

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PERA-U-12-239-W  
 : (PERA-R-1059-W)  
MILLCREEK TOWNSHIP :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On August 06, 2012, Millcreek Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA). The Township is seeking to clarify the bargaining unit of nonprofessional employes by excluding the position of Payroll Manager from the unit as confidential. The Board certified exclusive collective bargaining representative of the bargaining unit is AFSCME District Council 85 (Union).

On September 6, 2012, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on April 10, 2013, in Pittsburgh. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Township filed its post-hearing brief on June 12, 2013, and AFSCME filed its post-hearing brief on September 9, 2013.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents 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. 6-7)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. Gerald Wolf has been the Township Treasurer for thirty years. There are three elected Township Supervisors: Brian McGrath; Joseph Kujawa; and Richard Figaski. (N.T. 14-15).
4. Diane Lyons is the Human Resource Manager. (N.T. 15-16).
5. Mr. Wolf has been directly involved in all of the labor negotiations during the thirty years that he has worked for the Township, with both the police union and this Union. He has not missed a single negotiation in thirty years. (N.T. 17-18, 31).
6. Mr. Wolf directly participates in formulating Township proposals and strategies for negotiations with the Union and discusses those proposals with the Township Supervisors and labor counsel. (N.T. 18-19)
7. Mr. Wolf's office is part of the executive suite on the second floor of the Township Administrative Office Building. Also in the executive suite are the offices of the three Township Supervisors, Janice Reichard and Ms. Lyons. (N.T. 22-23)
8. Ms. Reichard is the Township Payroll Manager. Her office is twenty-seven feet from Mr. Wolf's office. (N.T. 20-21, 23-24, 35-37)
9. Ms. Reichard directly reports to Mr. Wolf. Mr. Wolf and Ms. Reichard interact at least four-to-five times per day, every day, without exception. (N.T. 25, 28, 30)

10. Ms. Reichard prepares wage schedules for Township bargaining proposals and submits them to Mr. Wolf. Mr. Wolf shares actual bargaining proposals with Ms. Reichard. (N.T. 31-32)

11. Ms. Reichard compiles the cost analysis of wage proposals and sick leave for the Township during bargaining with the Union, from which the Township's bargaining strategy can be inferred.

#### DISCUSSION

As the party seeking to exclude the position of Payroll Manager as confidential and change the composition of the bargaining unit as certified by the Board, the Township has the burden of proving the necessary facts to support the confidential exclusion. **In the Matter of the Employes of Riverview Intermediate Unit #6**, 37 PPER 106 (Final Order, 2006); **In the Matter of the Employes 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 Employes of Tunkhannock Area Sch. Dist.**, 29 PPER ¶ 29023 (Final Order, 1997).

Section 301(13) of PERA provides the statutory requirements for removing a confidential employe from the bargaining unit as follows:

"Confidential employe" shall mean 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; 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).

**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).

The record in this case clearly establishes that the Payroll Manager has a close continuing relationship with the Township Treasurer, Mr. Wolf. The record also establishes

that Mr. Wolf is a member of the Township's negotiating team and has been involved in developing bargaining strategies and proposals for every contract negotiation for the past thirty years with this Union and the police union. Mr. Wolf directly participates in formulating Township proposals and strategies for negotiations with the Union and discusses those proposals with the Township Supervisors and labor counsel.

The Township established that Mr. Wolf's office is part of the executive suite on the second floor of the Township Administrative Office Building as are the offices of the three Township Supervisors, Janice Reichard and Ms. Lyons. Ms. Reichard's office is twenty-seven feet from Mr. Wolf's office, and she directly reports to Mr. Wolf. She interacts with Mr. Wolf at least four-to-five times per day, every day, without exception. She prepares wage schedules for Township bargaining proposals for Mr. Wolf, and she compiles the cost analysis of wage proposals and sick leave for the Township during bargaining with the Union, from which the Township's bargaining strategy can be inferred. On this record, the law assumes that Ms. Reichard is privy to confidential information under Section 301(13)(ii). **North Hills, supra**. Accordingly, the position of Township Payroll Manager is confidential and must be excluded from the 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 employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of Township Payroll Manager is a confidential position 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 bargaining unit of employes certified by the Board at PERA-R-1059-W is amended to exclude the position of Township Payroll Manager as a confidential employe.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to Pa. 34 Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this third day of November, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner