

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-11-108-E
 : (PERA-R-777-C)
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA BOARD OF PROBATION :
AND PAROLE :

FINAL ORDER

A Petition for Representation was filed with the Pennsylvania Labor Relations Board (Board) on April 15, 2011, by the Pennsylvania State Corrections Officers Association (Petitioner) alleging that it represented thirty (30) percent or more of the Parole Agents, Parole Agent IIs and Parole Supervisors employed by the Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole (Employer). Pursuant to Section 603(c) of the Public Employee Relations Act (PERA), the Petitioner requested that a hearing be scheduled and that an order be issued for election.

On April 29, 2011, the Board Secretary issued a letter declining to direct a hearing on the Petition for Representation, reasoning that the petitioned-for unit, limited to Parole Agents, did not comport with the Board's broad-based bargaining unit policy. As noted by the Secretary, Parole Agents and Parole Agent IIs are currently in a bargaining unit represented by the American Federation of State, County and Municipal Employees (AFSCME), which contains numerous other classifications of professional employees in the Investigation, Inspection and Safety Unit of the Commonwealth.¹ The Secretary noted that it is the Board's policy to conduct rival representation elections in the unit as currently certified. The Secretary further stated that the petitioned-for unit was inappropriate because the Parole Supervisors are first level supervisors, currently included in a meet and discuss unit also represented by AFSCME, who are statutorily prohibited from being included in a rank-and-file unit. The Secretary finally noted that the petitioned-for unit was limited to only full-time employees, inappropriately excluding part-time employees.

On May 19, 2011, the Petitioner filed exceptions to the Secretary's decision. In its exceptions, the Petitioner contends that the Secretary erred as a matter of law in dismissing the Petition without a hearing because the petitioned-for unit of Parole Agents, Parole Agent IIs and Parole Supervisors constitutes an appropriate unit under PERA. In support of this position, the Petitioner states that because the Secretary refused to direct a hearing, it was not able to present any evidence to show that the petitioned-for unit is appropriate under the Board's existing standards and that the Parole Supervisors, currently classified as supervisors, should no longer be categorized as such. The Petitioner further states that there are no part-time employees in the petitioned-for classifications.

The Association's exceptions must be dismissed because, as the Secretary correctly noted, the Board conducts rival representation proceedings in the unit as currently certified. In that way, the exclusion or inclusion of positions in a unit are not at issue, as a matter of law, during a rival petition proceeding because it is the policy of the Board to conduct an election as quickly as possible. Commonwealth of Pennsylvania, Office of Attorney General, 31 PPER ¶ 31033 (Final Order, 2000); Midwestern Intermediate Unit IV, 15 PPER ¶ 15178 (Final Order, 1984), *aff'd.* 16 PPER ¶ 16109 (Court of Common Pleas of Butler County, 1985); Baldwin-Whitehall School District, 26 PPER ¶ 26150 (Order Directing Submission of Eligibility List, 1995); Greater Johnstown School District, 13 PPER ¶ 13155 (Board Representative, 1982). In its Petition, the Association seeks to include only part of the existing bargaining unit presently represented by AFSCME, together with additional employees who are currently included in a separate supervisory, meet and discuss unit represented by AFSCME. Such a petition clearly violates the Board's policy concerning rival representation proceedings. The Board's policy of conducting rival elections in units already found to be appropriate promotes labor stability, whereas the Association's attempt to cobble together majority status among different

¹ This bargaining unit is certified at Case No. PERA-R-777-C.

classifications of employes from separately certified units undermines PERA's stated policy of promoting orderly and constructive relationships between employers and employes. 43 P.S. §1101.101.²

The Petitioner alleges that the unit it advances is an appropriate unit under the Board's standards. However, even assuming, *arguendo*, that the Board would find the petitioned-for unit appropriate if acting in the absence of an existing certification, that does not mean that the existing unit is necessarily inappropriate. The courts have recognized that various unit configurations can be appropriate and that the Board need not find the ultimate appropriate unit. County of Allegheny, 11 PPER ¶ 11031 (Court of Common Pleas of Allegheny County, 1979). Simply because the rival union is able to organize among a splinter group of an existing certified unit does not justify the damage to labor stability that would ensue if the Board would allow open season on existing, certified units. Therefore, the Secretary properly dismissed the Petition for Representation.

Further, with respect to unit determinations, Section 604(1) of PERA states as follows:

The board 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 board shall:

- (1) Take into consideration but shall not be limited to the following:
 - (i) public employes must have an identifiable community of interest, and
 - (ii) the effects of over fragmentation.

43 P.S. § 1101.604(1).

It is well-settled that an identifiable community of interest can exist despite differences among employe classifications. In the Matter of the Employes of Lansdale Borough, 24 PPER ¶ 24053 (Final Order, 1993) (citing Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), appeal denied, 525 Pa. 652, 581 A.2d 575 (1990); Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1971); Pittston Area School District, 12 PPER ¶ 12180 (Final Order, 1981); Peters Township School District, 16 PPER ¶ 16070 (Order Directing Submission of Eligibility List, 1985); and Neshannock Township School District, 17 PPER ¶ 17153 (Final Order, 1986). The Board has a long-standing policy of certifying broadly-based bargaining units, the application of which would, in this case, militate against the separate certification of a unit limited to essentially a single classification of employes. County of Allegheny, supra. (unit consisting of single classification of court reporters is inappropriately narrow); see also West Perry School District, 29 PPER ¶ 29110 (Final Order, 1998), aff'd, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 675, 795 A.2d 984 (2000). The broad-based bargaining unit policy is based on Section 604(1)(ii) of PERA, which directs the Board, when making the determination of an appropriate unit, to take into account the effects of overfragmentization of bargaining units. In City of Philadelphia, 10 PPER ¶ 10059 (Final Order, 1979), the Board stated that:

The public policy of the Commonwealth and the purpose of the Act as set forth in Section 101 is to promote orderly and constructive relationships between public employers and their employes and to preserve at the same time the rights of the citizens of the Commonwealth to keep inviolate the guarantees for their health, safety and welfare. It is our considered judgment that the public policy of the Act will best be effectuated by avoiding the dangers of overfragmentization

² It should be noted that bargaining must cease between the incumbent union and the employer in the face of a question of representation raised by a rival representation petition. Commonwealth of Pennsylvania (Liquor Control Board), 10 PPER ¶ 10031 (Nisi Decision and Order, 1979), adopting the National Labor Relations Board rule established in Midwest Piping and Supply Company, 63 NLRB 1060, 17 LRRM 40 (1945). The purpose of this rule is to allow the Board to conduct an election among the employes unfettered by possible employer manipulation of the collective bargaining process. To allow the collective bargaining process for the overall unit to be halted while the parties engage in protracted litigation over the appropriateness of a splinter unit defeats PERA's stated purpose of orderly and constructive bargaining relationships in the public sector.

inherent in the certification of a bargaining unit limited to a small number of employes from among a much larger group. The whipsaw effect bargaining with a myriad of fragmented bargaining units has on an employer undermines rather than fosters harmonious employe-employer relations and the rights of the public.

Id. at 97. The Board will deviate from its broad-based bargaining unit policy upon a showing that an identifiable community of interest is completely lacking between those employes included in and excluded from the proposed unit. West Perry, supra, citing Bucks County (Public Defender's Office), 13 PPER ¶ 13109 (Final Order, 1989), aff'd sub nom. District 65, United Autoworkers v. PLRB, 15 PPER ¶ 15062 (Court of Common Pleas of Bucks County, 1984).

In its Petition, the Petitioner made no claim that an identifiable community of interest is completely lacking between the employes it seeks to represent and the other professional employes in the Investigation, Inspection and Safety unit. In its exceptions, the Petitioner fails to specifically allege any differences between the Parole Agents and the other employes in the bargaining unit. Petitioner does object to being denied the opportunity to present such evidence at a hearing. However, the Petitioner fails to point out with any specificity the evidence that would substantiate the conclusion that there is a complete lack of community of interest, beyond a vague reference to changes in "terms and conditions of employment, job duties and functions." The Petitioner makes no claim that there are differences in the vast array of the community of interest factors relied on by the Board (e.g. pay scales, hours, benefits, areas of work, educational and skill requirements, grievance procedures, working conditions and bargaining history). It should be noted that the petitioned-for employes are currently represented in the larger Investigation, Inspection and Safety unit that is governed by a collective bargaining agreement that addresses many of these community of interest factors in a uniform fashion. Thus, the Petitioner has failed to make any specific allegations that would warrant a departure from the application of the Board's broad-based bargaining unit policy in this case.

Under the broad-based bargaining unit policy, the Board recognizes all-inclusive blue-collar units, all-inclusive white-collar units, wall-to-wall nonprofessional units, units limited to professional employes and units of both professional and nonprofessional as appropriate under the Act. Lansdale Borough, supra, citing Methacton School District, 11 PPER ¶ 11040 (Decision and Order, 1980), 11 PPER 11227 (Final Order, 1980); Montgomery County Intermediate Unit 23, 11 PPER ¶ 11036 (Decision and Order, 1980). To allow the Petitioner's representation petition to proceed would result in the certification of two separate units of professional employes in the Commonwealth related to investigation, inspection and safety. Absent even an allegation that an identifiable community of interest is totally lacking between the Parole Agents, Parole Agent IIs and Parole Supervisors and the other employes in the bargaining unit, such a unit configuration violates PERA's admonition against overfragmentization of bargaining units and is antithetical to the interests of the public and public employers throughout the Commonwealth.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Petitioner and affirm the decision of the Board Secretary declining to direct a hearing on the Petition for Representation.

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 are dismissed and the Secretary's decision not to direct a hearing on the Petition For Representation is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this nineteenth day of July, 2011. 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.