

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 :
 : Case No. PERA-U-00-112-W
 : (PERA-R-4444-W)
NORTH HILLS SCHOOL DISTRICT :

FINAL ORDER

On February 28, 2001, North Hills School District (Employer) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a Proposed Order of Unit Clarification issued by a Board hearing examiner on February 12, 2001. On March 8, 2001, the Board Secretary issued a letter requesting that the Employer serve its exceptions upon the North Hills Educational Support Personnel Association, ESPA/PSEA/NEA (Association) as required by Section 95.98(a)(4) of the Board's Rules and Regulations. After service upon the Association was perfected, the Association filed its response to the Employer's exceptions on March 26, 2001.

In the Proposed Order of Unit Clarification, the hearing examiner concluded that the position of Delinquent Tax Collector (currently held by Jeana Lichina) shares a community of interest with the employees in the Association's existing bargaining unit of secretaries, clerks and key punch operators, and directed that the Delinquent Tax Collector position be included in the Association's bargaining unit. In doing so, the hearing examiner rejected the Employer's argument that the petition for unit clarification should have been dismissed because there exist other positions within the School District that share an identifiable community of interest with the Association's existing bargaining unit and the inclusion of all of those positions would violate the Board's requirement that a representation election must be conducted among the employees if the additional positions would increase the existing unit by more than fifteen (15) percent. Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981).

In its exceptions, the Employer contends that the Hearing Examiner erred in (1) making various findings of fact, in that those findings of fact are either incomplete, misleading or inaccurate; (2) failing to dismiss the petition for unit clarification in violation of the Board's Westmoreland Intermediate Unit rule; and (3) concluding that the position of Delinquent Tax Officer shares an identifiable community of interest with employees in the existing bargaining unit.

In support of its Westmoreland Intermediate Unit argument, the Employer first excepts to Finding of Fact number 6, in which the hearing examiner recites the fact that the Association had previously filed a petition for unit clarification which sought to include various other positions, including the Delinquent Tax Collector, into the existing bargaining unit. That petition was dismissed by the Board Secretary without a hearing because it would have increased the unit by over fifty percent and violated the fifteen-percent rule enunciated in Westmoreland Intermediate Unit. The Association filed no exceptions to the Board Secretary's dismissal of that petition. In its exceptions, the Employer contends that the hearing examiner erred in not specifically finding that, in that prior

petition, the Association alleged that additional positions shared an identifiable community of interest with the employees in the existing bargaining unit. The Employer also contends that there is an absence of any finding concerning the intent of the Association in filing the instant petition for unit clarification or why the Association no longer asserts that an identifiable community of interest exists between those previous positions and the existing bargaining unit employees.

The Employer's exception in this regard and its assertion that the current petition must be dismissed as violating Westmoreland Intermediate Unit find no support in the case law. Initially, it should be noted that the filing of a petition for unit clarification presupposes an argument that those positions share an identifiable community of interest with the existing unit. However, that petition for unit clarification was dismissed without a hearing and the Association is making no present representational claim to the other positions included in that petition. As evidenced by the Employer's argument in this case that the Delinquent Tax Collector position does not share an identifiable community of interest with the other employees in the bargaining unit, there can be a myriad of reasons why the Association determined to drop its claim that the remaining positions would be appropriately included in the existing unit. In any event, the existence of other positions which may share an identifiable community of interest with the existing bargaining unit does not make the existing bargaining unit inappropriate or require the dismissal of the instant petition for unit clarification seeking to include only the Delinquent Tax Collector. The issue of the other employees' inclusion in the bargaining unit is simply not presented in this case. As noted by the Hearing Examiner, the Association is making no present claim to represent those employees and, because the previous litigation did not even progress to the hearing stage, the Association is not estopped from advocating its position in this case. Ligon v. Middletown Area School District, 584 A.2d 376 (1990), citing Associated Hospital Service of Philadelphia v. Pustilnik, 497 Pa. 221, 439 A.2d 1149 (1981).

The Board's rules (34 Pa. Code § 95.23(a)) provide that a unit clarification petition may be filed where "no question of representation exists." In Westmoreland Intermediate Unit the Board determined, based on prior case authority, that no question of representation was deemed to exist where small numbers of employees (less than 10 to 15%) were sought to be accreted to an existing unit. The Board determined that absent a vehicle to bring small numbers of unorganized employees into an existing unit (with whom the unorganized employees shared a community of interest), the rights granted under the Public Employee Relations Act (PERA) were being denied. Here the inclusion of one employee increases the unit by less than three percent. The Board's policy stated in Westmoreland Intermediate Unit was intended to address precisely this circumstance where the addition of one employee to this unit presents no question of representation. For its part, the Employer would deny this position rights granted under the PERA because the Association unsuccessfully sought on another occasion to include more employees than authorized under Westmoreland Intermediate Unit. It is the Board's duty to protect and facilitate PERA rights rather than deny those rights based on speculation about the motive or intent of the Association regarding an issue not presented by the facts of this case.

The Employer further contends that various findings of fact made by the hearing examiner are inaccurate, incomplete or misleading. After a thorough review of the record and the factual findings of the hearing

examiner, the Board is satisfied that there exists substantial evidence to support the findings of fact and that those findings accurately reflect the existing job duties of the Delinquent Tax Collector and the similarities between the Delinquent Tax Collector and the employees in the Association's bargaining unit which amply support the conclusion that an identifiable community of interest exists. With respect to the Employer's contention that the hearing examiner failed to sufficiently elaborate upon the differences between the Delinquent Tax Collector and the employees in the Association's bargaining unit, Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975) states as follows regarding such a claim:

"When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence which are relevant to a decision."

464 Pa. at 287, 346 A.2d at 561. In the Proposed Order of Unit Clarification, the hearing examiner discussed the Employer's allegations that certain differences existed between the Delinquent Tax Collector and the employees in the Association's bargaining unit, but appropriately relied upon the numerous similarities that are reflected in the hearing examiner's findings of fact. The hearing examiner simply concluded, after due consideration, that the differences cited by the Employer failed to destroy the identifiable community of interest which otherwise exists.

The hearing examiner found an identifiable community of interest based upon the fact that the Delinquent Tax Collector performs duties that are the same or similar to duties performed by bargaining unit members, was required to meet educational and experience requirements that fall between requirements for positions included in the bargaining unit, interacts with other unit members on a daily basis, and works the same number of hours per week, works the same shift, receives the same number of sick days, has the same health insurance carrier and health care benefits, receives the same number of weeks of vacation, works in the same office and has the same supervisor as other members of the bargaining unit. The Hearing Examiner also noted that when the Delinquent Tax Collector was on maternity leave for several months, a bargaining unit member performed her duties. The differences cited by the Employer are less extensive than the differences cited in other cases as justifying a conclusion that an identifiable community of interest does not exist. See West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, ___ Pa. ___, ___ A.2d ___ (2000)(cafeteria employees and custodial/maintenance included in the same unit despite significant differences in job duties and other terms and conditions of employment); Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), petition for allowance of appeal denied, 525 Pa. 652, 581 A.2d 577 (1990)(blue-collar laborers and white-collar secretaries share an identifiable community of interest).

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Employer and make the Proposed Order of Unit Clarification final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by North Hills School District are hereby dismissed, and the Proposed Order of Unit Clarification is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this nineteenth day of June, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.