

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
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:  
PERA-U-18-277-E  
:  
(PERA-R-5241-C)  
RIVERSIDE SCHOOL DISTRICT :

**PROPOSED ORDER OF DISMISSAL**

On October 18, 2018, the Riverside School District (District or Employer) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude two secretarial positions from a unit of nonprofessional employees, represented by the Riverside Educational Support Personnel Association (Association or Union), as confidential employees, pursuant to Section 301(13) of the Public Employee Relations Act (PERA or Act).

On November 6, 2018, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on February 25, 2019, if necessary.

The hearing ensued as scheduled on February 25, 2019, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties both filed post-hearing briefs in support of their respective positions on June 10, 2019.

The 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 Section 301(1) of PERA. (N.T. 7)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. The Association is the exclusive bargaining agent for a unit of nonprofessional employees at the District. (Joint Exhibit 1)
4. The Association and the District are parties to a collective bargaining agreement (CBA) effective July 1, 2016 through June 30, 2021. (District Exhibit 14)
5. Justine Vishnesky and Michele Cantarella are both employed at the District as business office secretaries. They work side by side in the District's business office and report directly to William Drazdowski, who is the Business Manager. (N.T. 16-20)
6. Drazdowski has been the District's Business Manager since January 2019. He began working for the District in April 2018 as the Assistant Business Manager and was promoted when Joseph Surridge, the business manager at the time, accepted another position as Superintendent of Buildings and Grounds. (N.T. 15-16, 66, 160)

7. The District has never employed an Assistant Business Manager, aside from when Drazdowski held the position from April 2018 to January 2019. Since Drazdowski's promotion to Business Manager in January 2019, the Assistant Business Manager position has been vacant. (N.T. 146-147, 159-160; Association Exhibit 1)

8. The District has an administrative center connected to the Elementary West School building. The administrative center is separated from the Elementary School with its own separate entrance from outside the building. (N.T. 169-171; Association Exhibit 1, District Exhibit 16)

9. The business office is part of the administrative office and houses the Business Manager, who has his own office, and a separate larger room where the two business office secretaries are located. (N.T. 20-21, 161, 172-173; Association Exhibit 2, District Exhibit 16)

10. The Business Manager's office has two doors that can be closed and locked to isolate Drazdowski from the other employees. The larger room of the business office where the secretaries work also has doors, which can be closed to isolate the secretaries from other employees. The personnel files are located in the larger room right behind the secretaries. (N.T. 24, 131, 172; Association Exhibit 2, District Exhibit 16)

11. The administrative center also has two separate offices for the Superintendent, Paul Brennan, and his secretary, Reba Destefano, which are separated from the business office by a hallway. Destefano is a confidential employee, who is excluded from the bargaining unit. The offices for Brennan and Destefano are separate rooms that have their own doors with locks, which gives Brennan and Destefano the ability to isolate themselves from the rest of the employees in the administrative center, including everyone in the business office. (N.T. 131-132, 170-172; Association Exhibit 2)

12. The business office secretaries perform job duties related to the District's financial matters, such as contracts and service agreements with outside vendors, accounting and budgetary matters, employment issues such as payroll and salary calculations, hourly pay rates, overtime, insurance benefit costs, and other working terms and conditions, which are all governed by the CBA. (N.T. 24, 30-35, 37-40, 42-48, 51-54, 58-62, 69, 76-82, 86, 88-89, 114; District Exhibits 1-5, 8, 10, 12, 14)

13. The District's Business Manager has never been on the District's negotiating team for any of the four CBA's over the last 21 years. The Business Manager has never appeared at any of the bargaining sessions at any time. Nor has the Business Manager been present at the work premises during any of the bargaining sessions.<sup>1</sup> (N.T. 155-157, 164-168, 183-185, 190, 193-194)

14. The District's bargaining team has included the Superintendent, the District's lawyer, and three or four members of the School Board. As Superintendent, Brennan was on the bargaining team for the most recent CBA. (N.T. 164-166)

15. The current Business Manager, William Drazdowski, has never participated in any CBA negotiations and was not hired at the District until

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<sup>1</sup> The bargaining sessions have always taken place after work hours in the library of the District's high school building. (N.T. 167-168).

after the negotiations for the most recent CBAs for both the support staff Union, as well as the teacher's union. (N.T. 57, 67-69)

16. Vishnesky and Cantarella have never attended any of the bargaining sessions on behalf of the District. They have not sat at the table as part of the District's negotiating team or been present on the work site during any of the bargaining sessions. Nor has the District ever indicated that its negotiating team was using or relying on their services. (N.T. 168-169, 194-195)

17. The District services approximately 1,600 students, while the Association has about 65 bargaining unit members, including seven secretaries. (N.T. 148-149, 174)

#### DISCUSSION

The District has petitioned to exclude the two business office secretaries from the nonprofessional bargaining unit as confidential employees. The Association opposes the petition on the grounds that the business office secretaries do not satisfy the definition of confidential employees under the Act. As the party seeking to exclude the business office secretaries from the unit, the District has the burden of proving by substantial evidence the asserted statutory exclusions apply. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010) *alloc. denied* 17 A.3d 1256 (Pa. 2011). The Board reviews actual job duties and will only consider written job descriptions to corroborate testimony of actual duties. *Id.* at 980.

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).

The District has not sustained its burden of proving that the business office secretaries should be excluded as confidential employees pursuant to Section 301(13)(i) of the Act. Although the record shows that the business office secretaries work in the District's personnel offices for purposes of the first prong of the Section 301(13)(i) test, the record does not demonstrate that they also have access to information subject to use by the District in collective bargaining.<sup>2</sup>

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<sup>2</sup> During the hearing, the Association raised multiple evidentiary objections to many of the District's exhibits and much of the testimony, arguing that it post-dated the instant Petition for Unit Clarification. The Association was given a continuing objection in this regard. However, the objection is overruled. Post-petition evidence is admissible where there has been no showing that the employer changed job duties merely to influence the Board's determination regarding the placement of the position in question. In the Matter of the Employes of Housing Authority of the City of Shamokin, 42 PPER 32 (Proposed Order of Unit Clarification and Proposed Order of Amendment of Certification, 2011) *citing* In the Matter of the Employes of Westmoreland

In Bangor Area School District, 9 PPER ¶ 9295 (Nisi Decision and Order, 1978), the Board explained as follows:

The second criteria of sub-part (i) is 'an employe who has access to information subject to use by the public employer in collective bargaining.' Our Commonwealth Court recently determined in Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB, 383 A.2d 546 (1978), that an employe who had access to personnel records and fiscal information such as budgets, proposed allocations of funds toward the employer's programs, salaries, and memoranda concerning proposed salary increments to specific employes was not a 'confidential employe' under the first test of Section 301(13) of the Act since the employe enjoyed no access to information subject to use by the employer which could be considered outside the 'public record.' 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. The collective bargaining information must be of such a definite nature that the union would know of the employer's plans if said information is revealed. See West Jefferson Hills School District, 5 PPER 65 (1978); and Northgate School District, 9 PPER ¶ 9121 (1978).

The record here does not show that the business office secretaries are privy to the relevant determinations of the District's labor policy, nor do they have access to collective bargaining information of such a definite nature that the Union would know of the District's plans if said information is revealed. The business office secretaries perform job duties related to the District's financial matters, such as contracts and service agreements with outside vendors, accounting and budgetary matters, employment issues such as payroll and salary calculations, hourly pay rates, overtime, insurance benefit costs, and other working terms and conditions, which are all governed by the CBA. This is not confidential work under PERA.

Indeed, the record is devoid of any evidence whatsoever that the business office secretaries have any involvement in collective bargaining with the District's employes. The District has not shown that the business office secretaries have ever been privy to the District's proposals in advance or have access to the relevant determinations of the District's labor policy. In essence, the District has simply shown that the business office secretaries crunch numbers in connection with budget and health insurance projections and have access to the District's software system containing those estimated costs. However, such evidence is insufficient to deprive an

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County, 40 PPER 35 (Final Order, 2009). There is no indication that the post-petition evidence in this case was suspicious in any way or designed to influence these proceedings. Instead, the record shows that the post-petition evidence was simply an example of the standard business practice that has occurred continually prior to the filing of the petition. (N.T. 40-41, 42, 45).

employe of her rights under the Act. As the Association persuasively notes, there is no evidence that the District ever shared with the business office secretaries how the District would use the information to which they had access at the bargaining table or what kind of bargaining strategies or proposals the District planned to make to the Union. Nor is there any evidence that the business office secretaries ever saw bargaining proposals, performed any sort of analysis of the same, or were privy to communications between members of the District's bargaining team. On this record, the business office secretaries are not confidential employes under Section 301(13) (i) of the Act.

Likewise, the District has not sustained its burden of proof under Section 301(13) (ii) of the Act. As the Board further explained in Bangor Area School District:

Sub-part (ii) of Section 301(13) concerns an employe who works in a 'close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.' We interpret this phrase to embrace only those employes who assist or act in a confidential capacity to persons who formulate, determine and effectuate management's policies in the field of labor relations. See West Shore School District, 3 PPER 1 (1973); and Northgate School District, *supra*.

Significantly, the Pennsylvania Supreme Court has held that 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 work 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. Cmwlt. 2011) *citing* Altoona Area School District, *supra*; North Hills School District v. PLRB, 762 A.2d 1153 (Pa. Cmwlt. 2000); Commonwealth ex rel. Gallas v. PLRB, 636 A.2d 253 (Pa. Cmwlt. 1993) *aff'd*, 665 A.2d 1185 (1995). In North Hills, the Court expressly 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, 389 A.2d 553, 557 (Pa. 1978).

In this case, the record shows that the business office secretaries work for the Business Manager, who is not a member of the District's bargaining team and therefore does not qualify as a public officer associated with collective bargaining. The District asserts that the business office secretaries should be excluded as confidential employes based on the District's expectation that Drazdowski will be involved in negotiations with the bargaining unit in the near future. However, it is well settled that employes will not be excluded from bargaining units based on job duties which have not yet been performed. In the Matter of the Employes of Pottstown Borough, 33 PPER ¶ 33192 (Final Order, 2002). Accordingly, the District's argument in this regard is rejected.

The District also contends that the business office secretaries should be excluded from the unit because they have a close continuing relationship with the Superintendent, who actually has been involved with collective bargaining. However, the record does not support a conclusion that the business office secretaries have a close continuing relationship with the Superintendent. To the contrary, the record shows that the business office secretaries work in a separate office across a hallway from the Superintendent, who has a door that can be closed and locked to ensure privacy. What is more, the Superintendent already has his own confidential secretary, Reba Destefano, who has an office next to him, both of which have their own doors, which can be closed and locked.

The District asserts that there is a close continuing relationship because the Superintendent has requested information from the business office secretaries that he later used in bargaining. (N.T. 99-100). However, this is not the sort of close continuing relationship with a public officer associated with collective bargaining, which is contemplated under Section 301(13)(ii) of the Act. In the Matter of the Employees of Mid-West School District, 44 PPER 44 (Proposed Order of Dismissal, 2015), 47 PPER 61 (Final Order, 2015). Indeed, there is no evidence that the business office secretaries open the Superintendent's mail, type his correspondence on a regular basis, answer his phone, or have access to his email account or other communications.

The District claims that the business office secretaries could see confidential communications because it is a small office, which allows them access to the same printers, scanners, and fax machines. Similarly, the District maintains that the business office secretaries sometimes enter the Superintendent's office to get checks signed. Once again, however, this is simply not sufficient evidence to justify excluding employees from the bargaining unit and denying their rights under the Act. In the Matter of the Employees of Jeannette City School District, 14 PPER ¶ 14213 (Final Order, 1983) (rejecting argument that employees in small personnel offices without great difficulty may overhear discussions of labor relations matters or see confidential papers on desk tops as they move about). In any event, as the Union persuasively notes, the Superintendent can simply close and lock the doors to both his and Destefano's office to ensure privacy.

Finally, the District has offered no credible evidence or explanation to demonstrate why the Superintendent needs another confidential secretary in addition to Destefano, who already works directly for him. In fact, the District would have this Board believe that the Superintendent requires three confidential employees, as the District is petitioning to exclude both Vishnesky and Cantarella, without delineating any difference or separation of the duties they perform. Such a proposition would clearly violate the Board's longstanding policy prohibiting employers from scattering confidential duties among various employees to gain exclusions for more employees than are necessary for an employer to conduct its collective bargaining. In the Matter of the Employees of Cheltenham School District, 32 PPER ¶ 32052 (Proposed Order of Unit Clarification, 2001), 32 PPER ¶ 32098 (Final Order, 2001). Accordingly, the Petition for Unit Clarification must be dismissed.

**CONCLUSIONS**

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The business office secretarial positions are not confidential within the meaning of Section 301(13) of PERA.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

That the Petition for Unit Clarification 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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 16th day of August, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner