

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-16-221-E
: (PERA-R-80-285-E)
WISSAHICKON SCHOOL DISTRICT : (PERA-R-581-E)¹

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On August 1, 2016, the Wissahickon Education Alliance (Alliance or Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to merge the professional and non-professional units, which the Alliance represents at the Wissahickon School District (District or Employer). On August 15, 2016, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating November 21, 2016, in Harrisburg, as the time and place of hearing, if necessary.

On September 16, 2016, the parties filed jointly executed stipulations with the Board in lieu of a hearing, in which they each agreed to rely on all prior transcripts, exhibits, and briefs that were submitted during the proceedings in PERA-U-14-212-E.²

The Examiner, on the basis of all of the 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 the Public Employe Relations Act (PERA or Act). (N.T. 9)

2. The Alliance is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 9)

3. In January 1971, the Board certified the Wissahickon Education Association (WEA) as exclusive representative for a professional bargaining unit comprised of classroom teachers, school nurses, guidance counselors, librarians, reading specialists, and home and school visitor; and excluding supervisors, first level supervisors, and confidential employes as defined in the Act. In February 1974, the unit was amended to include the positions of social laboratory coordinator and educational media specialist. (Joint Exhibit 1A)

4. In October 1980, the Board certified the Wissahickon Skilled Services Organization as exclusive representative for a nonprofessional bargaining unit comprised of all full-time and regular part-time secretarial/clerical employes (clerk-typists, clerks, teacher aides, secretaries); transportation department employes (bus drivers, drivers, mechanics, head mechanics, matrons); maintenance department employes (maintenance helpers, groundsmen, carpenters, painters, plumbers, mechanics); plants operations department employes (custodians, head custodians); and food service department employes (cooks, manager, assistant manager, general helpers, cashiers); and excluding management level employes, supervisors, first level supervisors, confidential employes and guards, as defined in the Act. In September 1996, the unit was amended to exclude the position of personnel secretary (benefits). (Joint Exhibit 1A)

¹ The caption appears as amended by the Hearing Examiner.

² The Alliance previously filed a Petition for Unit Clarification seeking to merge the professional and nonprofessional units on July 7, 2014, which proceeded to a hearing on February 19, 2015. On July 16, 2015, I issued an Order Directing Submission of Eligibility List, directing the District to file a list of the names and addresses of the employes eligible for inclusion in the professional unit. On September 22, 2015, an election ensued which resulted in a Nisi Order of Dismissal by the Board Representative on October 7, 2015. The Alliance filed exceptions to the Nisi Order of Dismissal on October 27, 2015, which the Board dismissed by way of an August 16, 2016 Final Order.

5. On August 20, 1990, the Board issued a Nisi Order of Amended Certification changing the name of the nonprofessional representative to the Wissahickon Educational Support Personnel Association (WESPA). (Joint Exhibit 1B)

6. On September 27, 2004, the Alliance filed a Petition for Amendment of Certification, alleging that the WEA and the WESPA voted by secret ballot on April 28, 2004 to amend their bylaws and constitutions such that the names of both units should change to the Wissahickon Education Alliance. (Joint Exhibit 1A)

7. On November 2, 2005, the Board amended the certifications of the WEA and WESPA to reflect the Alliance as the bargaining representative for both the professional and nonprofessional units. (Joint Exhibit 1B)

8. The professional and nonprofessional bargaining unit members are employees of the District. (Joint Exhibit 1A)

9. The District is located in Montgomery County and is made up of six school buildings, including four elementary schools, a middle school, and a high school, plus a central office and bus garage. With the exception of the central office and bus garage, every District building contains both professional and nonprofessional employees. (N.T. 86-87, 106; Joint Exhibit 14)

10. The professional and nonprofessional employees are both entitled to grievance arbitration when they are subject to discipline. The professional employees have a four-step contractual procedure, while the nonprofessional employees have a five-step procedure, each of which consists of the Superintendent, the School Board, and Arbitration as the final three levels. (N.T. 98, 136; Joint Exhibits 5, 12F, 13E)

11. The professional and nonprofessional employees both receive some type of tuition reimbursement for additional credits or certificates that relate to their jobs. (N.T. 110-112)

12. The professional and nonprofessional employees are both part of the same healthcare consortium. (N.T. 28-30; Union Exhibit 5)

13. The professional and nonprofessional employees both participate in the Public School Employees' Retirement System (PSERS). (N.T. 28-30)

14. The professional and nonprofessional employees are both subject to a rating and observation process. (N.T. 137)

15. The professional and nonprofessional employees both have furlough protection with respect to seniority in their respective contracts. (N.T. 136; Joint Exhibits 12F & 13E)

DISCUSSION

The Alliance has petitioned to merge the professional and nonprofessional bargaining units of employees at the District. However, the District contends that the professional and nonprofessional employees lack a community of interest under Section 604 of PERA.

Section 604 of PERA provides, in relevant part, as follows:

The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employees must have an identifiable community of interest, and (ii) the effects of over fragmentation.

(2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit.

43 P.S. § 1101.604.

In determining whether employees share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining history, and employees' desires. **West Perry School District v. PLRB**, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An 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 464.

In this case, the record shows that the District's professional employees clearly share an identifiable community of interest with the nonprofessional employees. First of all, the professional and nonprofessional employees all work for the same employer, which is the District. Likewise, the professional and nonprofessional employees work together at six of the eight District buildings and each one of the schools, including the four elementary schools, the middle school, and the high school. In addition, the professional and nonprofessional employees have very similar grievance procedures. The professional employees have a four-step contractual procedure, while the nonprofessional employees have a five-step procedure, each of which consists of the Superintendent, the School Board, and Arbitration as the final three levels. The record also shows that the professional and nonprofessional employees both receive some type of tuition reimbursement for additional credits or certificates that relate to their jobs. Further, they are both part of the same healthcare consortium and participate in PSERS. What is more, they are both subject to a rating and observation process and enjoy furlough protection with respect to seniority in their respective contracts.

The District spent much time at the hearing and in its brief pointing out the various differences between the professional and nonprofessional employees with regard to the type of work performed, educational requirements, pay scales, hours, and level of benefits. However, I find that such minor differences simply reflect the division of labor at the District and do not destroy the clearly identifiable community of interest based on the findings of fact set forth herein. 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 Pennsylvania State University v. PLRB*, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (the Board need not find an identical community of interest but merely an identifiable community of interest). As a result, I must conclude that the District's professional and nonprofessional employees share an identifiable community of interest and that an election is warranted among the professional employees consistent with Section 604(2) of the Act. Should the professional employees vote not to be included in a unit with the nonprofessional employees, then the Petition for Unit Clarification will be dismissed.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Alliance is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The District's professional and nonprofessional employees share an identifiable community of interest.

5. Should the professionals vote for inclusion with the nonprofessionals, then the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time professional and nonprofessional employes, including but not limited to classroom teachers, school nurses, guidance counselors, librarians, reading specialists, home and school visitor(s), social laboratory coordinator(s), educational media specialist(s), secretarial/clerical employes (clerk-typists, clerks, teacher aides, secretaries); transportation department employes (bus drivers, drivers, mechanics, head mechanics, matrons); maintenance department employes (maintenance helpers, groundsmen, carpenters, painters, plumbers, mechanics); plants operations department employes (custodians, head custodians); and food service department employes (cooks, manager, assistant manager, general helpers, cashiers); and excluding management level employes, supervisors, first level supervisors, confidential employes and guards, as defined in the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes eligible for inclusion in the professional unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this 9th day of November, 2016.

PENNSYLVANIA LABOR RELATION BOARD

John Pozniak, Hearing Examiner