

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
 :  
 : Case No. PERA-U-09-202-W  
 : (PERA-R-1121-W)  
 :  
 ALLEGHENY INTERMEDIATE UNIT NO. 3 :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On June 5, 2009, the Alternative Education Professionals Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA) seeking to include the position of instructional assistant in the existing unit of professionals and nonprofessionals employed by the Allegheny Intermediate Unit No. 3 (Intermediate Unit). On June 18, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on October 14, 2009. On October 13, 2009, I continued the hearing indefinitely at the request of the parties pending the submission of factual stipulations in lieu thereof. On April 9, 2010, I rescheduled a hearing for September 1, 2010 because the Board had not received the factual stipulations. On August 26, 2010, I continued the hearing based on the representation that the parties would submit factual stipulations in lieu thereof. On August 30, 2010, the Board received the stipulations of fact. The parties did not file briefs.

The hearing examiner, on the basis of the stipulations of fact filed with the Board and from all other matters of record, makes the following:

**FINDINGS OF FACT**

1. The Intermediate Unit is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-1121-W).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Stipulation of Fact ¶ 2; PERA-R-1121-W).
3. The full time instructional assistant is a permanent position and a full time employe has occupied the position for two years. (Stipulation of Fact ¶ 3).
4. The qualifications for the position are similar to those for other nonprofessional positions in the existing unit. Those qualifications are as follows:
  1. One of the following qualifications:
    - a. Have completed at least two (2) years of postsecondary study (48 credits of postsecondary education)
    - b. Possess an associate degree or higher (in any subject)
    - c. Meet rigorous standard of quality as demonstrated through a state or local assessment.
  2. Demonstrates strong written and oral communication skills
  3. Highly organized with the ability to multi-task
  4. Basic knowledge of computers (Microsoft Office)
  5. Basic knowledge of office machines
  6. Experience with e-mail and voice mail.

(Stipulation of Fact ¶ 4).

5. The position reports to the classroom teacher and is evaluated by the principal or program director. Other nonprofessional positions in the bargaining unit have similar supervision and evaluation. (Stipulation of Fact ¶ 5).

6. The instructional assistant position and other nonprofessional positions in the existing unit are located at various locations operated by the Intermediate Unit's alternative education program.

7. The employe in the position of instructional assistant works closely with bargaining unit employes in the delivery of education support services to students, assisting certified professionals with instructional and non-instructional activities. (Stipulation of Fact ¶ 7).

8. The duties of the instructional assistant position are similar to those of other nonprofessional employees in the existing unit and include the following: Reinforce instruction as designed and directed by the teacher; assist students in the use of teaching devices, such as filmstrips, tape recorders, assistive technology and computers, and other equipment used for individualized instruction; maintain confidentiality of students/program; assist with supervision of students during non-instructional time; assist the teacher in the monitoring assignments; assist in monitoring the class according to the students and policies of the school; assist with supervision of students at arrival and departure times; accompany the teacher and students on field trips during the school day; attend training as required; assist the teacher with students who may need physical restraint; accompany students and assist the teacher during emergency drills; prepare instructional materials such as copies, artwork etc., as directed by the teacher; help with bulletin boards and classroom displays; maintain good housekeeping in the classroom, which includes proper storage of materials supplies and equipment; secure and operate audio-visual equipment; secure instructional materials from the classroom, media library or supply room; check and order supplies after consulting with the teacher; perform office skills such as typing, e-mailing, copying, faxing and answering telephones; and other related duties. (Stipulation of Fact ¶ 8).

## DISCUSSION

The petition seeks to include the instructional assistant as a nonprofessional position into the combined unit of professionals and nonprofessionals. The parties have not raised any specific issues regarding the petition. The only issue to be determined, therefore, is whether the position of instructional assistant shares an identifiable community of interest with the other positions in the existing unit. In determining whether employes share an identifiable community of interest, the Board considers the following: the type of work performed, educational and skill requirements, pay scales, hours and benefits, areas of work, working conditions, interchange of employes, supervision, grievance procedures, bargaining history, and employe desires. Fraternal Order of Police v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. May 26, 2000), affirming, 29 PPER ¶ 29110 (Final Order, 1998); Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours and working conditions or other factors. Id.

The record clearly shows that the instructional assistant shares an identifiable community of interest with the other nonprofessional employes in the bargaining unit of professionals and nonprofessionals. The instructional assistant must possess minimum educational and background qualifications similar to those of other nonprofessionals already in the unit. The employe in the position of instructional assistant is evaluated by the principal as are other employes in the unit. The employe in this position must demonstrate a basic knowledge of computers and office equipment, which the parties stipulated are all similar requirements for other nonprofessionals in the unit. Certainly, the instructional assistant, who works with and reports to an assigned teacher, shares the same work environment and conditions as other professional and nonprofessional employes in the unit.

Also, a review of the job duties reveals that the instructional assistant must work closely with other bargaining unit members to perform the required job functions and deliver educational support services. The instructional assistant is required to interact directly with students and school personnel. This interaction occurs when the instructional assistant supports the assigned teacher in implementing their educational designs; obtains and operates audio-visual and computer equipment for the educational benefit of students; and secures and procures supplies, materials and equipment. The employe in the position of instructional assistants is required to maintain a frequent and pervasive interaction and involvement with bargaining unit members, students and the educational environment.

Accordingly, the position of instructional assistant is properly included in the bargaining unit of professional and nonprofessional employes at the Intermediate Unit.

#### CONCLUSIONS

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

1. The Intermediate Unit is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The position of instructional assistant shares an identifiable community of interest with employes in the bargaining unit of professional and nonprofessional employes of the Intermediate Unit represented by the Union.
5. The position of instructional assistant is properly included in the bargaining unit of professional and nonprofessional employes of the Intermediate Unit.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the Certification of Representative issued on January 12, 1972 at Case No. PERA-R-1121-W is hereby amended to include the position of instructional assistant, 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 be and become absolute and final.

SIGNED, DATED AND MAILED this twelfth day of November, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, HEARING EXAMINER