

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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COMMONWEALTH OF PENNSYLVANIA : Case No. PERA-R-16-124-E
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FINAL ORDER

On June 6, 2016, Charles L. Scheidler Jr. (Petitioner) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the May 18, 2016 decision of the Secretary of the Board declining to direct a hearing on the Petition for Representation filed by the Petitioner under the Public Employee Relations Act (PERA). The Petition seeks certification of a bargaining unit limited to Solid Waste Program Specialists employed by the Commonwealth of Pennsylvania, Department of Environmental Protection (Commonwealth). The Secretary declined to direct a hearing and dismissed the Petition on the ground that the petitioned-for unit is inappropriately narrow and does not comply with the Board's broad-based bargaining unit policy, citing **Allegheny County**, 11 PPER ¶ 11031 (Court of Common Pleas of Allegheny County, 1979). The Secretary further noted that in **Commonwealth of Pennsylvania, Department of Environmental Protection**, 43 PPER 24 (Proposed Order of Dismissal, 2011), a Board Hearing Examiner concluded that the Specialist class within the Department of Environmental Protection is management level and therefore is excluded from the bargaining unit of professional, nonsupervisory engineering and scientific employes (referred to as the B-4 bargaining unit) represented by AFSCME Council 13 (AFSCME) pursuant to Section 301(2) and (16) of the Public Employee Relations Act, 43 P.S. §1101.301(2) and (16).

In his exceptions, the Petitioner asserts that there are numerous Commonwealth job titles that have fewer filled positions than the Solid Waste Program Specialist, including Environmental Chemist I, Nuclear Safety Specialist, Property Casualty Insurance Actuary 2, and Soil Scientist 2. However, notably all of these positions are included in the B-4 bargaining unit, which demonstrates that the unit is broad-based consistent with the longstanding Board policy relied upon by the Secretary. The unit sought by the Petitioner is not inappropriate because there are only a small number of Solid Waste Program Specialists employed by the Commonwealth. Rather, the petitioned-for unit is inappropriate because it would only include a single Commonwealth job title and would exclude numerous positions that share an identifiable community of interest with the Solid Waste Program Specialists. The rationale for the Board's broad-based bargaining unit policy was discussed in **Chester County**, 26 PPER ¶ 26118 (Proposed Order of Dismissal, 1995), 27 PPER ¶ 27003 (Final Order, 1995), **aff'd**, No. 95-11568 (Court of Common Pleas of Chester County, 1998) as follows:

When assessing what is an appropriate unit the Board has traditionally included whether employes have an identifiable community of interest under Section 604(1)(i) of [PERA]. In making that determination the Board examines, "the employees' skills, their duties, areas of work, working conditions, interchange of employes, supervision, grievance procedure, hours of work, trade requirements, pay scales and employe desires." **Allegheny General Hospital v. PLRB**, 14 Pa. Commonwealth Ct. 381, 387-388, 322 A.2d 793, 799 (1974). Yet the Act demands that the Board also consider the effects of overfragmentization, suggesting the desirability of fewer and larger units. **Western Psychiatric Institute and Clinic v. PLRB**, 16 Pa. Commonwealth Ct. 204, 211, 330 A.2d 257, 260 (1974). Consequently, the Board's policy under Section 604(1)(ii) has been to make sure, "that the units must be as few as practically can be." *Id.* at 210, 330 A.2d at 260...

26 PPER at 274. Similarly, in dismissing a petition to represent a narrow unit in **Bucks County Public Defender's Office**, 13 PPER ¶ 13109 (Final Order, 1981), the Board noted "the danger of the whipsaw effect on public employers" if they must bargain with a multitude of overly fragmented units. 13 PPER at 198.

As recognized by the Secretary, permitting the Petitioner to proceed in this case on a petition to represent only a narrow unit of a single job title within Commonwealth government would violate the

Board's broad-based bargaining unit policy and promote overfragmentization, contrary to the express intent of the legislature in enacting PERA. 43 P.S. § 1101.604(1)(ii).

The Petitioner also contends that his position is not management level or supervisory, and therefore the Secretary erred in relying on **Department of Environmental Protection**. However, if the Solid Waste Program Specialists are not management level or supervisory, then they belong in the existing broad-based unit for Commonwealth professional, nonsupervisory engineering and scientific employees (the B-4 bargaining unit) and not in the narrow unit proposed by the Petitioner consisting of only a single job title. Thus, the Secretary properly dismissed the Petition for an inappropriate unit under the Board's broad-based bargaining unit policy. Further, any claim that the position at issue should be included in the existing unit must be advanced by either the Commonwealth or AFSCME through filing of a petition for unit clarification because individual employees lack standing to file such a petition.

Not only is the petitioned-for unit inappropriate, but the Petitioner has failed to establish the requisite showing of interest to warrant further processing of its Petition. Section 603 of PERA, 43 P.S. § 1101.603, and Section 95.14(8) of the Board's Rules and Regulations, 34 Pa. Code § 95.14(8), require that an election request contain a showing that thirty percent or more of the employees in the proposed unit wish to be represented by a designated representative for purposes of collective bargaining. Section 95.1 of the Board's Regulations provides that a showing of interest may be demonstrated by "written authorization cards or petitions, signed by employees and dated, authorizing an employee organization to represent the employees for the purpose of collective bargaining or requesting an election for certification...of public employee representatives..." 34 Pa. Code § 95.1. Here the Petitioner submitted a petition with employee signatures, but the signature petition does not authorize an employee organization to represent the employees in collective bargaining or request an election for certification of a representative. Thus, the signature petition does not meet the Board's standard for a showing of interest. **Commonwealth of Pennsylvania, Department of Corrections**, 20 PPER ¶ 20130 (Proposed Order of Dismissal, 1989), 21 PPER ¶ 21148 (Final Order, 1990). Accordingly, the Petition for Representation must be dismissed on this ground alone. **Id.**

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to direct a hearing and dismissing the Petition for Representation.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Charles L. Scheidler Jr. are dismissed and the Secretary's May 18, 2016 decision declining to direct a hearing and dismissing the Petition for Representation is hereby made absolute and final.

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