COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PERA-U-10-109-W
	:	(PERA-U-82-81-W)
	:	
ELIZABETH FORWARD SCHOOL DISTRICT	:	

PROPOSED ORDER OF UNIT CLARIFICATION

On April 2, 2010, the Elizabeth Forward Educational Support Personnel Association (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification (Petition) seeking to include the position of Technology Support II (Tech II) in the nonprofessional bargaining unit at the Elizabeth Forward School District (District). On April 12, 2010, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on September 8, 2010, in Pittsburgh. During the hearing on that date, the Union and the District were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties presented oral argument at the close of the hearing in lieu of filing post-hearing briefs.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other 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). (PERA-U-82-81).

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (PERA-U-82-81).

3. The District stipulated and agreed that Tech IIs share an identifiable community of interest with the employes in the bargaining unit should it be determined that they are not supervisors. (N.T. 3).

4. The Tech IIs report to the Director of Technology, Mary Beth Wiseman, for projects assigned by her. They report to the Network Manager for support issues. (N.T. 9).

5. The District currently employs one Tech I for the 2010-2011 school year. Her name is Denise Napoli. Tech IIs have more skills and education than the Tech I. Ms. Napoli reports to Tech IIs when she cannot resolve a computer related problem, and she reports to Director Wiseman when the Tech IIs are unable to resolve the problem. (N.T. 9-10, 18-19, 39-40, 56, 71-72, 78, 97).[1]

6. Director Wiseman completes all performance evaluations on Ms. Napoli. Tech IIs provide solicited information to Director Wiseman about Ms. Napoli for her performance evaluation. Tech IIs are not present during the evaluation interview and they do not participate in the evaluation. Director Wiseman's performance evaluations have been used to give Ms. Napoli raises in the past. (N.T. 9, 19, 41, 63, 98, 107-108).

7. Tech IIs have not evaluated Tech Is. Tech IIs have not at any time issued discipline to any other employes; they have not effectively recommended any other employe

[1] The Tech I job description provided by the District shows that Ms. Napoli should report to Director Wiseman, then the Building Principal and then the Superintendent. (District Exhibit 4). However, Director Wiseman credibly testified that her Department does not follow that chain of command. (N.T. 37).

for hire. The Tech IIs do not have a role in receiving or processing grievances. (N.T. 41, 58, 63, 111).[2]

8. Tech IIs were present during the hiring interviews of the Network Manager and a recent Tech II. The scores assigned to each candidate by the Tech IIs were averaged with Director Wiseman's scores. Director Wiseman effectively recommends technology candidates for hire at the District. (N.T. 20, 47).

9. The Help Desk is an offsite contractor that receives notices regarding computer related issues from District employes, determines the nature of the problem and generates a problem ticket. Tech IIs and the Network Manager retrieve Help Desk tickets and assign work to Ms. Napoli within her skill level. (N.T. 11, 14, 52-54, 59).

10. The majority of a Tech I's work time is spent prioritizing and responding to Help Desk tickets assigned to her by Tech IIs and following basic procedures for resolving individual reported computer problems. Ms. Napoli works alone when resolving computer problems. (N.T. 57, 94-95, 102).

11. The daily responsibilities of Tech IIs have two parts: project management for projects assigned by Director Wiseman and resolving Help Desk tickets. If a complaint received via the Help Desk can be resolved by Ms. Napoli, a Tech II usually assigns the task to her. (N.T. 71-72).

12. Ms. Napoli's leave is approved by Director Wiseman. Ms. Napoli has never submitted a leave request to a Tech II. (N.T. 98, 107).

DISCUSSION

The issue, as framed by the District, is whether the Tech IIs are supervisors as defined in PERA. Section 301(6) of PERA provides as follows:

> 6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. §1101.301(6). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5)(emphasis added); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 675, 795 A.2d 984 (2000). The Board will not find an employe to be a supervisor if the employe only exercises supervisory authority sporadically. Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1989). For an employe to be a supervisor, he or she must actually exercise authority set forth in Section 301(6) of the Act and such authority must carry with it the power to reward or sanction employes. Belle Vernon Area School District, 21 PPER ¶ 21165 (Final Order, 1990).

In this case, the District did not meet its burden of proving that the position of Tech II is supervisory within the meaning of Section 301(6) of PERA. Although the record shows that the Tech IIs assign Help Desk tickets to Ms. Napoli for resolution and that Ms. Napoli reports back to the Tech IIs if she is unable to resolve a computer related problem assigned to her, the Board has held that "[t]he hallmark of supervisory status

[2] I have excluded evidence presented by the District that Jeffrey Stolkovich, a Tech II, was involved in evaluating Ms. Napoli because it was a post-petition evaluation and he had not done such an evaluation in the past five years that he was a Tech II at the District. (N.T. 35, 39-41, 66, 73-74). His involvement in that evaluation was thereby suspect and the Board's policy is to exclude post-petition evidence in such circumstances. In this regard, the Board has stated that the policy "is designed to deter an employer from assigning job duties to an employe after a petition is filed simply to justify the employe's inclusion or exclusion from the unit." In the Matter of the Employes of Westmoreland County, 40 PPER 35 (Final Order, 2009), aff'd, Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010).

under [PERA] is the ability to effect reward or sanction." Findlay Township Water Authority, 21 PPER ¶ 21130 at 324 (Final Order, 1990). This record is clear that Tech IIs have not disciplined, rewarded or sanctioned any other District employes. Although Tech IIs provide solicited information to Director Wiseman about Ms. Napoli, the Tech IIs are not directly involved in evaluating Ms. Napoli. The record does not indicate the extent to which, if at all, Director Wiseman relies on such information. Also, Director Wiseman's evaluation is the basis for rewarding Ms. Napoli with raises (not the solicited information from the Tech IIs).

Moreover, although Tech IIs have participated in the hiring process of another Tech II and the Network Manager, the Tech IIs do not supervise other Tech IIs or the Network Manager; Tech IIs have not effectively recommended the hiring of a Tech I. Accordingly, their involvement in the hiring process of those positions is not, as a matter of law, relevant in determining their supervisory status with respect to the Tech I. Additionally, the Board has held that "[l]imited actions in the hiring process alone may not be sufficient to establish supervisory status, because the Board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." Penns Manor Educ. Ass'n v. Penns Manor Area Sch. Dist., 30 PPER 30198 at 430 (Final Order, 1999). The Tech IIs involvement in the hiring process is too limited and unrelated to the positions the District claims are supervised by the Tech IIs to have any impact on the determination here.

The Board has also held that "to 'effectively recommend' pursuant to Section 301(6), the recommendation must be given controlling weight and cannot be subject to independent investigation by higher authority." Id. The record does not identify what, if any, weight was given to the Tech IIs' involvement in hiring let alone whether their input was given controlling weight. Indeed, on this record, Director Wiseman is the only person with authority to effectively recommend the hiring of personnel in the Technology Department at the District.

Additionally, the Board considers "such factors as frequency, duration and importance of the various supervisory duties performed." Penns Manor, 30 PPER at 430 (quoting State System of Higher Educ. V. PLRB, 737 A.2d 313 at 316 (Pa. Cmwlth. 1999). The time Tech IIs spend on hiring, promoting, disciplining and evaluating the Tech I does not exist, and the time spent assigning tasks to the Tech I as well as performing other administrative duties is insignificant in this case. In fact, Ms. Napoli even prioritizes her own case load.

Accordingly, the position of Technology Support II shares an identifiable community of interest with the employes in the nonprofessional bargaining unit at the District. The position of Tech II is not supervisory and shall be included in the nonprofessional unit.

CONCLUSIONS

The hearing 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 Association is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The position of Technology Support II, shares an identifiable community of interest with the other employes in the nonprofessional bargaining unit at the District.

5. The position of Technology Support II is not supervisory within the meaning of Section 301(6) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the bargaining unit of nonprofessional employes of Elizabeth Forward School District, certified by the Board at Case Number PERA-U-82-81-W, is hereby amended to include the position of Technology Support II.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order 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 at Harrisburg, Pennsylvania, this twenty-fourth day of November, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner