

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-10-447-E
: (PERA-R-95-70-E)
CHESTER UPLAND SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On December 27, 2010, the Chester Upland Educational Support Personnel Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include school climate managers and school/community climate managers in a bargaining unit of Chester Upland School District (District) employees who the Association represents under a certification issued by the Board at Case No. PERA-R-95-70-E. On January 6, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on April 8, 2011, if the parties were unable to settle any issues in dispute by then. The hearing examiner held the hearing as scheduled and afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On May 26, 2011, the Association filed a brief by deposit in the U.S. Mail. By letter dated May 31, 2011, the District filed a brief via U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On April 14, 1995, the Board certified the Association as the exclusive representative of a unit of District employees described as follows:

"All full-time and regular part-time white-collar nonprofessional employees including but not limited to secretaries, clerks and aides; and excluding management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the [Public Employee Relations] Act [(PERA)]."

(Case No. PERA-R-95-70-E)

2. The District employs nine school climate managers to act as liaisons with students, families, school staff and non-school related entities such as the police to ensure a school climate that is conducive to learning and that provides students with a safe and secure environment. They work at one of three high schools and at five of six elementary schools. The District also employs safety staff (or police officers) who work at the high schools and at two of the elementary schools and in-school suspension aides who work at one of the high schools and at two of the elementary schools. (N.T. 8, 11, 14-18, 23-24, 45-48, 50-51; District Exhibit 1)

3. Principals employed by the District provide the "primary supervision" of the safety staff. Safety staff at the high schools are "supervised" by a sergeant. (N.T. 23-24, 42)

4. At schools where school climate managers and safety staff both work, school climate managers transfer safety staff within the schools. They also deploy and assign work to safety staff on a daily basis. In matters of discipline, they consult with principals, who are not bound by any recommendations from them and who in turn consult with the human relations department for any discipline beyond oral and written reprimands. They have no authority to discipline safety staff on their own. In consultation with principals, they evaluate the performance of safety staff. They do not sign performance evaluations for safety staff. They may write letters of commendation for safety staff. They do not sit at the first level of any grievance procedure or approve or disapprove of leave requests by safety staff. Any reward of performance by safety staff is based on "the District-wide initiative." (N.T. 19-24, 26-27, 32-41, 50-51)

5. The District employs one school/community climate manager who serves as a link between the schools and the community to reduce out-of-school conflicts that impact the operation of the schools and who works with school climate managers and safety staff on a District-wide basis to develop and maintain safe schools. (N.T. 11-14, 31; District Exhibit 2)

6. School climate managers and the school/community climate manager are non-professional employes who share an identifiable community of interest with the employes already included in the unit. (N.T. 6-7)

DISCUSSION

The Association has petitioned to include school climate managers and school/community climate managers in a bargaining unit of District employes that the Association represents under a certification issued by the Board at Case No. PERA-R-95-70-E. According to the Association, school climate managers and school/community climate managers should be included in the unit because they share an identifiable community of interest with the employes already included in the unit and are not supervisors or management level employes.

The District has stipulated that school climate managers and school/community climate managers share an identifiable community of interest with the employes already included in the unit (N.T. 6-7). The District also admits that "[t]he School/Community Climate Manager . . . has no supervisory role," Brief at 3, but contends that school climate managers are supervisors not eligible for inclusion in the unit. The District does not contend that school climate managers and school/community climate managers are management level employes.

Given the positions of the parties, the only contested issue is whether or not climate managers are supervisors.

Section 301(6) of the PERA defines a supervisor as follows:

"'Supervisor' means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment."

In Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010), appeal denied, 2011 Pa. LEXIS 526 (Pa. Mar. 8, 2011), the court explained the applicable law as follows:

"A party seeking to exclude a position from a bargaining unit has the burden of proving by substantial evidence the statutory exclusion applies. *Sch. Dist. of Phila. v. Pa. Labor Relations Bd.* [719 A.2d 835 (Pa. Cmwlth. 1998)]. The Board reviews actual job duties and will only consider written job descriptions to corroborate testimony of actual duties. See *Sch. Dist. Of Twp. Of Millcreek v. Millcreek Educ. Ass'n*, 64 Pa. Commw. 389, 440 A.2d 673 (Pa. Cmwlth. 1982) (noting that the purpose of unit clarification procedure is to determine whether job classifications belong in bargaining unit based upon actual job functions). In determining supervisory status, Section 604(5) of PERA authorizes the Board to 'take into consideration the extent to which supervisory and nonsupervisory functions are performed.' 43 P.S. § 1101.604(5); *W. Perry Sch. Dist. V. Pa. Labor Relations Board*, 752 A.2d 461 (Pa. Cmwlth. 2000). It is therefore appropriate for the Board to consider such factors as frequency, duration and importance of the various supervisory duties performed. *W. Perry Sch. Dist.*

Moreover, job titles, such as supervisor or manager, are not sufficient to overcome the actual duties performed as evidence of being a supervisor under PERA. *Id.* In addition, the Board recognizes an employee is a supervisor under PERA if he or she has the authority to perform the functions of Section 301(6) and actually

exercises that authority on a regular basis and uses independent judgment when doing so. *In the Matter of the Employees of Hempfield Sch. Dist.*, 3[9] Pa. Pub. Employee Rep. [154 (2007)."

Id. at 980. In Hempfield School District, former Hearing Examiner Peter Lassi further explained that

"[t]he Board has found that the right to order the work force and the ability to reward or sanction employes is what distinguishes a supervisor from a lead worker. Danville Area School District, 8 PPER ¶ 195 (Order and Notice of Election, 1977). Thus, if an employe exercises authority to direct other employes, but does not effect reward or sanction, the employe is not a supervisor. Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER ¶ 20126 (Final Order, 1989)."

39 PPER at 183.

In Westmoreland County, the court in holding that probation supervisors were not supervisors rejected any reliance "on general, non-detailed testimony of Probation Supervisors' respective directors that they perform the duties identified in Section 301(6)." 991 A.2d at 981. The court also noted that

"even though Probation Supervisors report misconduct, the mere obligation to do so is not a basis to exclude a position from a collective bargaining unit. *Phila. Housing Auth. v. Pa. Labor Relations Bd.*, 32 Pa. Pub. Employee Rep. [¶]32046 (2001)."

Id. at 982. The court additionally noted that

"[i]n its decisions, the Board holds that in order for the completion of personnel evaluations to support a supervisory exclusion, the evaluations must be given controlling weight and result in either an award or sanction. *In the Matter of Hempfield Sch. Dist.* Here, the evidence shows personnel decisions are not used to determine pay increases, decreases, promotions or demotions."

Id.

The District contends that school climate managers are supervisors because of their role in transferring, suspending, discharging, disciplining, assigning work to and evaluating safety staff. Notably, however, the record shows that some climate managers work in schools without safety staff (finding of fact 2), that principals provide the "primary supervision" of the safety staff (finding of fact 3) and that a sergeant also "supervises" some of the safety staff. Id. Moreover, although the record shows that some climate managers transfer and assign work to safety staff (finding of fact 4), the record only contains conclusory testimony that they use independent judgment in doing so (N.T. 37), does not show that they transfer safety staff on a regular basis and does not show that they effect reward or sanction of safety staff. Furthermore, the record shows at best that some climate managers consult with principals in evaluating and disciplining safety staff (finding of fact 4). The record does not show that their consultations include recommendations that carry controlling weight or result in the reward or sanction of safety staff. Thus, under the law as set forth in Westmoreland County, there is no basis for finding climate managers to be supervisors.

CONCLUSIONS

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 under section 301(1) of the PERA.
2. The Association is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.

4. School climate managers and school/community climate managers share an identifiable community of interest with the employes already included in the unit.

5. School climate managers are not supervisors under section 301(6) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the unit certified by the Board at Case No. PERA-R-95-70-E is clarified to include school climate managers and school/community climate managers.

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 days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this sixteenth day of June 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner