

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-13-359-W
 : (PERA-R-514-W)
FRANKLIN AREA SCHOOL DISTRICT :

FINAL ORDER

On January 31, 2014, the Franklin Area School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the January 14, 2014 decision of the Secretary of the Board, in which the Secretary declined to direct a hearing on the District's Petition for Unit Clarification. In the Petition, the District sought to exclude the position of Instructor of Incarcerated Youth from the professional bargaining unit that is certified at Case No. PERA-R-514-W and is represented by the Franklin Area Education Association (Association).¹ In dismissing the Petition, the Secretary stated that the District alleged that the position of Instructor of Incarcerated Youth is not included in the bargaining unit. Therefore, the Secretary concluded that because the Petition is not seeking a change to the current certified bargaining unit, a unit clarification proceeding is unwarranted.

The District alleges in its exceptions that the Secretary erred in concluding that the Petition is not seeking a change to the current certified bargaining unit because the Petition requested that the Board's certification be amended to specifically exclude the position of Instructor of Incarcerated Youth from the unit. However, the District's Petition alleges that the parties have not considered the position of Instructor of Incarcerated Youth to be included in the certified bargaining unit. The Petition further indicates that the number of employes in the proposed unit would not change from the number of employes presently included in the certified bargaining unit. Therefore, the Petition is not seeking a change to the current certified bargaining unit.

The District further alleges in its exceptions and supporting brief that the Association has filed a grievance pursuant to the parties' collective bargaining agreement asserting, *inter alia*, that the position at issue is included in the bargaining unit and that a Board hearing is warranted in order to resolve the dispute between the parties regarding inclusion of the position in the unit. Section 604 of PERA provides the Board with the authority to determine the appropriateness of a bargaining unit and to certify that unit. Once certification has been obtained, the Board may also determine whether a particular employe is a member of that unit. However, the Board's jurisdiction to determine whether a particular employe is a member of the unit is not exclusive. While an arbitrator may not alter the definition of the bargaining unit as broadly described in the Board's certification, an arbitrator has jurisdiction to determine whether an employe is a member of the bargaining unit as it has been defined by the Board. **Northwest Tri-County Intermediate Unit No. 5 Education Association v. Northwest Tri-County Intermediate Unit No. 5**, 465 A.2d 89 (Pa. Cmwlth. 1983); **Wayne Highlands Education Association v. Wayne Highlands School District**, 498 A.2d 1375 n.1 (Pa. Cmwlth. 1985); **West Shore School District v. West Shore Education Association**, 519 A.2d 552 (Pa. Cmwlth. 1986); **American Federation of State, County and Municipal Employees, AFL-CIO, District Council 87 v. Luzerne County**, 540 A.2d 1002 (Pa. Cmwlth. 1988); **Somerset Area School District v. Somerset Area Education Association**, 899 A.2d 1170 (Pa. Cmwlth. 2006).

In this case, the Board has certified as appropriate a unit of "[a]ll full-time and regular part-time professional employes including but not limited to" various professional job classifications. The Board describes the unit broadly to obviate the need for the parties to return to the Board each time a job classification's name is changed or a different professional job classification is filled by the employer. In those instances, as here, where the parties disagree upon unit inclusion or exclusion,

¹ An Amended Nisi Order of Unit Clarification was issued at Case No. PERA-U-98-69-W on July 24, 1998, certifying the Association as the exclusive representative of "[a]ll full-time and regular part-time professional employes including but not limited to classroom teachers, nurses, guidance counselors, librarians, director of audio-visual materials and instructional adaptation specialist..."

the Board and the Courts have recognized, as outlined above, that the grievance arbitration procedure is an appropriate forum to resolve that dispute. In **Allegheny Intermediate Unit 3 Education Association v. Allegheny Intermediate Unit 3**, 31 PPER ¶ 31128 (Final Order, 2000), the Board has gone so far to hold that an employer violates Section 1201(a)(1) and (5) of PERA by refusing to submit such a matter to grievance arbitration for the arbitrator to make a determination whether a disputed position is encompassed within the bargaining unit as broadly defined by the Board. Therefore, the Secretary did not err in dismissing the District's Petition and declining to direct a hearing in this case.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the District's exceptions.

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Franklin Area School District are hereby dismissed and the Secretary's decision declining to direct a hearing on the Petition for Unit Clarification be and the same 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, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this eighteenth day of February, 2014. 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.