

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: PERA-U-15-156-E
: (PERA-R-455-E)
SPRING-FORD AREA SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On June 5, 2015, the Spring-Ford Area Education Association (Association or Union) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification pursuant to the Public Employe Relations Act (PERA or Act) seeking to include the College Career Coordinators at the Spring-Ford Area School District (District or Employer) in a unit of professional employes, certified by the Board at Case No. PERA-R-455-E.

On June 25, 2015, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating February 5, 2016, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary and was held as scheduled on February 5, 2016 before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed post-hearing briefs in support of their respective positions on or about April 29, 2016.

The Examiner, on the basis of the evidence presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5-6)
3. The Association is the exclusive bargaining agent for a subdivision of the employer unit comprised of teachers, librarians, counselors, nurses, and athletic trainers, and excluding all Department Heads, and also excluding all other supervisors, first level supervisors, and confidential employes as defined in the Act. (Exhibit D-2, D-3; PERA-R-455-E, as amended at PERA-U-15-23-E)
4. The Association and District are parties to a collective bargaining agreement (CBA), which is effective from 2013 through 2017, and which governs the terms and conditions of employment for the employes in the professional unit. (Exhibit D-19)
5. The District employs two College Career Coordinators, Kathleen McNeill and Tricia Falco. McNeill was hired in August 2014, while Falco began working in or around December 2015. (N.T. 10-11, 135)
6. Falco replaced Maren Bhalla who held the position from July 2006 through September 2015. (Exhibit D-9)
7. McNeil holds a master's degree in counseling psychology, a bachelor of arts degree in religion and psychology, and is certified as an elementary and secondary counselor. Falco has a bachelor of arts degree in art and elementary education and is certified in elementary education. Bhalla has a master's of science degree in education, a bachelor of science degree in journalism with an emphasis in public relations, and is a certified school counselor. (Exhibit D-9)

8. As a condition of being hired, the District required the College Career Coordinators to have a bachelor's degree. (N.T. 19; Exhibit D-4)

9. The College Career Coordinators perform the following job duties: assist students and parents in planning and preparing students for life after high school; serve as the primary liaison between senior high school and college, career, and military representatives; administer the daily operations of the Future Planning Center; work with the guidance department to ensure students receive support necessary to making decisions about their future; compile resources for students on college majors and careers; assist students with college admission applications; assist students and parents with financial aid applications; coordinate the college and career fair; coordinate and process scholarship applications; serve as the SAT, ACT, and PSAT test center coordinator; serve as the military branch visit coordinator; facilitate and distribute the District's Future Planning Guide; coordinate college representative visits; coordinate evening college and career planning programs for students and parents; and oversee student athletes' NCAA eligibility in order to compete in college. (N.T. 17-19; Exhibit D-10)

10. The College Career Coordinators follow the in-service days at the District, attend Back-to-School Night in September, follow the parent conferences schedule in November, attend five to eight professional development conferences outside of the school on colleges, financial aid, military opportunities, and SAT/ACT testing, meet individually with students and parents throughout the day, and develop and make presentations for each grade level and their parents. (N.T. 23-25, 31; Exhibit A-2)

11. The College Career Coordinators are salaried employees, who work 40 hours per week, and who report to and are evaluated by Patrick Nugent, the Head Principal. (N.T. 11-13, 40)

12. In performing her job duties, McNeil relies on the education and training she received while obtaining her advanced degree. McNeil underwent an internship program for her master's degree, during which she sat in on individual counseling sessions with students and parents, and then took on a caseload of her own students, who she assisted throughout the college application process. McNeil also took approximately 12 credits during her master's program, which were specific to being a school counselor and had components relating to college and career counseling. (N.T. 61-67)

DISCUSSION

The Association has petitioned to accrete the College Career Coordinator position into the professional bargaining unit of employees at the District. However, the District opposes the petition on the grounds that the College Career Coordinator is not a professional employe under Section 301(7) of PERA. The District also contends that the College Career Coordinator position and the employees in the professional unit lack a community of interest under Section 604 of PERA.

Section 301(7) of PERA provides as follows:

"Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7). The test is conjunctive, and all four parts must be met in order for an employe to be deemed professional under PERA. **In the Matter of the Employees of Luzerne County Community College**, 37 PPER 47 (Final Order, 2006).

In this case, the record shows that the College Career Coordinator is a professional employe under Section 301(7) of the Act. First of all, the District

requires the College Career Coordinator to have a bachelor's degree as a condition of being hired. Kathleen McNeil, who is an incumbent in the position, holds a master's degree in counseling psychology, a bachelor of arts in religion and psychology, and is certified as an elementary and secondary counselor. She credibly testified that, in performing her job duties, she relies on the education and training she received while obtaining her advanced degree.

Indeed, McNeil underwent an internship program for her Master's degree, during which she sat in on individual counseling sessions with students and parents, and then took on a caseload of her own students, who she assisted throughout the college application process. McNeil also took approximately 12 credits during her master's program, which were specific to being a school counselor and had components relating to college and career counseling. Further, McNeil convincingly described how a large portion of her work involves directly counseling students and conducting motivational interviews, the techniques for which she learned through her counseling program. (N.T. 61). Even the District's Head Principal, Patrick Nugent, who supervises the College Career Coordinator position, readily conceded that McNeil's internship was the deciding factor in her obtaining the job and that she could not have done the internship without her college degree. (N.T. 125-128).¹

In **Abington Heights School District**, 41 PPER 52 (Proposed Order of Unit Clarification, 2010), Hearing Examiner Timothy Tietze held that, where a degree enables an employe to accumulate the prior job experience which makes that employe attractive to the public employer for a position, that position is professional under the Act. In the instant matter, the case for the College Career Coordinator being a professional employe is even stronger than the employe at issue in **Abington Heights**, *supra*. To be sure, McNeil actually gained her prior experience, which made her attractive as a candidate for the College Career Coordinator position, directly through an internship in her master's degree program. As a result, the College Career Coordinator position must be deemed a professional employe under the Act.

The District contends that the College Career Coordinator is not a professional employe under the Act because the position does not satisfy the third prong of the test; i.e. that it does not require knowledge of an advanced nature in the field of science or learning customarily acquired through specialized study in an institution of higher learning. In making this argument, the District relies on **In the Matter of the Employes of State System of Higher Education**, 28 PPER § 28046 (Final Order, 1997), wherein the Board held that the inquiry under Section 301(7) does not focus on whether the employer requires a degree of any sort, but rather whether the work to be performed requires a degree in the discipline as a requirement to perform that work. The District's reliance on **SSHE**, however, is misplaced.

As previously set forth above, the record shows that McNeil relies on the education and training she received while obtaining her advanced degree to perform her duties as a College Career Coordinator. The District points to Tricia Falco in making the argument that the skills required for the College Career Coordinator position are acquired through prior work experience in higher education admissions, recruiting, and financial aid. The District also relies on the testimony of Nugent and Elizabeth Leiss, the Director of Human Resources, who both claimed that Falco's undergraduate degree in elementary education and art, along with her teaching certification, played no role in her selection for the position. (N.T. 89, 123). However, the record shows that the District did not even post the vacancy for Falco's position until August 2015, which was well after the instant petition for unit clarification, which was filed on June 5, 2015. (Exhibits D-1, D-4).

Post-petition evidence is admissible where there has been no showing that the employer changed job duties merely to influence the Board's determination regarding the

¹ Nugent also testified that McNeil's two bachelor of arts degrees in religion and psychology, along with her master's degree in counseling and her certification as a school counselor, did not play any role in her selection for the position. (N.T. 125). However, this testimony is not accepted as credible and has been given no weight in this proceeding, especially in light of the admissions cited above.

placement of the position in question. **In the Matter of the Employees of Housing Authority of the City of Shamokin**, 42 PPER 32 (Proposed Order of Unit Clarification and Proposed Order of Amendment of Certification, 2011) *citing In the Matter of the Employees of Westmoreland County*, 40 PPER 35 (Final Order, 2009). In this case, it seems evident that the District has manipulated the job qualifications for the College Career Coordinator position to influence the Board's determination. The testimony of Nugent and Leiss cited directly above has not been accepted as credible or persuasive. Indeed, it strains credulity to think that Falco's bachelor of arts degree in elementary education and/or her teaching certification played absolutely no role in her selection for a position counseling and advising high school students regarding their postsecondary and career plans or that she could have obtained the necessary experience for the job without her academic credentials. As such, I find the District's contentions relative to Falco to be without merit and give no weight to its post-petition evidence.

In any event, the record shows that the District, in hiring Falco, did not consider the first applicant pool it received to have any strong candidates for the position. (N.T. 76-79, 96). In fact, the District had to advertise the vacancy at least one more time before it was able to hire Falco. (N.T. 76-79, 96). The Board has long held that, in certifying units under PERA, it deals with classes of employees as a whole and that individual exceptions to the general rule are irrelevant. **Commonwealth of Pennsylvania**, 24 PPER ¶ 24154 (Proposed Order of Dismissal, 1993) *citing PLRB v. AFSCME*, 342 A.2d 155 (Pa. Cmwlth. 1975). To the extent, then, that Falco represents a deviation from the class as a whole, as represented by McNeil, who was hired prior to the filing of the instant unit clarification petition, her qualifications are not dispositive.

In any case, the record shows that the District included a bachelor's degree as a requirement for the job because the District was looking for individuals who had time management skills, the ability to communicate both verbally and in writing at a higher level, and organization skills. (N.T. 81). Leiss specifically testified that people with these skills typically have advanced degrees rather than just a high school diploma. (N.T. 81). Thus, the work to be performed in the College Career Coordinator position requires the exact skills that are learned through obtaining a bachelor's degree. The District reads **SSHE** too broadly. Indeed, the fact that the District did not require a bachelor's degree in a specific, finite discipline is not fatal to the Association's petition. Moreover, to the extent the District was looking for experience in the higher education realm, the Board has held that, where an employee is able to provide services in part because of her knowledge acquired from experience and in part because of her knowledge acquired from institutions of higher learning, that employee is deemed professional under the Act. **In the Matter of the Employees of Bucks County Area Vocational-Technical School**, 22 PPER ¶ 22139 (Proposed Decision and Order², 1991).

Finally, as the Association points out, the record shows that all three individuals who have held the College Career Coordinator position have possessed an advanced degree in education or psychology. (Exhibit D-9)³. To hold that degrees in such subject areas are not related to the job duties of College Career Coordinators, who counsel and advise students and parents regarding postsecondary and career plans, would also strain credulity and be contrary to the Section 301(7) test for professional employees. On this record, I must conclude that the College Career Coordinator position is one that the drafters of PERA would contemplate as professional. See **Bucks County Area Vocational-Technical School**, *supra*.⁴

² Although this case involved a unit clarification and should have been titled a proposed order of unit clarification, it appears as a proposed decision and order by the reporter.

³ The record further shows that all of these individuals also hold certifications from the Commonwealth in teaching or counseling. (Exhibit D-9).

⁴ The District does not argue that the position fails the Section 301(7) test under any of the other three prongs. As evidenced by the job duties set forth herein, including counseling and advising students and parents regarding the postsecondary and career process, developing and making presentations for each grade level and parents, serving as experts in NCAA eligibility and guiding students through that process, (N.T. 109), and the autonomy granted them in performing their job functions, (N.T. 25, 131), it is clear that the College Career Coordinator position is predominantly intellectual and varied in character, requires consistent exercise of discretion and judgment, and is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

The District also contends that the College Career Coordinator position lacks an identifiable community of interest with the employees in the professional unit. Having found that the College Career Coordinator position is professional as defined in Section 301(7) of the Act, however, then, by operation of law the College Career Coordinator position shares an identifiable community of interest with the employees in the existing professional unit. Indeed, the same factors, such as work performed, educational, and skill requirements, which support professional status also support the conclusion that the College Career Coordinators in question share an identifiable community of interest with the existing bargaining unit of teachers, librarians, counselors, nurses, and athletic trainers. See **In the Matter of the Employees of Temple University Health System Episcopal Hospital**, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) citing **In the Matter of the Employees of Riverview Intermediate Unit**, 37 PPER 106 (Final Order, 2006) (holding that professional status of both the employees at issue and the employees in the existing bargaining unit speaks to the question of whether an identifiable community of interest exists). Accordingly, the unit will be amended to include the College Career Coordinator position.

CONCLUSION

The Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The College Career Coordinator position is professional within the meaning of Section 301(7) of PERA and shares an identifiable community of interest with the employes in the existing unit.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the unit certified at PERA-R-455-E is hereby amended to include the position of College Career Coordinator.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this sixth day of May, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner