

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-09-137-W
: (Case No. PERA-R-07-523-W)
: :
NESHANNOCK TOWNSHIP SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On April 13, 2009, the Neshannock Education Support Professionals, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include the secretary to the superintendent, the secretary to the assistant superintendent, the secretary to the director of pupil services and the accounts payable clerk in a bargaining unit comprised of Neshannock Area School District (District) employees that the Board certified at Case No. PERA-R-07-523-W.

On April 22, 2009, the Secretary of the Board issued an order and notice of hearing. On October 7, 2009, the hearing examiner held the hearing and afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On January 15, 2010, each party filed a brief by deposit in the U.S. Mail.

On February 12, 2010, the hearing examiner issued a proposed order of dismissal finding that all four employees were confidential under section 301(13)(ii) of the Public Employee Relations Act (PERA) and dismissing the petition accordingly. Neshannock Township, 41 PPER 20 (Proposed Order of Dismissal 2010). Given that result, the hearing examiner did not address whether or not any of the employees was also confidential under section 301(13)(i) of the PERA. Id. at n. 1.

On March 2, 2010, the Association filed exceptions alleging that the hearing examiner erred in finding the accounts payable clerk (Gisela Arrow) and one of the other three employees to be confidential.

On July 20, 2010, the Board issued a final order dismissing the exceptions. Neshannock Township, 41 PPER 83 (Final Order 2010).

The Association filed with Commonwealth Court a petition for review alleging that the Board erred in dismissing the exceptions as to the accounts payable clerk (Ms. Arrow).

On June 14, 2011, Commonwealth Court reversed the final order and remanded "for the PLRB's consideration of Arrow's status under subsection (i)." Neshannock Educational Support Professionals Association, PSEA/NEA v. PLRB, 22 A.3d 1103, 1107 (Pa. Cmwlth. 2011).

On September 22, 2011, the Board remanded for the hearing examiner to consider Ms. Arrow's status under section 301(13)(i).

The hearing examiner, on the basis of the evidence presented by the parties at the hearing, makes the following:

FINDINGS OF FACT¹

1. In 2007, the District negotiated a successor collective bargaining agreement with the exclusive representative of its professional employees. The District's superintendent (Dr. Mary Todora), assistant superintendent (Dr. Kathleen Roppa) and director of pupil services (Concetta Fiorante) were members of its bargaining team and sat at the bargaining table. Dr. Todora was its chief negotiator. Prior to the negotiations, Dr. Todora, Dr. Roppa and Ms. Fiorante met to review the expiring collective bargaining agreement word for word to identify problems they wanted to address at the bargaining table. During the negotiations, Dr. Todora sometimes met with the chief negotiator for the Association on a one-to-one basis. Dr. Roppa took notes at the bargaining sessions. (N.T. 15, 33-34, 56-57, 77-79, 82, 124, 162, 164, 169-171)

2. On January 2, 2008, the Board, pursuant to a joint request of the parties, certified the Association as the exclusive representative of a bargaining unit comprised of non-professional employees, including secretaries and paraprofessionals, employed by the District. Confidential employees are excluded from the unit. (Case No. PERA-R-07-523-W)

3. In 2008, the District negotiated a successor collective bargaining agreement with the Association. Dr. Todora, Dr. Roppa and Ms. Fiorante were members of the District's bargaining team and sat at the bargaining table. Dr. Todora was the District's chief negotiator. Prior to the negotiations, Dr. Todora, Dr. Roppa and Ms. Fiorante met to review the expiring collective bargaining agreement word for word to identify problems they wanted to address at the bargaining table. During the negotiations, Ms. Fiorante formulated a life insurance proposal. Dr. Roppa took notes at the bargaining sessions. (N.T. 33-37, 57, 80-81, 113-114, 132-134, 142-143, 164, 169-171)

4. During the negotiations with the Association, a secretary (Sharon Muraca) who had been performing special assignments for Dr. Todora because Dr. Todora valued her competence typed up a spread sheet that the District's bargaining team used to analyze bargaining proposals, proposals for Dr. Todora to present at the bargaining table and agendas of the points Dr. Todora wanted to present at the bargaining table. (N.T. 51-54, 58-63, 86-87, 94-96, 99-106, 168-169; District Exhibit J)

5. The secretary to the assistant superintendent (Jeanne Ann Hunt) reports directly to the assistant superintendent (Dr. Roppa) and is responsible for her typing and for organizing her files. During both sets of negotiations, Ms. Hunt typed up Dr. Roppa's notes from the bargaining sessions. (N.T. 107, 110, 114, 118-120, 166-167, 170)

6. The secretary to the director of pupil services (Lori Kaufman) reports directly to the director of pupil services (Ms. Fiorante) and is responsible for keeping track of the hours worked by paraprofessionals. During the negotiations with the Association, Ms. Kaufman provided Ms.

¹With the exception of an omitted footnote, findings of fact 1-8 are as set forth in the proposed order of dismissal dated February 12, 2010. Although many of those findings do not relate to the remand, they are all repeated here for ease of reference to those findings that do relate to the remand. Findings of fact 9-10 are made pursuant to the remand.

Fiorante with data regarding the hours worked by paraprofessionals. Ms. Fiorante included that data in the spreadsheet that the District's bargaining team used to analyze bargaining proposals. (N.T. 43, 58, 130, 132-139, 141-142, 150-151)

7. The accounts payable clerk (Gisela Arrow) reports directly to the business manager (Melissa Morosky) and is responsible for any matters related to accounts payable, including the payment of bills and reimbursements for Title I and Title II grants. During the negotiations with the Association, Ms. Arrow prepared for Dr. Todora a cost analysis of an insurance proposal that Dr. Todora presented at the bargaining table. During the negotiations with the exclusive representative of the professional employes, Ms. Arrow provided Dr. Roppa with data regarding Title I and Title II grants available to offset employe salaries. (N.T. 43-44, 156-157, 159-161, 164-165)

8. In May 2009, Ms. Muraca began working as Dr. Todora's secretary. (N.T. 58-59, 63-64, 84, 180)

9. The District maintains a central office where it keeps its employe personnel records. Ms. Arrow works in the central office and has access to those records. Dr. Todora, Dr. Roppa and Ms. Fiorante also work in the central office. They send and receive "information for bargaining" on a fax machine located there and may discuss collective bargaining matters in their offices and in a conference room located there. None of the walls in the central office is sound-proofed. Access to the central office is restricted to the employes working there. Dr. Todora has on the computer in her office confidential information about students, parents and collective bargaining. Ms. Hunt, Ms. Kaufman and Ms. Muraca have access Dr. Todora's computer in the regular course of their duties. In the regular course of her duties, Ms. Arrow uses the fax machine to send purchase orders and to communicate with vendors and is involved with wage attachments. (N.T. 15-32, 46-51, 111-112, 124, 149-150, 157-162)

10. When Ms. Arrow prepared the cost analysis of the insurance proposal that Dr. Todora presented at the bargaining table in 2008, Dr. Todora told her that she (Dr. Todora) was going to present the proposal at the bargaining table. During the same negotiations, Ms. Arrow provided the District's bargaining team with "information on health benefits and those kinds of things" that the team used in formulating the District's bargaining strategy. (N.T. 43-44, 51-58)

DISCUSSION

Pursuant to the remand of Commonwealth Court, the Board is to consider the status of the accounts payable clerk (Ms. Arrow) under section 301(13)(i) of the PERA, which defines a confidential employe as "any employe 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."

Section 301(13)(i) is framed in the conjunctive, so both parts of it must be met in order for an employe to be confidential. PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1976).

The record shows that the accounts payable clerk works in the central office where the District keeps its employe personnel records (finding of fact 9). An office where employe personnel records are kept would be a

personnel office of a public employer. Id. Thus, she meets the first part of section 301(13)(i).

The record does not show that the accounts payable clerk meets the second part of section 301(13)(i), however, so she may not be found to be confidential.

Under the second part of section 301(13)(i), "the information to which the employee is privy 'must be of such a definite nature that the union would know of the employer's plans [in collective bargaining] if said information is revealed.' Bangor Area School District, 9 PPER ¶ 9295 (Nisi Decision and Order 1978)] at 533." North Hills School District v. PLRB, 762 A.2d 1153, 1159 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 566 Pa. 653, 781 A.2d 150 (2001). Thus, access to public information such as the employer's budget will not support a finding of confidential status. Altoona Area School District. Moreover, section 301(13)(i) is to be narrowly construed to cover only "those employees whose inclusion in the bargaining unit would prevent the employer from bargaining with the union on even terms." Id., 480 Pa. at 159, 389 A.2d at 559.

In support of its contention that the accounts payable clerk is a confidential employe, the District presented evidence (1) that she has access to the employe personnel records in the central office, (2) that she is involved with wage attachments and (3) that confidential information about students and parents is on a computer (Dr. Todora's) in the central office. See finding of fact 9. Under North Hills School District, however, access to information of that sort will not support a finding of confidential status in that if revealed none of it would let a union know of the District's plans in collective bargaining.

The District also presented evidence that access to the central office is restricted to the employes working there, (2) that its superintendent, assistant to the superintendent and director of pupil services have private offices there, (3) that they send and receive "information for bargaining" on a fax machine located there, (4) that they may discuss collective bargaining matters in their offices and in a conference room located there, (5) that the walls in the central office are not sound-proofed, (6) that Dr. Todora's computer contains confidential collective bargaining information and (7) that the accounts payable clerk uses the fax machine on a regular basis to send purchase orders and to communicate with vendors. See finding of fact 9. The chance that an employe might see a fax or hear a conversation involving matters of collective bargaining either in performing duties unrelated to collective bargaining or because of their work location will not support a finding of confidential status, however. Jeanette City School District, 14 PPER ¶ 14213 (Final Order 1983), aff'd, 15 PPER ¶ 15172 (Court of Common Pleas of Westmoreland County 1984); Reynolds School District, 22 PPER ¶ 22098 (Final Order 1991). Moreover, although the record shows that three secretaries (Ms. Hunt, Ms. Kaufman and Ms. Muraca) have access to Dr. Todora's computer in the regular course of their duties, there was no showing that the accounts payable clerk has access to it in the regular course of her duties.

The District also presented evidence that during negotiations with the exclusive representative of its teachers in 2007 the accounts payable clerk provided one of the District's negotiators (Dr. Roppa) with data regarding Title I and Title II grants available to offset employe salaries. See finding of fact 7. In addition, the District presented evidence that during

the negotiations between the parties in 2008 the accounts payable clerk provided the District's bargaining team with information on "health costs and those kinds of things" that the team used in formulating the District's bargaining strategy. See finding of fact 10. Mere access to information subject to use by the employer in collective bargaining does not make an employe confidential, however. North Hills School District.

The District also presented evidence that during the negotiations between the parties in 2008 one of the District's negotiators (Dr. Todora) had the accounts payable clerk prepare a cost analysis of an insurance proposal, telling the accounts payable clerk that she (Dr. Todora) was going to present the proposal at the bargaining table. See findings of fact 7 and 10. The record does not show, however, that the accounts payable clerk was privy to any other plans of the District during those negotiations or to any plans of the District during negotiations with the exclusive representative of its teachers in 2008.

Notably, in holding that the accounts payable clerk was not a confidential employe under section 301(13)(ii), Commonwealth Court focused on the fact that she had performed confidential tasks on but two occasions. Commonwealth Court also noted that on a substantially similar record in Altoona Area School District our Supreme Court held that four secretaries were not confidential because

"to deny these secretaries the salutary effects of public employe status based on such a minimal connection with collective bargaining would distort the legislative intent to accord employes in the public sector the right to organize and have the benefit of union representation."

22 A.3d at 1106, quoting Altoona Area School District, 480 Pa. at 157, 389 A.2d at 558.

Given that section 301(13)(i) is to be similarly construed to cover only "those employes whose inclusion in the bargaining unit would prevent the employer from bargaining with the union on even terms," Altoona Area School District, and given that the record only shows that the accounts payable clerk was privy to the District's collective bargaining plans on one occasion over the course of two negotiations, the same result obtains here. Compare City of Bethlehem, 22 PPER ¶ 22094 (Final Order 1991), where the Board found an employe to be confidential under section 301(13)(i) because the record showed that on multiple occasions she had advance knowledge of proposals the employer presented at the bargaining table.

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 accounts payable clerk is not a confidential employe under section 301(13)(i) 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 certification in Case No. PERA-R-07-523-W is amended to include the accounts payable clerk in the bargaining unit.

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 fifth day of October 2011.

PENNSYLVANIA LABOR RELATIONS BOARD



DONALD A. WALLACE, Hearing Examiner