

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: CASE NO. PERA-U-22-314-E  
: (PERA-R-3680-C)  
:  
:  
EAST STROUDSBURG AREA SCHOOL DISTRICT :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On December 19, 2022, the East Stroudsburg Area Education Support Professionals Association (Association or Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to remove the confidential classification from four nonprofessional positions and include them in a unit of nonprofessional employees of the East Stroudsburg Area School District (District or Employer) certified at PERA-R-3680-C.

On January 26, 2023, the Secretary of the Board issued an Order and Notice of Hearing designating April 19, 2023, in Harrisburg, as the time and manner of hearing.

The hearing was continued twice by the agreement of the parties. The hearing was ultimately held on January 22, 2024, in Harrisburg, 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. A second day of hearing was held on February 27, 2024, via Microsoft Teams.

The Association and the District both filed post-hearing briefs on June 7, 2024.

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 pursuant to PERA. (N.T. 8-9).
2. The Association is an employe organization pursuant to PERA. (N.T. 8-9).
3. The District includes two high schools, two intermediate or middle schools, six elementary schools and one cyber school. It has an enrollment of approximately 7,000 students and approximately 1200 to 1300 employees. (N.T. 133, 162-163).
4. On July 19, 1973, the Board certified the East Stroudsburg School Service Personnel Association (one of the Association's previous names) as the exclusive representative of "all employes in a subdivision of the employer unit comprised of secretaries, full and regular part time cafeteria employes, custodians, bus drivers, and excluding supervisors, first level supervisors, management level and confidential employes as defined in the Act." (Nisi Order of Certification, PERA-R-3680-C; Joint Exhibit 2).

5. On November 1, 1989, the Association petitioned to change its name to the East Stroudsburg Area Educational Support Personnel Association. The Association now calls itself the East Stroudsburg Area Educational Support Professional Association. The District recognizes this latter name. (PERA-M-89-560-E; Joint Exhibit 1).

6. On June 12, 1990, the Board, based on jointly submitted stipulations from the parties, amended the unit to include the positions of Secretary to the Assistant Superintendent for Curriculum and Instruction; Secretary to the High School Principal; Payroll Clerk; Tax Collector/Receptionist; and Accounts Payable/Bookkeeper. The Board also amended the unit to exclude the positions of Transportation Dispatcher; Secretary to the Superintendent; Secretary to the Assistant Superintendent for Administration and Personnel; Secretary to the Business Manager; and Administrative Secretary. (Nisi Order of Unit Clarification, PERA-U-90-76-E; Joint Exhibit 2).

7. On August 14, 1995, the Association filed a Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981), petition seeking to include in the previously certified unit (PERA-R-3680-C) the following positions: instructional aides, cafeteria monitors, maintenance workers, and media technicians. An election was held on September 20, 1995, and the unrepresented employees voted to be accreted to the unit. On October 17, 1995, the Board thereafter certified the Association as the exclusive representative of the employees in a bargaining unit described as: "all full-time and regular part-time nonprofessional employees including but not limited to secretaries, bus drivers, custodial employees, cafeteria employees, payroll clerks, tax collector/receptionists, accounts payable bookkeepers, instructional aides, cafeteria monitors, maintenance workers and media technicians and excluding professional employees, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act." (Order and Notice of Election, Nisi Order of Certification, PERA-R-95-417-E; Joint Exhibit 2).

8. On May 18, 2020, the Board issued a Nisi Order of Unit Clarification which amended the unit to include the positions of Study Hall Monitor and Student Helper. (Nisi Order of Unit Clarification; PERA-U-00-54-E; Joint Exhibit 2).

9. On June 27, 2000, the Board, based on the joint stipulations of the parties, amended the bargaining unit to include the positions of Secretary to the Support Staff Administrator, Secretary to the Assistant Superintendent for Curriculum and Instruction and Secretary for the Business Office. (Nisi Order of Unit Clarification, PERA-U-98-400-E; Joint Exhibit 2).

10. On October 19, 2006, the Board, based on the agreement of the parties, amended the bargaining unit to exclude the position of Secretary to the Assistant Superintendent for Pupil Services as confidential. (Nisi Order of Unit Clarification, PERA-U-06-481-E; Joint Exhibit 2).

11. On March 5, 2008, the Board, based on the agreement of the parties, amended the bargaining unit to exclude the position of Secretary to the Business Manager as confidential. (Nisi Order of Unit Clarification, PERA-U-07-529-E; Joint Exhibit 2).

12. On January 24, 2012, the Board, based on the agreement of the parties, amended the bargaining unit to exclude the position of Benefits

Clerk as confidential. (Nisi Order of Unit Clarification, PERA-U-11-199-E; Joint Exhibit 2).

13. The parties are subject to a collective bargaining agreement (CBA) with the effective dates of July 1, 2022 through June 30, 2026. (N.T. 22; Joint Exhibit 1).

14. The District employs confidential secretaries. These employees are referred to as administrative assistants. These employees are not in the nonprofessional unit or the professional unit. These confidential secretaries work in the District's administrative center. Two confidential secretaries report to the Superintendent, Dr. William Riker. Five confidential secretaries report to the Director of Human Resources (HR), Steve Zall. The District promulgates a compensation plan for the administrative assistants which includes a summary of the terms and conditions of employment for the administrative assistants including workdays, holidays, vacation, compensation, fringe benefits, etc. (N.T. 33-38, 51-52; Joint Exhibit 3).

15. As of the time of the hearing, the confidential secretaries or administrative assistants were:

Reports to	Name
Superintendent	Patricia Rosado
Superintendent	Debora Wisotsky
Dir. of Human Resources	Patricia Farmer
Dir. of Human Resources	Christine Mayrhauser
Dir. of Human Resources	Jennifer Schnaitman
Dir. of Human Resources	Rosario Cirnigliaro
Dir. of Human Resources	Christina Davidge

(N.T. 39; Association Exhibit 1).

16. The bargaining unit includes nonprofessional staff members including secretaries and clerks. The administrative assistants work similar hours and days to members of the bargaining unit. Administrative assistants have similar overtime benefits and vacation benefits as members of the bargaining unit. Administrative assistants work in the same building and office as members of the bargaining unit. Administrative assistants daily work with members of the bargaining unit. (N.T. 53-64, 66, 99, 104-105; Joint Exhibit 1, 3).

17. The District's bargaining team typically includes Riker, Zall, three or four District School Board members, and the solicitor. The administrative assistants do not appear at the bargaining table on behalf of the District. Riker is directly involved in the formulation of the District's collective bargaining proposals. (N.T. 70-76, 147, 267).

18. In January 2022, the District unilaterally classified another employee, Rebecca Lopez (previously designated as a business office employee) as a confidential administrative assistant and attempted to remove her from the bargaining unit. The Association filed an unfair labor practice charge and the Board ultimately found in favor of the Association. East Stroudsburg Area Educational Support Professional Association v. East Stroudsburg Area Sch. Dist., 55 PPER 33 (2023), affirming 54 PPER 55 (2023). Lopez was returned to the bargaining unit. (N.T. 53).

19. Patricia Rosado is an administrative assistant to Superintendent Riker. She has been in this position since 2005. She assists Riker with his calendar, mail, email, and schedules conferences. She is also the School Board secretary. As School Board secretary she does the School Board calendar. She handles the School Board and Superintendent's budgets, correspondence, typing, mailing, and phone calls. Rosado's cubicle is right outside of Riker's office and next to Wisotsky. (N.T. 117-128).

20. Wisotsky works in the Superintendent's office. She is primarily responsible for updates to District policy. She also works on reserving and preparing facilities for events. She serves as secretary for any committee of School Board members including the bargaining committee. She also prepares the budget for the school police. Her desk is about three feet from the Superintendent's office. At the request of Riker, she will research District policies in connection with the District's response to grievances. She also does everything Rosado does as they both back up each other. (N.T. 64, 79, 123-128, 142-152, 227).

21. Both Rosado and Wisotsky routinely answer Riker's phone and read and handle his email. Emails they read include emails from School Board members and members of bargaining teams. Rosado has seen District bargaining proposals in emails. Rosado and Wisotsky have access to Riker's files. (N.T. 127-129, 131, 142-146).

22. Cirnigliaro works in the HR office. Her job duties include administering teacher and staff tuition reimbursement and teacher certification and vacation time. She also does PIMS reports (Pennsylvania Department of Education reporting) and monitors clearances for teachers. (N.T. 64-65, 104).

23. Cirnigliaro has a written job description which is a fair and accurate summary of her job qualifications and duties. I incorporate Cirnigliaro's entire job description into this Finding of Fact by reference but do not fully reproduce it here due to its length. With respect to the discussion on confidential duties below, Cirnigliaro's job description states in relevant part:

- Professional Contract Negotiations:

Participate in professional contract negotiations as a resource for background information and language.

. . . .

- Review and proofread support staff contract prior to finalizing.

(N.T. 287; District Exhibit 4).

24. Schnaitman works in the HR office. Her job duties include administration of health care benefits including medical, dental and vision. She is the benefits coordinator. She gives information to new employees and answers questions about benefits from current employees. She also enters benefit information into the payroll system. (N.T. 65, 102-104, 365).

25. Schnaitman has a written job description which is a fair and accurate summary of her duties and job requirements. I incorporate Schnaitman's entire job description into this Finding of Fact by reference but do not fully reproduce it here due to its length. With respect to the

discussion on confidential duties below, her job description states in relevant part:

Essential Functions:

Benefits Coordinator job responsibilities

- Participate in the contract negotiation process as a resource person for all healthcare/benefit related content and assist with contract wording revisions as needed. . . .

(N.T. 407; District Exhibit 6).

26. Schnaitman maintains the benefits files for every employe and retiree in the District in her office. These files contain information such as medical enrollment forms, life insurance benefits forms, claims disputes, and correspondence about benefits with employes and retirees. She is the only person with access to these files. (N.T. 386-388).

27. Farmer works in the HR office. She deals with labor arbitrations and labor contracts and is one of the District's contacts with the unions. She also processes FMLA leaves and prepares the School Board agenda. The Association is not petitioning to have her confidential status removed. Farmer has her own office with a door. (N.T. 67, 98-99).

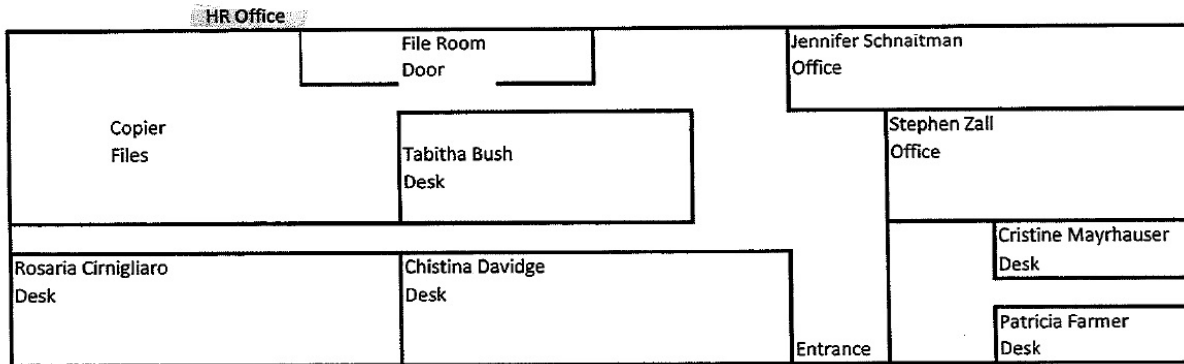
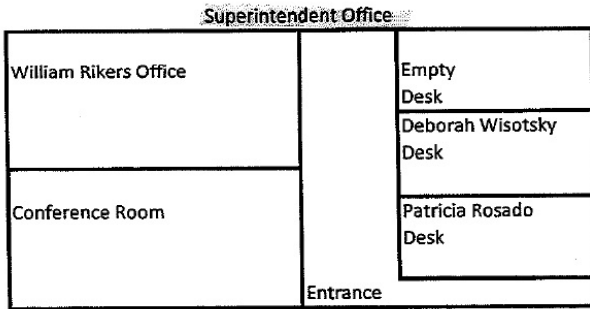
28. Mayrhauser works in the HR office. She backs up Farmer and posts job vacancies. She also corresponds with job applicants. Mayrhauser has her own office with a door. (N.T. 68, 99-101).

29. Davidge works in the HR office. She took over the position formerly held by Horton and administers Workers' Compensation benefits and claims. (N.T. 69).

30. Davidge has a written job description which is a fair and accurate summary of her duties. I incorporate Davidge's entire job description into this Finding of Fact by reference but do not fully reproduce it here due to its length. With respect to the discussion on confidential duties below, her job description states in relevant part: "Review and Proofread support staff contract and salaries". (N.T. 319; District Exhibit 5).

31. Tabitha Bush works in the HR office and reports to Zall. She is a secretary and in the bargaining unit. She has been in her current position for approximately two years. Her duties include answering the department phone and responding to department emails. She handles approximately a dozen phone calls a day and over sixty emails a day. She is also responsible for onboarding documents for new hires and also filing. Onboarding means collecting all the paperwork needed for a new employe to start working. Bush works in a cubicle in the HR office. (N.T. 93-108).

32. The Superintendent's office and HR office have the following approximate layout. This chart is not to scale but accurately shows the layout of the offices and where employe's workspaces are:



(N.T. 79, 99, 123, 153; Association Exhibit 2).

33. The HR office includes current employe personnel files in a file room near the copier. The personnel files room has a door with a lock. The District stores employe files for previous employes in a different space in the administration building. For current employes, the personnel files includes two files for each current employe: a hot file and a professional file. The professional file holds documents such as their application, their ID, and tax documents. The hot file includes clearances, discipline, and other information that does not go in the professional file. (N.T. 112-116; Association 2).

34. Zall is the Director of Human Resources. He has been in this position for over six years and has been an employe of the District for over twenty-three years. The Human Resources department is responsible for all employe issues from recruitment through separation. Issues the department handles include employe benefits, Worker's Compensation, tuition reimbursement, labor contracts and negotiations, and non-union compensation plans. (N.T. 161-165).x. Zall has a separate office with a door and a lock. He typically closes the door when he has meetings. Zall has the capacity to limit access to his office to specific employes. (N.T. 106, 253-254).

35. Zall sits at the table on behalf of the District during collective bargaining negotiations. Zall was involved in bargaining for the current CBA between the District and the Association. Bargaining for the current CBA began in 2021 and continued through 2022. The CBA was ratified in February 2022. (N.T. 165, 178).

36. Zall follows a typical process when preparing for and engaging in collective bargaining. He shares out a draft of the current collective bargaining agreement with necessary stakeholders for them to identify any recommendations they wish to provide him to bring to the School Board

bargaining committee to consider. Zall defines necessary stakeholders as the directors or supervisors of the job classifications covered by the collective bargaining agreement in question. In addition to sharing the current collective bargaining agreement with the necessary stakeholders, Zall also shares the document with the Human Resources department administrative assistants. He is usually looking for feedback on topics such as benefits, Workers' Compensation, tuition reimbursement, vacation and other leave, and other topics vital to the collective bargaining agreement. (N.T. 165-167, 173).

37. To share the current CBA with the stakeholders and HR department administrative assistants, Zall creates a Google cloud version of the current collective bargaining agreement in question ("cba cloud document") and shares it with the necessary employees. He then asks them to "populate [the cba cloud document] with recommendations or revisions they may have." Zall wants to know if the information in the cba cloud document is accurate and still applicable and if there have been any changes to the background regulations or statutes. Employees with access can highlight text in the cba cloud document and make notes or comments that appear in the margins. (N.T. 165-169, 177-178).

38. With respect to HR department employe review of the cloud document, Zall is looking for feedback on Workers' Compensation, changes to related laws and regulations, fringe benefits, information about benefit providers, information about insurance providers, unemployment issues, and leave and absences information. Zall relies on the HR staff to be up to date on these issues. Zall relies on Schnaitman for information about benefits. He relies on Davidge (and her predecessor Horton) for information about Workers' Compensation. He relies on Cirnigliaro for information about tuition reimbursement, teacher certifications, seniority, and vacation time. He also, in general, relies on all members of the staff for general HR issues. (N.T. 169-173, 198-200, 220-222, 234-242, 259, 291, 301-302, 335, 391-392, 402-406).

39. In the course of bargaining, Zall will become aware of proposals from the relevant union or the District. Zall takes notes on any proposal and incorporates proposal information into the relevant cba cloud document. The HR administrative assistants always have access to the cba cloud document. If he needs them to be aware of a specific change or issue that arises during bargaining, he will "share it back to them" which indicates that there is new language or information that is relevant to the School Board bargaining committee that he wants them to review. (N.T. 178-186, 193-196).

40. Eventually, through the course of bargaining, as proposals are shared between the parties and incremental agreements are made, the cba cloud document becomes less of a reflection of the past cba and changes into a tentative agreement. The administrative assistants still have access to the cba cloud document at this point. As more of a tentative agreement, the administrative assistants can see in the cba cloud document the last table positions of the parties and economic proposals. (N.T. 195-198, 205, 220-221, 230, 392-393).

41. Schnaitman follows the changes in proposals and suggests language changes in proposals regarding benefits. When Schnaitman noticed that one of her proposed changes has not been implemented, she will lobby for the change. With respect to proposals, Schnaitman reviews her areas such as health care

and insurance benefits to make sure everything's accurate and to see if any language changed. She also makes sure anything being proposed on either side would be able to be carried out with any of the District's insurance carriers. Schnaitman typically evaluates benefit proposals in collective bargaining negotiations. (N.T. 367-369, 383-384, 393, 403-411).

42. The District's chief financial officer or the business manager are responsible for costing out proposals during collective bargaining. (N.T. 415).

43. Once Zall gives access to a cloud document to someone, they have access forever until he intentionally removes them or they separate from employment with the District. Zall could restrict the sharing of cloud documents to specific administrative assistants. (N.T. 205-206, 230-231).

44. When working on collective bargaining or grievance issues, Zall will from time to time ask administrative assistants to gather information from HR files such as personnel files. (N.T. 208-209).

45. Zall does not grant access to the cba cloud document to Bush. (N.T. 232).

46. Grievances are processed through the HR department. Zall is typically involved in grievances at Level 2. Zall also maintains a cloud version of a spreadsheet that tracks union grievances including Association grievances ("grievance cloud document"). Zall shares this document with the HR administrative assistants. The grievance cloud document notes when a grievance was filed, gives a brief summary of the grieved issue, provides a detailed summary of actions taken at each level and dates, and contains a column for discussion and recommendations. The grievance cloud document is essentially a tracking form to show what grievances are outstanding. The grievance cloud document does not contain information about the District's analysis or determination about the merits of any grievance. Farmer, Davidge, and Mayrhauser update the information in the grievance cloud document. Farmer, Davidge, and Mayrhauser will remind Zall about grievance deadlines and prepare files for him before he goes to grievance meetings. Farmer, Davidge, and Mayrhauser will have access to District positions on grievances before they are made known to the union. If the grievance deals with benefits issues, Zall will work with Schnaitman. (N.T. 187-193, 215-220, 251, 349; District Exhibit 2).

47. Zall does not grant access to the grievance cloud document to Bush. (N.T. 256).

48. Similar to the cba cloud document, Zall could remove access to the grievance cloud document for any employe. (N.T. 257).

49. The typical process for grievances starts with a union representative delivering a grievance to the HR department. One of the employes of the HR department would sign and receive the grievance. The HR employe would then stamp the grievance and start a file or folder. The HR employe would include information in the grievance file such as the relevant contract. They may also collect relevant payroll or attendance information as needed. The HR department keeps grievance files. (N.T. 209-212, 327-329).



50. Zall keeps all of the grievance files in his office. Zall will include his notes about a grievance in the grievance file. These notes could include advice from District counsel. Zall's notes will contain information about his discussions with administrators (including Riker) about the merits of the grievance. All administrative assistants have access to his office. Any administrative assistant can read anything in the grievance files. Zall will from time to time direct an administrative assistant to prepare a grievance response. (209-213, 252-255, 289-290, 325, 339).

51. Zall prepares the District's proposals or presentations before they are communicated in collective bargaining. (N.T. 279).

#### DISCUSSION

The Association petitioned to remove the confidential classification of the administrative assistant positions held by Wisotsky, Cirnigliaro, Horton, and Schnaitman<sup>1</sup>. At the hearing, it was discovered that Horton's position was now filled by Davidge.

In order to remove the confidential classification of these four administrative assistants and accrete them into the bargaining-unit, the Association has the initial burden of showing that the four administrative assistants have an identifiable community of interest with other members of the bargaining unit. Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604.

It is the burden of the petitioning party, in this case the Association, to show an identifiable community of interest. When determining whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employes, grievance procedures, bargaining history, and employes' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. Id.

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<sup>1</sup> Schnaitman's position was subject to a previous unit clarification petition. See Finding of Fact 11. However, that unit clarification petition was not litigated on the merits before the Board. The associated Nisi Order was issued based on the agreement of the parties. Therefore, this matter is not determined by the past unit clarification involving Schnaitman.

Differences among employees in a unit may reflect the division of labor at an employer and do not destroy a clearly identifiable community of interest. See In the Matter of the Employees of Wissahickon School District, 47 PPER 26 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employees of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010), citing Pennsylvania State University v. PLRB, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (holding that the Board need not find an identical community of interest but merely an identifiable community of interest).

In this matter, it is clear the four administrative assistants share an identifiable community of interest with other members of the bargaining unit. Like other members of the bargaining unit, they work for the District in the District's administrative building. They perform nonprofessional clerical work similar to other members of the Association's bargaining unit such as secretaries and clerks. Cirnigliaro, Davidge, and Schnaitman work in the same office as Bush, who is a bargaining-unit member. The four administrative assistants work similar hours and have similar benefits to other members of the bargaining-unit. These facts are sufficient to show an identifiable community of interest.

In it's Brief at 12-13, the District argues that there is no identifiable community of interest:

Each of these positions works for a high ranking District executive administrator who has a particular set of job duties and responsibilities that is unique to the Superintendent and the Director of Human Resources. Each of these high ranking administrators receive and keep a great deal of sensitive information that the School District requires them to keep confidential, except from their closest and most trusted employees. The four positions at issue are among those closest and most trusted employees.

Unlike other school district secretaries, the Administrative Assistants do not have job skills that are exactly similar to those of the others, not even the three who work in the Human Resources office. Each has a unique skill set, developed in part by experience on the job and in part by the fact that they have proven themselves to be trustworthy, and they have gained the trust of the executives with whom they work.

For all of the above reasons, the undersigned submits, as respectfully as she can, that the four Administrative Assistant positions at issue in this matter do not share an identifiable community of interest with the secretaries or any other employees in the bargaining unit, who are rank and file employees who usually can work interchangeably with other employees in their same classification. Most importantly, however, the four employees do not want to be part of the Association's bargaining unit. They have done better in terms of salary on their own, acting through their meet and discuss group and perhaps even before they formed a meet and discuss group. If they

were to be included in the bargaining unit, they would in all probability lose the trust that enables them to have higher paid positions than bargaining unit secretaries and lose access to the information they now have. Such a move is unlikely to improve their economic terms of employment.

I do not agree with the District's argument that there is no identifiable community of interest between the four administrative assistants and members of the bargaining unit. Addressing the arguments of the District above, the degree to which these four administrative assistants are confidential is discussed below. While it is true the four administrative assistants have unique job duties, they still perform non-professional clerical or white-collar duties, which are similar to work performed by other members of the bargaining-unit. The differences in job duties highlighted by the employer here are merely a reflection of the division of labor.

With respect to the District's argument that the four administrative assistants do not "want to be part of the Association's bargaining unit", I do not find such a claim to be supported in the record. Even if the record did show that the four administrative assistants had a professed desire to not join the Association, such a desire would not defeat the finding of an identifiable community of interest. With respect to the District's argument that the four administrative assistants would suffer from a loss of pay if they were accreted into the Association's bargaining unit, the District would have the ability to bargain with the Association over the wages of the administrative assistants added to the bargaining unit.

For the above reasons, there is an identifiable community of interest between the four administrative assistants and members of the bargaining unit.

Moving to the issue of the confidential classification of the four administrative assistants, 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 lead case in interpreting the confidential exclusion is PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), in which the Pennsylvania Supreme Court specifically affirmed the Board's adoption of a narrow construction of the confidential exclusion. In so doing, the Supreme Court agreed with the Board's interpretation of the confidential exclusion as limited to "only those employes whose inclusion in the bargaining unit would seriously impair the employer's ability to bargain on a fair and equal footing with the union." Id. As the court opined, section 301(13) is "not intend[ed] to deny the benefits of public employe status to every employe however tangentially connected to collective bargaining negotiations." Id.

The term "confidential," as defined in Section 301(13) of PERA, is specific to bargaining and deviates significantly from society's common understanding. In the Matter of the Employees of County of Bucks, 55 PPER ¶ 2 (Proposed Order of Unit Clarification and Proposed Order of Dismissal, 2023). The Board stated in Bangor Area School District, 9 PPER ¶ 9295 (Nisi Decision and Order, 1978):

The Board has . . . 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.

9 PPER at 533.

Thus, the mere knowledge of or costing out of bargaining proposals is insufficient to justify a confidential exclusion. See Whitehall-Coplay School District, 12 PPER ¶ 12046 (Nisi Order of Unit Clarification, 1981) (payroll clerk who provided cost analysis to school district business manager not excluded as confidential); Derry Township School District, 11 PPER ¶ 11047 (Nisi Decision and order, 1980), aff'd, 12 PPER ¶ 12040 (Final order, 1981) (two employes involved in cost analysis of possible employer proposals were not confidential employes); Canonsburg Borough, 18 PPER ¶ 18001 (Final Order, 1986) (access to budgetary information does not make wage tax clerk confidential); Northern Intermediate Unit 19, 19 PPER ¶ 19189 (Final Order, 1988) (knowledge of the range of proposals under consideration by an employe does not make an employe confidential); Trinity Area School District, 22 PPER ¶ 22125 (Final Order, 1991).

The Board and the Courts have required a definitive showing that an employe is actually exposed to the employer's confidential collective bargaining information to support a confidential exclusion. Western Beaver County School District, 37 PPER ¶ 53 (Proposed Order of Unit Clarification, 2006).

Access to grievances and grievance materials does not confer confidential status under Act 195. Altoona Area Sch. Dist., supra; Cameron County, 33 PPER 33063 (Order Directing Submission of Eligibility List, 2002).

Section 301(13) (ii) of PERA focuses on the level of association that the alleged confidential employe has with the employer's collective bargaining representative. Where said employe has "a close continuing relationship" with involved management personnel, PERA assumes that that employe would have access to 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." Altoona Area School District, supra; see also North Hills School District v. PLRB, 762 A.2d 1153 (Pa. Cmwlth. 2000). Consistently, "the employes 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." Neshannock Educational Support Professionals Ass'n v. PLRB, 22 A.3d 1103 (Pa. Cmwlth. 2011).

Merely being a subordinate to or reporting to a member of the employer's bargaining team is insufficient to establish a close continuing relationship for purposes of Section 301(13)(ii) of PERA. Mid-West School District, 47 PPER 61 (Final Order, 2015). "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." Id.

An employer cannot scatter the confidential duties in order to deny additional employes bargaining rights under PERA. West Jefferson Hills School District, 25 PPER ¶ 25137 (Final Order, 1994); Reynolds School District, 22 PPER ¶ 22098 (Final Order, 1981); Blackhawk School District, 4 PPER 76 (Nisi Decision and Order, 1974); Commodore Perry School District, 3 PPER 335 (Order and Notice of Election, 1973). The Board will not automatically conclude that the existence of another confidential employe means that an employer is scattering job duties. In Westmont Hilltop School District, 33 PPER ¶ 33067 (Final Order, 2002) the Board found that the fact that the business manager already had a confidential employe working for him "does not preclude the finding that an additional employe in the same office is confidential." Id.

The District has the burden of establishing the underlying facts necessary to support the conclusion that the four administrative assistant positions are confidential, under either of the two prongs of Section 301(13) of PERA. In the Matter of the Employes of Tunkhannock Area School District, 29 PPER 29023 (Final Order, 1997).

Moving to this case, with respect to Wisotsky, the record shows that she and Rosado work as a team to provide secretarial, clerical and administrative support to Riker and the School Board. Moving to the Section 301(13)(i) prong, the record shows that Wisotsky does not work in the personnel office of the District which is the HR department. The record shows that personnel records are kept in the HR department. Therefore, the District has not met its burden of showing Wisotsky is confidential under the 301(13)(i) prong.

With respect to showing a close continual relationship, the record shows that Wisotsky's office is about three feet from Riker's office. Riker is the District Superintendent and participates in collective bargaining on behalf of the District. Wisotsky routinely answers Riker's phone and reads and handles his email. Emails that she reads include emails from School Board members and members of the District's bargaining team. Wisotsky also, in combination with Rosado, handles Riker's correspondence. Wisotsky also has access to all of Riker's files. Additionally, Wisotsky works directly for School Board committees, including the School Board bargaining committee.

The record also shows that Riker has an additional confidential secretary in Rosado. However, I find that this arrangement (two confidential secretaries) to be reasonable on this record considering the size of the school district and also considering that both Rosado and Wisotsky perform additional duties for the School Board in addition to supporting Riker. In other words, I find that the District has not scattered duties in the context of Rosado's and Wisotsky's job duties.

Therefore, weighing the above evidence, I find the District has met its burden of showing Wisotsky has a close continual relationship with Riker and thus has met the 301(13)(ii) prong of the confidential employe test under PERA.

I now move to discussing Cirnigliaro, Schnaitman and Davidge. I first analyze their alleged confidential status under 301(13)(i).

It is clear that Cirnigliaro, Schnaitman, and Davidge work in the personnel office of the District.

Reviewing Cirnigliaro's job description, her role in collective bargaining is that she is a "resource for background information and language" and "[r]eview[s] and proofread[s] support staff contract prior to finalizing." Beyond her job description, the record also shows that Cirnigliaro has access to the cba cloud document created and shared by Zall. The record shows that Zall relies on Cirnigliaro for information about tuition reimbursement, teacher certifications, seniority, and vacation time with respect to the collective bargaining. Through the course of bargaining, as proposals are shared between the parties and incremental agreements are made, Cirnigliaro can see in the cba cloud document the last table positions and proposals of the parties.

Moving to Schnaitman, she is referred to as the District's benefits coordinator. Reviewing Schnaitman's job description, she has the following duties with respect to collective bargaining: "[p]articipate in the contract negotiation process as a resource person for all healthcare/benefit related content and assist with contract wording revisions as needed." Like Cirnigliaro above, Schnaitman also has access to the cba cloud document created and shared by Zall. When Zall shares the cba cloud document, Zall relies on Schnaitman for information about benefits as she is the District's benefits coordinator. When the cba cloud document evolves to contain proposals from the parties, Schnaitman reviews collective bargaining proposals in her areas such as health care and insurance benefits to make sure everything's accurate and to see if any language changed. She also makes sure anything being proposed on either side would be able to be carried out with any of the District's insurance carriers. Schnaitman typically evaluates benefits proposals in collective bargaining negotiations and proposals for the non-union benefits packages.

Moving to Davidge, I will analyze her job duties in combination with any evidence about her predecessor Horton's duties as there has been no showing that the District changed her job duties post-petition in order to influence the outcome of the petition. See In the Matter of the Employees of Riverside School District, 51 PPER ¶ 16 (Proposed Order of Dismissal, 2019). She took over the position formerly held by Horton and administers Workman's Compensation benefits and claims. Davidge's job description does not show any direct collective bargaining duties besides "[r]eview and [p]roofread support staff contract and salaries." Like Cirnigliaro and Schnaitman above, Davidge also has access to the cba cloud document created and shared by Zall. When Zall shares the cba cloud document, Zall relies on Davidge for information about Workers' Compensation.

Cirnigliaro, Schnaitman, and Davidge have access to the grievance cloud document. As part of their access to the grievance cloud document, they do not see information about the District's analysis or determination about the

merits of any grievance. They have access to all the grievance files in Zall's office. These files contain all Zall's notes about the grievance including advice from District counsel and notes about Zall's discussions with administrators (including Riker) about the merits of the grievance.

The District makes its argument about the Cirnigliaro's, Schnaitman's and Davidge's status as confidential under 301(13)(i) at pages 17-21 of its Brief. I have thoroughly reviewed this section of the District's Brief and I disagree with the District's characterization of the law on the issue and I disagree with the relevance of the citations to the record made by the District.

I instead find that Cirnigliaro, Schnaitman and Davidge are not exposed to information sufficient to make them confidential under 301(13)(i). Section 301(13)(i) requires the District to show the employees in question have access to very specific bargaining information: the collective bargaining information must be of such a definite nature that the union would know of the employer's bargaining plans if said information is revealed. It is not enough to show, as argued by the District, that the information is used in the bargaining process or in any way related to the District's plans about grievances. Merely seeing a bargaining proposal, for example, is not an example of being exposed to confidential information if the union has already seen the proposal. The Board has consistently held that the analysis of bargaining proposals is not sufficient to create confidential status.

In reaching this conclusion with regard to Cirnigliaro, Schnaitman and Davidge, I am persuaded by the Association's argument:

The District, thus, must establish that the secretaries were actually aware of the District's bargaining strategies and tactics (and therefore had the ability to "tip off" the Association in advance and improperly tilt negotiations in the Association's favor). See Tunkhannock Area Sch. Dist., 29 PPER 29023. See also Altoona, 389 A.2d at 557 (confidential employee must have the ability to prevent the District from bargaining on a level of "equal footing with the union"). The District has not made this showing. HR Director Zall, to be certain, has shared with the Administrative Assistants bargaining proposals that were made at the table (using the same [cba cloud document]). Mr. Zall, however, shared only those bargaining proposals that had already been made at the bargaining table and "tentative agreements" (i.e., agreements that the parties had already reached at the bargaining table). There is no evidence, however, that Mr. Zall disclosed the District's bargaining proposals before they were made to the union.

(Association's Brief at 32-33) (Footnotes and citations to the record omitted).

Additionally, with respect to the District's burden of showing that Cirnigliaro, Schnaitman, and Davidge meet the 301(13)(i) prong, the Association persuasively argues:

The District, unfortunately, has submitted no exhibits or written evidence of the [cba cloud document] and, instead, has relied on the vague and imprecise testimony of its witnesses. This further hampers the District's ability to meet its burden of proof on the issue of confidential status.

(Association's Brief, footnote 28). I agree with the Association that the lack of evidence on this record of exposure of District bargaining strategy to Cirnigliaro, Schnaitman and Davidge undermines the District's burden of showing confidential status under 301(13) (i).

Further, with respect to information about grievances, the Association persuasively argues:

At the hearing, finally, the District repeatedly argued that the three Administrative Assistants in Human Resources (Schnaitman, Cirnigliaro, and Davidge) have access to the District's grievance files including the grievances themselves. The District, for example, emphasized a spreadsheet that Mr. Zall created (and shares with the Administrative Assistants) which lists the Association's grievances, their number, and their status (how far the grievance has advanced in the CBA's procedure toward arbitration or whether the grievance has been withdrawn). The District also noted that the Human Resources office receives all grievances; that at least one of the Administrative Assistants receives and sees them; and that Mr. Zall keeps files regarding the grievances in his own personal office (which the Administrative Assistants can access). The District also argues that Mr. Zall uses the Administrative Assistants to research issues raised by the grievance (such as payroll, attendance, benefits, and School Board policies). These facts, the District argues, make the three Administrative Assistants "confidential." The argument fails. Access to grievances and grievance materials does not confer confidential status under Act 195. See In the Matter of Employees of Western Beaver County Sch. Dist., 37 PPER 53 (2006); PLRB v. Altoona Area Sch. Dist., 389 A.2d 553, 557 (1978); In the Matter of Employees of Cameron County, 33 PPER 33063 (2002). The reason is because confidential status depends on the employee's knowledge of collective bargaining while it is taking place (i.e., being able to "tip off" the union about the District's bargaining plans and strategies). . . . Grievances, on the other hand, are filed under Collective Bargaining Agreements that have already been negotiated. Collective bargaining has already taken place. Thus, from a legal standpoint, accessing grievance materials is no different than accessing other information and data from past Collective Bargaining Agreement (such as the employer's salary and health care costs). This, as shown above, does not confer confidential status. . . .



(Association's Brief at pages 41-42) (citations to the record omitted). I agree with the Association's analysis of the record and the law. I find that the District's reliance on the administrative assistants' exposure to grievance files and notes on the District's position on grievances is not sufficient to make them confidential under 301(13)(i).

Therefore, for the above reasons, the District has not met its burden of showing Cirnigliaro, Schnaitman and Davidge are confidential under the 301(13)(i) prong.

Moving to an analysis of Cirnigliaro's, Schnaitman's, and Davidge's status under 301(13)(ii), the record shows that the three work solely and directly for Zall, who is a key member of the District's collective bargaining team. Zall's central role in collective bargaining is an important fact in determining confidential status under 301(13)(ii) in this matter. The record shows that the three have access to Zall's office and that he will task them from time-to-time to go into his office to pull and work on grievance files. The record also shows Zall shares access to his cba cloud document and grievance cloud document generally with these three administrative assistants. I find that these two documents, the cba cloud document and the grievance cloud document, are for the purposes of the analysis under 301(13)(ii) analogous to Zall's 'office files' and that the administrative assistants constant access to them is akin to having constant access to Zall's office files. Schnaitman, in particular, performs regular collective bargaining work for Zall. The record shows Schnaitman evaluates collective bargaining proposals dealing with health care and insurance benefits and takes an active and responsible role in producing new contract language. Thus, the access Cirnigliaro, Schnaitman and Davidge have to Zall's office and his cloud files, and the close work Schnaitman does to evaluate proposals and propose language, is sufficient for me to find that they would, by "sole nature of that relationship, have access to confidential collective bargaining information". Mid-West School District, supra. These facts, together, tend to show that these three are confidential employees under the 301(13)(ii) prong. See Neshannock Educational Support Professionals Ass'n, supra; North Hills School District, supra.

The analysis does not end here, however, as the record also shows that the District has scattered some duties among the five administrative assistants in the HR department. Zall has two other confidential secretaries: Farmer and Mayrhauser. Farmer and Mayrhauser sit directly adjacent to Zall's office. Farmer deals specifically with arbitrations and labor contracts and is one of the District's contacts with the Union. Mayrhauser backs up Farmer and performs other important duties such as posting job vacancies and corresponding with job applicants.

Starting a scattering analysis first with Schnaitman, as discussed above, Schnaitman's confidential status is based, in part, on her close work in monitoring and evaluating collective bargaining proposals. Importantly, the record shows that Schnaitman will work on proposed language for new collective bargaining agreements on issues within her expertise. Schnaitman will take an active role and, if she notices that her proposed changes have not been implemented, she will lobby for those changes. The record does not show the District is impermissibly scattering confidential duties to Schnaitman to achieve unnecessary or unwarranted exclusions from the bargaining unit. See Brandywine Heights Area School District, 41 PPER ¶ 170 (Final Order, 2010). The close evaluation of collective bargaining proposals regarding benefits and the drafting of language is a core part of

Schnaitman's job as the District's benefits coordinator and there is no evidence the District has needlessly assigned her this task to keep her status as confidential.

On the other hand, Cirnigliaro's and Davidge's apparent confidential status under 301(13)(ii), as shown above, relies almost exclusively on their access to Zall's office and constant access to Zall's cloud documents. The record shows that these two, unlike Schnaitman, do not perform any regular and substantial or analytical work in collective bargaining other than sharing their expertise when asked or by proofreading drafts. Statutory confidential status is not intended to deny the benefits of public employee status to every employe however tangentially connected to collective bargaining negotiations. Altoona Area School District, supra. I find that their apparent confidential status in this matter is based on Zall scattering duties among all five of the administrative assistants. Zall could restrict Cirnigliaro's and Davidge's access to his office and rely on his other confidential secretaries for work required with files in his office. Further, Zall could use more discernment in sharing the cba cloud document and grievance cloud document. Zall is already careful to not include Bush on the cloud documents and has thus shown the ability to use discretion when sharing the cloud documents. He could further limit access to these cloud documents and only allow access to Cirnigliaro or Davidge when their specific input and expertise is strictly necessary. Alternatively, Zall could send specific emails to these two asking for their expertise or ask for their expertise in person. The record shows that these tasks could be performed by Zall without undue hardship. By using such discipline and discernment in the assignment of duties and sharing of information, the District would thus avoid scattering duties and creating an excessive number of confidential employes under Section 301(13)(ii).

Weighing the entirety of the above, I therefore find that the District has not met its burden of showing that Cirnigliaro and Davidge are confidential employes pursuant to 301(13)(ii) due to the scattering of duties.

As all of the administrative assistants have the same job titles, in the Order below I will refer to Cirnigliaro's job as Administrative Assistant (Tuition Reimbursement, Certifications, Seniority, Vacations). I will refer to Schnaitman's job as Administrative Assistant (Benefits Coordinator). I will refer to Davidge's job as Administrative Assistant (Workers' Compensation). I will refer to Wisotsky's job as Administrative Assistant (Superintendent).

#### **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 employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Administrative Assistants share an identifiable community of interest with the members of the bargaining unit.

5. The Administrative Assistant (Superintendent) and Administrative Assistant (Benefits Coordinator) classifications are confidential employees.

6. The Administrative Assistant (Tuition Reimbursement, Certifications, Seniority, Vacations) and Administrative Assistant (Workers' Compensation) classifications are not confidential employees.

**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 is amended to include the positions of Administrative Assistant (Tuition Reimbursement, Certifications, Seniority, Vacations) and Administrative Assistant (Workers' Compensation).

**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 thirty-first day of July, 2024.

**PENNSYLVANIA LABOR RELATIONS BOARD**

/s/ Stephen A. Helmerich  
STEPHEN A. HELMERICH, Hearing Examiner