

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-09-428-E
: (PERA-R-198-C)
: :
CORNWALL-LEBANON SCHOOL DISTRICT :

PROPOSED ORDER OF DISMISSAL

On October 26, 2009, the Cornwall-Lebanon Education Association (Association or Petitioner) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking clarification of a unit of professional employes of the Cornwall-Lebanon School District (District or Respondent) to include the position of instructional technology specialist in the unit.

On November 3, 2009, the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a telephone pre-hearing conference to resolve the matters in dispute and December 17, 2009, in Harrisburg, was scheduled as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to February 23, 2010 and again to April 13, 2010. The hearing was held on the rescheduled date, at which time, all parties in interest were afforded a full opportunity to present evidence and cross-examine witnesses.

The 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 Cornwall-Lebanon School District is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (PERA), 43 P.S. § 1101.301(1). (N.T. 7)
2. The Cornwall-Lebanon Education Association is an employe organization within the meaning of Section 301(3) of PERA, 43 P.S. 1101.301(3) (N.T. 7)
3. The Association is the exclusive certified bargaining representative of the "employes in a subdivision of the employer unit comprised of classroom teachers, guidance counselors, school nurses, dental hygienists, home and school visitors, and department chairmen excluding supervisors, first level supervisors, and confidential employes as defined in the Act No. 195." (Certification of Representative, PERA-R-198-C, Board Exhibit 1)
4. In August 2004, the District hired Nicole Schomp as an instructional technology specialist. (N.T. 9, 10)
5. Schomp earned a bachelor's degree in elementary education from Alvernia College in 1989. She earned a master's degree in teaching and curriculum from Penn State University in 2003. She also earned an instructional technology specialist certification from Philadelphia University in 2004. (N.T. 9)
6. On January 21, 2009, the District established a job description for the position of instructional technology specialist. (N.T. 11, 42, Association Exhibit 1)
7. The job description for the position does not require that the person must possess a college degree. Rather, the description includes the following language,

QUALIFICATIONS

1. College diploma, university degree, or technical school training certification in the field of technology, and/or 3 years equivalent work experience.
2. Instructional Technology Specialist Certificate
3. Experience in Technology
4. Experience in the Educational Field

(N.T. 11, 42, Association Exhibit 1)

8. The District's job description also states the General Scope of Responsibilities as: "The instructional technology specialist provides instruction, training and resources to administrators and professional staff in order to facilitate the integration of technology in the classroom which will enhance an educator's lesson and content material. The individual is also responsible for coordinating, organizing and facilitating the effective utilization of instructional technology within the school setting." (N.T. 11, 42, Association Exhibit 1)

9. Schomp is responsible for assisting teachers, administrators and nonprofessional employes with technology matters. She answers questions from teachers about how to use technology in their classroom, for example, wireless laptops. (N.T. 12, 47, District Exhibits 1, 2 and 3)

DISCUSSION

The Association's petition for unit clarification seeks to include the position of instructional technology specialist in the professional unit of teachers, guidance counselors, school nurses, dental hygienists, home and school visitors, and department chairmen.

The District seeks dismissal of the petition on two grounds: that the position is not professional as defined in Section 301(7) of PERA and that the position lacks an identifiable community of interest with the other professional positions in the unit as required by Section 604 (1) of PERA.

Section 301(7) of PERA defines "professional employe" as:

[A]ny 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).

This definition establishes a four-part conjunctive test for professional status. City of Bethlehem, 22 PPER ¶ 22094 (Final Order, 1991), aff'd 23 PPER ¶ 23098 (Ct. of Common Pleas, Northampton County, 1992); Chester County, 31 PPER ¶ 31155 (Order Directing Submission of Eligibility List, 2000). The petitioner must prove each of the four parts of the statute in order to prove the position professional.

The District contends that the Association has not proven the third part of the statutory test for professional employes, namely that the 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." Specifically,

the District questions whether Schomp's knowledge required for the position came from "an institution of higher learning" as that term has been defined by Board cases.

In In the Matter of the Employees of State System of Higher Education (SSHE), 28 PPER ¶ 28046 (Final Order, 1997), the Board stated that "[i]t is significant to note in this regard that Section 301(7) does not focus on whether the employer requires a degree of any sort but rather whether the work to be performed requires a degree in the discipline as a requirement to perform that work." Id. at 99. In SSHE, the Board further concluded that where an employe holds a degree that is unrelated to his job duties, that degree is insufficient to support a finding of professional status. Id.

Schomp hold two degrees, neither of which is in informational technology. However, holding a degree in an unrelated field does not make a professional employe for a particular position. State College Area School District, 39 PPER 129 (Final Order, 2008). Schomp also holds a 2004 certification from Philadelphia University as an informational technology specialist. It is not clear if Schomp acquired this certification before being hired, but for the sake of this discussion, I am assuming that she acquired the certification before she was hired.

In Lackawanna County Area Vocational-Technical School, 33 PPER ¶ 33170 (Proposed Decision and Order, 2002), aff'd 33 PPER ¶ 33201 (Final Order, 2002), the union petitioned to include the information technology coordinator as a professional employe. The Board found the employe was not a professional employe because his associate's degree in engineering technology was not necessary to perform his work. The Board went on to state that a bachelor's degree in the discipline is not required to meet the third part of test and that an associate's degree could satisfy the test, citing City of Bethlehem, supra.

I found no cases where the Board has recognized a certification was equivalent to an associate's degree for finding an employe was professional. Given this lack of precedent, the discussion could conclude; by definition, a certification is not a degree. However, there are other reasons: the record lacks details of the course of study leading to Schomp's certification and the length of time needed to obtain the certification. For these reasons, and because the Board has not recognized that an education level below an associate's degree satisfies the "higher education" language of the test, the Association's petition to include this position must be dismissed.

There is no doubt that Schomp has valuable and specialized skills for assisting other employes with technology matters. However, Section 301(7) of PERA requires that the position meet all four parts of the test for a professional employe. Because the position does not meet the third part of the test, it is not professional. The Association's petition must be dismissed.

In light of the discussion finding that the position is not professional, there is no need to discuss or decide the District's second grounds for dismissal, that the position lacks an identifiable community of interest with the other professional positions in the unit as required by Section 604 (1) of PERA.

CONCLUSIONS

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

1. That Cornwall-Lebanon School District is a public employer within the meaning of Section 301(1) of the Act.
2. That Cornwall-Lebanon Education Association is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the position of instructional technology specialist is not a professional employe within the meaning of Section 301(7) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the petition for unit clarification 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 (20) days of the date hereof, this order shall be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this third day of February, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner