

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : PERA-U-12-293-E
 : (PERA-R-02-556-E)
LUZERNE COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On September 10, 2012, Teamsters Local Union 401 (Union or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) requesting that the Board include the position of legal social worker in a unit of professional employes that is described as including but not limited to Assistant District Attorneys an Assistant Public Defenders of Luzerne County (County or Respondent) certified by the Board at Case No. PERA-R-02-556-E.

On September 29, 2012, the Secretary of the Board issued an Order and Notice of Hearing in which November 7, 2012, was assigned as the time of a telephone pre-hearing conference and March 7, 2013, in Harrisburg was assigned as the time and place of hearing, if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary and was held as scheduled, at which time all parties in interest were afforded an opportunity to present testimony cross examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the stipulation of facts and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Luzerne County is a public employer within the meaning of section 301(1) of the Act. (N.T. 8, Board Exhibit 1)
2. Teamsters Local Union 401 is an employe organization within the meaning of section 301(3) of the Act. (N.T. 8, Board Exhibit 1)
3. On March 4, 2003, in Case No. PERA-R-02-556-E, the Board certified the Union as the exclusive representative of the employes in a unit of "all full-time and regular part-time professional employes who are directly involved with and necessary to the functioning of the courts and who are not hired, fired and directed by the courts including but not limited to Assistant District Attorneys and Assistant Public Defenders; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act." (N.T. 8, Board Exhibit 1)
4. On October 5, 2005, at Case No. PERA-A-04-411, a Board of Arbitration, convened under authority of PERA, issued an Award that became the parties' collective bargaining agreement for the employees in this unit. The Award contains certain provisions of benefits and working conditions for the attorneys who work in the offices of District Attorney and Public Defender. (N.T. 45, 46, County Exhibit 1)
5. The Office of Public Defender employs two legal social workers, described in the County's classification system as caseworker II, juvenile unit. (N.T. 11)
6. Kris Nardi is one of two legal social workers in the Office of Public Defender. (N.T. 9, 31)
7. Under the County's classification system, the legal social workers is designated as a Caseworker II (Juvenile Unit). (N.T. 11, 31, Petitioner's Exhibit 1)

7. Nardi was hired in August, 2011. As a condition of being hired, the County required Nardi to have a masters degree in social work. (N.T. 12)
8. Nardi holds a bachelors degree in social work from Misericordia University and a masters degree from Marywood University (N.T. 11, 12)
9. Nardi holds a Pennsylvania license in social work issued by the Department of State, Bureau of Professional and Occupational Affairs. (N.T. 11, 27)
10. Nardi's caseload varies from 30 to 75 juveniles. (N.T. 12)
11. Nardi works on all phases of the juvenile delinquency proceedings, including intake, detention, adjudication, disposition, revocation of probation hearings and placement review hearings. In this work, he makes sure that the juvenile clients are being treated in the least restrictive manner possible and according to the principles of Balanced and Restorative Justice (BARJ). (N.T. 11, 13, 17, 21, 22 and 23, Petitioner's Exhibits 1-5)
12. The legal social worker is part of an interdisciplinary team that includes an investigator and the assistant public defender assigned to the juvenile. Each member of the team has a different role. Normally, when they meet with the juvenile client, all three sit down with the client and obtain information that assists them with their particular role. (N.T. 14, 16, Petitioner's Exhibits 1-6)
13. The legal social worker works with one of three public defenders who are assigned to the juvenile unit. During their work day, they are often together. For example, they go together to the detention center in the evening to interview a client before a morning hearing. (N.T. 11, 16, 25, Petitioner's Exhibits 1 and 4)
14. The social worker will provide a recommendation to the public defender of the ways to keep the juvenile in the least restrictive placement that is consistent with the BARJ principles. (N.T. 17)
15. In providing the recommendation, the social worker uses discretion and independent judgment in providing a clinical recommendation based on his independent review of the findings of his interviews with the client and others. (N.T. 17, 29)
16. In order for Nardi or the other social worker to be assigned to a juvenile case, the public defender who is assigned to represent the juvenile would have to request a social worker for that case, most often selecting an individual based on the social worker's area of expertise. (N.T. 32)
17. In a typical case, the public defender will first provide the social worker with an overview of the case. The public defender then asks the social worker to provide a recommendation as to the placement of the juvenile. The legal social worker functions similarly to an expert witness. It is the public defender's responsibility to submit that recommendation to the juvenile court judge. (N.T. 32-34, Petitioner's Exhibits 1, 2,3 and 4)
18. The legal social workers are obligated to follow the Code of Ethics of the National Association of Social Workers (NASW). The public defenders are obligated to follow the Pennsylvania Rules of Professional Conduct. Because of the possible conflict between these two sets of rules and because the County wants to provide an "interdisciplinary team concept" in representing juveniles, the County, on April 9, 2012, established a set of guidelines for each group of professionals to follow when conflicts arise. The guidelines are at Office of Public Defender Internal Operating Policy 3-12. (N.T. 25, 31, Petitioner's Exhibit 6)

DISCUSSION

The Union's petition for unit clarification seeks to include the position of legal social worker in a professional unit of assistant district attorneys and public defenders.

Section 301(7) of PERA defines "professional employe" as:

[A]ny employe whose work -- (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7).

This definition establishes a four-part conjunctive test for professional status. **City of Bethlehem**, 22 PPER ¶ 22094 (Final Order, 1991), *aff'd* 23 PPER ¶ 23098 (Ct. of Common Pleas, Northampton County, 1992); **Chester County**, 31 PPER ¶ 31155 (Order Directing Submission of Eligibility List, 2000). The petitioner must prove each of the four parts of the statute in order to prove the position professional.

The Union proved all four parts of the professional employees test. The County concedes that the legal social workers are professional employees under Section 301(7) of PERA. First, they make clinical recommendations on the cases of juvenile defendants who have been charged with any of a variety of offenses, a clear example of work that is "intellectual and varied in nature." Second, the social workers' clinical recommendations require "consistent exercise of discretion and judgment" because of the inherent necessity to treat each juvenile defendant's case as its unique case. Third, the social workers' work requires knowledge of an advanced nature in that they must have a masters degree in social work in order to be hired. Fourth, because their caseloads of anywhere from 30 to 75 cases present different time demands at different points of the month and year, the social workers' "output or result accomplished cannot be standardized in relation to a given period of time."

The County opposes the inclusion of the legal social worker on the ground that the position does not share "an identifiable community of interest" with the other professionals in the unit, as required by Section 604 (1) of PERA. The County points out that the professionals in the unit are all attorneys, either assistant public defenders or assistant district attorneys. Consequently, the collective bargaining agreement reflects the terms and conditions of employment that are peculiar to attorneys.

In order to prove a unit clarification petition, the Union must show that the positions at issue share an identifiable community of interest under section 604(1)(ii) of PERA, 43 P.S. 1101.604(1)(ii).

In the Matter of the Employes of Spring Grove Area School District, 38 PPER 54 (Proposed Decision and Order, 2007), the Examiner stated:

To determine whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, areas of work, working conditions, interchange of employes, supervision, grievance procedures, bargaining history, and employe desires. **Fraternal Order of Police v. PLRB**, 557 Pa. 586, 735 A.2d 96 (1999); **West Perry School District v. PLRB**, 752 A.2d 461 (Pa. Cmwlth. May 26, 2000), *affirming*, 29 PPER ¶ 29110 (Final Order, 1998); **Allegheny General Hospital v. PLRB**, 322 A.2d

793 (Pa. Cmwlth. 1974). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours and working conditions or other factors. **Id.** As the Commonwealth Court stated in **Western Psychiatric Institute and Clinic v. PLRB**, 330 A.2d 257 (Pa. Cmwlth. 1974):

"We do not read Section 604 [of PERA] to mean ... that an identifiable community of interest cannot exist without some differences in requirements of experience, skills and education To accept [that] proposition would lead to ... over-fragmentation ... [T]he Board's determinations may not ignore the effects of over-fragmentation and ... the units must be as few as practicably can be"

Id. at 260.

In the Matter of the Employes of Spring Grove Area School District, 38 PPER ¶ 54 at 143 (Proposed Decision and Order, 2007).

The Union has demonstrated that the legal social workers share an identifiable community of interest with the public defenders. Both professionals work in the same physical areas, whether it be the conference rooms and the courtrooms of the Luzerne County courthouse or at the juvenile detention center. The legal social workers and the public defenders are on the same team, working on behalf of the same juvenile client, following the same principles of Balanced and Restorative Justice (BARJ) of seeking the least restrictive placement for juveniles who are facing the prospect of being adjudicated as delinquent. The legal social workers work at the direction of the public defenders, following the public defenders' requests for clinical recommendations. Each group simply brings their own professional training and skills to the juvenile's case.

The County's argument against an "identifiable community of interest" points out that the legal social workers and the assistant public defenders differ in the following aspects: education, licensing and registration rules, continuing education requirements, ethical guidelines and pay and benefits. As for benefits, the County pays the attorneys' annual licensing fees and for 12 continuing legal education credits (Article 27 of the collective bargaining agreement). The legal social workers pay their own licensing fee. The County offers the legal social workers a day leave to attend the continuing education with the attorneys.

However, to include a position in the bargaining unit, the law does not require "a perfect uniformity in conditions of employment" but rather "an identifiable community of interest." **Employes of Spring Grove Area School District, supra**. As described above, the legal social workers and the assistant public defenders share some similar conditions of employment. The differences highlighted by the County are not so pronounced to prohibit inclusion. As for different ethical guidelines for social workers and public defenders, it should be noted that the existing unit includes assistant district attorneys, another group whose ethical guidelines could also put them into a conflict with the public defenders.

Furthermore, section 604(1)(ii) of PERA requires that the Board, in determining the appropriateness of a unit, "shall...take into consideration...the effects of over fragmentation." 43 P.S. 1101.604(1)(ii). If the Board excludes the position from this unit, one effect would be for the County to have to negotiate two different collective bargaining agreements for professional employees in the Office of Public Defender.

Accordingly, because the Union has established an identifiable community of interest between the legal social workers and the employes in the existing unit, the petition to include them in the unit will be granted.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The County is a public employer within the meaning of section 301(1) of PERA.
2. The Union is an employe organization within the meaning of section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of legal social worker is a professional employe under Section 301(7) of PERA and shares an identifiable community of interest with the positions in the unit of professional employes certified by the Board at Case No. PERA-R-02-556-E.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the unit of professional employes of Luzerne County certified by the Board at Case No. PERA-R-02-556-E is hereby amended to include the position of legal social worker.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this seventeenth day of May, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner