

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: CASE NO. PERA-U-19-27-E
: (PERA-R-11,447-C)
: :
THE PENNSYLVANIA STATE SYSTEM OF HIGHER: :
EDUCATION (INDIANA UNIVERSITY) :

FINAL ORDER

The Pennsylvania State System of Higher Education (PASSHE) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 11, 2020, to a Proposed Order of Unit Clarification (POUC) issued on May 22, 2020. The State College and University Professionals, PSEA/NEA (SCUPA) filed a response to the exceptions and a supporting brief on June 22, 2020.

In the POUC, the Hearing Examiner granted the Petition for Unit Clarification filed by SCUPA and included the positions of Social Media Strategist, Assistant Director of Media Relations, Multimedia Producer, and Assistant Director of Annual Giving in the professional bargaining unit represented by SCUPA. In doing so, the Hearing Examiner found that the positions at issue shared a community of interest with the other positions in the SCUPA bargaining unit, and that the positions were not management level within the meaning of Section 301(16) of the Public Employee Relations Act (PERA or Act).¹

This matter arose when SCUPA filed a Petition for Unit Clarification on January 28, 2019, as amended on May 30, 2019, seeking to include the positions of Social Media Strategist, Multimedia Producer, Assistant Director of Media Relations and Assistant Director of Annual Giving in the bargaining unit comprised of all full-time and regular part-time professional employees classified as State College and University Administrators; and excluding nonprofessional employees, management level employees, supervisors, and first-level supervisors, confidential employees and guards as defined in the Act. A hearing was held on September 19, 2019, 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 State College and University

¹ Section 301(16) of PERA provides as follows:

"Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

Administrators (SUAs) are in a bargaining unit represented by SCUPA. The SUAs work at all 14 of PASHHE's state-wide campuses, although many do not work directly with students. (FF 5, 6). In general, SUAs are professionals who are assistant and associate directors of departments such as admissions, financial aid, student activities, residence life, judicial, registrars, tutorial and academic assistance services, career services, alumni relations, grant fund programs, while others work in student development across all 14 PASSHE campuses. Job titles for the SUAs are not consistent across all 14 campuses. (FF 5).

At Indiana University (IUP), the positions of Social Media Strategist and Assistant Director of Media Relations are non-supervisory professional positions in the IUP Marketing Department. (FF 7). The core leadership team of the IUP Marketing Department consists of Chris Noah (Chief Marketing Officer), Mike Powers (Executive Director of Marketing and Communications), Michelle Fryling (Director of Media Relations) and Simon Stuchlik (Executive Director of Brand Management). Mr. Noah was hired by the President of IUP to be responsible for implementing a new and updated marketing brand strategy at IUP, and he reports on the progress of brand implementation directly to the IUP President. (FF 23).

Tessa Lukesh currently occupies the role of Social Media Strategist at IUP, and has been in this position for approximately three months prior to the hearing. She is the first person to hold this position. (FF 11, 13). Her responsibilities include maintaining social media accounts for IUP by sorting through stories and posts to decide which to share on IUP's various social media platforms. She also supports the efforts of other IUP social media accounts. (FF 11). Ms. Lukesh has a bachelor's degree in English with a minor in Communications. (FF 12). She spends 80%-90% of her time at work performing "social media management" through daily review of all of IUP's social media platforms (Facebook, Twitter, YouTube, LinkedIn, Instagram, Snapchat, and emerging platforms), and her duties require responding to messages on those platforms and monitoring any mentions or tags of IUP. (FF 14).

Ms. Lukesh spends her remaining time performing social media strategy development and analytics reporting. Before Ms. Lukesh's arrival at IUP, the University had hired a third-party marketing firm to create a strategy for social media. Ms. Lukesh has been operating pursuant to that strategy and was told that while she had some liberty to decide when and how to modify the social media strategy, she is required to get approval from Mr. Powers before doing so. (FF 15).

In early September 2019, an IUP student posted a racist video on his social media account. The video was being associated with IUP on social media. Ms. Lukesh became aware of the issue and immediately went to Mr. Powers, who took Ms. Lukesh to discuss the matter with Ms. Fryling. Ms. Fryling drafted a message that would be used for IUP's official response. The message was then approved by Mr. Noah and the University President. Ms. Fryling forwarded the approved message to Ms. Lukesh, who began posting it on IUP's social media accounts. (FF 16).

Stephanie Keppich is the Assistant Director of Media Relations at IUP. She had been in the position for approximately six months at the time of the hearing. (FF 17). Ms. Keppich is responsible for

discovering stories at IUP that would play in the traditional media. She finds stories that fit predetermined editorial priorities and pushes them out to the media, but does not herself determine editorial priorities at IUP. When determining which stories to use, Ms. Keppich utilizes her professional skills as a journalist. (FF 19).

The Assistant Director of Annual Giving is a non-supervisory professional position in the Department of Annual Giving at IUP. (FF 24). As the Assistant Director of Annual Giving, Matthew Gueguen spends approximately 40% of his time administering the IUP Phone-a-Thon. He also works with the Student Philanthropy Council on the annual Student Gift project. Finally, Mr. Gueguen is responsible for IUP Crowdfunding such as GoFundMe pages. (FF 25). Mr. Gueguen's tasks existed prior to his placement in the position and are assigned to him by Stephanie Sell, the Director of Annual Giving. (FF 26).

With respect to the Phone-a-Thon, Mr. Gueguen is responsible for hiring students, assigning calls, and analyzing statistics on giving through the Phone-a-Thon. Mr. Gueguen is also responsible determining the best time to call donors, and drafting the appropriate scripting for student workers to follow during a call. (FF 28).

Mr. Gueguen also helps people and organizations at IUP with setting up Crowdfunding for specific causes on campus. Mr. Gueguen is responsible for developing a plan and creating a webpage to allow the Crowdfunding request to be pushed out through social media. (FF 29).

On exceptions, PASSHE challenges the Hearing Examiner's conclusion that the three positions at issue are not management level employes pursuant to Section 301(16) of PERA.² It is well-settled that a management level employe is "(1) any individual who is involved directly in the determination of policy; (2) any individual who directs the implementation of policy; or (3) employes above the first level of supervision." Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021, 1023 (Pa. Cmwlth. 1989); Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010); Commonwealth of Pennsylvania (Department of Education), 14 PPER ¶ 14136 (Final Order, 1983).

With regard to the first prong of the statutory test, the Board opined in Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), that an employe who is "involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect." Id. at 327. Further, the Board stated that it "does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who

² PASSHE has not excepted to the inclusion of the Multimedia Producer position in the SCUPA bargaining unit and thus concedes that the position is not management level pursuant to PERA. 34 Pa Code § 95.98(a)(3) ("[a]n exception not specifically raised should be waived.").

simply engaged in research or the collection of data necessary for the development of a policy proposal.” Id.

As to the second prong of the statutory test in Section 301(16), concerning an employe who responsibly directs the implementation of policy, the Board noted that:

[P]ersons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures provided that such role is not of a routine or clerical nature and bears managerial responsibility to ensure completion of the task. The administration of policy involves basically two functions: (1) observance of the terms of the policy, and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy.

Id.

The Board has long held that the development of policy within a position’s professional or technical expertise does not render the position management level. Commonwealth of Pennsylvania, 49 PPER 41 (Proposed Order of Unit Clarification, 2017), *affirmed*, PERA-U-16-334-E and PERA-U-16-335-E (Final Order, April 17, 2018); Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016); School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998) (holding that employes who monitored instructional programs to ensure compliance with court mandates, but could not take action in the event of non-compliance, did not participate directly in the policy-making process). Indeed, the Board has stated that “[j]udgments of professional employes which transcend the technical discipline of professionals should be distinguished from those instances where the natural and normal performance of professional duties may affect the employer’s policy merely by the specialized nature of the professional’s normal tasks.” In the Matter of the Employes of Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1988) at 378. Only the former are considered management level employes pursuant to PERA. Id. Put another way, “managerial status may not be based on decision making which is part of the routine discharge of professional duties.” Id.; Slippery Rock, *supra*. at 192.

Here, PASSHE maintains that the positions of Social Media Strategist, Assistant Director of Media Relations, and Assistant Director of Annual Giving should be excluded from the bargaining unit because they are management level employes in that each involves the independent exercise of discretion to interpret IUP’s policies for the

advancement of the University as a whole. The Board has consistently held that determining whether an employe should be excluded from the bargaining unit requires an inquiry into the actual job functions performed by that employe, as opposed to reliance on a job title, written job description or alleged prospective job functions. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010), *petition for allowance of appeal denied*, 17 A.3d 1256 (Pa. 2011). It is the Board's role to determine whether a position should be included in a particular bargaining unit based on the actual duties performed by the employe. Id. Each of the positions at issue will be discussed *seriatim*.

PASSHE first contends that the Social Media Strategist position is managerial and should not be included in the SCUPA bargaining unit because she has "policy development responsibilities." (Respondent's Brief, p. 14). Citing to her role in "rewriting IUP's social media guidelines to bring them in line with the University's revised brand strategy," PASSHE claims that the Social Media Strategist's responsibilities extend beyond the routine duties of a social media professional.

However, a careful review of Ms. Lukesh's testimony reveals that she was responsible for "working off" the re-brand for social media developed by an outside marketing firm, and that if she wished to make any changes, she was required to seek approval from her superiors. (N.T. 67). Further, Ms. Lukesh testified that 80-90% of her time is spent "checking in every day on all of the platforms [because]... There are a lot of different Facebook pages. There are a lot of different Instagram accounts, a lot of Twitters." (N.T. 64). Further, when asked about whether she "directed" the activity of other social media posters on these various social media platforms, she responded that she would "kind of guide by just giving them some suggestions on what would be better, but I don't have the overall authority to say you have to delete that or you should take that down." (N.T. 65).

Finally, when a social media crisis occurred involving a racist message posted by a student, Ms. Lukesh notified her superiors and was given the official IUP response which she then simply pushed out on Twitter. (N.T. 78-79). Based on the actual duties of Ms. Lukesh in her role as Social Media Strategist, it is quite apparent that she was not free to exercise her independent judgment to formulate social media policy for IUP. Rather, Ms. Lukesh utilized her professional education and experience in communications to monitor and maintain IUP's revised media strategy, as developed by an outside firm in conjunction with her superiors in the Marketing and Communications department.

Next, PASSHE contends that the Assistant Director of Media Relations position is managerial and should not be included in the SCUPA bargaining unit because the current employe holding that position, Ms. Keppich, responsibly directs the implementation of policy in that her primary responsibility is oversight and review of story content for placement in external media. (Respondent's Brief, p. 16). The evidence produced at the hearing, however, establishes that Ms. Keppich uses her professional skills to get stories which fit the pre-determined "IUP brand" placed with the traditional media. Ms. Keppich testified in particular that someone else tells her the types of stories that IUP's Marketing and Communications Department wants to see

presented to the media, and she uses her skill set to "uncover and discover" those stories. (N.T. 94-96). Finally, she stated that her job does not entail deciding which media messages would align with the brand pillars (N.T. 99-100), and that when an official emergency communications procedure is ultimately promulgated at IUP, it will be communicated to her, rather than formulated by her. (N.T. 104-105). As such, based on the actual duties of Ms. Keppich in her role as IUP's Assistant Director of Media Relations, it is clear that she is not free to exercise her independent judgment to formulate social media policy for IUP. Instead, Ms. Keppich utilizes her professional education and experience in communications to find and disseminate stories which reflect the re-branded media strategy developed by an outside firm and approved by her superiors.

Lastly, PASSHE contends that the Assistant Director of Annual Giving position is a management level position which should be excluded from the SCUPA bargaining unit because the current employe in the position, Matthew Gueguen, has strategic oversight of various fundraising activities at IUP, and is only supervised on a weekly basis by his supervisor. (Respondent's Brief, p. 4-5). Again, however, in looking at the actual duties of Mr. Gueguen, it is apparent that each of the three programs (IUP Phone-a-Thon, Student Philanthropy Council, and Crowdfunding) with which Mr. Gueguen is involved were developed before he occupied the role, and he is tasked with mere implementation of them. (N.T. 166-167, 196-198). Indeed, Mr. Gueguen stated that he was not permitted to set a goal as to how many students to solicit for donations for the annual gift program. (N.T. 168). Although there was testimony that Mr. Gueguen manages student workers and volunteers as part of the Phone-a-Thon, this responsibility alone does not remove the Assistant Director of Annual Giving position from the SCUPA bargaining unit as there was credible testimony that many SUAs across the Commonwealth who are in the SCUPA bargaining unit also manage student workers. (N.T. 180).

Therefore, after a review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the positions of Social Media Strategist, Assistant Director of Media Relations, and Assistant Director of Annual Giving are not management level employes within the meaning of Section 301(16) of PERA. As such, the disputed positions are properly included in the bargaining unit comprised of all full-time and regular part-time professional employes classified as State College and University Administrators; and excluding nonprofessional employes, management level employes, supervisors, and first-level supervisors, confidential employes and guards as defined in the Act. Accordingly, the Board shall dismiss PASSHE's exceptions and make the Proposed Order of Unit Clarification final.

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 Pennsylvania State System of Higher Education are hereby dismissed, and the May 22, 2020 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, James M. Darby, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this fifteenth day of September, 2020. 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 on September 18, 2020.