

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
: Case No. PERA-U-17-1-E  
:  
PENNSYLVANIA STATE SYSTEM OF :  
HIGHER EDUCATION :  
(EDINBORO UNIVERSITY) :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On January 5, 2017, the State College and University Professional Association (Union, Association or SCUPA) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification, pursuant to the Public Employe Relations Act (Act or PERA), alleging that the Pennsylvania State System of Higher Education (PASSHE or State System) is improperly excluding the position of Manager of Campus Life and Student Services at Porreco College from the bargaining unit represented by the Union and misclassifying the position as management. The Union further alleges that the State System achieved this by failing to fill a bargaining unit position and by assigning the work previously done by the bargaining unit to the newly created position designated as managerial. The Union's Petition, therefore, seeks to accrete the position of Manager of Campus life and Student Services at Porreco College into the bargaining unit of administrative professionals.

On February 3, 2017, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Wednesday, May 3, 2017. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. The Union filed its post-hearing brief on August 23, 2017. The State System filed its post-hearing brief on October 16, 2017.

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. The State System is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-11,447-C, Order and Notice of Election 1979)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-11,447-C, Order and Notice of Election 1979)

3. The employees in the bargaining unit represented by SCUPA are professional college administrators working in multiple, non-faculty positions, at each university throughout the State System. SCUPA bargaining unit members work in admissions, financial aid, student services and student life. (N.T. 12-13, 18-19)

4. The State University Administrators are referred to by the parties as "SUAs." (N.T. 13)

5. There are five separate classifications of SUAs: SUA-1, SUA-2; SUA-3; SUA-4 and SUA-5, corresponding with increasing responsibilities and salaries. (N.T. 13, Association exhibit 1).

6. SUA positions assist students in residence life. They assist in student development, including student-professor relationships, academic intervention and other student support. (N.T. 18-19)

7. The parties acknowledged that jobs within the SCUPA unit change from time to time as the State System responds to the changing needs of the students and the Commonwealth. Consequently, the parties developed a new classification system to place SUAs on the proper SUA classification level. (Association Exhibit 1 at ii)

8. Under the new classification system, which was implemented in January of 2017, the positions represented by SCUPA are scored using multiple scoring factors to determine which SUA classification (1 to 5) is appropriate for the position. (N.T. 13-14; Association Exhibit 1)

9. The classification system uses four "compensable factors" to determine proper placement: (1) Knowledge and Skills; (2) Decision Making; (3) Responsibility/Span of Influence; and (4) Interfacing/Influencing others. All compensable factors have been assigned a specific weight to determine a point value. (N.T. 14-15; Association Exhibit 1 at 2)

10. In the late 1980s, a farm property was donated to Edinboro University. Since then the University has operated a branch campus on that property, which is known as the Porreco College Campus. (N.T. 35)

11. At the present time, approximately 350 to 400 students attend classes at the Porreco College Campus. (N.T. 35)

12. Certificate programs and Associate degrees in business, criminal justice, human services, social services and preschool education are offered at the Porreco Campus. (N.T. 35)

13. Students at the Porreco Campus can also transfer to the main campus of Edinboro University to complete advanced degrees or obtain additional education. (N.T. 35)

14. The Porreco Campus has an open admissions policy, permitting any student with a GED to attend. While some students attend Porreco College directly from high school, many are nontraditional students, who are older and/or working. (N.T. 35-36)

15. The compensable factors of Decision Making and Responsibility/Span of Influence are directly applicable to the duties of the Manager of Campus Life and Student Services at Porreco College. (N.T. 15-16)

16. With regard to Decision Making, the classification system provides: "This factor measures the nature and frequency of typical decisions authorized to be made by each position. It appraises the extent to which the position regularly makes independent decisions or is called upon to make significant recommendations that directly influence the decisions made by others." (Association Exhibit 1 at 5)

17. The classification system identifies four degrees of decision making, as follows:

(1) Decisions are repetitive and routine, easy to recognize and easy to resolve. There are a few clear-cut alternative solutions, (2) Decisions and problems are similar in nature and solved based on limited analysis. Judgments are usually confined to application of practice, precedent, policies, standards or regulations, which are not unusual. There are several alternative solutions available. (3) Diversified work which involves decisions or recommendations based on a wide range of varied or dissimilar procedures, considerations, and the analysis of facts in situations to determine what action should be taken within the limits of standard practice. The issues are sufficiently complex, requiring analysis and latitude for interpretation within guidelines or policies. (4) Work is diversified and involved. Duties require decisions which may necessitate devising new methods or modifying or adapting standard principles and practices to new or changed conditions. Requires discretion and judgment in making decisions which, in general, are based upon general precedents (experience) or operating policies. Problem solving typically involves less routine to somewhat more complicated matters. Decisions have institutional impact and usually involve other units or departments of the University.

(Association Exhibit 1 at 6)

18. The classification system also includes four degrees of Responsibility/Span of Influence:

(1) Work can typically be done independently without coordination with other functions or programs. Limited ability to influence outcomes outside of the unit or department. Actual

measures are difficult to determine and are not significant in the discharge of duties and responsibilities. (2) A significant amount of work requires general awareness and some coordination of activities in other departments, functions, programs, specialized knowledge or outside entities. The position exerts an impact on the short-range performance of the University, but the quantifiable scope of the job is limited. The scope is moderate in its impact on the success of the organization. (3) Work typically requires coordination and/or some integration of activities across related or unrelated functions including outside entities. The position exerts an impact on the University's short-range goals and potentially impacts its long-range goals. The quantifiable scope of the job is considerable and may be broad. There is a possibility to periodically have a considerable positive or negative impact on the success of the University. (4) Work typically requires integration across unrelated programs/departments or functions specialized knowledge and outside entities. The position exerts a sizeable impact on both the short- and long-term success of the University. The quantifiable scope of the job is broad. There is continuing possibility to incur major gains or losses.

(Association Exhibit 1 at 8)

19. Members of the bargaining unit represented by SCUPA, who are classified at Grade 4 and Grade 5, have wide influence, wide networking interaction and a sizable amount of discretion in their positions. (N.T. 16)

20. SUAs throughout the State System provide guidance, direction and support to students in their educational experience, beginning with orientation and course selection and continuing through career advice and job placement. (N.T. 18-19)

21. The Classification Manual for SCUPA represented professionals contains three job descriptions describing the functions of these positions. The Academic Success Coordinator (a SUA 2 position) primarily "assists students and the academic advisor to ensure student retention and academic success." The position targets outreach to certain students "in the conditional admit program, undeclared students, and other (major) declared freshmen and sophomores." (Association Exhibit 1 at 24-25)

22. The Assistant Director of Career Development (also a SUA 2 position) "is responsible for providing programs and services which serve to enrich and enhance the educational experiences of all students as they plan their careers and enter into the job market." (Association Exhibit 1 at 28-29)

23. The Director of Multicultural Affairs (a SUA 3 position) "is responsible for directing the daily operations and overall management of

the Multicultural Center and the Office of Multicultural Affairs which provides academic, developmental, and social support services for African American, Latino, Asian-American and Native American students." The position provides services supporting multicultural student transition, retention, success, graduation and engagement in campus life. The position also provides advocacy for multicultural students as well as appreciation for diversity and multiculturalism. (Association Exhibit 1 at 39-40)

24. Prior to 2014, the University did not have an employe with the specific responsibility over student life, academic success or career development at the Porreco Campus. The University created a new part-time position, identified as the Coordinator of Student Development Services, assigned to the Porreco Campus, to work with students at Porreco and provide them with academic support. (N.T. 39-41)

25. In August of 2015, that position became full time, was graded as a SUA 2, and included in the SCUPA bargaining unit. (N.T. 17, 41; Association Exhibit 2)

26. From its inception in the spring of 2015, through the end of the 2015-2016 academic year, the Coordinator of Student Development Services position was filled by Mary Beth Mercatoris. (N.T. 48-49)

27. The Coordinator of Student Development Services primarily supported career development goals for students and supported academically at-risk students. (N.T. 49)

28. At the conclusion of the 2015-2016 academic year, Ms. Mercatoris left the Coordinator of Student Development Services at Porreco Campus position and was promoted to a new position as Interim Dean of Students in Campus Life. (N.T. 51)

29. Prior to the start of the 2016-2017 academic year, the University created the position of Manager of Student Life and Services at Porreco College, the position at issue, and filled it with Denise Manjarrez. (N.T. 102; Association Exhibit 3)

30. The Manager of Student Life and Services at Porreco College provides student life services to the students who attend the Porreco Campus. Indiana University of Pennsylvania (IUP), another university in the State System, operates a similar branch campus. (N.T. 19-20)

31. There is a SCUPA represented student life manager assigned to the IUP branch campus with duties and responsibilities similar to the Manager of Student Life and Services at Porreco College. That position is classified as a SUA 3 or SUA 4. The person holding the comparable position at IUP has no direct management oversight at the branch campus and is the primary contact person on that branch campus for academic counselling and residence life issues. (N.T. 20)

32. The State System classified the new position as a management position, removing the position and the work from the bargaining unit represented by SCUPA. A review of the job descriptions for the new Manager of Campus Life and Student Services at Porreco College and the former Coordinator of Student Development services at Porreco College establishes the functional identity of the two positions. (Association Exhibits 2 & 3).

33. Both job descriptions identify three identical primary responsibilities: Student Life/Student Involvement; Academic Support Academic Success; and Career Exploration. (Association Exhibits 2 & 3)

34. The individual task bullet points following each major responsibility are essentially the same in both job descriptions, and frequently identical. (Association Exhibits 2 & 3)

35. These job descriptions contain similar duties and responsibilities as those of the Academic Success Coordinator, the Assistant Director of Career Development and the Director of Multi-Cultural Affairs, which are SCUPA positions. (Association Exhibit 1 at 24-40)

36. The Manager of Campus Life and Student Services at Porreco College has some increased responsibilities. For example, the Coordinator position (SUA-2) was responsible for student life programming, which was described as follows: "Assist in the design and implementation of student life programming." The new management position eliminates the word "Assist" and states: "Design and implement student life programming." (Association Exhibits 2 & 3)

37. Dr. Faye Howard, the Assistant Vice President for Academic Success and Student Retention, supervises the Manager of Campus Life and Student Services at Porreco College. (N.T. 80)

38. Dr. Howard determined that the Manager of Campus Life and Student Services at the Porreco Campus needed the authority and capability to make strategic decisions. (N.T. 84)

39. Dr. Howard wanted someone to determine what changes to assessments and student orientation, if any, needed to be made and how to implement those changes. (N.T. 84-85)

40. Dr. Howard wanted the person filling the new position to identify the needs of students based on the student learning outcomes for Porreco College and fulfill those needs. (N.T. 85)

41. Ms. Manjarrez was selected to fill the position based on her graduate degree work and her prior experience with students. (N.T. 85)

42. Ms. Manjarrez utilizes her professional training and expertise within her position, as Manager of Campus Life and Student Services at

Porreco College, to identify areas of need and to develop and implement the strategies necessary to meet those needs. During the course of an academic year, Ms. Manjarrez estimates that she spends approximately 25% of her professional time meeting personally with approximately 100 of the 350-to-400 students enrolled at Porreco College and providing individual support services. (N.T. 114)

#### **DISCUSSION**

Section 604 of the Act requires SCUPA to establish that the Manager of Campus Life and Student Services at Porreco shares an identifiable community of interest with other employes in the SCUPA bargaining unit. 43 P.S. § 1101.604. When determining 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, working conditions, interchange of employees, grievance procedures and bargaining history." West Perry School District v. PLRB, 722 A.2d 461 (Pa. Cmwlth. 2000). The Court further concluded that areas of work, supervision and employes' desires are other important factors. Id. at 464. "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." Id. at 464.

The record in this matter shows that the Manager of Student Life and Services at Porreco College shares an identifiable community of interest with members of the bargaining unit. Denise Manjarrez is a full-time professional employee. Her education, skill and job duties are similar to other people and positions within the bargaining unit. A review of the Classification System recently adopted by the parties for the specific purpose of assessing responsibilities of the members of this bargaining unit, and appropriately compensating them, establishes that positions in the bargaining unit filled by SUA-3s and SUA-4s possess and provide precisely the same level of professional decision making authority and implementing responsibility as the Manager of Student Life and Services at Porreco College. Comparing the job description of the Director of Multicultural Affairs, which is a SUA-3 position, with the Manager of Student Life and Services at Porreco College, demonstrates that the duties and responsibilities of the two positions share much in common. Both positions exist to serve the special needs of a select group of students attending a State System campus.

The State System argues that the position should be excluded from the bargaining unit because Ms. Manjarrez is a managerial level employee under PERA. The Act defines "management level employe" as an employee "who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision." 43 P.S. § 1101.301(16). The last standard for determining whether an employe is management level is not at issue in this case.

The Board, in Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), opined that an employee who is "involved directly in the determination of policy," under the first prong of the statutory test, is as follows:

An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the statute does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal.

Horsham, 9 PPER at 327. The Horsham Board also opined that "responsibly directs the implementation [of policy]," refers to the following:

[P]ersons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures provided that such role is not of a routine or clerical nature and bears managerial responsibility to ensure completion of the task. The administration of policy involves basically two functions: (1) observance of the terms of the policy, and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy.

Id.

However, the Board and its examiners have distinguished technical discretion and expertise from managerial discretion. Hearing Examiner Pozniak properly noted that the Board has held as follows:

[P]olicy formulation and implementation must be distinguished from technical expertise. To define the problem and directly implement the proposed solution to a problem is not the same as performing a function within a known discipline with competence. The former has to do with policy and the latter deals with technical expertise.

In the Matter of the Employees of Allegheny County, 47 PPER 4 (Proposed Order of Unit Clarification, 2015) (citing City of Lebanon, 4 PPER 24 (1974)).

The Board has also held that making decisions that effectuate the responsibilities of the position is not synonymous with managerial policy formulation or implementation. In the Matter of the Employees of Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1988). The Penn State Board held that a nurse practitioner's formulation of medical protocols was the result of professional expertise and not indicative of managerial authority. The Penn State Board relied on General Dynamics Corp., 1013 NLRB 851 (1974) and opined as follows:

Judgments of professional employees which transcend the technical discipline of professionals should be distinguished from those instances where the natural and normal performance of professional duties may affect the employer's policy merely by the specialized nature of the professional's normal tasks.

Penn State, 19 PPER at 378. When the only policies developed by the person holding the position in question are policies entirely within the expertise of the position and applicable to the duties of the position, such policies are not considered managerial, even though there may be some indirect impact on operations or managerial policy. Id. In Abington Heights Sch. Dist., 42 PPER 18 (Final Order, 2011), the Board affirmed a hearing examiner's determination that a behavioral specialist position was not managerial where the policy developed by the behavioral specialist was a policy entirely within the professional expertise of the position. The Board further held that the behavioral specialist's policy implementation also fell within his professional expertise in fulfillment of the responsibilities of his position. As such, making those decisions was not sufficient to substantiate the position as managerial.

To the extent that Ms. Manjarrez exercises more authority in performing the functions of her position than her predecessor, she is merely functioning at a higher degree of decision-making, with a greater degree of responsibility, as recognized and classified in the agreed-upon classification system for SCUPA represented employees. Indeed, the SUA classification system recognizes that SUAs have work that "is diversified and involved." Their duties require decisions which may necessitate devising new methods or modifying or adapting standard principles and practices to new or changed conditions. Their positions require discretion and judgment in making decisions which, in general, are based upon precedents, experience and operating policies. Their problem solving typically involves less routine and complicated matters, and their decisions have institutional impact. (Association Exhibit 1).

Ms. Manjarrez does professional work within her technical expertise. However, her problem solving, program development and discretionary decisions constitute technical, professional discretion within her field of training and expertise. Those decisions are not managerial, as that term is applied under the Act to exclude positions from the protection of collective bargaining. While Ms. Manjarrez routinely makes independent decisions and effective recommendations for programming, she does not make or implement managerial policy.

Although the State System believes that Ms. Manjarrez' s duties with respect to developing programs for student orientation makes her a manager, her involvement in orientation, e.g. to add and delete sessions of student orientation, was a technical solution, based on her training and experience; it was in response to student needs, to improve students' adjustments to and performances in academic life at Porreco College. Although student orientation at Porreco College was improved by her changes and those changes were consistent with the job contemplated by Dr. Howard, Ms. Manjarrez merely established an orientation curriculum for students that did not affect employes or the employer's enterprise directly. Her decisions are consistent with and dependent upon the exercise of her professional judgment and expertise, and those decisions do not constitute the requisite formulation or implementation of managerial policy sufficient to remove the position from the protections of PERA or the bargaining unit represented by SCUPA.

Similar limitations on the actual authority invested in the position emerge with regard to Ms. Manjarrez's authority regarding assessments. She added a component to the assessment regarding basic study skills. Her other identified change was to institute a requirement that students at Porreco College with less than a 1.0 grade point average must meet on a weekly basis with an intern at the academic success center. Previously, those meetings had been elective. (NT 109, 111, 116.) These professional decisions were based upon Ms. Manjarrez's education and training as applied to the duties of her position. The third and fourth degrees of decision making, applicable to bargaining unit SUA-3s and SUA-4s, recognize that employees at these levels do perform "diversified work which involves decisions that require discretion and judgment in making decisions."

In this case, the evidence produced by the State System does not support the exclusion of the Manager of Student Life and Services at Porreco College from the Association's bargaining unit. Dr. Howard clearly has authority to formulate policy. Dr. Howard formulated policy as a management level employe when she decided that the on-site student life person at Porreco College should have more authority to tailor the programs at Porreco College to the specific needs of the students in attendance. However, those increased responsibilities moved the position up the SUA classification scale. They did not transform the position into a manager requiring removal from the bargaining unit. Ms. Manjarrez performs important professional duties utilizing professional discretion in the performance of those duties. She is not engaged in managerial policy formulation, implementation or modification on a level that justifies her position's exclusion from the bargaining unit.

## **CONCLUSIONS**

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

1. The State System 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 Manager of Student Life and Services at Porreco College is not a management level position and is thereby properly included in the professional unit of State University Administrators represented by SCUPA.

## **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 certified by the Board at PERA-R-11,447-C is hereby amended to include the position of Manager of Student Life and Services at Porreco.

### **IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions 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 twenty-seventh day of December, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner