

The COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-17-149-W
:
UNIVERSITY OF PITTSBURGH :

FINAL ORDER

The University of Pittsburgh (University) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on January 22, 2019, to a Proposed Order of Unit Clarification (POUC) issued on January 2, 2019. In the POUC, the Hearing Examiner granted the Petition for Unit Clarification filed by the International Union of Operating Engineers, Local 95-95A (Union) and included the positions of Emergency Management Systems (EMS) Coordinator, and Mechanical, Electrical and Plumbing (MEP) Commissioning Coordinator, in the nonprofessional, blue-collar unit represented by the Union.¹

This matter arose on June 8, 2017, when the Union filed a Petition for Unit Clarification with the Board seeking to include the EMS Coordinator and MEP Commissioning Coordinator positions in the grandfathered bargaining unit comprised of all full-time and regular part-time non-professional, blue-collar employees including operating engineers, lead engineers, foremen, energy management technicians, unit coordinators, maintenance mechanics, Utility I and Utility II employees of the University. After numerous continuances, a hearing was held on August 23, 2018, at which time the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

For purposes of addressing the exceptions to the POUC, the facts are summarized as follows. The Union represents a grandfathered bargaining unit consisting of 105 employees including all full-time and regular part-time operating engineers, lead engineers, foremen, emergency management technician, unit coordinators, maintenance mechanics, and Utility I and II employees. (FF 3). The bargaining unit members are responsible for maintaining the 78 education and research buildings on the University's campus. (FF 4). Bargaining unit employees are the first responders to maintenance calls, take care of hot/cold complaints, equipment issues, and preventative maintenance on campus. Specifically, operating engineers in the bargaining unit are responsible for properly operating all mechanical systems; performing select preventative and corrective maintenance; and monitoring building automation system hardware, software, sensors and components. (FF 4).

The University building automation system is known as the Direct Digital Control (DDC) system. (FF 5). It is a computer system which controls the equipment and lighting on campus. (FF 5). EMS Coordinators and MEP Commissioning Coordinators work with the DDC

¹ The Union did not file a response to the University's exceptions.

system in the Energy Center, a large office space located on the fifth floor of the Eureka Building. (FF 6, 10).

The MEP Commissioning Coordinators commission new DDC equipment and recommission existing equipment on campus to make sure that the DDC and the controlled building equipment are operating correctly, running efficiently, and have proper installation. Bargaining unit operating engineers often work with MEP Commissioning Coordinators to commission and recommission DDC equipment and related building equipment and lighting. (FF 9).

EMS Coordinators maintain and update the DDC through programming, and monitor the controlled equipment in campus buildings through the DDC. If they detect a problem, they will investigate the issue and dispatch an operating engineer, if necessary. (FF 10).

Bargaining unit members interact regularly with the EMS Coordinators and the MEP Commissioning Coordinators, generally through a two-way radio system. Bargaining unit employees interact with EMS Coordinators and the MEP Commissioning Coordinators to identify equipment issues, be dispatched to problem sites, obtain information regarding service calls and exchange information that jobs have been completed. (FF 13). Bargaining unit operating engineers attend weekly meetings with EMS Coordinators and MEP Commissioning Coordinators in the Energy Center. (FF 13).

In addition to their working interactions, the Hearing Examiner also found that EMS Coordinators and MEP Commissioning Coordinators work similar hours as the bargaining unit operating engineers. (FF 11). Three of the bargaining unit operating engineers have offices in the Energy Center, while others are assigned elsewhere on campus. (FF 6, 8). Further, no professional licensure or college degree is required for bargaining unit members, the EMS Coordinator or MEP Commissioning Coordinator positions. (FF 14, 15). Additionally, the bargaining unit members share the same pension and healthcare benefits as the EMS Coordinators and the MEP Commissioning Coordinators. (FF 12, 13).

Initially, the University excepts to the Hearing Examiner's factual findings that the EMS Coordinators and the MEP Commissioning Coordinators work similar shifts to the operating engineers in the bargaining unit, and attend a weekly meeting with them. However, these findings have adequate support in the record. Indeed, Robert Csaszar, who has worked for 17 years as an operating engineer at the University, testified specifically to the fact that the Coordinators and the operating engineers work similar shifts. (N.T. 19-20). Further, another operating engineer employed by the University, Mark Malinoski, testified that he attends Tuesday meetings at the Energy Center with the EMS Coordinators and MEP Commissioning Coordinators. (N.T. 89-90).

The Board defers to the hearing examiner's decision to credit some, all, or none of a witness' testimony because he is best able to observe the manner and demeanor of the witnesses at the hearing. Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 33 PPER ¶ 33011 (Final Order, 2001); Crestwood School District v. Crestwood Education Association, 32 PPER ¶ 32050 (Final Order, 2001). The Board will not disturb the hearing examiner's credibility determinations absent compelling

circumstances. Id. Here, the University did not allege any such circumstances. The factual findings of the Hearing Examiner are supported by substantial credible evidence and thus, the University's exceptions to them must be denied.

Based on his factual findings, the Hearing Examiner went on to conclude that EMS Coordinators and MEP Commissioning Coordinators are non-professional, non-supervisory employees who share an identifiable community of interest with other members of the grandfathered bargaining unit under PERA.² The University now contends on exceptions that this conclusion was erroneous because the Hearing Examiner misapplied the legal standard for an identifiable community of interest. Specifically, it claims that the actual job duties, physical location of work, and working conditions of the EMS Coordinators and the MEP Commissioning Coordinators differ from those of the employees currently in the bargaining unit such that a community of interest is lacking.

The present matter is controlled by Section 604 of PERA, which directs the Board to determine an appropriate bargaining unit of employees. In doing so, the Board considers whether the proposed members share an identifiable community of interest, 43 P.S. §1101.604(1)(i), while being mindful of the effects of over-fragmentization. 43 P.S. §1101.604(1)(ii). As aptly noted in the POUC, the factors to be considered by the Board in finding a community of interest may include "the type of work performed, educational and skill requirement, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, and bargaining history." FOP v. PLRB, 735 A.2d 96, 100 (Pa. 1999); West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000).

Furthermore, it is well-established that "[a]n 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." FOP, supra at 100; West Perry, supra at 464. To avoid the effects of over-fragmentization, the Board has adopted a broad-based bargaining unit policy in finding an appropriate unit of employees. E.g., Chester Upland School District, 12 PPER ¶ 12179 (Final Order, 1981); In the Matter of the Employees of City of Wilkes-Barre, 50 PPER 1 (Final Order, 2018).

In this matter, the University argues that there is a marked disparity between the job duties of the EMS Coordinator and the MEP Commissioning Coordinator positions and those of the bargaining unit members such that there can be no identifiable community of interest within the meaning of PERA. In support of this argument, the University cites to two cases, Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974), and Fraternal Order of Police, Conference of Pennsylvania Liquor Control Bd. Lodges v. PLRB, 695 A.2d 926 (Pa. Cmwlth. 1997).

Neither case is applicable to the instant matter. First, Allegheny General Hospital was decided before the Board adopted its

²On exceptions, the University does not argue that the EMS Coordinators and MEP Commissioning Coordinators are professionals, supervisors, or management level employees.

policy of certifying broad-based bargaining units, and as such, is distinguishable. See Chester Upland School District, *supra*. Secondly, in FOP, the Supreme Court determined that there was not an identifiable community of interest between liquor enforcement officers (LEO) employed by the Pennsylvania State Police and liquor licensing analysts working for the Liquor Control Board because the two groups of employees worked for separate, distinct, and independently operated state agencies.³

Furthermore, in both Allegheny General Hospital and FOP, the work performed by one group did not in any way touch on that of the other, and was conducted completely independently from the other.⁴ Here, in stark contrast, the record is replete with references to the operating engineers and the EMS Coordinators and the MEP Commissioning Coordinators all working together side-by-side, day-by-day, to effectively operate the buildings on campus in an energy efficient manner.

It is important to note that both cases cited by the University were distinguished by the Commonwealth Court in Berks/Lehigh College Faculty Association v. PLRB, 763 A.2d 548 (Pa. Cmwlth. 2000). There, when the Penn State educational system was redesigned, the Berks and Allentown two-year branch campuses were merged into a four-year institution known as the Berks Lehigh Valley College (BLVC). Thereafter, the Board dismissed a petition seeking to represent a bargaining unit of only BLVC faculty. On appeal, the Association argued that there was not an identifiable community of interest within the meaning of Section 604(1) of PERA because elements of employment for the BLVC faculty differed in some regards from the faculty working at other Penn State colleges in the Penn State University system.

In rejecting this argument, the Commonwealth Court reiterated that "[a]n 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 551 (quoting FOP v. PLRB, *supra* at 100) and concluded that although there were elements of the employment relationship which were unique to BLVC, there were employment conditions similar to that of Penn State faculty such that the two groups shared an identifiable community of interest pursuant to PERA. Therefore, the Commonwealth Court held that a bargaining unit limited only to BLVC faculty was inappropriate. Likewise, in the instant matter, the University's argument that, because some of the job duties and working conditions of the operating engineers differ from the EMS Coordinators and MEP Commissioning Coordinators, they cannot be represented in the same bargaining unit, must fail.

³ Indeed, prior to 1987, when the duties of the LEOs and analysts were performed within the LCB, both positions were in a single bargaining unit within the LCB. FOP, *supra* at 927-928.

⁴ Unlike here, in Allegheny General Hospital, the maintenance employees and housekeeping employees performed different unrelated functions, had different skill requirements and pay scales, had different supervisors, and there was no interchange of employees between the two groups.

In a more recent case, In the Matter of the Employees of City of Wilkes-Barre, supra, the Board reiterated its broad-based bargaining unit policy in considering a petition for unit clarification. There, the Board rejected an employer's attempt to exclude paramedics from an existing bargaining unit based on differences involving type of work performed, lines of supervision, shifts and hours, fringe benefits, and working conditions, stating that "the Board has long favored broad-based bargaining units as appropriate under Section 604 of PERA." Id. at 2. The Board stated that, "[w]here there is substantial evidence of a community of interest, differences in wages, hours, working conditions, job duties, skills, supervision or benefits among bargaining unit positions will not foreclose inclusion in an appropriate broad-based bargaining unit." Id. at 3.

In its brief, the University points to testimony that operating engineers do not get involved in programming the DDC, and that the EMS Coordinators and MEP Commissioning Coordinators do not repair and rewire the physical systems which are controlled by the DDC, as evidence that a community of interest is lacking. The University also points to testimony that only two operating engineers, and an apprentice, report for work daily to the Energy Center with the rest of the operating engineers being dispatched, as needed, to the other 77 buildings on campus to address problems with the system. Finally, the University highlights testimony that many of the operating engineers work a 24/7 schedule, while only 3 of the EMS Coordinators and MEP Commissioning Coordinators work a shift other than daylight. These facts do not require a different result than that reached by the Hearing Examiner in this case, because, as noted above, perfect uniformity in conditions of employment simply is not required by PERA or interpretive caselaw. FOP, supra; West Perry, supra; Wilkes-Barre, supra.

Rather, it is quite clear from a review of the entire record that the interplay between the job duties of the EMS Coordinators and MEP Commissioning Coordinators and the operating engineers is significant. Indeed, the record is rife with evidence that current members of the bargaining unit work together with the EMS Coordinators and the MEP Commissioning Coordinators to maintain the energy systems on the University's campus. (N.T. 21-22, 36, 37-38, 69-73, 85-88, 95, 108-109, 153, 158, 168-169, 184-186, 198, 22). The evidence shows that the operating engineers could not do their job without the EMS Coordinators and MEP Commissioning Coordinators, and *vice versa*, because the technological advancements in energy management at the University have necessitated an interplay between the two groups.

Therefore, after an exhaustive review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the Union met its burden of establishing the existence of an identifiable community of interest between the EMS Coordinators and the MEP Commissioning Coordinators with the bargaining unit members by substantial, competent record evidence. As such, the EMS Coordinators and MEP Commissioning Coordinators are properly included in the non-professional blue collar grandfathered bargaining unit comprised of operating engineers, lead engineers, foremen, energy management technicians, unit coordinators, maintenance mechanics, Utility I and Utility II employees represented by the Union. Accordingly, the

exceptions filed by the University shall be dismissed, and the POUC made absolute and final.

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 the University of Pittsburgh are hereby dismissed, and the January 2, 2019 Proposed Order of Unit Clarification, shall 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, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this twenty-first day of May, 2019. 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.