

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 :

FINAL ORDER

The Plum Borough School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 24, 2016, to a Proposed Order of Unit Clarification (POUC) issued on March 4, 2016. In the POUC, the Hearing Examiner concluded that the position of "Confidential Secretary for Personnel & Central Administration" is not confidential within the meaning of Section 301(13) of the Public Employee Relations Act (PERA), and therefore should be included in the bargaining unit represented by the Plum Borough Secretaries ESP, PSEA/NEA (Union). The Union did not file a response to the District's exceptions. Based on the testimony and evidence presented at a hearing held on September 15, 2015, the Hearing Examiner found the following facts.

On July 20, 2015, the Union filed a Petition for Unit Clarification with the Board seeking to include the position of "Confidential Secretary for Personnel & Central Administration" in the existing bargaining unit of non-professional employees certified by the Board at Case No. PERA-R-807-W. Lori Demetrio (Demetrio) has held the position of Confidential Secretary in the office of Personnel and Central Administration since January 2000. (FF 3). The purpose of Demetrio's position is to provide "secretarial support for Central Office Administration." (FF 5). Demetrio reports directly to Michael Brewer (Brewer), the Director for Administrative Services, who participates on behalf of the District in collective bargaining. (FF 3 and 4). Demetrio's office is approximately ten to twelve feet away from Brewer's office, in an alcove in the high school. (FF 6).

As Confidential Secretary for Personnel and Central Administration, 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. (FF 8). As Brewer's secretary, Demetrio gives Brewer documents to sign, gives him his mail, and files new District policies in his policy manual, but does not have access to Brewer's email. (FF 9 and 11). Demetrio has access to Brewer's calendar, but his calendar does not contain information on bargaining sessions other than indicating that they take place. (FF 12). Demetrio prepares empty files for Brewer to use, but does not access or use Brewer's files. Brewer files his own documents except for personnel files. (FF 13). Demetrio keeps the employees' personnel files for the District in her office. (FF 14). Demetrio assists Brewer when he prepares agendas for personnel discussions during executive sessions of the School Board. (FF 10).

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. She does not prepare contracts for School Board review and approval. (FF 16). Demetrio does not have access to correspondence or communications between members of the District's bargaining team during negotiations. (FF 17). Brewer does not discuss bargaining proposals with Demetrio, nor has he ever sought Demetrio's opinion on labor negotiations. (FF 18). 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. (FF 19). However, at Brewer's request, Demetrio has compiled teachers' salary information from other school districts based on publicly available sources during the negotiation of a collective bargaining agreement. (FF 15).

Based on the above Findings of Fact, the Hearing Examiner determined that Demetrio was not a confidential employe within the meaning of Section 301(13) of PERA. Section 301(13) 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 Hearing Examiner found that although Demetrio works in the personnel office, she does not have access to information subject to collective bargaining, and therefore is not a confidential employe under clause (i) of Section 301(13). As regards clause (ii), there is no dispute that Brewer is associated with collective bargaining on behalf of the District. However, the Hearing Examiner stated that Demetrio is not Brewer's personal secretary. The Hearing Examiner found that Demetrio's position is to primarily provide administrative and clerical support to Central Office Administration, and not to Brewer. Additionally, the Hearing Examiner found that even assuming that Demetrio is a secretary to Brewer, 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. Accordingly, the Hearing Examiner concluded that there is not a close continuing relationship between Brewer and Demetrio, as is necessary to establish that Demetrio is a confidential employe under Section 301(13)(ii) of PERA.

On exceptions, the District argues, *inter alia*, that the Hearing Examiner erred in finding that Demetrio was not Brewer's secretary, and in concluding that there was not a close continuing working relationship between Demetrio and Brewer, as required to render Demetrio a confidential employe under Section 301(13)(ii) of PERA. Initially, we note that Demetrio admitted that she is "secretary to the Director of Administrative Services." (N.T. 8-9). Further, there is no dispute that Brewer is the Director of Administrative Services, and that he is involved with collective bargaining for the District. Thus, the issue is whether the District has established a close continuing working relationship between Demetrio and Brewer for purposes of Section 301(13)(ii) of PERA.

In **PLRB v. Altoona Area School District**, 389 A.2d 553 (Pa. 1978), the Pennsylvania Supreme Court held that there is a limited exclusion for confidential employes under Section 301(13) of PERA. Thereafter, in **North Hills School District v. PLRB**, 762 A.2d 1153 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 781 A.2d 150 (Pa. 2001), the Commonwealth Court held that evidence of exposure to confidential collective bargaining materials is not required to satisfy the confidential exclusion under clause (ii) of Section 301(13) of PERA. Giving effect to both holdings, the Board in **Mid-West School District**, 47 PPER 61 (Final Order, 2015), discussed the evidentiary burden of proof to establish a close continuing relationship under Section 301(13)(ii). In **Mid-West School District**, the Board stated as follows:

To justify excluding an employe from the bargaining unit under Section 301(13)(ii), the employer must establish through competent evidence of the employe's actual duties that there is a "close continuing relationship" between the alleged confidential employe and the District's bargaining representative. **North Hills School District, supra.**; [**Neshannock Educational Support Professionals Association v. PLRB**, 22 A.3d 1103, 1107 (Pa. Cmwlth. 2011)]. Indeed, allowing mere supervisory status, standing alone, to establish a confidential relationship would run afoul of the Supreme Court's discussion of labor policy in **Altoona Area School District** ... Moreover, a confidential exclusion based solely on who is the employe's supervisor, without evidence of the duties performed for that supervisor, would be contrary to the Board's long-standing labor policy of precluding the scattering of confidential duties among the bargaining unit. See **Cheltenham School District**, 32 PPER ¶32098 (Final Order, 2001).

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. **North Hills School District**, 762 A.2d at 1159...

Mid-West School District, 47 PPER at 216-217. In **Mid-West School District**, no evidence was presented that the payroll clerk performed any routine administrative duties for the district's business manager. Accordingly, the Board upheld the conclusion that the district failed to establish a close continuing relationship between the payroll secretary and the business manager.

The holding in **Ford City Borough**, 47 PPER 51 (Final Order, 2015), is consistent with the analysis used by the Board in **Mid-West School District**. Indeed, in **Ford City Borough**, the Board found that because the secretary opened all borough mail, the hearing examiner properly inferred that she routinely opened the mail of the borough manager, who was associated with collective bargaining and for whom she worked. Thus, the Board concluded in that case that there was substantial evidence of routine administrative duties performed by the secretary for the borough manager, so as to establish a close continuing working relationship for confidential employe status under Section 301(13) (ii) of PERA.

Upon review of the record, we find that this case is analogous to **Ford City Borough**. As established in the record, Demetrio is the secretary for Brewer, who is associated with collective bargaining for the District. Further, the evidence indicates that she performs routine administrative duties for Brewer that justify assuming that Demetrio would, by sole nature of that relationship, have access to Brewer's confidential collective bargaining information. Indeed, unlike **Mid-West School District**, here there is direct, competent evidence of the routine duties performed by Demetrio for Brewer. 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. (FF 8). As Brewer's secretary, Demetrio gives Brewer documents to sign, gives him his mail, and files new District policies in his policy manual. (FF 9 and 11). Demetrio also assists Brewer when he prepares agendas for personnel discussions during executive sessions of the School Board. (FF 10). Accordingly, there is substantial evidence of a close continuing relationship between Brewer and Demetrio, such that the District has sustained its burden of establishing that Demetrio is a confidential employe under Section 301(13) (ii) of PERA.¹

After a thorough review of the exceptions and all matters of record, the Board shall sustain the District's exceptions in part and set aside the POUC in part consistent with the above discussion.

CONCLUSIONS

Conclusions 1 through 3, set forth in the Proposed Order of Unit Clarification, are affirmed and incorporated herein by reference. Conclusion 4 of the Proposed Order of Unit Clarification is vacated and set aside, and the following additional conclusion is made:

5. The Confidential Secretary for Personnel & Central Administration position is a confidential employe under Section 301(13) (ii) of PERA.

¹ Consequently, we need not address the District's exception to the Hearing Examiner's determination that there was no showing that Demetrio was actually exposed to confidential collective bargaining materials, as is necessary to establish confidential employe status under Section 301(13) (i) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Plum Borough School District are hereby sustained in part, that the Order on page 8 of the March 4, 2016 Proposed Order of Unit Clarification is hereby vacated and set aside, and the Petition for Unit Clarification is dismissed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twenty-first day of June, 2016. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.