

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-23-80-E
:
LACKAWANNA COUNTY :

PROPOSED ORDER OF DISMISSAL

On April 27, 2023, the Lackawanna County Court Reporters Association (Association or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board), alleging a 30-percent showing of interest among a professional employe unit of all full-time and regular part-time court reporters employed by Lackawanna County (County) and seeking an election pursuant to Section 603(c) of the Public Employe Relations Act (PERA or Act). By letter dated May 17, 2023, the Secretary of the Board declined to direct a hearing and dismissed the Petition for Representation. The Board Secretary concluded that a bargaining unit limited to a single classification of Court Reporters was inappropriately narrow under the Board's broad-based bargaining unit policy and that Court Reporters are not professional employes within the meaning of PERA.

On June 6, 2023, the Association filed timely exceptions to the Secretary's dismissal and argued that, based on the current duties and educational requirements for Court Reporters at the County, a hearing was necessary to determine whether those employes are professional within the meaning of Section 301(7) of PERA. On July 18, 2023, the Board issued an Order Directing Remand to the Secretary for Further Proceedings, opining that a hearing was necessary for a determination of whether Court Reporters in Lackawanna County are professional employes within the meaning of PERA. In doing so, the Board specifically noted that, if the Court Reporters are not found to be professional employes under PERA, the Board's broad-based bargaining unit policy would dictate that the Court Reporters be placed in a unit with all other court-related non-professional employes of the County. On August 1, 2023, the Secretary issued an Order and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on September 20, 2023, if necessary. The hearing was subsequently continued to November 20, 2023 at the Association's request and without objection by the County.

The hearing ensued on November 20, 2023, 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 separate post-hearing briefs in support of their respective positions on January 4, 2024.

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

FINDINGS OF FACT

1. The County 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)

3. Erin Walker has been employed by the County as a Court Reporter for 36 years. (N.T. 8-9)

4. Walker described how she attended the Academy of Business Careers in Woodbridge, New Jersey, which is a two-to-three-year school. She testified that her schooling began with basic theory and then progressed to accelerating speed and proficiency until she attained 225 words per minute. She explained how the schooling actually progresses to 250 words per minute, but then drops to 225 to ensure accuracy for court proceedings. (N.T. 9)

5. Walker testified that the schooling also includes education in legal and medical terminology, as well as learning how to designate the court, the plaintiff's attorney, the defense attorney, and the witnesses. She explained that the medical terminology is due to the medical malpractice cases that court reporters work. She also took English courses for grammar. (N.T. 10)

6. Walker testified that she was essentially taught how to accurately transcribe all manner of proceedings, including homicide and death penalty cases to preliminary and master's hearings for family court. (N.T. 11)

7. Walker testified that court reporting is a very skilled occupation that requires this sort of training. She described how there are many people who cannot attain the required 225 words per minute level, which leads to them leaving the profession. (N.T. 12)

8. Walker indicated that there are a number of certifications one can acquire in the field. She is an RPR, which stands for Registered Professional Reporter. She must take credits every three years to maintain that status. There are also Registered Merit Reporters, which must meet a higher standard, plus Real Time Reporters. (N.T. 12, 21-22)

9. Walker described sitting for the RPR exam, which included a written knowledge part, as well as a machine part. She explained how the machine portion of the exam tested her in three areas, literary, four voice, and jury charge.¹ She testified that she had to pass each portion at certain speeds, while maintaining 95 percent accuracy. (N.T. 12-13)

10. Walker became a Registered Professional Reporter on November 7, 2009. (N.T. 14-15; Association Exhibit 1)

11. Walker testified that her day-to-day operation, on a basic level, usually consists of sentencing proceedings, guilty pleas, and omnibus hearings. She also described reporting at trials, custody hearings, and preliminary injunction cases, along with pretrial matters, such as discovery proceedings. (N.T. 15-16)

12. Walker testified that court reporters do not really make judgment calls, but rather they make sure they can hear everything. She explained how

¹ Four voice apparently consists of dictating testimony that occurs in a proceeding with a judge, a plaintiff's attorney, a defense attorney, and a witness, which the aspiring reporters must take down. (N.T. 13)

this is essential given that they must transcribe everything with near 100 percent accuracy, verbatim. If there is an interruption, such as a cough or sneeze, or attorneys speaking over each other, the court reporters have to ask the judge to direct them not to do so because the reporters can only take down one person at a time. She testified that the courts are very good at ensuring the reporters can hear everything because the judges want an accurate record. (N.T. 16-17)

13. Walker testified that the court reporters are responsible for handling all the exhibits, which includes marking them and tracking what's been moved in and/or admitted. She described how the court reporters keep a running list, on which the judges and attorneys often rely. She collects the exhibits at the end of the proceeding and maintains them in a file for that case. (N.T. 17)

14. Walker testified that the judges review their transcripts to ensure 100 percent accuracy, which is critical for opinions and appeals. She explained how the court reporters also frequently have to ask the judges and attorneys to speak up when they are whispering during sidebar conferences. She noted that most of the appeals are taken from those sidebars. (N.T. 17-18)

15. Walker testified that there is always talk of doing away with court reporters and using electronic recording devices instead. However, she indicated that there is nothing that can report an actual person in the courtroom. She described how the technology has advanced in her field from using stacks of paper when she first started to now using an SD card, which stores everything. She noted how she can take the SD card from her machine and install it in her computer after being in court, and the computer translates the data to question-and-answer form. (N.T. 18-20)

16. Walker testified that the court reporters have deadlines for how soon they must return their transcripts. For example, in criminal proceedings, they have 30 days to send it out following a request. But she explained that the court reporters usually provide the transcript much sooner than the 30-day requirement. She described having 20 to 30 cases in a month and learning how to essentially triage the most important ones to meet those deadlines. (N.T. 23)

17. Walker described how she gets a monthly journal from the National Court Reporters Association, which includes seminars nationwide and education on the latest technology or things going on in the field. (N.T. 24)

18. On cross-examination, Walker explained how the court reporters will speak up at times during legal proceedings. For example, she testified that when a witness nods, she will ask if the non-verbal response was a yes or a no. She also indicated that she will sometimes ask the judge to have the witnesses speak louder. She characterized these instances as "judgment calls." She described how she was cautioned in school against interrupting an attorney's flow or train of thought. As a result, the court reporters try to minimize any interruptions of their own accord. (N.T. 24-25)

19. On cross-examination, Walker insisted that the court reporters make judgment calls all the time. She did not provide any other examples of such "judgment calls," aside from noise or distractions. She acknowledged that, in those cases, the judges often assist by giving directives to anyone who is in court at the time. (N.T. 25-26)

20. On cross-examination, Walker admitted that, if a judge reads a transcript and finds something that is incorrect, the judge will issue a directive to the court reporter to fix it or make a change. She did not indicate that the court reporters have any authority or independence to make the changes on their own. (N.T. 26-27)

21. On cross-examination, Walker described how some attorneys will ask for daily copies of the transcript during a trial. In these situations, the court reporters prepare a schedule, so that one reporter handles the morning session, while another does the afternoon. This allows the reporter covering the morning sessions to immediately start typing during the afternoon, while the afternoon reporter takes the machine home to do the same at night. She explained how the court reporters find a way to provide the transcript every day, even if it means staying up very late at night to finish. (N.T. 29-31)

22. Walker testified that the court reporters are supervised by the Court Administrator, Frank Castellano. She indicated that the court reporters are paid a yearly salary. (N.T. 36-38)

23. The County presented the testimony of JoAnn Decker, who has been the County's Human Resources Director for approximately two years. She was the County's Human Resources Manager prior to that for about six years. She described having daily involvement with a number of collective bargaining duties, including grievances, due process hearings, labor-management meetings, and contract negotiations when the time comes. (N.T. 40-41)

24. Decker testified that the County has seven bargaining units. She indicated that, in her time with the County, she has never dealt with the court reporters as part of a collective bargaining relationship. She explained how the prison is covered by AFSCME, while the Deputy Sheriffs have their own unit. She testified that the largest unit is a clerical one covered by SEIU, which includes IT, maintenance, roads and bridges, 911 dispatchers, and administrative assistant employees. She also noted that the public defenders and detectives each have their own units,² while the adult and juvenile probation officers are in a unit with the domestic relations officers. Finally, there is another AFSCME unit for the Office of Youth and Family Services. (N.T. 41-42, 44-48)

DISCUSSION

The Association has petitioned to represent a professional bargaining unit comprised of all full-time and regular part-time court reporter employees of the County. However, the County opposes the petition on the grounds that the petitioned-for employees do not meet the definition of professional employees under the Act. In addition, the County contends that the Association has petitioned for an inappropriate unit, as the petitioned-for unit is limited to a single classification of employees, and therefore, violates the Board's broad-based bargaining unit policy.

Section 301(7) of PERA provides as follows:

² Of course, the detectives would be in an Act 111 unit, and not one certified under PERA.

"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 Employes of Luzerne County Community College, 37 PPER 47 (Final Order, 2006).

Unfortunately for the Association, I am unable to conclude that the court reporters meet the test for a professional employe under the Act, given that the court reporters fail on at least the first three prongs of the Section 301(7) test. First of all, the record does not show that the work of the court reporters is predominantly intellectual and varied in character. While Erin Walker testified that her schooling included education in legal and medical terminology, as well as English grammar, the County persuasively notes that the record fails to show this included the intellectual learning of such legal and/or medical subjects. Rather, at most, the record shows that such schooling was for the purpose of familiarization simply to aid in the transcription of legal proceedings. On this point, Walker's testimony reflects that the court reporter duties predominantly entail maintaining sufficient speed and accuracy to ensure an adequate record for trial and appellate judges. Although this is certainly a highly skilled and critical endeavor, it nevertheless falls short of the first prong of the four-part test under the Act, as the court reporters do not apply knowledge of any academic discipline to their craft.

Similarly, the record does not show that the court reporters perform work that requires the consistent exercise of discretion and judgment. When initially asked on direct examination, Walker denied that court reporters make judgment calls. Instead, she simply indicated that court reporters make sure they can hear everything. Her testimony indicates that the judges are tasked with controlling the hearing and directing the parties not to speak over one another or cause disruptions. While the court reporters do interject at times to ensure they can hear, this is not the sort of consistent exercise of discretion and judgment contemplated by the Act. To the contrary, insofar as the court reporters interject on their own, they are simply trying to ensure that they are able to perform their job duties. In fact, Walker acknowledged that the judges are the ones who review the transcripts and direct the court reporters to fix any mistakes or make changes. The record is devoid of any evidence that the court reporters have the authority or independence to even suggest any changes to the judges, let alone to fix mistakes or make those changes on their own. In addition, the court reporters do not exercise any discretion or judgment as it relates to deadlines either. Walker did not indicate that the court reporters can extend their deadlines or make exceptions thereto, or even that they recommend doing so to the judges. At best, they simply have the autonomy to juggle their caseload so that they can prioritize which transcripts need to be done first to ensure that their deadlines are kept.

Furthermore, the Association has not demonstrated that the court reporter position 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, as required by the third prong of the test for professional employes. Although Walker described how she attended the Academy of Business Careers in Woodbridge, New Jersey, which is a two-to-three-year school, and that she progressed to accelerating speed and proficiency until she attained 225 words per minute, there is no evidence that she was awarded any sort of degree from that institution.

The Board has held that a degree from an institution of higher learning is required for an employe to be professional within the meaning of the Act, which includes associate degrees below the bachelor degree level. In the Matter of the Employes of Lower Bucks County Joint Municipal Authority, 39 PPER 95 (Proposed Order of Unit Clarification, 2008) (*citing In the Matter of the Employes of Lackawanna Career Technology Center*, 33 PPER ¶ 33201 (Final Order, 2002)). See also In the Matter of the Employes of Williamsport Area Community College, 1 PPER 57 (1971) (practical nurses and industrial nurses, whose primary function is the administration of first aid to students, faculty and administration, who were not required to be certified or possess a college degree, were not professional under the Act); In the Matter of the Employes of the City of Bethlehem, 21 PPER ¶ 21176 (Proposed Decision and Order, 1990), 22 PPER ¶ 22094 (Final Order, 1991), *aff'd*, 23 PPER ¶ 23098 (Court of Common Pleas, Northampton County, 1992) (paramedics were not professional despite the requirement that they have one year of experience and 1,000 hours of training, including clinical training, complete an internship and pass a state certification examination); and In the Matter of the Employes of Luzerne County, 29 PPER ¶ 29056 (Proposed Decision and Order, 1998), 29 PPER ¶ 29145 (Final Order, 1998) (district attorney's trial assistant, senior trial assistant, paralegal, victim witness coordinator, and ARD coordinator were properly included in the nonprofessional unit because they lacked the educational requirement for professional designation).

Perhaps even more significantly, there is also no credible evidence that the County requires such training or any sort of degree to attain employment there as a court reporter or that the actual work of court reporting requires the same. Walker testified that court reporting is a very skilled occupation that requires this sort of training. However, the record is devoid of any evidence whatsoever regarding the training and qualifications for any of the other court reporter employes in the petitioned-for unit. Without more evidence, I am unable to discern whether Walker's assertion can be corroborated, or whether she is simply an outlier who is more qualified than others for the position. Indeed, there is no evidence regarding what the County requires for applicants to meet its qualification requirements for court reporter positions. Thus, even if Walker does possess a college degree of some kind, it would still not be sufficient on this record to demonstrate that the court reporters are professional employes under the Act because there is no evidence that a degree in the field is required by the work, the employer, or the certifying organizations. Therefore, while it is clear that the court reporters perform an important and valuable service for the County Judges, it must nevertheless be concluded that they are not professional employes. Accordingly, the Petition for Representation will be dismissed, without prejudice as to the Association's ability to refile for an otherwise appropriate unit, under the Board's broad-based bargaining unit policy.³

³ Notably, even if the court reporters were somehow deemed to be professional employes, the Association's Petition for Representation would most likely still have to be dismissed. Walker testified that the court reporters are

CONCLUSIONS

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

1. The County 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 hereto.
4. The Court Reporters are not professional employes within the meaning of Section 301(7) of PERA.
5. The Association has not petitioned for an appropriate unit under the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Petition for Representation is dismissed.

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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 24th day of January, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

supervised by the Court Administrator, which suggests that they belong in a court-appointed unit. The record shows that there is already a court-appointed professional unit consisting of the adult and juvenile probation officers, as well as the domestic relations officers. As such, the court reporters would have to be included in that unit and could not petition for their own separate unit of court-appointed professional employes.