

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : PERA-U-15-196-W  
 : (PERA-R-807-W)  
 PLUM BOROUGH SCHOOL DISTRICT :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On July 20, 2015, the Plum Borough Secretaries ESP, PSEA/NEA (Association or Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include in the existing non-professional bargaining unit the position of Confidential Secretary for Personnel & Central Administration.

On July 27, 2015, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating September 15, 2015, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was necessary. A hearing was held on September 15, 2015, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on December 11, 2015. The Plum Borough School District (District or Employer) filed a post-hearing brief in opposition to the Petition on January 11, 2016.

The Hearing Examiner, on the basis of the evidence presented at the hearing, and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The District is a public employer within the meaning of PERA. (N.T. 5).
2. The Association is an employe organization within the meaning of PERA. (N.T. 5).
3. Lori Demetrio (Demetrio) is currently the Confidential Secretary in the office of Personnel and Central Administration. She reports to Michael Brewer (Brewer), the Director for Administrative Services. She has held the position since January 2000. (N.T. 8-9).
4. Brewer is on the District's bargaining team. (N.T. 20, 41).
5. The title of Demetrio's position is "Confidential Secretary for Personnel & Central Administration." The defined purpose of Demetrio's position is "[Provide] secretarial support for Central Office Administration." (Association Exhibit 1).
6. Demetrio's office is located next to Brewer's in an alcove in the high school. Demetrio's office is approximately ten to twelve feet from Brewer's office. (N.T. 9-10).
7. Demetrio's office is across the hall from an administrative assistant who is in the bargaining unit and is proximate to other administrative assistants in the bargaining unit. (N.T. 10, 52).
8. Demetrio's regular duties include: checking and responding to District phone and email messages; updating criminal background checks, child abuse checks, and FBI fingerprint checks for staff; processing new hires into the human resources system; and, arranging for substitute teachers and staff. (N.T. 11-14).
9. Demetrio gives Brewer documents to sign, gives him his mail, and files new District policies in his policy manual. (N.T. 11).

10. Demetrio assists Brewer when he prepares agendas for personnel discussion of executive sessions of the School Board. (N.T. 28).
11. Demetrio does not have access to Brewer's email. (N.T. 13).
12. Demetrio has access to Brewer's calendar. Brewer's calendar does not contain information on bargaining sessions other than indicating that they take place. (N.T. 21).
13. Demetrio prepares empty files for Brewer to use, but Brewer files his own documents except for personnel files. Demetrio does not access or use Brewer's files. (N.T. 14, 26).
14. Demetrio keeps the personnel files for the District in her office. Other bargaining unit members have access to the personnel files in Demetrio's office. (N.T. 15, 26).
15. Demetrio, at Brewer's request, compiled teachers' salary information from other school districts from publicly available sources during the negotiation of a collective bargaining agreement. (N.T. 18, 22).
16. Demetrio does not prepare contracts for School Board review and approval. Demetrio has never drafted a collective bargaining agreement, attended a bargaining session, proofread a contract while the parties were still negotiating, or created wage benefit tables. (N.T. 16-18).
17. Demetrio does not have access to correspondence or communications between members of the District's bargaining team during negotiations. (N.T. 19-20).
18. Brewer does not discuss bargaining proposals with Demetrio, nor has he ever sought Demetrio's opinion on labor negotiations. (N.T. 30).
19. Brewer does not utilize Demetrio when he performs his duties relating to collective bargaining. At these times he utilizes the other confidential secretary in the District, Cynthia Vento, who is the secretary to the School Board. (N.T. 49-50).

#### **DISCUSSION**

The Association petitions to include the Confidential Secretary for Personnel & Central Administration into the existing bargaining unit of non-professional education secretaries and support personnel. Currently, Demetrio is the only person to hold this position.

As an initial matter, in a unit clarification petition, the petitioner bears the burden of proving an identifiable community of interest with the employees of the existing unit. **Amalgamated Transit Union, Local 89 v. PLRB**, 498 A.2D 485 (Pa. Cmwlth. 1985). The record shows that Demetrio clearly shares an identifiable community of interest with the educational secretaries in the existing bargaining unit. The record shows that Demetrio works for the same employer, performs substantially similar administrative and clerical duties, and is physically located in the High School with, and adjacent to, other bargaining unit members. Thus, since Demetrio has the same employer, performs substantially similar duties, and is located at the same location as bargaining unit members, she shares a community of interest with members of the bargaining unit.

Having established that the position shares an identifiable community of interest with the other employees in the unit, the burden shifts to the District to demonstrate that the position has the requisite elements of confidential status to exclude the position from the unit. **Mid-West School District**, 47 PPER 44 (Final Order, 2015).

Section 301(13) of PERA provides 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).

Addressing the first section of the "confidential employe" definition, the record shows that Demetrio does not meet the requirements of this section. For an employe to be deemed confidential, Section 301(13) (i) requires that the employe works in the personnel offices of the employer **and** has access to information subject to use by the employer in collective bargaining. Demetrio satisfies the first prong as she works in the Central Administration office and indeed is responsible for keeping the personnel files of the District in her office. However, the record shows that Demetrio does not satisfy the second prong of Section 301(13) (i) which requires proof that 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 at 533 (Nisi Decision and Order, 1978). The Board in **Bangor Area School District** further stated:

The Board has similarly held that an employe does not have access to confidential collective bargaining information when (s)he 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 employe is privy to the relevant determinations of the employer's policy that that person may be found to be confidential.

**Id.** This language from **Bangor Area** was recently cited, upheld and used by the Board in **Mid-West School District, supra**. There is nothing in this record that demonstrates that Demetrio, by virtue of her position, became privy to the District's bargaining proposals or strategy or any confidential information used by the District in collective bargaining. In its brief, the District argues that Demetrio's compilation of data concerning teacher salaries in other school districts satisfies the second prong of Section 301(13) (i). However, this argument fails because the information collected by Demetrio, as in **Bangor Area**, is public information also available to the Association. The record does not show that Demetrio became privy to any District confidential information or bargaining strategy through her compilation of salaries. The District argues in its brief that the mere fact that Demetrio knew Brewer was compiling teacher salary data from specific school districts in preparation for collective bargaining is confidential information sufficient to satisfy the second prong. This argument fails because the record does not support the inference that the Association would **definitely** know the District's bargaining plans if it knew which publicly available documents Brewer may have consulted. Thus, the District has failed to establish that Demetrio is a confidential employe under Section 301(13) (i) of the PERA.

Turning to Section 301(13) (ii), the District has also not met its burden of proof. The exclusion under Section 301(13) (ii) is specifically limited to those employes who work in a close continual relationship with managerial employes who actually formulate, determine or effectuate the employer's labor policy. **PLRB v. Altoona Area School District**, 389 A.2d 553, 557 (Pa. 1978). The Commonwealth Court has found individuals to be working in a close continuing relationship with a management official where the employes are part of the management official's personal staff and have access to his or her office files, or where the employes work directly for members of the employer's bargaining team and/or perform work related to collective bargaining on a regular basis. **Neshannock Educational Support Professionals Ass'n v. PLRB**, 22 A.3d 1103 (Pa. Cmwlth. 2011) **citing Altoona Area School District, supra; North Hills School District v. PLRB**,

762 A.2d 1153 (Pa. Cmwlth. 2000); **Commonwealth ex rel. Gallas v. PLRB**, 636 A.2d 253 (Pa. Cmwlth. 1993) *aff'd*, 665 A.2d 1185 (1995). In **North Hills**, the Court stated that "[w]here an employee has a close relationship with such involved management personnel, the PERA appears to assume that the 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 a fair and equal footing with the union.'" *Id.* at 1159 **citing PLRB v. Altoona Area School District, supra**. The Board recently held:

While the finding of a close continuing relationship under Section 301(13)(ii) may be based on the totality of the circumstances, merely because a particular employe is a subordinate to a member of the employer's bargaining team, standing alone, is insufficient to establish a close continuing relationship under Section 301(13)(ii) of PERA. There must be testimony or evidence of the employe's continuing duties for the employer's bargaining representative to justify assuming that the employe would, by sole nature of that relationship, have access to confidential collective bargaining information.

**Mid-West School District, supra**. There is no question or dispute on this record that Brewer is a District representative associated with collective bargaining and, therefore, the question in this matter under Section 301(13)(ii) is whether Demetrio is in a close continuing relationship with Brewer. In this matter, I find that there is no such relationship because an analysis of Demetrio's duties does not support the conclusion that, by the sole nature of her relationship with Brewer, she would have access to collective bargaining information. Demetrio's duties primarily do not concern providing administrative or secretarial support directly to Brewer. Rather, her role in the District, as testified to at the hearing, was heavily weighted to performing administrative and clerical tasks for the Central Office Administration such as ensuring that employees have updated clearances and providing essential administrative support for the District's substitute teacher program and new employe hiring process. Demetrio's secretarial duties with respect to Brewer are minimal in comparison. She does not have access to Brewer's email and her support for Brewer is limited to giving him his mail, preparing file labels, updating his policy manual, and assisting him with preparing agendas for the Board. Other than updating his policy manual, Demetrio does not do any filing for Brewer. While Demetrio has access to Brewer's calendar, the calendar does not contain information on bargaining sessions other than indicating that they take place.

Further, the record shows that Demetrio is removed from the bargaining process which supports the conclusion that Demetrio has not been exposed to, and is not likely to be exposed to, information which would reveal the District's collective bargaining strategy and that Demetrio's inclusion in the unit would not prejudice the District in any way. **See Derry Township** 36 PPER 167 (Final Order, 2005). Brewer does not discuss bargaining proposals with Demetrio, nor has he ever sought Demetrio's opinion on labor negotiations. Demetrio does not prepare contracts for School Board review and approval. Demetrio has never drafted a collective bargaining agreement, attended a bargaining session, proofread a contract while the parties were still negotiating, or created wage benefit tables. Demetrio does not have access to correspondence or communications between members of the District's bargaining team during negotiations. While Demetrio assists Brewer when he prepares agendas for executive sessions of the School Board, the record does not show that those agendas contained confidential collective bargaining information that would reveal the District's collective bargaining strategy. Most importantly, Brewer does not utilize Demetrio when he performs his duties relating to collective bargaining and at these times he utilizes the other confidential secretary in the District. Thus, the nature of the relationship between Demetrio and Brewer is such that Demetrio would not have access to collective bargaining information.

In its Brief, the District argues that the facts in this matter are nearly identical to **North Hills School District, supra**. In **North Hills**, the Commonwealth Court found that the secretary in question, Dougherty, was confidential pursuant to Section 301(13)(ii) because she was the "only secretary" to the Assistant Superintendent, Santillo, a representative associated with collective bargaining on behalf of the

District in that matter.<sup>1</sup> However, I find that **North Hills** is distinguishable on a least two important facts.

First, the secretary at issue in **North Hills**, Dougherty, had the job title "Secretary to the Assistant Superintendent." *Id.*, at 1155. In this case, importantly, Demetrio is not titled as the secretary to Brewer, but as "Confidential Secretary for Personnel & Central Administration" with the purpose of "Provid[ing] secretarial support for Central Office Administration." This job title and purpose were supported by testimony from Demetrio and Brewer at the hearing and are accurate reflections of Demetrio's position. The record shows, as discussed above, that Demetrio's position primarily concerns providing administrative and clerical support for the Personnel & Central Administration department rather than primarily providing secretarial support to Brewer. Thus, this matter is distinguishable from **North Hills** because Demetrio is not Brewer's personal secretary and her position is to primarily provide administrative and clerical support to Central Office Administration, and not to Brewer.

Second, and most importantly, the record shows that Brewer does not utilize Demetrio when he performs his duties relating to collective bargaining and that, at these times, he utilizes the other confidential secretary in the District, who is the confidential secretary to the School Board. Thus, even assuming Demetrio is the secretary to Brewer, she is not the **only** secretary to Brewer, as he utilizes the secretary to the School Board when he performs duties relating to collective bargaining. Thus, unlike **North Hills**, Demetrio would not be the "only secretary" to Brewer, even if we assume she is a secretary to Brewer.

In its Brief, the District argues that the facts in this matter are "nearly identical" to **In the Matter of Employes of Ford City Borough**, 47 PPER 21 (Proposed Decision and Order, 2015). In **Ford City**, Hearing Examiner Pozniak held:

In this case, the record shows that the Borough Secretary works directly for the Borough Manager, who is a member of the Borough's bargaining team and qualifies as a public officer associated with collective bargaining. The Borough Secretary works right next to the Borough Manager in the same office, opens his mail, has access to the personnel files with him, and compiles cost information at his request to prepare for bargaining. This is strong evidence of the sort of close continual relationship with a public officer associated with collective bargaining, which is contemplated under Section 301(13)(ii) of the Act. As a result, the Borough Secretary must be excluded from the bargaining unit consistent with **North Hills**.

**Id.** The record in this matter is clearly distinguishable from **Ford City**. In this matter, as discussed above, Demetrio is not primarily Brewer's personal secretary and is not the **only** secretary utilized by Brewer. Moreover, the record in this matter shows that Demetrio does not have as close a working relationship to Brewer as existed in **Ford City**. For example, the record does not show that Demetrio opens Brewer's mail or shares an office with Brewer, facts which existed in **Ford City**.

Finally, in its Brief, the District argues that Demetrio meets the test for confidential employes formulated in **Neshannock Educational Support Professionals Ass'n v. PLRB**, *supra*. In **Neshannock**, the Commonwealth Court stated: "In **North Hills**, **Altoona**, and

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<sup>1</sup> The Commonwealth Court found in **North Hills**:

Santillo is a member of the School District's negotiation team, sits at the bargaining table during negotiations and has assumed an intense role in negotiations with the teacher's union, custodians and the Act 93 employes. . . . Thus, Santillo indisputably qualifies as a "representative associated with collective bargaining" on behalf of the School District. Further, as Santillo's only secretary, Dougherty clearly has a close continuing relationship with Santillo and, thus, appears to have fully satisfied the PERA's second definition of a confidential employee.

**Gallas**, the employees that were found to have a "close continuing relationship" under Section 301(13)(ii) worked directly for members of the bargaining team and/or performed work related to collective bargaining on a regular basis." **Id.**, at 1107. Again, the District argues in its brief that the record shows that "Ms. Demetrio works directly and solely for Mr. Brewer, a leading member of the employer's bargaining [sic]." District's Brief, page 8. Thus, the District argues, Demetrio meets the first clause of the **Neshannock** formulated test for confidential employee. However, as mentioned above, I find in this matter that the record does not show that Demetrio works "directly and solely" for Brewer in that her duties do not exclusively or primarily entail personal secretarial service to Brewer and that, importantly, Brewer utilizes another secretary for his collective bargaining needs.

In this matter, the record does not support a finding that Demetrio has a close continual relationship with Brewer. Therefore, Demetrio is not a confidential employee pursuant to PERA and shall be included in the bargaining unit.

**CONCLUSION**

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 within the meaning of Section 301(1) of PERA.
2. The Association is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Confidential Secretary for Personnel & Central Administration position is not a confidential employee and shall be included in the unit.

**ORDER**

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the bargaining unit of employees certified by the Board at PERA-R-807-W is clarified to include the position of Secretary for Personnel & Central Administration.

**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 order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this 4th day of March, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner