

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-16-345-E
: (PERA-R-38-C)
CITY OF WILKES-BARRE :
:

FINAL ORDER

The City of Wilkes-Barre (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 8, 2018, from a Proposed Order of Dismissal (POD) issued on January 19, 2018. In the POD, the Board's Hearing Examiner dismissed the City's Petition for Unit Clarification under the Public Employee Relations Act (PERA) seeking to remove the City's paramedics and chief paramedic from the bargaining unit of City employees represented by the Professional and Public Service Employees Local #1310 (Local 1310). After the Secretary of the Board granted the City's request for an extension of time to file a brief in support of the exceptions, the City filed its brief on March 12, 2018.

On December 5, 2016, the City filed a Unit Clarification Petition under Section 95.23 of the Board's Rules and Regulations to exclude seventeen positions from the bargaining unit represented by Local 1310. An Order and Notice of Hearing was issued on January 3, 2017, scheduling a hearing on March 22, 2017. After a series of continuances requested by the parties, the hearing was rescheduled and held on October 2, 2017, at which time the parties presented testimony, cross-examined witnesses and introduced documentary evidence. Prior to the hearing, the City withdrew its Unit Clarification Petition as to all but the Chief Paramedic and Paramedics. The City and Local 1310 filed post-hearing briefs. Based on the evidence presented by the parties, the Hearing Examiner made necessary Findings of Fact, which are adopted herein and summarized as follows.

Paramedics have been members of the bargaining unit represented by Local 1310 since at least 1981. (FF 9). Approximately 75 percent of the employees in the bargaining unit are in clerical positions. The remaining members of the bargaining unit include specialty positions such as nurses, electricians, property foreman, parking attendants, parking enforcement, and the paramedics. (FF 8).

The City and Local 1310 are parties to a collective bargaining agreement (CBA), which had an initial term from January 2, 2007 through December 31, 2011, and was most recently extended in May 2017, through December 31, 2017. (FF 5). The CBA is applicable to all employees in the bargaining unit. Pursuant to the CBA, paramedics are covered by the same health insurance, pension benefits, payment schedules, grievance procedures, and disciplinary procedures as the other members of the bargaining unit. (FF 10). Additionally, paramedics, as with all members of the bargaining unit, must be residents of the City. (FF 16). Further, the Mayor has ultimate authority on hiring and firing

decisions for all members of the bargaining unit, including paramedics. (FF 17).

The paramedics work at the City's two fire stations, and the Chief Paramedic reports to the Fire Chief. (FF 12 and 13). The paramedics' schedules are similar to those of the firefighters. The fire department is usually scheduled on four shifts, with approximately twelve firefighters and two paramedics for each shift. (FF 12). While the paramedics do respond to calls for medical transport, emergencies and fires, the paramedics also perform clerical duties. Clerical duties comprise approximately 50 percent of the paramedics' duties. (FF 11).

The Fire Department office manager is a member of the bargaining unit who is also assigned to the fire station. She performs administrative and clerical duties for the fire department, and is supervised by the Fire Chief. (FF 14). Also included in the bargaining unit are two nurses assigned to the Kirby Health Center, who provide medical care and services to the public. (FF 15).

Based on the testimony and evidence presented, the Hearing Examiner found that the City did not prove that the Chief Paramedic and the other paramedics lack an identifiable community of interest with the other members of the bargaining unit, or that their inclusion in the unit is inappropriate under the Board's broad-based bargaining unit policy reflecting PERA's admonition against overfragmentization. In support of this conclusion, the Hearing Examiner stated as follows:

First, the paramedics, like all other members of the bargaining unit, are employees of the City. Like all other members of the bargaining unit, all decisions regarding the hiring and termination of paramedics ultimately rests with the Mayor. Second, paramedics have been members of the bargaining unit since at least 1981 - a continuous bargaining history of over thirty-six years. Third, similar to other members of the bargaining unit, paramedics perform clerical duties. Fourth, similar to other members of the bargaining unit, paramedics deliver medical services. Fifth, paramedics are covered by similar health insurance, pension benefits, payment schedules, grievance procedures, and discipline procedures compared to the other members of the bargaining unit. Sixth, the paramedics work with another bargaining unit member in the Fire Department.

* * *

[T]he City, at the hearing and in its brief, highlights many differences between the paramedics and other members of the bargaining unit including: the type of work performed; the lack of interchange amongst employees; differing lines of supervision; differences in shifts and hours; differences in fringe benefits; differences in working conditions; and conflicts between bargaining interests. (City's Brief at 2-3). However, 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.... The differences among employees in this unit reflect the division of labor at the City and do not destroy the clearly identifiable community of interest found in this record.

(POD at 4).

The City filed timely exceptions arguing that the Hearing Examiner erred in finding a community of interest between the paramedics and other bargaining unit employees. Relying on Fraternal Order of Police v. PLRB, 695 A.2d 926 (Pa. Cmwlth. 1997), *affirmed*, 735 A.2d 96 (Pa. 1999), the City argues that the Hearing Examiner failed to consider the distinguishing job functions and other dissimilarities in wages, hours and working conditions between bargaining unit employees and the paramedics.

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 employees must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604. In FOP, the Court stated that to determine whether employees share an identifiable community of interest, the Board should consider such factors as the type of work performed, working conditions, pay scales, hours and benefits, grievance procedures and bargaining history. FOP, supra.; see also, West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000) (same); Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974) (same). In Berks/Lehigh Valley College Faculty Association v. PLRB, 763 A.2d 548 (Pa. Cmwlth. 2000), the Court reiterated, that "[a]n 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., at 551 (*quoting FOP*, 735 A.2d at 100). Thus, the Board, and Courts have recognized that "Section 604 of PERA does not suggest that each employee classification within an employer unit be separated on community of interest standards due to difference in experience, skills, duties and rates of pay that may exist between classifications within a broader nonprofessional employee group." Pittston Area School District, 12 PPER 12180 (Final Order, 1981); Berks/Lehigh Valley College Faculty Association, supra.; West Perry School District, supra. Consistent therewith, and founded on well-established public sector labor policy, the Board has long favored broad-based bargaining units as appropriate under Section 604 of PERA. Athens Area School District, 10 PPER ¶ 10128 (Order and Notice of Election, 1978).

Moreover, the City's reliance on FOP, in this case, is misplaced. In 1971, prior to the Board's adoption of a broad-based bargaining unit policy, the Fraternal Order of Police, Conference of Pennsylvania Liquor Control Board Lodges (FOP) was certified as the representative

of Liquor Enforcement Officers of the Liquor Control Board (LCB).¹ At the time, the Liquor Enforcement Officers performed both enforcement duties and licensing duties for the LCB. In 1987, the General Assembly created the Bureau of Liquor Control Enforcement in the Pennsylvania State Police, and enforcement of the liquor laws was transferred to the PSP. Licensing Analyst positions were created to continue the liquor licensing duties for the LCB. Subsequently, the FOP negotiated collective bargaining agreements that covered the Liquor Enforcement Officers and the Licensing Analysts. In 1995, the FOP sought a separate certification for a unit of Liquor Enforcement Officers employed by the PSP.² On appeal, the Court stated that there was no substantial evidence of record³ to support any finding of fact that the enforcement officers at the PSP shared an identifiable community of interest with the licensing analysts at the LCB. FOP, 735 A.2d at 100. Indeed, as subsequently noted by the Commonwealth Court, the holding in FOP was based on the complete lack of substantial evidence supporting a community of interest between the liquor enforcement officers of the PSP, and the liquor licensing analysts employed at the LCB. Deputy Sheriffs Association of Berks County v. PLRB, 795 A.2d 1064 (Pa. Cmwlth. 2002).

As noted in FOP and the cases cited above, a party seeking to remove positions from a bargaining unit has the burden of establishing that an identifiable community of interest is completely lacking. West Perry School District, *supra*. Where there is substantial evidence of a community of interest, differences in wages, hours, working conditions, job duties, skills, supervision or benefits among bargaining unit positions will not foreclose inclusion in an appropriate broad-based bargaining unit. See Deputy Sheriffs Association of Berks County, *supra*.

Contrary to the City's arguments on exceptions, the Hearing Examiner did not disregard the differences between the paramedics and other employees in the bargaining unit. Instead, unlike in FOP, the Hearing Examiner found substantial credible evidence of record supporting an identifiable community of interest between the paramedics and other bargaining unit employees. As for the City's evidence of differences in hours, location, type of work performed, skills and other matters, the Hearing Examiner found that those differences do not negate the community of interest that does exist, nor warrant fragmenting the single classification of eight paramedics into its own unit in deviation from the Board's broad-based bargaining unit policy. See Springettsbury Township, 13 PPER ¶13107 (Final Order, 1982) (dismissing a union's representation petition seeking to sever the emergency medical technicians from the blue-collar nonprofessional bargaining unit).

¹ Case No. PERA-R-1083-C.

² Case No. PERA-U-95-213-E.

³ Substantial evidence is more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established. *E.g.* Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc., 345 Pa. 397, 29 A. 2d 90 (1942).

Upon a thorough review of the entire record, we agree with the findings and conclusions of the Hearing Examiner. First, we note that the City is not asserting in this case that the paramedics are legislatively authorized to act as firefighters so as to place them within the firefighter bargaining unit pursuant to Act 111 of 1968. 43 P.S. §301(2); International Association of Fire Fighters, Local 22 v. PLRB, 35 A.3d 833 (Pa. Cmwlth. 2012). Secondly, the Board has long held that the training, required education and technical aspects of the job of a paramedic do not make paramedics professional employees within the meaning of Section 301(7) of PERA. Thus, paramedics are generally included in a broad-based nonprofessional bargaining unit. City of Bethlehem, 22 PPER ¶22094 (Final Order, 1991), *affirmed*, 23 PPER ¶23098 (Lehigh County Court of Common Pleas, 1992). Third, we note that since 1981 the City has taken the position that the paramedics share an identifiable community of interest with the employees in the bargaining unit represented by Local 1310. See City of Wilkes-Barre, Case No. PERA-U-87-290-E.

With regard to the Hearing Examiner's discussion regarding the existence of an identifiable community of interest among the paramedics and other bargaining unit employees, the Hearing Examiner's findings of fact are supported by substantial evidence. The record evidence establishes that the job functions of the paramedics include spending approximately fifty percent of their time performing clerical duties, and that clerical duties are performed by nearly seventy-five percent of the bargaining unit members, including the Fire Department office manager who is also a member of the unit at issue. The duties of the paramedics also involve providing medical treatment and care to the public. The Hearing Examiner found that nurses in the bargaining unit similarly provide medical care and treatment services to the public. Accordingly, the record supports the Hearing Examiner's finding of a community of interest based on the type of work performed by paramedics and others in the bargaining unit.

As for the fact that paramedics are assigned to the City's fire stations, the Hearing Examiner found that other bargaining unit employees are also assigned to various locations and departments by the City. Indeed, by way of example, the Fire Department office manager is also assigned to a fire station. In addition, there are bargaining unit employees assigned to the police station, and the nurses in the bargaining unit are assigned to the Kirby Health Center. Nonetheless, the fact that employees may have different worksites does not render an employer-wide bargaining unit inappropriate. Berks/Lehigh Valley College Faculty Association, *supra*.

While the hours, shifts, and workdays of the paramedics differ from those of other bargaining unit employees, as noted by the Hearing Examiner, this is a function of the City's managerial decision to provide coverage for emergency medical services twenty-four hours a day, seven days a week. See, POD at 4. Notably, the record also reflects that another bargaining unit employee, the electrician, may be called upon to report to work by the City on an emergency basis if the need arises. (N.T. 103). Nevertheless, the fact that bargaining unit employees may be assigned by the employer to work different shifts, hours or workdays, does not demonstrate the complete absence of a community of interest. See Pittston Area School District, *supra*.

The City also argues that the paramedics have a different hiring process and line of supervision than the other bargaining unit employees. However, the identity of the person or persons who effectively recommend hiring and disciplinary decisions merely establishes who is the supervisor of certain bargaining unit employees under Section 301(6) of PERA. Indeed, the bargaining unit nurses are under the supervision of the principle health officer. (City Exhibit 1, Article XXXIII, Section 1). The bargaining unit position of fire department office manager is supervised by the Fire Chief. Similarly, the record shows that paramedics are under the lead direction of the Chief Paramedic, who is supervised by the Fire Chief. Merely having different supervisors for employees in the same bargaining unit does not warrant fragmenting the bargaining unit based on lines of supervision. 43 P.S. §1101.604(1)(ii); see also Deputy Sheriffs Association of Berks County, supra. (deputy sheriffs were appropriately included in the broad-based, court-related bargaining unit despite the fact that they were under the direction and supervision of the sheriff).

Additionally, the City also contends that the Fire Chief recommends hiring of paramedics. However, as found by the Hearing Examiner, all decisions regarding hiring and termination of bargaining unit employees, including paramedics, ultimately rests with the Mayor. Additionally, the paramedics are covered by the same disciplinary and grievance procedures as the rest of the bargaining unit employees. Thus, there is substantial evidence of a community of interest between paramedics and the other bargaining unit employees with respect to hiring, discipline and termination of employment.

The City argues that the paramedics are subject to separate and unique Standard Operating Procedures (SOPs) drafted by the Fire Chief and Chief Paramedic. Specific policies and procedures unique to a particular job location, supervisor or assignment, however, do not necessitate a separate bargaining unit. Indeed, in Berks/Lehigh Valley College Faculty Association, supra, the Court noted that while the campus administrators had developed their own policies and regulations concerning terms and conditions of employment at the branch campus where the petitioned for employees worked, because the branch campus employees remained subject to the overarching policies of the Pennsylvania State University, they would be appropriately part of a broad-based, university-wide bargaining unit.

Similarly here, the paramedics, while also having SOPs concerning their duties in relation to working out of the fire stations, remain subject to the overarching policies and rules of the City and Mayor. By illustration, under the City's policies, "paramedics, like all members of the bargaining unit, must be residents of the City." (FF 16). By way of further example, other specialized bargaining unit positions, such as the electrician and nurses would also have their own rules or protocols for their jobs. However, those employees, like the paramedics, are subject to the uniform disciplinary and grievances processes for failure to adequately perform or follow those rules or protocols, as are the paramedics with regard to the SOPs. Accordingly, the Hearing Examiner did not err in finding that the SOPs of the Fire Chief and Chief Paramedic that are applicable to the paramedics, do not foreclose the existence of a community of interest between the paramedics and other employees in the bargaining unit with regard to the overarching policies of the City.

The City also argues that the paramedics lack a community of interest with others in the bargaining unit because the paramedics have "carve-out" provisions in the CBA, providing paramedics with unique terms and conditions of employment. For example, Article XXXVIII "Miscellaneous Provisions" includes a section providing paramedics with reimbursement for lost or broken personal effects used in their job, provides paramedics with permission to use the City laundry facilities, and has a section covering pay for the paramedics' training. However, as recognized by the Hearing Examiner, Article XXXVIII also provides carve-out sections for nurses, safety dispatchers and the mechanics in the bargaining unit. The carved-out contract terms for paramedics, nurses, dispatchers and mechanics, that are negotiated by Local 1310 due to their particular work duties, do not negate the uniformity of other negotiated working conditions applicable to all bargaining unit members.⁴ As found by the Hearing Examiner, and supported by the CBA, paramedics are covered by similar health insurance, pension benefits, payment schedules, grievance procedures, and disciplinary procedures compared to the other members of the bargaining unit. See Deputy Sheriffs Association of Berks County, supra. ("when the benefits shared by all employees under the collective bargaining agreement were negotiated, differences in the employees' actual job functions already existed"). The similarity of these terms and conditions of employment support the Hearing Examiner's finding of a community of interest between the paramedics and the bargaining unit employees.

Finally, throughout the hearing and on exceptions, the City argues that the interests of the paramedics create conflict with other employees in the bargaining unit represented by Local 1310. In this regard, we note that even in Allegheny General Hospital, supra, relied upon by the City, the Court recognized that the desires of the employees in choosing their representative was a relevant inquiry in determining whether there is a community of interest. Bargaining history has also been recognized as a relevant consideration for a community of interest analysis. See FOP, supra. Here, the paramedics have been members of the bargaining unit since at least 1981 - a continuous bargaining history of over thirty-six years. Moreover, during this time, even the City has taken the position that the paramedics are members of Local 1310's bargaining unit. See City of Wilkes-Barre, Case No. PERA-U-87-290-E. To suggest a conflict, the City points to the fact that a paramedic has always been one of the union stewards and a paramedic participates in negotiation sessions. However, it is equally plausible, if not more plausible, that a paramedic being included in bargaining and grievances for the past thirty-six years is evidence of Local 1310's long-standing representation and inclusion of the paramedics as members of the broad-based bargaining unit. Indeed, the City's unit clarification petition in this case is contested by Local 1310 on behalf of the paramedics and

⁴ The City also attempts to point to a difference in the number of days per month that must be worked to accrue sick leave time. Article XV provides that to accrue 1.333 days of sick leave paramedics must work at least ten days, while other bargaining unit employees work 15 days a month. However, as testified to by Sean Chandler, Sr., this is a function of the differing schedules, such that all bargaining unit employees essentially work similar hours to achieve similar leave. (N.T. 166).

other bargaining unit employees.⁵ Absent from the record is any testimony that Local 1310 has not represented, or does not wish to represent, the paramedics, or that the paramedics do not wish to be represented by Local 1310. As such, the bargaining history and desires of the paramedics and Local 1310 support the Hearing Examiner's finding of a community of interest between the paramedics and the bargaining unit employees represented by Local 1310.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in finding that the City failed to establish that a community of interest is completely lacking between the paramedics and other employees in the bargaining unit represented by Local 1310. Further, upon review of the entire record, excluding the Chief Paramedic and the seven paramedics from the broad-based bargaining unit of City employees represented by Local 1310 would create a potential unit of a single classification (paramedics) and constitute undue fragmentation of the long-established bargaining unit. Accordingly, the exceptions filed by the City shall be dismissed, and the Hearing Examiner's POD dismissing the City's unit clarification petition, is made absolute and final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Wilkes-Barre are hereby dismissed, and the January 19, 2018 Proposed Order of Dismissal, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this nineteenth day of June, 2018. 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.

⁵ Compare FOP, *supra*. where the unit clarification petition was filed by the FOP on behalf of the Liquor Enforcement Officers.