

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 : Case No. PERA-U-11-63-W
 : (Case No. PERA-R-11,731-W)
NESHANNOCK TOWNSHIP :

PROPOSED ORDER OF DISMISSAL

On March 9, 2011, Neshannock Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the sanitation secretary/treasurer from a bargaining unit of Township employees who are currently represented by AFSCME District Council 85 (AFSCME) under a certification issued by the Board at Case No. PERA-R-11,731-W. On March 23, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on August 10, 2011. The hearing examiner held the hearing as scheduled and afforded both parties a full opportunity to present evidence and to cross-examine witnesses. AFSCME made a closing argument at the hearing. On August 15, 2011, the Township filed a brief by deposit in the U.S. Mail.

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

FINDINGS OF FACT

1. On September 1, 1978, at Case No. PERA-R-11,731-W, the Board certified AFSCME as the exclusive representative of employees of the Township in a bargaining unit described as follows:

"In a subdivision of the employer unit comprised of all full-time and regular part-time Clerical employees, Secretaries, Operators, Labor/Operators and Working Foremen; and excluding management level employees, supervisors, first-level supervisors, confidential employees, and guards, as defined in the [Public Employee Relations Act] Act [(PERA)]."

(Township Exhibit 4)

2. The Township employs a sanitation secretary/treasurer (Ronalyne Mitcheltree) in its sewer department (also known as its sanitation department). She reports directly to a member of its board of supervisors (Ralph R. Sheen, Jr.). She provides administrative support to the board works with the budget for the sewer department. She keeps Mr. Sheen current with information about pending law suits involving construction of the Township's sanitary sewers. She signs checks from a sewer department account to reimburse the Township's general fund for wages the Township pays to members of the bargaining unit working in the sewer department. Mr. Sheen consulted with her about available funds when the Township hired a bargaining unit member (Bryan Matea) to work in the sewer department. (N.T. 6-11, 14-21, 23-24, 29-30, 33-34, 38; Township Exhibits 1-3)

3. In 2010 or 2011, during negotiations between the parties for a collective bargaining agreement, a member of the board (Edmund Stevens) asked Ms. Mitcheltree for help in dialing a phone number. She dialed the number for him. He asked her to stay while he spoke on the phone. With the phone in speaker mode, he went "over some line items." She also heard him discuss "something with the pension." She did not "cost anything out" for the board. (N.T. 12-14, 28, 35)

4. The Township does not have a personnel office. (N.T. 11)

DISCUSSION

The Township has petitioned to exclude the sanitation secretary/ treasurer from the bargaining unit as a confidential employee. AFSCME contends that the petition should be dismissed because the sanitation secretary/treasurer is not a confidential employee.

Section 301(13) of the PERA defines a confidential employe as follows:

“‘Confidential employe’ shall mean any employe who works (i) in the personnel offices of a public employer and have 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.”

In its petition, the Township contends that the sanitation secretary/treasurer is a confidential employe, presumably under section 301(13) (i), because she “is required to work within the personnel offices of a public employer and has access to information that is subject to use by the public employer in collective bargaining.” The record, however, provides no support for the Township’s contention, for two reasons.

First, the record shows that the Township does not have a personnel office (finding of fact 4), so the sanitation secretary/treasurer may not be found to work in one. Thus, for that reason alone, there is no basis for finding that the sanitation secretary/treasurer is a confidential employe under section 301(13) (i). See PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1976), where our Supreme Court held that four secretaries who did not work in an office where employe personnel records were kept were not confidential employes under section 301(13) (i) as a matter of law.

Second, in order to be confidential under section 301(13) (i), an employe must not only work in a personnel office of a public employer but also have access to information subject to use by the public employer in collective bargaining. Id. Access to public information will not suffice. Id. Moreover, “the information to which the employe is privy ‘must be of such a definite nature that the union would know of the employer’s plans if said information is revealed.’ Bangor Area School District, 9 PPER [¶ 9295] 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, even if the Township had a personnel office in which the sanitation secretary/treasurer worked, she would not be a confidential employe under section 301(13) (ii) unless she also had access to information making her privy to the Township’s strategy in collective bargaining.

The record shows that the sanitation secretary/treasurer has access to budgetary information, including the wages paid to members of the bargaining unit (finding of fact 2), but access to information of that sort does not make an employe privy to the employer’s strategy in collective bargaining. Id. Thus, for that reason as well, there is no basis for finding that the sanitation secretary/treasurer is a confidential employe under section 301(13) (i).

In its petition, the Township contends that the sanitation secretary/ treasurer is a confidential employe, presumably under section 301(13) (ii), because she “is also required to maintain a close continuing relationship with the Township Supervisors who are involved in the collective bargaining process.” Again, however, the record provides no support for the Township’s contention.

A close review of the record shows that the sanitation secretary/ treasurer once helped a member of the board of supervisors (Mr. Stevens) make a phone call during negotiations between the parties for a collective bargaining agreement in 2010 or 2011 (finding of fact 3), but such a minimal connection with the collective bargaining process provides an insufficient basis for finding an employe to be confidential under section 301(13) (ii), especially since she reports directly to another member of the board (Mr. Sheen) (finding of fact 2). See Altoona Area School District, supra, where our Supreme Court also held that the four secretaries were not confidential employes under section 301(13) (ii), explaining that

“the drafters of the PERA did not intend to deny the benefits of public employe status to every employe however tangentially connected to collective bargaining negotiations. One secretary to a junior high school principal, whom the parties agree had a relationship to the principal typical of all four secretaries, testified that in ten years employment with the school district she typed materials

relative to collective bargaining on only two occasions. Both were one or two page memoranda. We agree with the Board that 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. See 43 P.S. § 1101. (statement of policy)."

480 Pa. at 156-157, 389 A.2d at 558. See also Neshannock Township School District v. PLRB, 22 A.3d 1103 (Pa. Cmwlth. 2011), where the court recently held that an accounts payable clerk was not a confidential employe under section 301(13)(ii) because her provision of financial information to members of the employer's bargaining team on two occasions was insufficient to establish that she worked in a close continuing relationship with them, especially since her immediate supervisor was not among them.

A close review of the record shows that the sanitation secretary/ treasurer provides the member of the board of supervisors to whom she reports directly (Mr. Sheen) with information about pending law suits involving construction of the Township's sanitary sewers and that he consulted with her about available funds when the Township hired a bargaining unit member to work in the sewer department (finding of fact 2). The record is silent, however, as to any work she may have done for him in matters involving collective bargaining. Inasmuch as a minimal connection with the collective bargaining process provides an insufficient basis for finding an employe to be confidential under section 301(13)(ii), Altoona Area School District, supra, Neshannock Township School District, supra, there is no basis for finding that she is a confidential employe under section 301(13)(ii) based on her work with him.

At the hearing, the Township established that the sanitation secretary/treasurer is bonded (N.T. 10) as is the Township's "non-union" secretary/treasurer (Leslie Bucci) (N.T. 11, 26-27), that a "non-union" employe (Ms. Bucci) filled in as the sanitation secretary/treasurer in the past without objection by AFSCME (N.T. 21, 30-32), that the current sanitation secretary/treasurer used to be an assistant secretary, an alternate treasurer and an alternate open records officer for the Township (N.T. 25; Township Exhibit 3) and that the certification of the bargaining unit does not expressly include the sanitation secretary/treasurer in the bargaining unit (Township Exhibit 4). In its brief, the Township also points out that the parties' current collective bargaining agreement (AFSCME Exhibit 1) does not expressly include the sanitation secretary/treasurer in the bargaining unit. None of the foregoing is relevant, however, as the focus in deciding whether or not an employe is confidential is on the present job duties of the employe.

CONCLUSIONS

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

1. The Township is a public employer under section 301(1) of the PERA.
2. AFSCME is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The sanitation secretary/treasurer is not a confidential employe under section 301(13) 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 petition is dismissed.

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 twenty-sixth day of August 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner