

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: CASE NO. PERA-U-20-140-W
: (PERA-R-11-367-W)
:
ERIE METROPOLITAN TRANSIT AUTHORITY :

PROPOSED ORDER OF UNIT CLARIFICATION

On July 7, 2020, the Amalgamated Transit Union, Local 568 (ATU or Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include Customer Service Representatives (CSRs) into an existing unit of nonprofessional employes of the Erie Metropolitan Transit Authority (EMTA, Authority or Employer) certified at PERA-R-11-357-W.

On August 5, 2020, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating November 13, 2020, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was continued by the Hearing Examiner. The hearing was ultimately held on March 29, 2021, via Microsoft TEAMS by agreement of the parties, 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.

ATU filed its post-hearing brief in support of its petition on June 21, 2021. EMTA filed its post-hearing brief on July 19, 2021.

The Hearing 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 Employer is a public employer pursuant to PERA. (N.T. 8).
2. The Union is an employe organization pursuant to PERA. (N.T. 8).
3. The Union is the exclusive representative of a bargaining-unit consisting of all full-time and regular part-time nonprofessional employes including but not limited to bus drivers, vehicle maintenance employes, dispatchers, stock controllers, maintenance supervisors, clerks, payroll clerks, and secretaries; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act. (PERA-R-11-367-W; Union Exhibit 1).
4. In 1982, the Board amended the Union's certification to include the classification of "planner". The planner was a position that prepared grant applications for federal and state funds. *Erie Metropolitan Transit Authority*, PERA-U-82-117-W (Proposed Order of Unit Clarification, 1982).
5. The parties are subject to a collective bargaining agreement (CBA) with the term of July 1, 2016 through June 30, 2020. (Union Exhibit 2).

6. Pursuant to the CBA, the Employer recognizes the Union as the duly authorized and sole collective bargaining agency for its Bus Operators, Garage, Shop and Maintenance Employees, Clerk Stenographer, Payroll Billing Clerk, Bookkeeper, Parts Manager, Building/Grounds Maintenance person, Foreman (garage), Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, Class C Dispatcher Supervisor, Director of Scheduling, Clerk Typist, and Accounts Payable clerk, DIR Phone Operators A & B. (Union Exhibit 2 page 1).

7. On or about June 3, 2019, the Employer posted a new job for "Customer Service Rep" or CSR. EMTA started employing three CSRs in approximately June 2019. The CSRs have the following general job description: Responsible for answering telephone calls, screening each call to determine clients' needs and directing the client according to Company procedure, assist the Director of Human Resources subject to sensitive internal employee documents, and perform various office and administrative duties. The CSR position requires a high school diploma and does not require any advanced education or special skills. The CSRs perform the following duties:

- Provide customer service for inbound customer calls.
- Determines requirements by working with customers and service.
- Answers inquiries by researching, locating, and providing information.
- Resolves problems and exploring answers, alternative solutions; implementing solutions; deescalating unresolved problems.
- Maintains call center database by entering information.
- Keeps equipment operational by following established procedures; reporting 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.
- As a Customer Service Representative, they may be subject to customer complaints involving Union employees and report it to the appropriate party for review.
- Assists Director of Human Resources with various employee sensitive materials on an as needed basis.

The position works 8 hour shifts, is paid hourly, and is eligible for overtime.

(N.T. 29, 113-116, 133-135; Union Exhibit 7; Employer Exhibit 1).

8. The Employer has a previously existing job position called "Class B Dispatcher." This position is in the bargaining unit. This job is similar

to Class A Dispatcher. This job's duties include responding to telephone inquiries on schedule information and responding to passenger complaints. Julie Michalak is a Class B Dispatcher. Michalak's duties include assigning work to bus drivers and answering the telephone and in-person questions from the public. Michalak takes complaints about bus drivers from the public. This job requires a high school diploma. Michalak works in the same hallway of the same building as the CSRs. The Dispatcher B is an hourly position eligible for overtime. Dispatcher Bs typically work 8-hour shifts. (N.T. 33-34, 76-87, 93-102; Union Exhibit 4).

9. The Employer has a previously existing job position called "Clerk Stenographer." This position is in the bargaining unit. This job has the general job duties of clerical, receptionist, reporting, data entry, and compilation and filing responsibilities. This job has specific duties of greeting public visitors to the EMTA, dispensing schedule information to the public and referring inquiries from the public and answering incoming telephone calls and referring them to the appropriate department or employee. The current Clerk Stenographer is Elisabeth Zetzel. Zetzel works in the Employer's Intermodal Center in an office. This job requires a high school diploma. The Clerk Stenographer is an hourly position eligible for overtime. The Clerk Stenographer works 8-hour shifts (N.T. 35-37, 48-54; Union Exhibit 5).

DISCUSSION

ATU seeks to include Consumer Service Reps (CSRs) into its unit of nonprofessional employees. There were at the time of hearing two CSRs employed by the EMTA. The bargaining unit at the time of the hearing contained approximately 140 employees. It is the burden of the petitioning party, in this case ATU, to show an identifiable community of interest. Section 604 of PERA provides, in relevant part, as follows:

The [B]oard 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 [B]oard 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.

43 P.S. § 1101.604.

When 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.

In addition, the Board has long favored a policy of certifying broad-based units. In the Matter of the Employees of University of Pittsburgh, 16 PPER ¶ 16205 (Order Directing Amendment of or Request to Withdraw Petition

for Representation, 1985) citing Athens Area School District, 10 PPER ¶ 10128 (Order and Notice of Election, 1978).

Differences among employees in a unit may reflect the division of labor at an employer and do not destroy a clearly identifiable community of interest. See In the Matter of the Employes of Wissahickon School District, 47 PPER 26 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employes 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) (holding that the Board need not find an identical community of interest but merely an 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 fragmentation." Berks County, 27 PPER ¶ 27110 (Final Order, 1996). The Board favors unit descriptions that use "including" language "so that unit clarification petitions need not be filed whenever an employe within the coverage of the unit is hired." Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992), aff'd 24 PPER ¶ 24110 (1993).

Moving to this case, it is clear that the CSRs share an identifiable community of interest with members of the bargaining unit. Most importantly, like the members of the bargaining unit, CSRs are regular nonprofessional employes of the EMTA. Additionally, CSRs perform similar work to the Clerk Stenographers and Dispatchers including answering phone calls from the public and dealing with public inquiries and complaints. CSRs and members of the bargaining unit have the similar education requirement of a high school diploma. Dispatchers and CSRs work in the same building of the Employer. CSRs and members of the bargaining unit are paid hourly, work similar 8-hour shifts, and are eligible for overtime. Thus, based on this record, it is clear the CSRs have an identifiable community of interest with members of the bargaining unit.

As I have found that the position in question shares an identifiable community of interest with the employes of the existing unit, the burden in this matter moves to the employer asserting that the positions meet a category of employe that is excluded from the unit by statute. The party arguing for the exclusion of an employe from a unit on a statutory ground bears the burden of proving a basis for the exclusion. School District of Philadelphia v. Commonwealth of Pennsylvania, PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998).

Turning to the Employer's arguments, the Employer argues:

Moreover, the Board must apply the Commonwealth Court's decision in Amalgamated Transit Union v. Pennsylvania Labor Relations Bd., 498 A.2d 485 (Pa. Commw. Ct. 1985), which affirmed an earlier Board decision that: (1) all positions that do not primarily perform blue-collar work directly related to the operation of municipal buses must be excluded from driver units, and (2) the effects of over-fragmentation cannot be considered once it is determined that a position lacks a community of interest with the preexisting unit.

(Employer's Brief at pages 1-2.) It is clear from the record that CSRs are clerical, white-collar positions and that the unit also contains blue-collar workers such as bus drivers. However, I find the cases cited by the Employer in this case to be clearly distinguishable. The bargaining unit in that case relied upon by the Employer was a specific blue-collar unit that existed prior to that passage of the Act and was grandfathered into the jurisdiction of PERA pursuant to Section 602(b) of the Act. New Castle Area Transit Authority, 13 PPER ¶ 13301 (Proposed Order of Unit Clarification, 1982). However, the bargaining unit in this matter is a mixed blue-collar and white-collar unit. The unit in this matter, as certified in 1978, does not include the word "blue-collar" and includes the job classifications of clerical, white-collar positions such as clerks, payroll clerks and secretaries. Indeed, the record in this matter shows clearly that the current bargaining unit includes the position "Clerk Stenographer" which is clearly a clerical, white-collar position. The Clerk Stenographer testified in this case and she was not a bus driver. Further undermining the Employer's reliance on Amalgamated Transit Union, 498 A.2d 485, is a subsequent Commonwealth Court decision which upheld a Board decision to include a clerical, white-collar worker in a bargaining unit of blue-collar maintenance workers. West Hanover Twp., 646 A.2d 625 (Commonwealth Court, 1994).

The Employer further argues:

By only scratching the surface of what each position entails, ATU highlights that an analysis of similarities in skills and education requirements, pay and benefits, and work conditions may support a finding of an identifiable community of interest between CSRs and dispatchers and/or the clerk stenographer. However, the sparse similarities identified by ATU are not dispositive of the community of interest analysis, even though an identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences. See [Fraternal Ord. of Police, 735 A.2d 96 (Supreme Court, 1999)]. The Supreme Court of Pennsylvania has affirmed that it is an error to give more weight to common conditions of employment than to factors that "involve the actual functions of the job" and "when the dissimilarities in job functions and other conditions of employment are both numerous and significant." Id. at 98, 100.

In Fraternal Order of Police, the Supreme Court affirmed that there was no substantial evidence on the record to support a conclusion that law enforcement officers and licensing analysts shared an identifiable community of interest when that purported interest was merely based upon findings that both groups were paid on the same salary schedule, under the same pay ranges, for the same number of hours per day, and with substantially the same benefits. Fraternal Ord. of Police, Conf. of Pennsylvania Liquor Control Bd. Lodges v. Pennsylvania Lab. Rels. Bd., 695 A.2d 926, 930 (Pa. Commw. Ct. 1997), *aff'd sub nom. Fraternal Ord. of Police*, 735 A.2d at 100. There, the differences in job

duties outweighed the facial similarities. For instance, the law enforcement officers received firearms training, were issued firearms, and were subject to physical and educational standards. On the other hand, the licensing analysts' duties included auditing and other regulatory work where they often worked from home and did not carry firearms. Fraternal Ord. of Police, 735 A.2d at 97, 100. Accordingly, there was no identifiable community of interest. Id. at 100.

(Employer's Brief at 11-12). A review of Fraternal Order of Police, 735 A.2d 96, reveals that it is distinguishable from this matter due to the idiosyncratic issue in Fraternal Order of Police where the employees in question were employed by two entirely separate agencies.

The following summarizes the factual background of Fraternal Order of Police based on the Supreme Court's published opinion: The unit in Fraternal Order of Police began in 1971 as the exclusive bargaining unit of Pennsylvania Liquor Control Board (LCB) employees. At the time, the LCB was both responsible for liquor licensing and enforcement of liquor laws. In 1987, the legislature transferred the law enforcement obligations to the Pennsylvania State Police (PSP) and at that time the LCB employees were given the choice of which agency to join. Many of the LCB employees chose to join the PSP and became enforcement officers. Many stayed with the LCB and became licensing analysts. Thus, the unit contained two sets of employees employed by two different agencies: the LCB and the PSP. In 1995, the FOP filed with the Board for a unit because to split the unit into two separate units because the FOP alleged there was no identifiable community of interest. The Board's Hearing Examiner rejected the petition holding that there was an identifiable community of interest and the Board upheld this decision. The Commonwealth Court reversed the Board and the Supreme Court upheld the Commonwealth Court. With that summary in mind, it is clear that Fraternal Order of Police is distinguishable from this matter. Indeed, as found by the Commonwealth Court, the employees in question in Fraternal Order of Police, ". . . are employed by separate Commonwealth agencies, each with its own policies and regulations." Fraternal Order of Police, 695 A.2d 926, 929 (Commonwealth Court, 1997). In this matter, the employees in question are all employed by the same regional agency, the EMTA. I find that this fact distinguishes Fraternal Order of Police from this matter.

Moreover, in Deputy Sheriffs Association of Berks County, 795 A.2d 1064 (Commonwealth Court, 2002), the Commonwealth Court later distinguishes Fraternal Order of Police and reiterates 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." Deputy Sheriffs Association of Berks County, 695 A.2d at 1067.

CONCLUSION

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

1. EMTA is a public employer within the meaning of Section 301(1) of PERA.
2. ATU is an employee organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The Customer Service Representatives share an identifiable community of interest with the other members of the bargaining unit and are properly included in the bargaining unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the bargaining unit is amended to include the position of Customer Service Representative.

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 twenty-sixth day of July, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner