

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-10-312-E
 : (PERA-R-98-572-E)
TEMPLE UNIVERSITY HEALTH SYSTEM :
EPISCOPAL HOSPITAL¹ :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On September 2, 2010, the Health Professionals and Allied Employees, AFT/AFL-CIO (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employee Relations Act (PERA).² The petition alleges that thirty percent or more of the unrepresented professional employees employed by Temple University Health System, Episcopal Hospital (Temple) wish to be exclusively represented by the Union for the purpose of collective bargaining and accreted into an existing professional bargaining unit of nurses at Episcopal Hospital (Episcopal). On September 14, 2010, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on Friday, November 19, 2010, in Harrisburg. On September 30, 2010, I rescheduled the hearing to November 1, 2010. At the hearing on that day, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On November 8, 2010, the notes of testimony from the hearing were filed with the Board. Both parties timely filed post-hearing briefs which the Board received on December 2, 2010.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Temple is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8).
3. The parties stipulated and agreed that the employes whom the Union is seeking to represent and accrete into the existing professional bargaining unit of nurses are professionals within the meaning of Section 301(6) of PERA. (N.T. 8).
4. In 2000, Temple purchased Episcopal Hospital and converted it into a behavioral health facility. (N.T. 41).
5. Medicare regulations require an interdisciplinary treatment team with at least one physician and one nurse and enough other professionals to help with patient care. At Episcopal, each unit has interdisciplinary treatment teams with a psychiatrist, as the team leader, a nurse, a behavioral health therapist and a social worker. Everyone on the treatment team is providing the care to the same patient. (N.T. 16-17, 43-45, 51-52, 71; Employer Exhibit 2).
6. The nursing staff, social workers and therapists all work in the behavioral health department at Episcopal and provide behavioral health care to patients. Social work and nursing are separate departments within behavioral health. (N.T. 102, 105-106).
7. Temple could not fully care for patients at Episcopal without social workers and behavioral therapists on the treatment team. (N.T. 52).

¹ The caption appears as amended by the hearing examiner.

² The petition was filed as a representation matter because of Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981), which held that when a party seeks to accrete a number of unrepresented employes that amounts to fifteen percent or more of the existing bargaining unit, an election must be held among the employes sought to be included.

8. Social workers are required to hold a master's degree in social work from an accredited program. (N.T. 14, 81).

9. The skills of a social worker include patient care, assessing patients, interviewing patients and providing psychiatric care. They spend most of their work day in their offices; they do not punch a time clock and do not work weekends. They receive all of the Temple holidays. (N.T. 14).

10. Social workers participate in treatment team meetings in the mornings. These meetings last approximately thirty minutes during which time all patient care professionals on the team discuss the current conditions with the patient. (N.T. 14-15).

11. Social workers meet with patients and develop a discharge plan. Social workers discuss patients' conditions and needs with insurance companies and prepare documentation for the hospital to receive payment from the insurance companies. They also meet with patients' families. (N.T. 14-16, 78, 92; Employer Exhibit 2).

12. The discharge plan is based on family history, insurance coverage and past medical and psychiatric history. (N.T. 78-80).

13. Social workers receive the same core benefits as other Temple employes with minor differences in co-pays and vacation time that have resulted from collective bargaining. (N.T. 18-19, 175).

14. Social workers discuss patients' medications with the nurses to better understand the patients. They interact with nurses on treatment team on a daily basis. (N.T. 19, 88).

15. Social workers add notes to patients' charts concerning matters such as behavior, planned treatment and observations. Nurses in the existing bargaining unit also add notes to patients' charts. Patient information is entered into a database for access by other professionals who have a need to access the information. (N.T. 20-21, 99, 112, 130, 139).

16. Social workers and behavioral therapists do not report to nurse management; they report to the director of social workers. (N.T. 22, 33, 67-68, 86).

17. Behavioral health therapists provide clinical care and participate in treatment team meetings. Therapists are required to have a bachelor's degree with training in mental health, though some have master's degrees. Different therapists have training in different specialties such as recreational therapy, art therapy and drug addiction. (N.T. 27-28, 62).

18. Therapists implement the therapeutic program for patients. They conduct group and individual sessions with patients. They also interact with insurance companies to gain approval for hospital stays. (N.T. 44).

19. Therapists communicate with nurses about events or issues regarding patients and patient care, especially if a patient has a negative reaction to medication. (N.T. 28).

20. Therapists complete patient assessments and progress notes for each patient. Therapists perform their assessments within 72 hours of patient admission. Progress notes provide a description of the patient, an assessment and an action plan. They write discharge summaries for patients begin discharged. (N.T. 28-29, 58).

21. In performing patient assessments, therapists ask patients about their personalities, the problems they are experiencing and the manner in which they are attempting to cope with their problems. Therapists look for triggers and warning signs. They examine patients' interests and inquire as to whether they become aggressive. Therapists ascertain the patients' goals for treatment. Therapists then conduct a second assessment to identify any additional issues or symptoms. The therapist determines the patient's drug of choice and triggers for using drugs. (N.T. 31).

22. Nurses are hourly employees. They receive time and a half pay for overtime. They take call. They receive shift differentials. Therapists and social workers are salaried. Many of the core benefits are the same for all professional employees of Temple. Some of the nurses' terms and conditions of employment are different than those of the social workers and therapist because nurses operate under a negotiated collective bargaining agreement whereas the social workers and therapists do not. Nurses' pay and raises are based on negotiated contract terms. Nurses, social workers and therapists all start with three weeks' vacation. Nurses receive four weeks' vacation after eight years; social workers and therapists receive four weeks after five years. Temple's pension contribution for nurses is capped at 8.5%. It is capped at 10% for social workers and therapists. Nurses receive six holidays per year, whereas the social workers and therapists receive eight. Both groups receive the same bereavement leave and jury duty benefits. (N.T. 19, 32, 158-168, 175).

23. Nurses provide general patient care ensuring that patients receive medications and attend nursing groups. They perform medical admission assessments and respond to patient medical issues. They effectuate physicians' orders regarding patient medications, diet and exercise. They also supervise mental health workers. Medicare requires nursing care to be provided around the clock. The admission information obtained by nurses is used by social workers to develop a discharge plan for the patient. (N.T. 43, 48, 96, 109-110, 111-113, 116; Employer Exhibit 1, ¶ B149, Employer Exhibit 6).

24. Nurses have discretion to administer drugs (designated "PRN") on an as-needed basis. Nurses are authorized to order the use of restraints on patients whose behavior is escalating to intolerable levels. (N.T. 113-114).

25. Nurses conduct group sessions with patients to discuss symptoms and medication management. (N.T. 72-74).

26. Nurses at Episcopal are required to work three holidays per year. (N.T. 116).

27. The Behavioral Health Therapist Coordinator position is identical in every way to the Behavioral Health Therapist position except that the Coordinator performs additional administrative duties. The Coordinator ensures the proper scheduling of therapists in the absence of the supervisor and oversees the ordering of supplies. (N.T. 26-27).

28. During treatment team, the psychiatric nurse shares information obtained from the nurse admission assessment interview with the therapist and social worker. The purpose of treatment team is to share information with other employees from different disciplines and discuss the information. (N.T. 131, 138-139, 147).

29. When patients have become uncontrolled during treatment team meetings, therapists have notified nurses who have the discretion to administer sedatives or other medications that are prescribed for that purpose. When a therapist has an issue with a patient at other times, the therapist contacts a mental health worker and then the nurse manager, both of whom are on the nursing staff. (N.T. 32, 73).

30. Therapists do not punch a clock or check in or out. They do not need coverage to leave the unit. Therapists work one weekend day every third week. They must work two holidays of their choosing per year. (N.T. 33-34, 66).

31. In assessing a patient's family's response to the patient's illness, a therapist, a social worker or a registered nurse could speak to the family. (N.T. 132).

DISCUSSION

The petition for representation seeks to include employees in the positions of social worker, behavioral therapist and behavioral therapist coordinator, into an existing professional unit of nurses.³ Temple stipulated and agreed that the petitioned for employees are professional. Notwithstanding this stipulation, Temple maintains that

³ I will refer to the three unrepresented positions collectively as the non-nursing professionals.

the non-nursing professionals do not share an identifiable community of interest with the nurses. Section 604 of PERA provides in relevant part:

"The Board 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 board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of overfragmentization."

43 P.S. § 1101.604. When determining whether employes 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, areas of work, working conditions, interchange of employes, supervision, grievance procedures, bargaining history, and employes' 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 and working conditions or other factors. Id. The same factors (such as work performed, educational and skill requirements) that support professional status also support the conclusion that the employes in this proposed professional bargaining unit share an identifiable community of interest with the existing professional employes in the unit. In the Matter of the Employes of Riverview Intermediate Unit, 37 PPER 106 (Final Order, 2006).

In its post-hearing brief, the Union argues that "the purpose and practice of the Multidisciplinary Treatment Team establishes the basis of [a] community of interest with regard to work performed, and significant similarities in working conditions, pay and, benefits create a commonality of bargaining objectives." (Union Post-hearing Brief at 2).

The substantial evidence of record supports a finding of a community of interest between the nurses and the non-nursing professionals. All of the employes are professionals and thereby share comparable educational backgrounds and professional skills. Both the nurses and non-nurses utilize discretion and independent judgment when treating different patients and formulating treatment plans. Moreover, the Vice President of Human Resources testified that all professional employes at Temple enjoy the same core benefits with minor differences in co-pays, eligibility and employer contributions, depending on their bargaining unit. Differences in holiday and weekend requirements as well as the fact that nurses are paid hourly with overtime eligibility are not sufficient differences to destroy a community of interest between the non-nurses and nurses. West Perry School District, supra. Indeed, nurses focus on treating the patients medically and controlling their diet and exercise while the social workers and behavioral therapists (including the coordinator) focus on behavioral, psychological and addiction problems. However, these differences merely reflect the necessary division of labor in a patient care facility where the specific demands of each professional contribute to the sophisticated service of providing mental health care.

Despite these differences, both nurses and non-nurses interact to share information and exchange ideas during treatment team meetings to best develop treatments for the patients and fulfill the common goal of patient care. When patients become uncontrolled thereby threatening their own safety or the safety of others, therapists contact and rely on nurses to administer sedatives. Therapists and nurses both perform patient assessments and social workers develop discharge plans based on insurance availability and the needs of the patient. Nurses, social workers and therapists all perform family response assessments.

The Board has held that an identifiable community of interest exists between a group of coordinators and nurses where the work of both groups of employes receive similar wages and benefits and spend considerable time discussing patient care. Pennsylvania State University (Hershey Medical Center), 23 PPER ¶ 23209 (Final Order, 1992). The record here shows that, despite identifiable differences in wages and benefits, the professional employes at Episcopal receive the same core benefits and comparable wages. The Board's decisions in Hershey, supra, and Riverview I.U., supra, support the Union's position here that, where employes with similar skills, education, core benefits and comparable wages are involved in the common goal of providing patient

care in the same facility, either directly or indirectly, those employees share an identifiable community of interest, even though their specific job duties vary. In affirming the Board, the Court of Common Pleas of Centre County recognized that “[i]t is not the Board’s obligation to certify the appropriate unit which may be advanced by a party to a Board proceeding but, rather, to find an appropriate unit.” Pennsylvania State University v. PLRB (PSU), 24 PPER ¶ 24117 at 309 (Court of Common Pleas of Centre County, 1993) (emphasis added). The PSU Court emphasized that “the Board need not find an identical community of interest but merely an identifiable community of interest,” id., and concluded that a community of interest with nurses exists where the employees are directly or indirectly involved in providing patient care. Id.

In West Perry, supra, the Commonwealth Court affirmed the Board’s inclusion of maintenance and custodian workers for a school district in the same unit as cafeteria workers, even though the workers performed different job duties in different areas of the school district, because they all generally performed blue collar work on school district property and received similar pay and benefits. Similarly, the nursing and non-nursing employees here are both providing professional patient care to the same patients in the same hospital building. They are required to have comparable amounts of professional education and training (although the substantive requirements differ) and receive the same core benefits.

The Episcopal nurses and the non-nursing professionals form an integrated group of codependent employees engaged in a symbiotic working relationship. All professionals at Episcopal consult with each other and rely on each others’ professional skills, training and education to care for patients in their respective disciplines. Each nurse and non-nursing professional is one component part of a complex machine. Each performs his or her discrete duties and assignments in a manner that contributes to the common goal of psychiatric care and rehabilitation.

Accordingly, the positions of social worker, behavioral therapist and behavioral therapist coordinator share an identifiable community of interest with the professional nursing employees in the existing unit.

CONCLUSIONS

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

1. Temple 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.
4. The social workers, behavioral therapists and behavioral therapist coordinators employed at Episcopal Hospital share an identifiable community of interest with the registered nurses at Episcopal Hospital.
5. The social workers, behavioral therapists and behavioral therapist coordinators employed at Episcopal Hospital are professional within the meaning of Section 301(7) of PERA.
6. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time professional employees including but not limited to registered nurses, social workers, behavioral therapists and behavioral therapist coordinators; and excluding nonprofessional employees, management level employees, first-level supervisors, confidential employees and guards as defined in the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that Temple University Health System, Episcopal Hospital must, within ten days of the date hereof, submit to the Board and the other parties an alphabetized list of the names and addresses of the non-nursing professionals (social workers, behavioral therapists and behavioral therapist coordinators) who share an identifiable community of interest with the registered nurses and are eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-second day of December, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner