

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-18-11-W
: (PERA-R-3473-W)
BETHEL PARK SCHOOL DISTRICT :
:

PROPOSED ORDER OF UNIT CLARIFICATION

On January 22, 2018, the Bethel Park Federation of Teachers, AFT Local 1607 (Federation) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the Informational Technology Coordinator classification into a unit of professional employees certified by the Board at Case No. PERA-R-3473-W.

On February 15, 2018, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating May 21, 2016, in Pittsburgh, as the time and place of hearing, if necessary.

A hearing was held on May 21, 2018, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Federation filed a post-hearing brief in support of its petition on July 27, 2018. The Bethel Park School District (District or Employer) filed its post-hearing brief on September 7, 2018. The Federation filed a response brief on September 18, 2018.

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

FINDINGS OF FACT

1. The District is a public employer within the meaning of PERA. (N.T. 10).

2. The Federation is an employee organization within the meaning of PERA. (N.T. 10).

3. The Federation represents a unit of approximately 354 professional employees of the District including classroom teachers, school nurses, school guidance counselors, school librarians, social workers, and psychologists. (PERA-R-3473-W).

4. Ron Reyer is the Director of Technology for the District. He has been in that position for the past thirteen years. (N.T. 142).

5. Matthew Johnson is currently employed by the District as a Network Application Specialist. He has been employed by the District for the past eighteen years. He was first hired as a computer technician and his position grew into the current title. Johnson became the Network Application Specialist in 2012. (N.T. 15-16, 39).

6. When Johnson was hired, the District required only an IT background and preferred an associate's degree. (N.T. 17).

7. Johnson has three associate's degrees and has earned eighteen IT certifications. If Johnson were to be replaced, Reyer would require that the replacement have a Bachelor's degree. (N.T. 17, 20, 22).

8. Johnson has an office in the District's high school. Teachers have access to the office and come into the office to seek assistance. Johnson will often travel throughout the District's buildings to address IT issues. (N.T. 23-24).

9. Johnson sometimes eats lunch in the staff lounge with other District staff including teachers. Johnson works twelve months a year. (N.T. 24-25, 28).

10. Johnson is paid a salary and receives the same health benefits as teachers. (N.T. 28).

11. Johnson maintains the Prosoft server which manages District financial and student software and the Microsoft Active Director server which manages network log-ons. Johnson is also responsible for maintaining the District's email system and Office 365 software. Johnson maintains all software used by teachers. He is responsible for administering the District's firewall which blocks questionable internet content. He also installs network software and maintains District servers. He maintains approximately sixty District servers. During the summer, He and the IT staff will update the bus scheduling software, format hundreds of PCs, install new software, and update existing software. (N.T. 18-19, 26, 27, 30, 151).

12. Liza Godfrey is currently employed as the District's IT Coordinator. She has been with the District for the past four years. (N.T. 55).

13. Godfrey has a bachelor's degree in liberal arts and a master's degree in education. When she was hired, a bachelor's degree was required for her position by the District. (N.T. 55, 189).

14. Godfrey's duties include managing the District's student information system. The student information system includes data such as grades and demographic information. Godfrey also organizes the ticket meetings for the department's technicians. The meeting is used to determine who covers what ticket. Godfrey is currently working on the deployment of new PCs for elementary school teachers. She also is currently working on a District wide training web site for staff and administration. (N.T. 57-59, 152).

15. Godfrey regularly interacts with teachers when teachers call her with problems they are having with the student information system. She also regularly eats lunch with teachers. (N.T. 59-62).

16. Godfrey works in the office in the District high school. She is paid a salary. (N.T. 60).

17. Godfrey does not receive healthcare benefits from the District since she is on her husband's plan. The District provides her a buyout of \$40 per pay period for not being on the District's plan. (N.T. 65).

18. Godfrey did not have a written job description until January 23, 2018, after the Petition had been filed. The job description given to Godfrey in January, 2018, did not accurately reflect her job duties. (N.T. 66, 73-75; District Exhibit 5).

19. Melvin Fiel is the District's Network Specialist. He has been in his position for approximately seven years. (N.T. 105-106).

20. As Network Specialist, Fiel is responsible for maintaining the District's network, backup systems, and security systems. The security systems he is responsible for include the camera systems, badging systems, and lines to the local police. He is responsible for maintaining the District's firewall used by teachers and students. (N.T. 106-108, 151-152).

21. Fiel has a Bachelor's degree in electrical engineering. A bachelor's degree in computer science or similar field was required for his position when he was hired. A bachelor's degree is still required for his position. (N.T. 115, 170).

22. Fiel interacts with teachers in the District to resolve network problems and firewall issues. (N.T. 110-111).

23. Fiel is paid a salary and has healthcare benefits through the District. His benefits are similar to the teachers' benefits. (N.T. 112).

24. Johnson, Fiel and Godfrey regularly interact with teachers as part of their respective job duties. (N.T. 134-5).

25. Johnson, Fiel and Godfrey all work out of an office in the District's high school. (N.T. 144-145).

DISCUSSION

The Federation's Petition seeks to include three "Informational Technology Coordinators" into a previously existing unit of professional employees. At the hearing, it was established that the correct titles of the positions are: Network Application Specialist, IT Coordinator and Network Specialist.

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.

When determining whether employees 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, bargaining history, and employees' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). 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.

In addition, the Board has long favored a policy of certifying broad-based units. In the Matter of the Employees of University of Pittsburgh, 16 PPER ¶ 16205 (Order Directing Amendment of or Request to Withdraw Petition for Representation, 1985) citing Athens Area School District, 10 PPER ¶ 10128 (Order and Notice of Election, 1978).

Section 301(7) of PERA provides as follows:

“Professional employee” means any employee 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). The test is conjunctive, and all four parts must be met in order for an employee to be deemed professional under PERA. In the Matter of the Employees of Luzerne County Community College, 37 PPER 47 (Final Order, 2006). The same factors (such as work performed, educational and skill requirements) that support professional status also support the conclusion that the employees in a proposed professional bargaining unit share an identifiable community of interest with the existing professional employees in the unit. In the Matter of the Employees of Temple University, 47 PPER ¶ 54 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employees of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010); In the Matter of the Employees of Riverview Intermediate Unit, 37 PPER 106 (Final Order, 2006).

The party arguing for the exclusion of an employee from a unit on a statutory ground bears the burden of proving a basis for the exclusion. School District of Philadelphia v. Commonwealth of Pennsylvania, PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998).

In this matter, the Federation has met its burden of showing that positions of Network Application Specialist, IT Coordinator and Network Specialist share an identifiable community of interest with the members of the professional unit. The Network Application Specialist, IT Coordinator and Network Specialist are professional employees and share other factors of an identifiable community of interest.

The Network Specialist, Melvin Fiel, is responsible for maintaining the District's network, backup systems, and security systems. The security systems he is responsible for include the camera systems, badging systems, and lines to the local police. He is also responsible for maintaining the

District's firewall used by teachers and students. Fiel has a bachelor's degree in electrical engineering. A bachelor's degree in computer science or similar field was required for his position when he was hired. Based upon this record, it is clear that the Network Specialist is a professional employee: his work is predominantly intellectual and varied in character; his work requires consistent exercise of discretion and judgment; the position requires a bachelor's degree; and his work cannot be standardized in relation to a given period of time.

The record also shows that the IT Coordinator is a professional employee. Liza Godfrey is the IT Coordinator. Godfrey has a bachelor's degree in liberal arts and a master's degree in education. When she was hired, a bachelor's degree was required for her position by the District. Godfrey's duties include managing the District's student information system. Godfrey also organizes the ticket meetings for the technicians. She also works on a District wide training web site for staff and administration. Based upon this record, it is clear that the IT Coordinator is a professional employee: her work is predominantly intellectual and varied in character; her work requires consistent exercise of discretion and judgment; the position requires a Bachelor's degree; and her work cannot be standardized in relation to a given period of time.

The record shows that the Network Application Specialist is a professional employee. Matthew Johnson is currently employed by the District as a Network Application Specialist. He has been employed by the district for the past eighteen years. He was first hired as a computer technician and his position grew into the current title. When Johnson was hired, the District required only an IT background and preferred an Associate's Degree. Johnson now has three Associate's Degrees and has earned eighteen IT certifications. If Johnson were to be replaced, Reyer would require that the replacement have a Bachelor's degree. As Network Application Specialist, Johnson resolves application or server issues. Johnson also installs network software and maintains District servers. Johnson maintains approximately sixty District servers. Johnson maintains the Prosoft server which manages District financial and student software and the Microsoft Active Director server which manages network log-ons. Johnson is also responsible for maintaining the District's email system and Office 365 software. Johnson maintains all software used by teachers. Johnson is responsible for administering the District's firewall which blocks questionable internet content. During the summer, Johnson and the IT staff will update the bus scheduling software, format hundreds of PCs, install new software, and update existing software. Based upon this record, it is clear that the Network Application Specialist is a professional employee: his work is predominantly intellectual and varied in character; his work requires consistent exercise of discretion and judgment; the position 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 his work cannot be standardized in relation to a given period of time.

In addition to being professional employees, the Network Specialist, Network Application Specialist, and IT Coordinator also share additional factors of an identifiable community of interest with the professional employees represented by the Federation. The Network Specialist, Network Application Specialist, and IT Coordinator are: employed by the District, similar to other professional employees; share an office in the District's high school where other professional employees work; often interact with other professional employees including teachers; are paid a salary similar to other

professional employees; and are eligible for health care benefits similar to other professional employees.

For all the above reasons, there is a clear identifiable community of interest among the three positions and the professional employees represented by the Federation, and the positions of Network Specialist, Network Application Specialist, and IT Coordinator shall be included in the unit.

In response to the Federation's petition, the District argues that the Network Application Specialist is not a professional employee and should not be included in the professional unit. The District argues "[t]he undisputed evidence presented and made part of the record demonstrated that the [Network] Application Specialist position does not require a four-year college degree, and that the position's current holder, Matt Johnson, possesses an associate's degree and does not possess a bachelor's degree. It is a prerequisite that an individual who is accreted into a professional employee unit possess the identified characteristics identified in [43 P.S. § 1101.301(7)]." (District's Brief at 2). The record in this matter shows that the work done by Johnson as Network Application Specialist is the type of work that normally requires a bachelor's degree. The record in this matter shows that Reyer believed that Johnson's position required a bachelor's degree and that Reyer told Johnson that if the Network Application Specialist position were relisted, Reyer would require a bachelor's degree. Johnson is able to adequately perform in the role due to his many years of experience and additional training at the certification level. Furthermore, Johnson is part of a class of employees along with the Network Specialist and the IT Coordinator who are clearly professional and require bachelor's degrees for their position.

The District next argues that the IT Coordinator position is at the managerial or supervisory level. Section 301(16) of PERA states:

"Management level employee" means any individual 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). Under this provision, a position is at the management level if the employee holding that position (1) is involved directly in the determination of policy; (2) directs the implementation of policy; or (3) is above the first level of supervision. Pennsylvania Association of State Mental Hosp. Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1988); Commonwealth of Pennsylvania (Attorneys Examiner I), 12 PPER ¶ 12131 (Final Order, 1981). In Pennsylvania Association of State Medical Hospital Physicians v. Commonwealth, PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989), the Commonwealth Court adopted the Board's definition of the first part of Section 301(16) of PERA as set forth in Horsham Township, 9 PPER 9157 (Final Order, 1978):

An individual who is involved directly in the determination of policy would include not only a person who has authority or responsibility to select among options and to put proposed policies into effect, but also a person who participates with regularity in the central process which results in a policy proposal and a decision to put such proposals into effect. Our reading of the statute does not include a person who simply drafts language for the statement 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.

Id.

The Board's policy is that the use of independent judgment and discretion by the employee when implementing the employer's policies is necessary to satisfy the second prong of the statutory test for management level employee under Section 301 (16) of PERA. Id.; Municipal Employees of Borough of Slippery Rock v. PLRB, 40 PPER 64 (Proposed Order of Unit Clarification, 2009), 40 PPER 122, (Final Order, 2009), aff'd 14 A.3d 189 (Pa. Cmwlth. 2011). In order to be considered a management level employee, the employee must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found. Slippery Rock, 14 A.3d 189, at 192. (Pa. Cmwlth. 2011).

The record in this matter shows that Godfrey is not involved in the determination of any District policy. Moreover, the record in this matter is clear that Godfrey is not involved in the implementation of District policy as the District has not shown that Godfrey has independent judgement and discretion to monitor compliance with any policy and take action where noncompliance is found. Instead, the record in this matter shows that Godfrey and the IT Department is strongly overseen by Reyer.

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

...any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees 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.

43 P.S. 1101.301(6). Employees must be excluded from the bargaining unit as supervisory if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise such authority and use independent judgment in exercising that authority. McKeesport Area School District, 14 PPER ¶ 14165 (Final Order, 1983). The distinguishing characteristic of an alleged supervisor is that the person holds authority that calls for the use of independent judgment and carries with it the power to reward or sanction employees. Mifflin County, 14 PPER ¶ 14012 (Proposed Decision and Order, 1982), 14 PPER ¶ 14051 (Final Order, 1983).

Section 604(5) of the Act provides that the Board shall:

(5) Not permit employees at the first level of supervision to be included with any other units of public employees but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed.

43 P.S. § 1101.604(5). When assessing supervisory status under Section 604(5), the Board may consider such factors as frequency, duration and importance of the various supervisory duties performed. State System of

Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999). Further, the issue of supervisory status under PERA was recently addressed by the Board in Cumberland Township, 49 PPER 66 (Final Order, 2018). In Cumberland Township, the Board noted that it "has consistently held that employees who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are lead workers and not supervisors within the meaning of PERA." Id.; State System of Higher Education, supra.

Applying the above law to the record in this matter, it is clear that the District has not met its burden of establishing that Godfrey is a supervisor pursuant to PERA. Nothing in the record supports a conclusion that Godfrey has the independent authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances. Indeed, the record shows that Reyer retains the authority to perform these functions. To the extent, if any, Godfrey performs any statutory supervisory functions, they make up a vanishingly small amount of her work.

Finally, the District argues that the Network Administrator is a management level positions because Mel Fiel "is routinely consulted and given voice in recommending and proposing the purchase and implementation of various software and technology products for use in the District's technology system." (District's Brief at 5). The District has not met its burden of proving that the Network Administrator is a management level employee because it has not shown that Fiel has independent judgment and discretion with respect to the purchase and implementation of software and technology sufficient to meet the statutory definition.

CONCLUSION

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 within the meaning of Section 301(1) of PERA.
2. The Federation is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Network Application Specialist, IT Coordinator and Network Specialist are professional employees and share an identifiable community of interest with the other members of the bargaining unit and are properly included in the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the bargaining unit of employees certified by the Board at PERA-R-3473-W is amended to include the positions of Network Application Specialist, IT Coordinator and Network Specialist.

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 (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this sixteenth day of October, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner