

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF : Case No. PERA-D-16-25-W
 : (PERA-R-11-294-W)
GLASSPORT BOROUGH : (PERA-R-4414-W)

FINAL ORDER

On January 26, 2016, Teamsters Local Union No. 205 (Union) filed a letter with the Pennsylvania Labor Relations Board (Board) disclaiming interest in representing the clerical employees of the Borough of Glassport (Borough), as certified by the Board in Case No. PERA-R-11-294-W. By letter dated February 19, 2016, the Secretary of the Board dismissed the Union's disclaimer of interest in further representing the clerical employees, and stated as follows:

The current unit, as certified at Case No. PERA-R-11-294-W, includes all full-time and regular part-time nonprofessional employees including but not limited to laborers, operators, truck drivers, custodians and clerical employees. Therefore, a request to decertify the Union among only the clerical employees is inappropriate. Accordingly, the disclaimer of interest must be dismissed.

The Borough filed exceptions to the Secretary's dismissal letter, and a supporting brief, with the Board on March 10, 2016.

As an initial matter, the Borough lacks standing to file exceptions to the Secretary's dismissal of the Union's disclaimer of interest. See **Milton Regional Sewer Authority**, 35 PPER 26 (Final Order, 2004). In holding that an employer does not have standing to file exceptions to the dismissal of a decertification petition that it did not file, the Board held in **Bradford County**, 29 PPER ¶ 29150 at 349 (Final Order, 1998), that "[w]hat the statute does not contemplate is an employer seeking to revive an employe-filed decertification that the employe/petitioner no longer desires to pursue." Thus, as recognized in **Bradford County**, in the absence of exceptions filed by the Union, the Borough lacks standing to file its own set of exceptions challenging the Secretary's dismissal of the Union's disclaimer of interest.

Even if the Borough had standing, its exceptions are without merit. It is well-established Board procedure and policy that representation proceedings, including decertification, must be conducted in the unit as previously certified by the Board. *E.g.* **Medical Rescue Team South Authority**, 31 PPER ¶ 31059 (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).

The Borough argues, however, that the existing certification of the Board is in error as the clerical employees were not appropriately included in the bargaining unit. First, the Borough's argument is an untimely and impermissible collateral attack on the 2011 joint request for certification in Case No. PERA-R-11-294-W. 34 Pa. Code §95.98(a) and (b) (in the absence of timely exceptions, all issues are waived and a nisi order of certification becomes final upon the expiration of twenty calendar days from the date of issuance).

Moreover, it is established Board policy that the propriety of a position's inclusion in a unit previously certified by the Board may not be litigated in a decertification proceeding. **East Taylor Township**, 41 PPER 73 (Order Directing Submission of Eligibility List, 2010); **Clearfield County**, 24 PPER ¶ 24173 (Order and Notice of Decertification Election, 1993). In **Clearfield County**, the Board Representative, noting the Board's policy of holding decertification proceedings in the unit certified by the Board, expressly held that "although a unit previously certified may not conform to present policy with regard to unit appropriateness ..., now [in a decertification proceeding] is not the time for that determination to be made." *Id.* at 445. The Board Representative noted in **Clearfield County** that the proper means to challenge the

appropriateness of the unit, or the inclusion of a position in the certified bargaining unit, is not through the decertification process, but by way of a petition for unit clarification.

The same result must obtain here. The Borough's challenge to the appropriateness of the bargaining unit, as certified at Case No. PERA-R-11-294-W, cannot be raised as exceptions to the dismissal of the Union's disclaimer of interest, but must be brought by way of a unit clarification petition under 34 Pa. Code §95.23. Accordingly, after a thorough review of the exceptions and all matters of record, the Borough's exceptions to the dismissal of the Union's disclaimer of interest shall be dismissed.

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 filed by Glassport Borough are hereby dismissed, and the February 19, 2016 decision of the Secretary of the Board, be and hereby is 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, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this nineteenth day of April, 2016. 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.