T. 26, 28, 73-75)

19. Ms. Fiamoncini prepares a Treasurer's Report every month. She attends meetings of the Board of Supervisors every month, during which she submits the monthly Treasurer's Report. The monthly Treasurer's Report contains lists of accounts and the money available in those accounts. The financial information to which Ms. Fiamoncini has access is available in the Treasurer's Reports which are public documents approved at public meetings and posted on the Township website. (N.T. 29-32, 46-47; Township Exhibit 3)

20. The Township Police Department has an Act 111 bargaining unit. The Supervisors serve as the Township bargaining team in negotiations with the Police unit. (N.T. 14, 17)

21. Ms. Fiamoncini collects financial data for annual budget proposals in August/September each year. The budget is adopted at a public meeting. Employee salaries are publicly available information. The police collective bargaining agreement is voted upon at a public meeting and the salaries, vacations and benefits contained therein are publicly available. (N.T. 33; Township Exhibit 4)

22. Ms. Fiamoncini's role in the budget process includes reviewing what the Township has spent on items in the past and determining how much more may be spent on those items in the upcoming year. She then includes those projections in line items on a spreadsheet for review by the Supervisors. The Supervisors then inform Ms. Fiamoncini whether they wish to change or add anything or add money for a new purchase or project. The Supervisors ultimately determine the budget. Ms. Fiamoncini has no role in preparing the Police Department budget. (N.T. 82-83)

23. At time throughout the budget year, the Supervisors may from time to time consult with Ms. Fiamoncini to determine the affordability of unbudgeted purchases or expenses. Anytime a Supervisor wants a financial or budget update, Ms. Fiamoncini will provide the information upon request. For example, Ms. Fiamoncini provided Supervisor Susnoskie financial information regarding the amount of gasoline being used as compared to the amount of gasoline for which the Township had budgeted. (N.T. 34-35, 50)

24. Ms. Fiamoncini collects financial information and provides it to Township auditors. She provides clarification if the auditors have questions. The auditors issue an opinion regarding the accounting and financial soundness of the Township. (N.T. 35, 51, 81)

25. Ms. Fiamoncini has access to employees' health care information. She is the Township contact for all insurance quotations. She handles employees' Workers' Compensation and Heart and Lung claims as well as Township vehicle claims. (N.T. 36, 51, 68, 93-94)

26. Ms. Fiamoncini is not on the Township bargaining team or committee. Except for one occasion, she has not participated in executive sessions. Ms. Fiamoncini has never been asked to do anything for the Supervisors in connection with collective bargaining with the Police union. She has never been asked to obtain quotes from different health insurance plans in connection with collective bargaining negotiations with the Police union. (N.T. 40-41, 84, 86, 112-113)

27. Prior to the filing of the instant petition, Ms. Fiamoncini has never learned in advance of any Township bargaining proposal with the Police unit; she has never typed any proposals for the Township.

DISCUSSION

The Township seeks to exclude the position Township Treasurer from the proposed bargaining unit of nonprofessional Township employees because it believes that the position is confidential under Section 301(13) of PERA. (N.T. 7; Township's Post-hearing Brief at 5). The Township has the burden of establishing the necessary facts to support the exclusion. In the Matter of the Employees of State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999). This burden is high because the policies of the Act seek to protect public employees by affording them the right to join a union and benefit from the fruits of collective bargaining. In the Matter of the Employees of Rome Township, 40 PPER 54 (Order Directing Submission of Eligibility List, 2009).

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).

The Township maintains that the position of Treasurer in this case meets both prongs of Section 301(13). (Township's Post-hearing Brief at 5). The Township contends that Ms. Fiamoncini is a confidential employee because she works in the personnel offices of the Township and has access to information used by the Township in collective bargaining satisfying the first prong of Section 301(13) of the Act. (Township's Post-hearing Brief at 5). The Township argues that, in East Allen Township, 48 PPER 34 (Order Directing Submission of Eligibility List, 2016), the examiner relied on the same facts as presented here in excluding the secretary-treasurer under the first

prong of Section 301(13) of PERA, in that case. (Township's Post-hearing Brief at 5).

The examiner's analysis and discussion in the case In The Matter of the Employees of Cumberland Township, 49 PPER 4 (Order Directing Submission of Eligibility List, 2017) are pertinent to the facts of this case. In Cumberland Township, the examiner stated the following:

In defining the nature of Section 301(13)(i), the Board has required that the employee in question be privy to the employer's bargaining strategy. In this regard, the Board has opined as follows:

[A]n employee does not have access to confidential collective bargaining information when she simply takes basic data and compiles reports which may eventually be used in negotiations as the position of the employer when the person who compiles the basic data has no information which would be considered confidential as a result of that compilation. It is only when an employee is privy to relevant determinations of the employer's policy that that person may be found to be confidential. The collective bargaining information must be of such definite nature that the union would know of the employer's plans if the information is revealed.

Bangor Area Sch. Dist., 9 PPER ¶ 9295, 533 (Nisi Decision and Order, 1978). In Bangor, the payroll clerk prepared all aspects of employee payroll, insurance benefits, accumulated medical insurance price quotes and wage data. The Bangor Board concluded that the payroll clerk was not confidential because she was not privy to the employer's policy determinations in the field of labor relations. Also, the Bookkeeper in Bangor, who was responsible for generating reports and accumulating cost data and who did not have access to the employer's policies in labor relations, was also not confidential. Id.

In Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB, 383 A.2d 546 (Pa. Cmwlth. 1978), the proposed confidential employee arguably had access to and knowledge of budgets, allocations of funds, salaries and memoranda concerning proposed salary increases before being made known to the union. The Commonwealth Court agreed with the Board that the employee was not confidential. The Columbia/Snyder Court placed paramount importance on the fact that, even in the employee's new position in the fiscal department, "she would have access to no information relevant to collective bargaining which could be considered outside the 'public record.'" Id. at 551. Similarly, in Tunkhannock Area School District, 29 PPER ¶ 29023 (Final Order, 1997), the Board held that an accounting supervisor who priced fringe benefit proposals was not privy to bargaining strategies of a definite nature so as to seriously impair the employer's bargaining position if such information was revealed to the union, within the narrow construction of Section 301(13), as mandated by the Supreme Court in Altoona, supra. Also, in

Western Beaver County School District, 37 PPER 53 (Proposed Order of Unit Clarification, 2006), the examiner held that the payroll clerk was not confidential, even though the clerk had access to payroll, grievances, personal information and had provided information for collective bargaining and budget preparation, because the payroll clerk was not privy to the employer's bargaining strategy.

Cumberland Township, 49 PPER at 17-18.

The record in this case shows that the Township Treasurer is not confidential within the meaning of the first prong of Section 301(13). Ms. Fiamoncini does not work in a personnel office. The personnel files are located in the Code Enforcement Officer's office, not in Ms. Fiamoncini's work area. She has no office of her own and has the same access to the unlocked personnel files as any other employee in the Township who has access to the Township Building. She works in an open space along side the Township Secretary near the front entrance to the Township Building. She does not work alongside any Supervisors, and she is not the custodian of the records for the Township.

Moreover, there is no evidence demonstrating the Ms. Fiamoncini is or has been privy to the Township's collective bargaining strategy. This Board has consistently held, as in Bangor, supra, that simply compiling data and reports that may be used in collective bargaining does not qualify as having access to confidential collective bargaining information. Access to employee health care/insurance records, employment records, payroll records and Township financial and tax information does not, without more, establish that Ms. Fiamoncini has been given access to the manner in which the Township may wish to utilize that information in planning a bargaining strategy or taking a bargaining position with respect to negotiating wages, hours and terms and conditions of employment.

Indeed, the payroll clerk in Bangor, supra, who prepared all aspects of employee payroll, insurance benefits, medical insurance quotes and wage data, had worked with the same data and information as Ms. Fiamoncini does here. As quoted from Cumberland Township above, "The Bangor Board concluded that the payroll clerk was not confidential because she was not privy to the employer's policy determinations in the field of labor relations." Cumberland Township, 49 PPER at 17-18. Similarly, in Columbia, supra, the Commonwealth Court held that knowledge of and access to budgets, allocation of funds and even proposed, but unknown, salary increases did not rise to the level of a confidential employee such that the employee should be deprived of the protections under the Act. Even where the employee in the position has access to grievances, personal information and provided information to be used for collective bargaining, the position is not confidential because there is no exposure to bargaining strategy, tactics or positions. Western Beaver, supra.

East Allen Township is distinguishable, and the Township's reliance on that case is misplaced. In East Allen Township, the secretary-treasurer was removed as confidential as a matter of law, pursuant to West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1994), because the employee was the appointed secretary of a second-class township and the record showed that she was the custodian of records, not because the employee was also the appointed treasurer performing duties associated with treasurer. Accordingly, the position

of Township Treasurer is not confidential within the meaning of Section 301(13)(i).

The Township also contends that the Treasurer is a confidential employee under the second prong of Section 301(13) of PERA and posits that Ms. Fiamoncini works in a close continuing relationship with the Supervisors who go to the bargaining table and are associated with collective bargaining. (Township's Post-hearing Brief at 6). Ms. Fiamoncini, argues the Township, reports directly to the Supervisors, and she interacts daily with at least one of the Supervisors, Richard Mychak. (Township's Post-hearing Brief at 6). The second prong of the statutory confidential exclusion focuses on the relationship, i.e., the close continuing relationship, with management personnel who formulate, effectuate or determine labor policy for the employer. (Township's Post-hearing Brief at 6).

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 interpreted Section 301(13)(ii) and opined as follows:

[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). In this regard, the Township properly notes that the second prong focuses on the relationship that the purported confidential employee has with management involved in collective bargaining. However, that relationship must be "close" and "continuing."

In Neshannock Educational Support Professionals Association v. PLRB, 22 A.3d 1103 (Pa. Cmwlth. 2011), the Commonwealth Court opined that "the employees that were found to have a 'close continuing relationship' under Section 301(13)(ii) of PERA worked directly for members of the bargaining team and/or performed work related to collective bargaining on a regular basis." Neshannock, 22 A.3d at 1107. The record in this case shows that Ms. Fiamoncini reports to the Supervisors but does not have a close or continuing working relationship with any of them, nor is she an assistant to any of the Supervisors. Although Supervisor Mychak comes into the Township Building every day, he secludes himself in the conference room and completes paperwork and phone calls necessary to his duties as

Roadmaster. He does not interact with Ms. Fiamoncini for work-related matters, and he does not discuss labor policy with her. None of the Supervisors have an office at the Township Building. None of the Supervisors maintain any regular presence or perform any regular work at the Township Building. Ms. Fiamoncini does not perform routine administrative or clerical duties for the Supervisors. Accordingly, Ms. Fiamoncini does not have a close and continuing relationship with any Supervisors such that it can be assumed, within the meaning of North Hills, supra, that she would be privy to the Township's labor policy and strategies in collective bargaining.

As the Board opined in Mid-West School District, 47 PPER 61 (Final Order, 2015), merely being a subordinate to or reporting to a member of the employer's bargaining team is insufficient to establish a close continuing relationship for purposes of Section 301(13)(ii) of PERA. "There must be testimony or evidence of the employee's continuing duties for the employer's bargaining representative to justify assuming that the employee would, by sole nature of that relationship, have access to confidential collective bargaining information." Mid-West School District, 47 PPER at 217. The Board has a long-standing policy of precluding the scattering of confidential duties among employees in the bargaining unit. Id. at 216. To effectuate this policy, the Board will not grant a confidential exclusion merely based on the identity of an employee's supervisor and said supervisor's involvement in bargaining absent evidence of the close continuing nature of the employee's duties.

Ms. Fiamoncini does not perform daily or continuing duties for any of the Supervisors. Ms. Klingerman, the excluded, confidential Township Secretary performs the routine administrative work for the Supervisors. Significantly, the Supervisors are present at the Township Building a very small percentage of the time. They sporadically interact with Ms. Fiamoncini. Also, Ms. Fiamoncini's informal meetings to discuss the budget are too infrequent to find a close continuing relationship. The record in this case does not contain evidence of the kind of close continuing relationship that justifies the assumption under 301(13)(ii) of PERA, i.e., that she would be exposed to confidential collective bargaining strategies, proposals or designs. Reporting directly to the employer's bargaining representative does not, by itself, rise to the level of a close and continuing relationship with that representative, as required for the confidential exclusion under PERA.

Accordingly, the position of Township Treasurer is not confidential within the meaning of Section 301(13)(ii) of PERA, and it is properly included in the proposed bargaining unit.

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 employee organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The employees in the proposed bargaining unit of nonprofessional employees at the Township, including the Township Treasurer, share an identifiable community of interest.

5. The position of Township Treasurer is not a confidential position and is properly included in the proposed bargaining unit.

6. The Roadmaster position is currently filled by a Township elected official and the duties of that position were not litigated.

7. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time nonprofessional Township employees including, but not limited to, the Township Treasurer and the employees of the Township Road Maintenance Department, and excluding management level employees, supervisors, first-level supervisors, confidential employees and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee 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 employees 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 eighteenth day of December, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner