

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-20-140-W
: :
ERIE METROPOLITAN TRANSIT AUTHORITY :

FINAL ORDER

Erie Metropolitan Transit Authority (EMTA, or Employer) filed timely¹ exceptions with the Pennsylvania Labor Relations Board (Board) on August 16, 2021, and a supporting brief on August 27, 2021, to a Proposed Order of Unit Clarification (POUC) issued on July 26, 2021. In the POUC, the Hearing Examiner granted the Petition for Unit Clarification filed by the Amalgamated Transit Union Local 568 (ATU or Union) seeking to accrete the Customer Service Representative (CSR) position into the nonprofessional bargaining unit represented by ATU. ATU filed a response to the exceptions and a brief supporting the POUC on September 16, 2021.

On July 7, 2020, ATU filed a Petition for Unit Clarification with the Board seeking to include the CSR position into an existing unit of nonprofessional employees of the EMTA. The existing bargaining unit was certified by the Board on August 25, 1978, at Case No. PERA-R-11,367-W as follows:

In a subdivision of the employer unit comprised of all full-time and regular part-time non-professional employees including but not limited to bus drivers, vehicle maintenance employees, dispatchers, stock controllers, maintenance supervisors, clerks, patrol clerks, and secretaries; and excluding management level employees, supervisors, first-level supervisors, confidential employees, and guards as defined in the Act.

On August 5, 2020, the Secretary of the Board issued an Order and Notice of Hearing, directing a hearing to be held on November 13, 2020. The hearing was continued by the Hearing Examiner, and was held on March 29, 2021, via Microsoft Teams, at which time all parties in interest were afforded a full opportunity to present testimony cross-examine witnesses and introduce documentary evidence. On July 26, 2021, the Hearing Examiner issued a POUC finding that the CSR positions at issue shared an identifiable community of interest with the certified bargaining unit of nonprofessional employees represented by ATU.

For purposes of addressing the exceptions to the POUC, the salient facts are summarized as follows. EMTA is a public employer within the meaning of Section 301(1) of PERA, and ATU is the exclusive representative of a certified bargaining unit consisting of all full-time and regular part-time

¹ EMTA's exceptions are timely because August 15, 2021, the twentieth day following issuance of the Hearing Examiner's decision, was a Sunday and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

nonprofessional employees including but not limited to bus drivers, vehicle maintenance employees, dispatchers, stock controllers, maintenance supervisors, clerks, payroll clerks and secretaries; and excluding management level employees, supervisors, first-level supervisors, confidential employees and guards as defined in the Act. (FF 1-3); Erie Metro Transit Authority, Case No. PERA-R-11,367-W (Nisi Order of Certification, 1978). In 1982, the Board amended the Union's certification to include the classification of "planner." The planner position prepares grant application for state and federal funds. Erie Metropolitan Transit Authority, PERA-U-82-117-W (Proposed Order of Unit Clarification, 1982). (FF 4).

On or about June 3, 2019, the Employer posted a new position, "Customer Service Representative" or CSR. The job description for the CSR position is, as follows: Responsible for answering telephone calls, screening calls to determine clients' needs and directing the client according to Company procedure, assist the Director of Human Resources subject to sensitive internal employe documents, and perform various office and administrative duties. The CSR position does not require any special skills; only a high school diploma is necessary for the job. (FF 7).

Customer Service Representatives work 8-hour shifts, are paid hourly, and are eligible for overtime. The following duties are performed by the CSRs: provide customer service for inbound customer calls; answer inquiries by researching, locating and providing information; resolves problems and exploring answers and alternative solutions; de-escalates unresolved problems; maintains call center database by entering information; keeps equipment operational and reports malfunctions; updates job knowledge by participating in educational opportunities; responds to inquiries for the Paratransit Shared Ride Service; submits a monthly percentage report to the Controller listing the percentage of time allocated to Paratransit services in order to properly report Paratransit time to be paid out through the Paratransit-LIFT budget; assists Director of Human Resources with various employe sensitive materials on an "as needed" basis. (FF 7).

The job of "Class B Dispatcher" is a position included in the bargaining unit. Julie Michalak is a Class B Dispatcher employed by EMTA. The job duties performed by a Class B Dispatcher include responding to telephone inquiries about bus schedules and responding to customer complaints. This position is paid hourly and requires a high school diploma. Typically, a Class B Dispatcher works an 8-hour shift. (FF 8).

The job of "Clerk Stenographer" is a position included in the bargaining unit. The current Clerk Stenographer is Elisabeth Zetzel. The clerk stenographer position requires a high school diploma, works 8-hour shifts, and is eligible for overtime. This position involves greeting public visitors to the EMTA, dispensing schedule information to the public and referring inquiries from the public, in person and by phone, to the appropriate department. (FF 9).

On exceptions, EMTA challenges the Hearing Examiner's conclusion that the CSRs share an identifiable community of interest such that the CSRs may be included in the certified bargaining unit represented by ATU. Perfect uniformity in conditions of employment is not required for a community of interest to exist. A bargaining unit is an appropriate unit for collective bargaining despite differences among employes in wages, hours, working conditions, or other factors. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000); see In the Matter of the Employes of Wissahickon

School District, 47 PPER 26 (Order Directing Submission of Eligibility List, 2015) (citing Pennsylvania State University v. PLRB, 24 PPER ¶24117 (Centre County Court of Common Pleas, 1993) (noting that where there are differences among employees in a bargaining unit, it may simply reflect the division of labor put in place by an employer and thus, will not destroy a identifiable community of interest)). The general policy of the Board is to certify units as broadly as possible in order to avoid the deleterious effects of over-fragmentization. Indeed, it is firmly established that blue and white-collar employees share an identifiable community of interest for an appropriate wall-to-wall unit for collective bargaining under PERA. See e.g. Berks County, 27 PPER ¶27110 (Final Order, 1996); and Erie Metropolitan Transit Authority, PERA-R-11,367-W (Nisi Order of Certification, 1978).

In the instant case, it is undisputed that since 1978, and spanning multiple collective bargaining agreements, the current certified bargaining unit includes white-collar "clerk stenographers, clerk typists, payroll, billing, and accounts payable clerks, bookkeepers, parts managers, dispatchers, scheduling directors, and phone operators." (EMTA brief, p. 2). Moreover, EMTA entered into a Memorandum of Agreement in Case No. PERA-R-11,367-W, stipulating that the appropriate bargaining unit includes all non-professional employees including but not limited to, all full-time and regular part-time blue-collar and white-collar positions. Erie Metro Transit Authority, Case No. PERA-R-11,367-W (Nisi Order of Certification, 1978). EMTA nevertheless argues now that the Hearing Examiner erred in finding an identifiable community of interest between the CSRs and the nonprofessional white-collar positions in the certified bargaining unit, and insists notwithstanding its prior agreement, that white-collar nonprofessional employees simply cannot be in the same unit as nonprofessional blue-collar employees.

Relying on Amalgamated Transit Union, Local 89 v. PLRB, 498 A.2d 485 (Pa. Cmwlth. 1985), EMTA argues that employees who are not "directly involved" with operation of EMTA's buses must be excluded from what it refers to as "the driver unit." As noted by the Hearing Examiner in the POUC, Amalgamated Transit Union is not applicable to this case for several reasons. First, here, unlike the recognized blue-collar unit in Amalgamated Transit Union, the bargaining unit in this case was certified by the Board in 1978 as a wall-to-wall unit which included, but was not limited to, all full-time and regular part-time nonprofessional blue-collar and white-collar employees. Here, the Board's certification in Case No. PERA-R-11,367-W, expressly includes "white-collar" job classifications such as clerks, payroll clerks and secretaries, as was agreed to as an appropriate unit by EMTA.

Secondly, the Amalgamated Transit Union decision was specifically rejected by the Commonwealth Court in a subsequent decision, West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1994); see Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), *appeal denied*, 581 A.2d 577 (Pa. 1990). In West Hanover Township, the Commonwealth Court held that white-collar workers such as a bookkeeper/accountant, a billing clerk and an office worker could be included in the same unit with blue-collar workers such as water operators and laborers. The key inquiry, as it is here, is whether under the Board's broad based bargaining unit policy, there are enough similarities between positions such that an identifiable community of interest exists for purposes of collective bargaining and to avoid over-fragmentization of the employer unit. The Commonwealth Court made abundantly clear that a community of interest, and the determination of an

appropriate bargaining unit, does not require perfect alignment of duties among the employees.

Here, the record clearly shows that the CSR, clerk stenographer and dispatcher positions all deal regularly with customers in person and on the phone. Further, they all work an 8-hour shift, are paid hourly, are eligible for overtime, do not wear uniforms, and do not require any special education or skills to perform their job. Moreover, unequivocal testimony indicates that the CSR position was created by EMTA to share the customer relations tasks with the clerk stenographer and dispatcher positions and ease the burden those tasks were placing on those positions. The fact that the latter clerk stenographer and dispatcher positions have duties other than customer relations does not defeat an identifiable community of interest between those positions and the CSRs. Rather, the differences between the positions simply reflect the division of labor at the Erie Metropolitan Transit Authority. See In the Matter of the Employes of Wissahickon School District, supra.; University of Pittsburgh, 50 PPER 84 (Final Order, 2019).

EMTA further cites to Fraternal Order of Police (FOP) v. PLRB, 735 A.2d 96 (Pa. 1999), to argue that inclusion of the CSR positions into the existing nonprofessional bargaining unit is not appropriate. As noted by the Hearing Examiner, FOP is factually distinguishable from the instant matter. First, in FOP, there were different independent Commonwealth employers. By statute, the law enforcement duties of the liquor enforcement officers (previously performed by employes of the Pennsylvania Liquor Control Board) were given to the Pennsylvania State Police, while the Liquor Control Board retained the clerical/administrative duties of the licensing analysts. Here, contrary to the issue in FOP, there is no dispute that EMTA is the employer of the CSRs.

Furthermore, the exact argument made here by EMTA in reliance on FOP was flatly rejected in Deputy Sheriffs of Berks County v. PLRB, 795 A.2d 1064 (Pa. Cmwlth. 2002). In Berks County, the union sought to represent a bargaining unit consisting only of deputy sheriffs, and the Board dismissed the petition. On appeal, the Commonwealth Court affirmed, noting that it disagreed with the union's contention that the FOP court had redefined the proper community of interest analysis, and stating that "[t]he decision in FOP does not reflect that any one factor should be given greater weight than others, and the FOP court reiterated that an identifiable community of interest does not require perfect uniformity in conditions of employment, but can exist despite differences in wages, working conditions and other factors." *Id.* at 1067.

Finally, EMTA excepts to the Hearing Examiner's Finding of Fact 8 in that it "leaves out relevant and necessary information regarding the duties of the dispatcher position." (EMTA's brief, p. 19). Contrary to EMTA's argument, the Hearing Examiner carefully detailed the duties of, and requirements necessary for, the current dispatcher positions in the POUC. It is well-settled that the Hearing Examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence, and draw inferences from those findings of fact. PLRB v. Kaufmann Department Stores, Inc., 29 A.2d 90 (Pa. 1942). The Hearing Examiner's findings of fact are supported by substantial, legally competent evidence, AFSCME District Council 85 v. Erie County, 36 PPER 5 (Final Order, 2005), and there are no compelling circumstances necessitating the Board's review of the credibility determinations and factual findings of the Hearing Examiner. See International Association of Firefighters Local 840 v. Larksville Borough, 48 PPER 82 (Final Order, 2017).

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in accreting the CSR position into the existing certified bargaining unit of nonprofessional employes represented by the ATU. As such, EMTA's exceptions shall be dismissed, and the POUC will be made 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 Erie Metropolitan Transit Authority are hereby dismissed, and the July 26, 2021 Proposed Order of Unit Clarification, 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, Albert Mezzaroba, Member, and Gary Masino, Member, this fifteenth day of February, 2022. 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.