

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PERA-D-19-39-W  
 : (PERA-R-5584-W)  
THE UNIVERSITY OF PITTSBURGH :

**PROPOSED DECISION AND ORDER**

On February 28, 2019, the University of Pittsburgh (University) filed a Petition for Decertification with the Pennsylvania Labor Relations Board (Board) alleging a good faith doubt of the majority status of the Faculty Association of the School of Medicine (Association or FASM) pursuant to the Public Employe Relations Act (PERA or Act). In its Petition, the University alleged that it has a good faith doubt that FASM exists, that it is an employe organization under § 301(3) of PERA, that it has majority status, and requested decertification of FASM without an election.

On April 16, 2019, the Secretary of the Board dismissed the petition upon his determination that the Board's rules and regulations do not provide for decertification without an election. The University filed timely exceptions to the Secretary's dismissal and the Board issued an Order Directing Remand to Secretary for Further Proceedings on June 18, 2019.

On June 19, 2019, the Secretary of the Board issued an Order and Notice of Hearing designating July 10, 2019, in Pittsburgh, as the time and place of hearing.

The hearing was held on July 10, 2019, in Pittsburgh, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The University filed its post-hearing brief on August 9, 2019. FASM filed no brief.

The Hearing Examiner, based on all matters of record, makes the following:

**FINDINGS OF FACT**

1. The University is a public employer within the meaning of PERA. (N.T. 7).

2. On March 18, 1976, the Board certified FASM as the exclusive representative of a unit of all full-time faculty, regular part-time faculty in the tenure stream, Research Associates and Departmental Chairpersons under the jurisdiction and control of the Medical School; excluding Teaching Fellows, Teaching Assistants and Graduate Student Assistants, non-Teaching Professionals, Research Assistants, and all first level supervisors, supervisors, management and confidential employes under the Act. (PERA-R-5584-W).

3. On May 8, 1984, David Feingold, President of FASM, sent a letter to the Board Hearing Examiner Elliot Newman disclaiming interest in the

bargaining unit. The Board thereafter on May 16, 1984 issued a Nisi Order of Decertification. (University Exhibit 4; PERA-D-84-288-W).

4. On June 26, 1984, Feingold and Stephen Little, Acting Secretary and Treasurer of FASM, again wrote Newman to express that FASM has reaffirmed its interest in being the exclusive bargaining representative of the bargaining unit. (University Exhibit 3).

5. On July 3, 1984, the Board issued a Nisi Order of Withdrawal which vacated its previous May 16, 1984, Nisi Order of Decertification based on Feingold and Phillip's June 26, 1984, letter which the Board interpreted as a request for withdrawal of a disclaimer of interest. (PERA-D-84-288-W).

6. William Madden has served in a variety of management roles for the University for the past twenty-six years. Madden is currently the Associate Senior Vice Chancellor for Administration of Health Sciences and is currently responsible for administering the School of Medicine. Madden has also previously served in roles with budgetary oversight of the School of Medicine. Madden is not aware of any activity by FASM on behalf of the bargaining unit including requests to bargain or the filing of any grievances. (N.T. 12-16).

7. Madden reviewed records pertaining to the interaction between the School of Medicine and employes and found no record of FASM. (N.T. 17).

8. Madden conducted interviews with previous management level employes of the University who would likely have knowledge of FASM. As a result of this investigation, Madden concluded that one previous management employe was at most aware of FASM activity in the 1980s. (N.T. 18-22).

9. Robert Hartman is the Assistant Vice Chancellor for Employee and Labor Relations. His office has records of collective bargaining agreements between the University and unions back to the 1940s. Hartman reviewed these records and concluded that FASM never bargained with the University, never elected a steward, never filed a grievance, and never filed an unfair practice charge. (N.T. 34-38).

10. The notice of the Petition for Decertification was posted in the School of Medicine. (N.T. 46-47; Union Exhibit 5).

11. The Notice of Hearing was posted in the School of Medicine. (N.T. 46-47).

12. At the hearing on July 10, 2019, no one representing FASM appeared. (N.T. 5, 55).

13. No one representing FASM has contacted the undersigned Hearing Examiner during the entire pendency of this matter.

#### **DISCUSSION**

The University in this matter asks that FASM be decertified as the exclusive representative of a bargaining unit of faculty employes of its Medical School. The record is clear in this matter that FASM has been defunct since the mid-1980s. The University presented credible witnesses that testified that FASM has not been active at the School of Medicine since

the mid-1908s. No one from FASM showed up to the hearing in this matter to contest the University's allegations. I find that FASM does not exist, FASM is not an employe representative, and FASM does not command a majority status.

The question in this matter moves to remedy. The University asks the Board to decertify FASM without an election. The University argues that no decertification election can be held because there is no employe organization and therefore no entity could or should be listed on a ballot. (University's Brief at 7). Having a decertification election would be, the University argues, a waste of Board resources as the only choice on the ballot would be "no representative." Id. The University argues that the Hearing Examiner has broad authority to order "other appropriate action" in the context of hearings before the Board pursuant to Board rule § 95.91(k)(2). Id.

I agree with the University. It is clear in this case that FASM does not exist and has not existed for a long time. It is defunct. There is no employe representative for the bargaining unit or rival petitioning to represent the bargaining unit. A decertification election in this matter therefore would be absurd and a waste of resources. The University is requesting the Board decertify FASM, or void FASM's certification, and that is in my opinion an appropriate action considering the unique circumstances of this case. As the petitioning entity, the University has properly asked for decertification, and there is no reason, on this record, to deny the University's proper request.

#### **CONCLUSIONS**

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

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. FASM is NOT an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction.
4. FASM is defunct and should be decertified by the Board as the exclusive bargaining representative of the bargaining unit.

#### **ORDER**

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

#### **HEREBY ORDERS AND DIRECTS**

that the University shall:

- (1) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(2) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this eighth day of November, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

---

Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-D-19-39-W  
: (PERA-R-5584-W)  
THE UNIVERSITY OF PITTSBURGH :

**AFFIDAVIT OF COMPLIANCE**

The University hereby certifies it has posted a copy of the Proposed Decision and Order as directed therein.

---

Signature/Date

---

Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

---

Signature of Notary Public