

LEGAL NOTICES, cont.

the 25th day of July, 1989, for the purpose of obtaining a certificate of incorporation.

The name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is H & W, INCORPORATED.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

LAW OFFICES OF
WELTON J. FISCHER
550 Cleveland Avenue
Chambersburg, PA 17201

8/25/89

LEGAL NOTICE

NOTICE IS HEREBY GIVEN, That Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania on June 19, 1989, for the purpose of obtaining a Certificate of Incorporation.

The name of the corporation organized under the Commonwealth of Pennsylvania Business Corporation Law of 1933, (P.L. 364), as amended, is WOODCREST HOMES, INC.

The purpose or purposes for which the corporation has been organized are to engage in the business of general building contractor, and to engage in and to do any lawful act concerning any and all lawful business for which corporations may be organized under the Pa. Business Corporation Law.

J.L. Doyle, Attorney
114 Walnut St., P.O. Box 512
Waynesboro, PA 17268

8/25/89

NOTICE OF WINDING-UP PROCEEDING PVI, INC.

NOTICE IS HEREBY GIVEN that PVI, Inc., a Pennsylvania corporation with principal offices located at 11057 Creek Road, Fannettsburg, Pennsylvania 17221, has filed a Certificate of Election to Dissolve and is winding up its business. All communications or inquiry should be submitted to: Edward I. Steckel, Esquire, 412 Chambersburg Trust Building, Chambersburg, Pennsylvania 17201.

8/18, 8/25/89

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WASHINGTON TOWNSHIP MUNICIPAL AUTHORITY
VS. PENNSYLVANIA LABOR RELATIONS BOARD, C.P.,
Franklin County Branch, Misc. Doc. Vol. 2, Page 174

Labor Law - Administrative Appeal - Bargaining Unit - Confidential Employee

1. The Pa. LRB is better qualified than the courts to make bargaining unit determinations and their ruling will not be disturbed unless found to be arbitrary and capricious.
2. Some differences among employees may exist without destroying the identifiable community of interest necessary for a bargaining unit.
3. The Pa. LRB will not find an employee to be a confidential until collective bargaining has occurred and that particular employee has been used in a confidential capacity.

Jan G. Sulcove, Esq., Counsel for Plaintiff

James B. Neurohr, Esq., Counsel for Defendant, PLRB

Christy Concannon, Esq., Counsel for Intervenor Local 32

WALKER, J., December 16, 1988:

On October 20, 1986, the International Brotherhood of Teamsters, Local Union No. 32 filed a petition for representation of all full-time and part-time personnel employed by Washington Township Municipal Authority (Authority) with the Pennsylvania Labor Relations Board (Board).

On February 6, 1987, a hearing examiner of the Board entered an order directing submission of an eligibility list. The Authority submitted such eligibility list to the Board on February 20, 1987.

By order dated February 26, 1987, a Board representative directed that an election be conducted on March 20, 1987 among the employees of the Authority for purposes of collective bargaining. Subsequent to the election, the Board representative issued a nisi order of certification certifying the election results in which four (4) employees voted for union representation, three (3) voted against the union, and one (1) abstained.

The Authority thereafter filed exceptions to the nisi order of certification. On February 12, 1988, the Board issued a final order which dismissed the Authority's exceptions and made final and absolute the nisi order of certification.

Having exhausted its administrative appeals, the Authority filed a petition for review of the Board's final order with this court on March 8, 1988. Argument was held on this matter on November 10, 1988 and it is now ripe for disposition.

The Authority first challenges the Board's determination that the clerical and blue collar employees constitute an appropriate unit for purposes of collective bargaining.

Section 604 of the Public Employee Relations Act (PERA) provides:

The board 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 board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employees must have an identifiable community of interest and (ii) the effects of over fragmentation.
43 Pa.C.S. § 1101.604 (1).

Given its extensive experience and expertise in the field of labor relations, the Board is better qualified than this court or other courts of this state to make findings of fact and bargaining unit determinations. *Chester-Upland School District v. PLRB*, Pa. Commonwealth Ct. , 532 A.2d 925 (1987); *PLRB V. AFSCME*, 20 Pa. Commonwealth Ct. 572, 342 A.2d 155 (1975). The court will not disturb the Board's determination of an appropriate bargaining unit herein where its conclusions are not arbitrary or capricious but are reasonably supported by the facts. *Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB*, 48 Pa. Commonwealth Ct. 342, 409 A.2d 532 (1980).

The record clearly indicates that the clerical and blue collar employees enjoy the same fringe benefits including Blue Cross/Blue Shield, major medical insurance, paid vacation, sick pay, paid holidays, personal car use, worker's compensation, unemployment compensation, bereavement pay, life insurance, jury duty, military training, leaves, retirement, and regulations regarding their conduct. In addition, these employees received the same pay increases over the past two years. Order directing submission of eligibility list, findings of fact 6, 7, 8 and 9.

Despite the Board's ample findings, the Authority contends that the clerical and blue collar employees do not share an identifiable community of interest. The Authority stresses that

the Board failed to consider the fact that all clerical employees are paid at a rate of \$6.51 per hour while the blue collar employees are paid wages ranging from \$8.20 per hour to \$5.75 per hour. It also contends that the blue collar employees work weekend hours while the clerical employees do not. Additionally, the Authority cites differences in job responsibilities as well as interchangeability of positions.

The court believes, however, that these differences are minimal and unlikely to have any substantial impact on the employees' ability to collectively bargain as one unit. The court further notes that the Board is not required to find an identical community of interest, but rather one which is identifiable. It is recognized that some differences may exist among employees without destroying the identifiable community of interest. *Western Psychiatric Institute and Clinic v. PLRB*, 16 Pa. Commonwealth Ct. 204, 330 A.2d 257 (1974). The slight differences that exist among the employees' wages, hours, and duties herein do not negate the abundance of fringe benefits and working conditions which both the clerical and blue collar employees share.

Based on the foregoing, the court concludes that the Board's determination of an appropriate bargaining unit herein is reasonably supported by the facts and not arbitrary or capricious. The court affirms the Board as to that issue.

The Authority next challenges the Board's determination that the accountant/bookkeeper is not a confidential employee within the meaning of Section 301 (13) of PERA.¹ This section provides as follows:

'Confidential employee' shall mean any employee 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 Pa.C.S. § 1101.301(13).

The Board has consistently held that it will not find an employee to be confidential until collective bargaining has

1. The Authority had also challenged the confidential status of the billing clerk, but has since withdrawn that challenge.

occurred and that particular employee has been used in a confidential capacity. *Penn Township*, 15 PPER ¶ 15015 (final order 1983); *Northgate School District*, 9 PPER ¶ 9220 (final order 1978). There is no evidence on record to suggest that either of these conditions have occurred yet. Until the Authority actually engages in collective bargaining herein, it has no basis to challenge the confidential status of the accountant/bookkeeper. The court also affirms the Board as to this issue.

The Authority also challenges the inclusion of the part-time clerical employee within the proposed bargaining unit because it claims her position is casual in nature. This argument is likewise without merit.

In determining whether a part-time employee shares an identifiable community of interest with full-time employees in a collective bargaining unit, the standard is whether that part-time employee exhibits a regularity of employment and some expectation of continuing that employment. *Bethlehem Township*, 10 PPER ¶ 10050 (order and notice of election 1979).

As the Board correctly found in its final order, the part-time employee has exhibited a sufficient regularity of employment and an expectation of continued employment. The record reveals that although the part-time employee is called in on an "as needed" basis, she did work an average of 14.5 hours per week over the last six months of 1986. Order directing submission of eligibility list, finding of fact 14. Additionally, she enjoys similar wages, duties, benefits, and working conditions all of which establish a real community of interest with the full-time employees. Neither is there evidence to suggest that this employee does not have a reasonable expectation as to continuing her employment. Accordingly, the Board's decision on this issue is affirmed.

Finally, the Authority objects to the Board's conduct of the representative election and, more specifically, to the Board's refusal to designate Gerald Zeigler as the Authority's watcher.²

Section 95.52 of the Board's rules and regulations provides as follows:

2. The Authority had also objected to the Board's canvassing of the ballots in the absence of a representative of the Authority. It has since withdrawn that contention.

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NOTICE OF ERRATIM

Because of a proofreading error, the issue of the advance sheets of our publication published on Friday, August 18, 1989, was incorrectly captioned as part of Volume 9 of the Journal. This should have shown, instead, as Volume 10.

Citizens

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LEGAL NOTICES, cont.

economic relief. A COUNTERAFFIDAVIT WHICH YOU MAY FILE WITH THE PROTHONOTARY OF THE COURT AND WHICH IS NORMALLY ATTACHED TO THIS NOTICE IS AVAILABLE BY CONTACTING PLAINTIFF'S ATTORNEY, CAROL L. VAN HORN, ESQUIRE, AT 249 LINCOLN WAY EAST, CHAMBERSBURG, PENNSYLVANIA, PHONE NO. (717) 264-6494

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Reference Service of
Franklin-Fulton Counties Court House
Chambersburg, PA 17201
Telephone No.: Chambersburg 264-4125,
Ext. 213.

9/1/89

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on June 7, 1989, an application for a certificate for the conducting of a business under the assumed or fictitious name of DOGS-R-US-COMPLETE PET GROOMING CENTER, with its principal place of business at 5317 Rice Hollow Road, Greencastle, PA 17225. The name and address or the person owning or interested in said business is Mary E. Oldham, of 5317 Rice Hollow Road, Greencastle, PA 17225.
9/1/89

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on August 7, 1989, for the purpose of obtaining a certificate of incorporation. The name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is Woodbridge Hills, Ltd., with its principal place of business at 15010 Buchanan Trail East, P.O. Box 430, Blue Ridge Summit, PA 17214. The purpose for which the corporation has been organized is

LEGAL NOTICES, cont.

to develop real estate and any other lawful purpose for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Martin and Kornfield
17 North Church Street
Waynesboro, PA 17268

9/1/89

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Each party to the election shall be entitled to be represented by one watcher at each polling place or by such additional watchers as the parties may agree, subject to such limitations as the Board or its duly authorized agent may prescribe. *Watchers for all parties shall be employees eligible to vote.* However, in the event the employer is unable to find an individual on the list of eligible voters who is willing to serve as a watcher, he may choose a nonsupervisory or other appropriate person.

34 Pa. Code § 95.52 (emphasis added).

The Authority attempted to designate Gerald Zeigler, the Code Enforcement Officer of Washington Township, as its watcher for the election. The Authority notified the Board of its designation two days before the election. The Board then informed the Authority that Mr. Zeigler would be prohibited from acting as the Authority's watcher because code enforcement officers are management level employees within the meaning of PERA. *See Lower Providence Township*, 16 PPER ¶ 16117 (final order, 1985).

Although the Authority had notice of the Board's decision regarding Mr. Zeigler two days prior to the election, the Authority made no attempt to find an alternate watcher. The Authority contends that it did not choose a watcher from among its clerical and blue collar employees because, by doing so, it would have been accepting a representative who was totally unsympathetic to its position. Given the fact that at least three of the employees voted against unionization, this contention is without merit.

Furthermore, the Board's decision can also be justified because the Authority never attempted to appoint a watcher from the list of employees eligible to vote as required by Section 95.52. As the Authority, readily admits, Mr. Zeigler was not an employee of the Authority, let alone an employee eligible to vote. It is apparent from the language of Section 95.52 that the Authority had a duty to inquire among its employees as to whether one of them would be willing to serve as its watcher. If failed, however, to do so. In essence, the Authority can only blame itself for not having a watcher present at the election.

The court finds no manifest and flagrant abuse of discretion or purely arbitrary execution in the Board's denial of the appointment of Mr. Zeigler as watcher. *Pennsylvania Social Services Union Local 668 v. PLRB*, 481 Pa. 81, 392 A.2d 256 (1975). The Authority's final challenge must fail.

ORDER OF COURT

December 16, 1988, Washington Township Municipal Authority's petition for review is dismissed, and the Pennsylvania Labor Relations Board's final order is affirmed.

FULTON TERRACE LTD. PARTNERSHIP VS. RILEY, ET. AL., C.P.
Fulton County Branch, No. 189 of 1988 C

Landlord - Tenant - Notice to Quit - 42 Pa. C.S.A. Sec. 250.501

1. Where tenants enter into a one-year lease a notice to quit within thirty days after service is inadequate.
2. The fact that three months have elapsed since a District Justice hearing does not meet the defect in the notice to quit.

Michael W. Chorazy, Esq., Counsel for Plaintiff

Jonathan D. Fenton, Esq., Counsel for Defendants

WALKER, J., March 30, 1989:

Plaintiff, Fulton Terrace Ltd. Partnership owns and operates Fulton Terrace Apartments, an apartment complex financed and regulated by the Farmers Home Administration, United States Department of Agriculture. Defendants, Benette Riley and Walter Jefferson, are tenants of Apartment A-22 of Fulton Terrace Apartments in McConnellsburg, Pennsylvania. On December 30, 1987, defendants signed a one-year lease with Fulton Terrace which commenced on February 1, 1988.

On May 11, 1988, plaintiff personally served a notice to quit on defendants. The notice alleged that defendants were in noncompliance with terms and conditions of the lease. It directed defendants to surrender their apartment within thirty (30) days from the date of service thereof.

On July 5, 1988, plaintiff filed a landlord and tenant complaint with District Justice Betty M. Keebaugh. The complaint alleged that a forfeiture of defendants' apartment had occurred because defendants had breached the conditions of the lease.

District Justice Keebaugh scheduled a hearing on plaintiff's complaint for August 1, 1988. After the hearing, District Justice Keebaugh rendered judgment in favor of plaintiff. On August 15, 1988, defendants filed a notice of appeal and supersedeas with this court. Plaintiff thereafter filed a

complaint with the court seeking eviction of defendants from their apartment for material non-compliance with the lease.

Defendants filed a preliminary objection to plaintiff's complaint in the nature of a petition to dismiss for lack of jurisdiction. Plaintiff filed a reply to defendants' preliminary objection and the matter was listed for argument court. Both parties having argued their respective positions before the court on December 27, 1988, the above matter is now ripe for disposition.

Defendants' petition to dismiss raises the following questions:

1. whether plaintiff's complaint should be dismissed because the notice to quit directed defendants to surrender within thirty (30) days of date of service rather than three (3) months;
2. whether plaintiff's complaint should be dismissed because plaintiff failed to give written notice of proposed termination to defendants stating the grounds for the proposed eviction and advising defendants that they have ten (10) days in which to respond to the proposed eviction;
3. whether plaintiff's complaint should be dismissed because plaintiff failed to serve defendants with a second notice to quit by first class mail; and
4. whether plaintiff's complaint should be dismissed because the district justice hearing was held twenty—seven (27) days after the landlord and tenant complaint had been filed.

Prior to bringing an action for possession before a district justice, a landlord is required to serve a notice to quit the premises on the tenant in accordance with Section 250.501 of the Landlord and Tenant Act.¹ Section 250.501 provides in pertinent part:

A landlord desirous of repossessing real property from a tenant may notify, in writing, the tenant to remove from the same at the expiration of the time specified in the notice under the following circumstances, namely, (1) upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions (3) or upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.

In case of the expiration of a term or of a forfeiture for breach of the conditions of the lease where the lease is for any term of less than one year or for an indeterminate time, the notice shall specify that the tenant shall remove within thirty days from the date of service thereof, *and when the lease is for one year or more, then within three months from the date of service thereof.* . .

The notice above provided for may be for a lesser time or may be waived by the tenant if the lease so provides.

¹42 Pa.C.S.A. 250.101 et seq.