

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Chauffeurs, Teamsters, Warehousemen and Helpers, Local 377,

Employee Organization,

and

Poland Township, Mahoning County,

Employer.

Case No. 2001-REP-03-0058

**DIRECTION TO ELECTION
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
January 24, 2002.

On March 8, 2001, the Chauffeurs, Teamsters, Warehousemen and Helpers, Local 377 ("Employee Organization") filed a Request For Recognition with the State Employment Relations Board ("Board") seeking to represent certain employees of the Poland Township, Mahoning County ("Employer"). On March 23, 2001, the Employer filed objections to the Request For Recognition. On September 6, 2001, the Board directed this matter to hearing to determine an appropriate unit and for all other relevant issues.

On December 13, 2001, a Recommended Determination was issued; the administrative law judge recommended that the Board find that the Police Secretary position was not a "confidential employee" under Ohio Revised Code § 4117.01(K) or a "management level employee" under Ohio Revised Code § 4117.01(L), that an individual serving as both the Poland Township Police Department Secretary and the Poland Township Clerk is not a "person holding elective office" under Ohio Revised Code § 4117.01(C)(1) because the elective office position that would preclude bargaining-unit membership is not a position within the bargaining unit or one that the Employee Organization was seeking to include within the unit; that "the unit appropriate for purposes of collective bargaining" is the Employee Organization's petitioned-for unit; and that the Board direct an election in the appropriate unit. On December 21, 2001, the Employer filed exceptions to the Recommended Determination. On December 31, 2001, the Employee Organization filed its response to the Employer's exceptions.

After reviewing the Recommended Determination and the record in this matter, the Board adopts the Findings of Fact, Analysis and Discussion, and Conclusions of Law in the Recommended Determination, incorporated by reference, and directs an election in the appropriate bargaining unit at a time and place established by the Representation Section Administrator in consultation with the parties.

The bargaining unit is described as follows:

INCLUDED: All full-time and regular part-time zoning and clerical employees, including zoning inspectors, assistant zoning inspectors, and secretaries.

EXCLUDED: All other township employees.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than February 4, 2002, the Employer shall serve on the Employee Organization and shall file with the Board a numbered, alphabetized election eligibility list containing the names and home addresses of all employees eligible to vote as of the pay period ending immediately prior to January 24, 2002.

It is so directed.

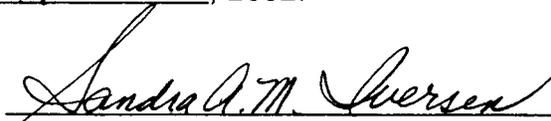
POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



SUE POHLER, CHAIRMAN

I certify that this document was filed and a copy served upon each party on this

25TH day of JANUARY, 2002.



SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS, LOCAL 377,	:	CASE NO. 01-REP-03-0058
	:	
Employee Organization,	:	KAY A. KINGSLEY
	:	Administrative Law Judge
and,	:	
	:	
POLAND TOWNSHIP, MAHONING COUNTY,	:	<u>RECOMMENDED DETERMINATION</u>
	:	
Employer.	:	

I. INTRODUCTION

On March 8, 2001, the Chauffeurs, Teamsters, Warehousemen and Helpers, Local 377 ("Union" or "Employee Organization") filed a Request for Recognition seeking to represent certain employees of Poland Township, Mahoning County ("Township" or "Employer"). The Union seeks to represent a bargaining unit described as "all full-time and regular part-time zoning and clerical employees, including zoning inspectors, assistant zoning inspectors, and secretaries."

On March 23, 2001, the Employer filed an objection to the Request for Recognition, arguing that the proposed bargaining unit contains a position that is both a "confidential employee" and a "management level employee" and should be excluded pursuant to Ohio Revised Code §§ 4117.01(K) and (L).¹ The Employer also argued that the position should be excluded pursuant to § 4117.01(C)(1) because it excludes persons holding elective office from the definition of a public employee.

On September 6, 2001, after a preliminary investigation, the State Employment Relations Board ("SERB" or "Board") directed this matter to hearing to determine an appropriate bargaining unit and for all other relevant issues. A hearing was conducted on October 2, 2001. Both parties filed post-hearing briefs on November 14, 2001.

II. ISSUES

- A. Whether an individual who serves as Police Secretary for Poland Township, Mahoning County, is a "confidential employee" within the meaning of § 4117.01(K).

¹All references are to the Ohio Revised Code, Chapter 4117, and all references to administrative code rules are to the Ohio Administrative Code, Chapter 4117, unless otherwise indicated.

- B. Whether an individual who serves as Police Secretary for Poland Township, Mahoning County, is a "management level employee" within the meaning of § 4117.01(L).
- C. Whether an individual who serves as both the Police Secretary for Poland Township, Mahoning County, and the duly-elected Poland Township Clerk should be excluded from the bargaining unit pursuant to § 4117.01(C)(1).

III. FINDINGS OF FACT²

1. Poland Township, Mahoning County, is a "public employer" within the meaning of § 4117.01(B). (S.; T. 6)
2. The Chauffeurs, Teamsters, Warehousemen and Helpers, Local 377 is an "employee organization" within the meaning of § 4117.01(D). (S.; T. 6)
3. Ms. Catherine Stacy is the duly elected Poland Township Clerk pursuant to §§ 507 et. seq. (S.)
4. Ms. Stacy is presently employed by the Township as the full-time Police Secretary. Ms. Stacy has held this position since 1997. Prior to this position, she was a clerical employee for all Township departments. (T. 57-58, 82)
5. Ms. Stacy became the Township Clerk on April 1, 1992, having previously served as Township Secretary since July 30, 1990. (T. 75, 79)
6. The Township comprises approximately 15,000 residents and has an annual budget of approximately \$2 million. (T. 31)
7. The Township has a Road Department consisting of seven employees who are covered by a collective bargaining agreement ("CBA"); a Police Department consisting of the Chief, three sergeants, and seven or eight patrol officers covered by two CBAs; and a Zoning Inspector, an Assistant Zoning Inspector who serves as

²All references to the transcript of the hearing are indicated parenthetically by "T.," followed by the page number. All references to the Union's exhibits in the record are indicated parenthetically by "U. Exh.," followed by the exhibit number. All references to the Employer's exhibits in the record are indicated parenthetically by "Emp. Exh." Followed by the exhibit letter. All references to the Stipulations of Fact are indicated parenthetically by "S.," followed by the stipulation number. References to the transcript and/or exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for that related finding of fact.

a secretary, the Police Department Secretary, the Township Secretary who serves as a receptionist, and a part-time Recycling Coordinator. (T. 18, 31-32)

8. Ms. Stacy's position is the only portion of the Union's proposed bargaining unit that the Employer contests. (S.)
9. In her position as Township Clerk, Ms. Stacy is the chief fiscal officer of the Township. She keeps the books and all financial records of the Township. (T. 19-20, 35)
10. In her position as Township Clerk, Ms. Stacy has provided input to the Township Trustees for their pre-negotiation strategy sessions on cost/benefit analysis so they are aware of what they can or cannot afford at negotiations. This input has not occurred since she became Police Secretary because negotiations have not occurred since she became Police Secretary. She is not included in the Township Trustees' meetings when the topics being discussed do not pertain to information she can provide as a result of her position as Township Clerk. (T. 19, 42-43, 59, 82-83)
11. In her position as Township Clerk, she issues purchase orders and prepares payroll checks and checks for paying operating expenses. Two other employees issue purchase orders in her absence. (T. 24-25, 92)
12. The Township does not employ a Human Resources director or have a separate Human Resources department. Any records that are generally maintained in a Human Resources department, i.e., personnel records, insurance benefit information, medical claim information, etc., are maintained by the Township Clerk. The Township Secretary also has access to this information. Any files containing employee evaluations and disciplinary material are in each department supervisor's office. (T. 23, 89)
13. In her role as Township Clerk, Ms. Stacy retyped a record-retention policy from a seminar. The policy was later adopted by the Township. Ms. Stacy solicited proposals from various banks and then made a recommendation to the Township Trustees as to which bank should serve as a depository institution. (T. 90-91)
14. In her position as Police Secretary, Ms. Stacy has access to police payroll files. The main personnel files, health insurance and benefits, and medical records are kept in the Chief's office. (T. 61-62, 88)
15. Pursuant to an order from the Chief of Police, Ms. Stacy segregates her Police Secretary duties from her Township Clerk duties by both the location of and the time during which she performs these duties. (T. 73, 81-82)

16. Ms. Stacy works full-time as Police Secretary on Monday from 7:00 a.m. – 3:00 p.m., and on Tuesday through Friday from 8:00 a.m. – 4:00 p.m. She conducts her part-time Township Clerk duties after her Police Secretary hours in a separate office upstairs. (T. 84, 109)

IV. ANALYSIS AND DISCUSSION

Section 4117.01(C)(6) excludes confidential employees from the definition of public employees. Section 4117.01(K) defines a “confidential employee” as follows:

“Confidential employee” means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

The concept of excluding confidential employees from a bargaining unit for purposes of collective bargaining exists in the private sector, but without the benefit of express statutory definition. NLRB v. Bell Aerospace Co., 416 U.S. 267, L.R.R.M. 2945 (1974). The general intent behind this exclusion is to prevent employees with access to the employer’s confidential labor relations information from passing it to the union to which they belong. Westinghouse Elec. Corp. v. NLRB, 398 F. 2d 669, 68 L.R.R.M. 2849 (6th Cir. 1968). The National Labor Relations Board (“NLRB”) has adopted a narrow definition of confidential employee “because most employees have an arguably confidential relationship with management, and because an expansive application of the exclusionary rule would deprive many employees of the right to bargain collectively.” Union Oil of California v. NLRB, 607 F. 2d 852, 853 (9th Cir. 1979). See also Dun and Bradstreet, Inc. 240 NLRB 162, 13, 100 L.R.R.M. 1297 (1979).

Similarly, the Board has strictly interpreted § 4117.01(D), stating that, given the statutory mandate of liberal construction, the exclusions set forth in § 4117.01 must be narrowly construed to facilitate employees’ rights to organize and bargain collectively. In re University of Cincinnati, SERB 86-023 (6-5-86). Employees who work in a close, continuing relationship with individuals involved in collective bargaining on behalf of the employer or who deal with information to be used in collective bargaining are properly excluded to prevent them from being a direct conduit of this information to the union. Id. These exclusions, however, must occur sparingly given the intent of the Act to give more persons, rather than fewer, opportunity for representation in the bargaining unit. Id.

The Police Secretary does not work in a close, continuing relationship with individuals involved in collective bargaining. The Police Secretary does not deal with information to be used in collective bargaining. Since the record is devoid of any evidence to show that the Police Secretary works with individuals involved in collective bargaining

or deals with information to be used in collective bargaining, the Police Secretary position does not meet any of the requirements to be a “confidential employee” under § 4117.01(K).

Section 4117.01(C)(7) excludes management level employees from the definition of public employees. Section 4117.01(L) defines a “management level employee” in relevant part as follows:

“Management level employee” means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration.

The Police Secretary does not formulate policy, responsibly direct the implementation of policy, assist the Township in preparing to conduct collective bargaining negotiations, administer collectively negotiated agreements, or play a major role in personnel administration. Thus, the Police Secretary position does not meet any of the requirements to be a “management level employee” under § 4117.01(L).

Section 4117.01(C)(1) excludes persons holding elective office from the definition of a public employee. In this case Ms. Stacy’s elected position as Township Clerk is not the position that SERB will be including in or excluding from the bargaining unit. The representation in question pertains only to the position she holds in the unit petitioned-for by the Union.

The Employer rests its entire case on the mistaken conclusion that SERB can exclude a particular person as opposed to a particular position from the bargaining unit. Rather than presenting evidence to show that the position in question (Police Secretary) was confidential or management level, the Employer attempted to show that another position (Township Clerk) also held by Catherine Stacy was both management level and confidential. Whether the latter position is management level or confidential is totally irrelevant to the issue before SERB, which is whether the position of Police Secretary (also held by Catherine Stacy) is properly within the bargaining unit or whether it should be excluded because it is management level or confidential. The Union does not seek to represent Ms. Stacy in her capacity as Township Clerk.

The elected official exclusion cited by the Employer is equally misplaced. The § 4117.01(C)(1) exclusion is intended to preclude elected officials from organizing as elected officials. No rational reading of the statute can extend this exclusion to positions outside the bargaining unit in question. The Employer does not provide any legal or logical precedent for its argument.

The Employer's apparent fear is that information Ms. Stacy would have access to as Township Clerk would be information that it would be inappropriate for her to have as Police Secretary and as a member of the bargaining unit. The statutory exclusions do not address the issue of a bargaining-unit employee having access to particular types of information in conjunction with a totally separate position. The statutory exclusions are intended to address the issue of an employee within the bargaining unit having management level or confidential duties as part of that bargaining-unit position's job responsibilities. Ms. Stacy keeps her duties as Township Clerk separate from her duties as Police Secretary. She performs these duties at different times and in different locations. No allegation has been made that any duties performed by her as Police Secretary are confidential or management level in nature. Therefore, the Employer's argument is without merit and has no bearing on whether the position of Police Secretary is included in the bargaining unit.

The burden of proof to establish an employee's exclusion from a bargaining unit is placed upon the party seeking the exclusion. In re Franklin Local School District Bd of Ed, SERB 84-008 (11-8-84). In this case, the Township has not proven by a preponderance of the evidence that Catherine Stacy meets the criteria for either a "confidential employee" or a "management level employee." In addition, the evidence does not support excluding her Police Secretary position from the bargaining unit as an elected official. Thus, the Police Secretary position should remain in the bargaining unit.

V. CONCLUSIONS OF LAW

1. Poland Township, Mahoning County is a "public employer" as defined by § 4117.01(B).
2. Chauffeurs, Teamsters, Warehousemen & Helpers, Local 377 is an "employee organization" within the meaning of § 4117.01(D).
3. The position of Police Secretary is not a "confidential employee" as defined by § 4117.01(K).
4. The position of Police Secretary is not a "management level employee" as defined by § 4117.01(L).
5. An individual serving as both the Poland Township Police Department Secretary and the Poland Township Clerk is not a "person holding elective office" within the meaning of § 4117.01 because the elective office position that would preclude bargaining-unit membership is not a position within the bargaining unit or one which the Union seeks to include in the bargaining unit.

6. "The unit appropriate for purposes of collective bargaining" is the Union's petitioned-for unit all full-time and regular part-time zoning and clerical employees, including zoning inspectors, assistant zoning inspectors, and secretaries.

VI. RECOMMENDATIONS

Based upon the foregoing, it is recommended that:

1. The Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The Board direct an election in the bargaining unit consisting of all full-time and regular part-time zoning and clerical employees, including zoning inspectors, assistant zoning inspectors, and secretaries.