

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #430 :
 :
 v. : Case Nos. PERA-C-99-383-E
 : PERA-C-99-560-E
 MANCHESTER AMBULANCE CLUB :
 :

FINAL ORDER

On November 7, 2000, the Manchester Ambulance Club (Club) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated October 18, 2000. In the PDO, the Hearing Examiner concluded that the Club committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by failing to bargain with the Teamsters, Local No. 430 (Union), which is the Board certified bargaining representative of its employes.¹ After a thorough review of the exceptions and the record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

27. The Second Lieutenant has no involvement in the decision to investigate misconduct or impose discipline on a member other than being in a position, as any other member, to report misconduct. The Club's by-laws provide that power and authority to administer disciplinary action shall be vested in the Board of Directors of the Club. Complaints concerning a member's misconduct are to be filed with the Captain, and if he is unavailable, with the First Lieutenant. The by-laws also provide that "[i]n the event that the Captain is the subject of the alleged misconduct, then the President or First Lieutenant shall instead be contacted." (Employer Exhibit 1, Article III, Section V). This section of the by-laws further provides that "[t]he Captain (or President/First Lieutenant as applicable) shall document the receipt of the complaint, then shall interview the person originating the complaint to ascertain facts directly." Id. Thereafter, the Board of Directors are briefed on the results obtained from the interviews and complaint. The Board of Directors then decides to dismiss the complaint, conduct further investigations or to conclude that a violation has occurred. If a violation is deemed to have occurred, the Board of Directors alone is authorized to determine an appropriate course of action in disciplining the Club member. (Employer Exhibit 1).

28. The Club's by-laws provide that, "[i]n the event that both the Captain and the First Lieutenant are absent, the Second Lieutenant shall act in their place." (Employer Exhibit 1, Article IV, Section V, Part VII).

29. The Club's by-laws establish the following procedure for Designating a Crew Chief:

¹ The Union did not file any response to the Club's exceptions and supporting brief.

Crew Chief—The entire crew is responsible for patient care, however, the Crew Chief is ultimately responsible for the patient's well being. The member with the highest level of training, i.e., Health Professional, Paramedic, or EMT, is designated as Crew Chief. When two or more members on the call have equal training, the senior ranking member will be Crew Chief unless one member is a line officer, in which case the line officer will be so designated. Should two members on a call have equal training, seniority and neither is a line officer, then the responsibility shall be alternated. Crew Chiefs must be eighteen (18) years of age.

(Employer Exhibit 1, Article IV, Section V, Part X).

30. The by-laws define line officers to include the positions of Captain and the lieutenants. (Employer Exhibit 1, Article IV, Section IV, Part II).

DISCUSSION PROCEDURAL BACKGROUND

On September 23, 1999, the Union filed a charge of unfair practices against the Club, under Section 1201(a)(1), (3) and (5) of PERA, alleging that the Club unlawfully discriminated against one of its employees for her union activity, refused to bargain with the Union and subcontracted out bargaining unit work to volunteers without bargaining. This initial charge was docketed by the Board at case number PERA-C-99-383-E. By letter dated December 8, 1999, the Board Secretary informed the parties that no complaint would be issued on the charge because the documents included with the charge indicated that the original two-employee bargaining unit, as certified by the Board, contained only one employee at the time, due to the voluntary resignation of one of the bargaining unit employees, and PERA does not support a one-person bargaining unit.

On December 27, 1999, the Union filed a second charge of unfair practices, under Section 1201(a)(1) and (5) of PERA, alleging that, throughout the month of December 1999, the Union repeatedly requested bargaining and the Club deliberately ignored those requests. This second charge was docketed by the Board at case number PERA-C-99-560-E.

On December 28, 1999, the Union filed timely exceptions and a supporting brief to the Secretary's letter declining to issue a complaint on the initial charge. On January 24, 2000 the Secretary issued a complaint and notice of hearing for the second charge. On February 8, 2000, the Club filed an Answer to this complaint, under docket number PERA-C-99-560-E, denying the charges, with New Matter asserting the affirmative defense that the Club has no duty to bargain with a one-person bargaining unit and that any other employees are supervisors or managers who are excluded from the bargaining unit. On January 26, 2000, the Union filed a letter with the Board requesting that the Board take notice that the Union filed a second charge which alleged a continuing bargaining violation. This letter also alleged that the Club had hired a second employee into the bargaining unit subsequent to the filing of the initial charge.

Upon consideration of the Union's exceptions, on February 15, 2000, the Board entered an Order Directing Remand to Secretary for Further

Proceedings on the initial charge. On February 17, 2000, the Secretary issued a complaint and notice of hearing on the initial charge, which identified the same time, place and manner for the hearing on the initial charge as was designated for the second charge. On March 2, 2000, the Club filed an Answer to this complaint, under docket number PERA-C-99-383-E, denying the charges, with New Matter asserting an affirmative defense that the Club has no duty to bargain with a one-person bargaining unit and that any other employees are supervisors or managers who are excluded from the bargaining unit. On March 21, 2000, one hearing was held for the charges. At the hearing, the Union withdrew its discrimination claim under Section 1201(a)(3) at case number PERA-C-99-383-E. The remaining issues were those that pertained to the alleged bargaining violations of both charges, which ensued from the same set of facts and circumstances.

FACTUAL BACKGROUND²

On July 8, 1999, the Board certified the Union as the exclusive bargaining representative for a bargaining unit of employees of the Club. The bargaining unit contained only two employees. The Board defined the bargaining unit as "[a]ll full-time and regular part-time nonprofessional employees including but not limited to emergency medical technicians; and excluding management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act." (PERA-R-99-207-E). Chris Klobetanz is a paid emergency medical technician (EMT) who has been employed by the Club since December 27, 1997. Ms. Klobetanz's duties include responding to emergency ambulance calls, providing patient care, maintaining the ambulance and the Club's building, preparing trip sheets that log the nature and events of a call response, entering data into a computer and preparing invoices and medical billing. Since Ms. Klobetanz was hired in December 1997, the Club has employed two EMTs, except for a period of approximately three months between July 1999 and October 1999, when a vacancy was created by the voluntary resignation of Ms. Klobetanz's only other co-worker, Christopher Walker.

On August 13, 1999, approximately one month after the Board's certification, the Club and the Union participated in a bargaining session and the Union presented its proposals for a collective bargaining agreement. By letter dated September 3, 1999, the Club's attorney informed the Union representative that the Club had no obligation to bargain because the bargaining unit had been reduced to one employee as a result of the voluntary resignation of one of the two EMTs in the unit. On October 21, 1999, the Club hired Kara Baney as a paid EMT. Prior to her starting on the payroll, Ms. Baney had been a volunteer EMT for the Club since 1985. Since that time, Ms. Baney had held the position of President, Captain, First Lieutenant, and Second Lieutenant. Ms. Baney was a Second Lieutenant as a volunteer and continued in that capacity when her status changed from volunteer to paid employee.

Ms. Baney works, on average, forty-eight hours per week and receives no overtime pay. On the days that she is scheduled to work, she works from 5:00 a.m. to 5:00 p.m. Ms. Klobetanz's regular schedule is Monday, Tuesday, Thursday and Friday, from 7:00 a.m. to 5:00 p.m. Ms. Baney and

² The Club does not challenge any of the findings of fact affirmatively made by the Hearing Examiner. Therefore, any objection to those findings is waived, and all such findings are conclusive. Delaware County Solid Waste Authority v. PLRB, 557 A.2d 795 (Pa. Cmwlth. 1989).

Ms. Klobetanz work together three days per week and, in general, perform similar duties. However, Ms. Baney performs more of the data entry and building maintenance and Klobetanz performs more of the medical billing. Although Ms. Baney is a second lieutenant, Ms. Klobetanz has never been told or otherwise instructed that Ms. Baney was her supervisor, or that she was to take or follow directives from Ms. Baney. Ms. Klobetanz has never received job assignments, orders or discipline from Baney. Also, Ms. Klobetanz has been training Ms. Baney in the preparation of the medical billing. Ms. Baney has not been directly involved in the Club's hiring decisions.

Ms. Baney has not had any involvement in scheduling or determining the hours for any employes of the Club. The Club's Board of Directors and its membership establish scheduling and hours. Also, Ms. Baney has never recommended discipline for any employes in her capacity as a paid EMT. Under the by-laws for the Club, the Second Lieutenant has no involvement in the decision to investigate misconduct or impose discipline on a member other than being in a position, as any other member, to report misconduct. Article IV, Section V, Part VII of the Club's by-laws provides that, "[i]n the event that both the Captain and the First Lieutenant are absent, the Second Lieutenant shall act in their place." (F.F. 28). Part X of the Club's by-laws provides, in pertinent part, that "[w]hen two or more members on the call have equal training, the senior ranking member will be Crew Chief unless one member is a line officer, in which case the line officer will be so designated." (F.F. 29). The by-laws define line officers to include the positions of Captain and the lieutenants.

ANALYSIS

In its exceptions, the Club raises five objections asserting that the Hearing Examiner erred in failing to conclude that Ms. Baney was a statutory supervisor who was excluded from the bargaining unit and that the bargaining unit, therefore, contained only one employe. Accordingly, asserts the Club, it has no duty to bargain with the Union, and the Hearing Examiner erred by concluding that the Club engaged in unfair practices for refusing to bargain. For the reasons that follow, the Board affirms the Hearing Examiner and the PDO.

I

The primary issue before this Board is whether Ms. Baney is a statutory supervisor such that she must be excluded from the bargaining unit, as a matter of law, thereby relieving the Club of its statutory duty to bargain with the Union. Based on the Club's unilateral belief that Ms. Baney is a supervisor, the Club has admittedly refused to bargain with the Union. In Community College of Beaver County v. PLRB, 24 PPER ¶ 24110 (Beaver County Court of Common Pleas, 1992), the Board and the Beaver County Court of Common Pleas resolved this very issue. The court in Beaver County affirmed this Board and held that the burden is on the party seeking exclusion from the unit to file a petition for unit clarification because only the Board has the power to determine the appropriateness of a bargaining unit. Id. Accordingly, the Beaver County Court stated that "when a party fails to take advantage of that procedure, . . . and instead determines on its own that a position is not part of the bargaining unit, it should not be able to avoid a finding that it has committed an unfair practice." Id. at 295. Moreover, the Beaver County court adopted the language of the Board's Final Order in that case stating that "where an

employer creates a position that is clearly within the broad description of the bargaining unit as certified by the Board, the employer commits an unfair labor practice by unilaterally declaring the position excluded from the bargaining unit.'" Id. at 295 (quoting Community College of Beaver County Clerical-Secretarial-Technical-Janitorial-Maintenance School Service Personnel Association, ESPA/PSEA/NEA v. Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992)).³

The Club maintained two paid EMTs until Christopher Walker resigned in July of 1999. After leaving Mr. Walker's position vacant for three months, the Club decided that it could not maintain adequate service without hiring another full-time, paid individual, and thereby returning to a payroll status of two paid employees. The Club admittedly refused the Union's requests to bargain. Then, in defending the unfair practice charge against it, the Club requested the Hearing Examiner and this Board to evaluate Ms. Baney's duties and responsibilities as a paid EMT to determine whether she is a statutory supervisor excluded from the unit. However, pursuant to Beaver County, supra, and countless other decisions by the courts and this Board,⁴ the Club cannot unilaterally determine whether Ms. Baney is a statutory supervisor excluded from the unit and then refuse to bargain. As the party seeking to exclude Ms. Baney from the bargaining unit, the Club had the burden of filing a petition for unit clarification before refusing to bargain. Having admittedly relied on its unilateral decision that Ms. Baney was not in the bargaining unit to justify its refusal to bargain, well-established authority requires this Board to find an unfair practice.

The Board is statutorily responsible and authorized to determine whether certain employees are included within a bargaining unit where, as here, a collective bargaining agreement does not yet exist. An employer, as an interested party, cannot usurp the authority and the role of the Board in defining the bargaining unit. The Club cannot unilaterally decide who is in the bargaining unit and thereby control when it has a duty to bargain. PERA does not contemplate empowering employers to decide for themselves when they have a duty to bargain with the elected and certified bargaining representative of their employees, unless a specifically named position is removed from bargaining by operation of law. PSSU Local 668

³ Although neither party addressed the case law that most appropriately disposes of the issues raised before the Board in the Club's exceptions, the Board is not raising or addressing any issues that the Club has not already raised and preserved for review. The Board is an independent adjudicative body with the statutory duty to protect and enforce certain statutory rights and obligations through its rulings. The Board, therefore, has a duty to apply the correct legal principles to issues already raised to achieve the most appropriate resolution of those issues. Accordingly, to ensure the most correct, predictable and consistent resolution of the issues raised, in Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469, 471 n.2 (Pa. Cmwlth. 1988), the Commonwealth Court opined that this Board has the authority to resolve issues on separate and individual grounds.

⁴ PSSU, Local 668 of SEIU, AFL-CIO v. PLRB, 740 A.2d 270 (Pa. Cmwlth. 1999); Ermel v. Commonwealth, Department of Transp., 470 A.2d 1061 (Pa. Cmwlth. 1984); Haverford Township Educ. Support Personnel Ass'n, PSEA/NEA v. Haverford Township Sch. Dist., 30 PPER ¶ 30201 (Final Order, 1999); Penns Manor Educ. Ass'n, PSEA/NEA v. Penns Manor Area Sch. Dist., 30 PPER ¶ 30198 (Final Order, 1999).

SEIU, AFL-CIO v. Commonwealth, Department of Labor and Industry, 29 PPER ¶ 29196 (Final Order, 1998), aff'd, 740 A.2d 270 (Pa. Cmwlth. 1999).⁵

II

The Club asserts that the Hearing Examiner erred as a matter of law by concluding that Second Lieutenant, Kara Baney, is not a supervisor, as that term is defined under Section 301(6) of PERA, because Ms. Baney did not actually impose discipline on a paid employe of the Club or otherwise actually exercise any of the supervisory functions enumerated in Section 301(6). The Club specifically argues that, while Ms. Baney does possess the authority to perform the functions under Section 301(6), that Section does not require an employe to actually exercise his or her authority to be deemed a supervisor; it only requires that an employe have the authority to act. In this regard, the Club maintains that the uncontradicted evidence, consisting of the testimony of Captain Michael DalPezzo and the Club's by-laws, reveals that Ms. Baney had the express authority to be in charge and make decisions regarding patient care, which is the focus of the Club's service, and otherwise supervise other employes in the absence of the Captain and the First Lieutenant.

As correctly noted by the Hearing Examiner in this case, in Matter of the Employes of City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988), the Board articulated the applicable standard for analyzing whether an employe is a statutory supervisor under Section 301(6) of PERA. In Bethlehem, the Board held that an employe is considered a supervisor under PERA if the record supports findings that satisfy all three of the following elements: (1) the employe has the authority to perform the functions listed in Section 301(6) of the Act; (2) the employe actually exercises that authority; and (3) the employe uses independent judgment when so acting. Id. To determine whether an employe is a supervisor instead of merely a lead worker, Section 301(6) requires that an employe possess both the right to order the work force and the ability to reward or sanction employes. Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977); See also, Borough of Ridley Park, 27 PPER ¶ 27227 (Final Order, 1996).

The Club concedes that, at a minimum, Section 301(6) of PERA requires the first prong of Bethlehem, i.e., the employe must at least possess the authority to perform the functions listed in Section 301(6). (Club's brief in support of exceptions at 6). A thorough review of the record, however, reveals that Ms. Baney's position as a paid EMT not only fails to meet the contested second prong of the Bethlehem test, as found by the examiner, but

⁵ By way of illustration, the courts of this Commonwealth and this Board have held, for similar reasons, that an employer cannot avoid its duty under PERA to submit an unresolved grievance to binding arbitration by unilaterally deciding that a grievance is not arbitrable. An arbitrator has the authority and the objectivity to determine arbitrability. PLRB v. Bald Eagle Area Sch. Dist., 499 Pa. 62, 451 A.2d 671 (1982); West Shore Sch. Dist. v. West Shore Educ. Ass'n, 519 A.2d 552 (Pa. Cmwlth. 1986), appeal denied, 517 Pa. 612, 536 A.2d 1335 (1987); Allegheny Intermediate Unit 3 Educ. Ass'n v. Allegheny Intermediate Unit 3, 31 PPER ¶ 31128 (Final Order, 2000).

also fails to meet the first prong.⁶ Accordingly, contrary to the Club's assertion, the record reveals that Ms. Baney did not possess the authority to exercise the functions listed in Section 301(6) of PERA.

Although the language of Section 604(5) of PERA coupled with the disjunctive in Section 301(6) contemplates that an employee need not possess the authority to exercise all the functions included in Section 301(6), the record demonstrates that Ms. Baney lacked the authority to exercise any of those functions. At the hearing in this matter, the Club focused much attention on Ms. Baney's ability to impose discipline. Although the Club argues that the Board should not require that Ms. Baney actually have disciplined paid employees given the short time period of her employment and that of the paid EMTs at the Club in general, the record conversely shows that Ms. Baney was not even authorized to administer or recommend discipline other than the expectation that she report misconduct, which is expected of all the Club's members.⁷

Article III, Section V of the Club's by-laws establishes the system by which a member will be disciplined. Nowhere, in the seven subparts of this section or anywhere else in the by-laws, is there any authority or role for the Second Lieutenant with respect to receiving and documenting complaints; or investigating, pursuing or imposing disciplinary action. Subpart I expressly provides that "[t]he Board of Directors shall be responsible for administering disciplinary action when warranted." (Employer Exhibit 1 at 3). Subpart II provides that "[a]ny member who receives a complaint against another member which reflects adversely upon this Organization shall contact the Captain, Setting forth all alleged facts and circumstances." Also "[i]n the event that the Captain is the subject of the alleged misconduct, then the President or First Lieutenant shall instead be contacted." Id. This subpart further provides that "[t]he Captain (or President/First Lieutenant as applicable) shall document the receipt of the complaint, then shall interview the person originating the complaint to ascertain factors directly." Id. Thereafter, the Board of Directors are briefed on the results obtained from the interviews and complaint. The Board of Directors then decides to dismiss the complaint, conduct further investigations or to conclude that a violation has occurred. If a violation is deemed to have occurred, the Board of Directors is authorized to determine an appropriate course of action in disciplining the Club member. Accordingly, the Club did not vest Ms. Baney with any authority to administer or effectively recommend any discipline on any of the workers.

Similarly, an examination of the Club's by-laws and the record as a whole reveals that Ms. Baney did not possess any authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, or reward other employees or responsibly direct them or adjust their grievances, as required by Section 301(6) of PERA. Therefore, although the Club objects to a rule of law requiring that Ms. Baney have actually exercised her supervisory authority, the record reflects that she did not even possess the authority in the first instance, which both Section 301(6) and this Board's

⁶ This Board has the authority to resolve issues on alternative, separate and independent grounds. Fraternal Order of Police, supra.

⁷ The Board has consistently held that, to effectively recommend discipline within the meaning of Section 301(6), the recommendation must be given controlling weight and cannot be subject to independent investigation by higher authority. Penns Manor, supra.

decision in Bethlehem, supra, require and which the Club acknowledges as a requirement.

The Club contends that Ms. Baney is a statutory supervisor, based on the testimony of Captain DalPezzo, who testified that he considers Ms. Baney to be a supervisor and that, when he and the First Lieutenant are absent from the Club, Ms. Baney, as Second Lieutenant, is in charge. The Club and Captain DalPezzo, however, specifically direct the Board's attention to the Club's by-laws as the authority for their position that Ms. Baney is a supervisor. A review of the by-laws, particularly the provisions upon which the Club and Captain DalPezzo relied, reveals that Ms. Baney was not a supervisor. Article IV, Section V, Part VI of the by-laws provides that "[t]he duties of the Captain shall be to supervise all personnel and equipment." Therefore, the Captain is the supervisor under the by-laws. The Club relies on parts VII and X to support its argument that Ms. Baney is also a supervisor. Part VII provides, in relevant part, that "[i]n the event that both the Captain and the First Lieutenant are absent, the Second Lieutenant shall act in their place." Accordingly, Ms. Baney, as Second Lieutenant, already has the authority, under the by-laws, to fill in for the Captain or the First Lieutenant. Under the Club's own argument, Ms. Baney can only be a temporary supervisor at best. However, it is well settled and "[t]he Board has long held that duties performed on a fill-in basis will not support a statutory exclusion from the bargaining unit." Utility Workers Union of America, Local No. 574 v. Harrison Township Water Authority, 29 PPER ¶ 29086 (Final Order, 1998); In the Matter of the Employes of Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991). Therefore, pursuant to the Club's own argument that Ms. Baney, as Second Lieutenant, is, at best, only a fill-in for the Captain or First Lieutenant, the Club cannot seek her exclusion from the bargaining unit as a statutory supervisor, as a matter of law.

Additionally, the Club and the testimony of Captain DalPezzo both refer to Article IV, Section V, Part X of the By-laws to support the Club's argument that Ms. Baney had the authority to exercise supervisory functions such that she should be excluded from the bargaining unit as a statutory supervisor. This part states the following:

Crew Chief—The entire crew is responsible for patient care, however, the Crew Chief is ultimately responsible for the patient's well being. The member with the highest level of training, i.e., Health Professional, Paramedic, or EMT, is designated as Crew Chief. When two or more members on the call have equal training, the senior ranking member will be Crew Chief unless one member is a line officer, in which case the line officer will be so designated. Should two members on a call have equal training, seniority and neither is a line officer, then the responsibility shall be alternated. Crew Chiefs must be eighteen (18) years of age.

(Employer Exhibit 1, Article IV, Section V, Part X). As the plain meaning of the above-quoted language reveals, many different Club members can or will be a Crew Chief at one time or another. This provision states that there is no designated Crew Chief per se, rather the Crew Chief is the person with either more training, experience, seniority or rank. Therefore, an assessment of who the Crew Chief is for a particular call or a particular shift constantly changes and depends on the individuals who are working together,

rather than the assignment of particular supervisory functions, recognized under PERA, to a particular employe. Moreover, depending upon the situation, either a volunteer or a paid employe could be a Crew Chief.

To the extent that the Club and Captain DalPezzo rely on this provision to support the conclusion that Ms. Baney is a statutory supervisor, they would also have to support a conclusion that every ranking, senior or more experienced member on a call, or a given shift, would be a statutory supervisor at one time or another. Under the Club's theory, the Club would be an organization akin to an army of generals without any soldiers. Moreover, the status of Crew Chief is also temporary under the plain meaning of this provision. As previously stated herein, even if the Crew Chief performs certain supervisory functions, the extremely temporary nature of the acting Crew Chief on a given call disqualifies that designation from being deemed a statutory supervisor, as a matter of law. Harrison Township, supra; Philadelphia Housing Authority, supra. Accordingly, the record reveals that, at one time or another, any member of the club could eventually rotate into the position of Crew Chief and that the Club has not vested, in the Crew Chief, the authority to function in a manner consistent with Section 301(6).

The minimal responsibilities of the crew chief are, at best, in the nature of lead worker, which this Board has long held do not satisfy the requisite criteria to qualify for the status of statutory supervisor warranting exclusion from the unit. In the Matter of Employes of McKeesport Area Sch. Dist., 14 PPER ¶ 14165 (Final Order, 1983). The Board therefore concludes that Ms. Baney is not a statutory supervisor because the record demonstrates that the Club has not clothed her with the requisite authority to perform any of the functions expressed in Section 301(6) in a manner that is not on a temporary or fill-in basis.

III

The Club's failure to meet its burden of proving the first prong of the conjunctive standard articulated in the Bethlehem analysis, i.e., that Ms. Baney possessed the requisite authority or ability to perform the statutory functions of a supervisor, normally ends the inquiry into Ms. Baney's status as a statutory supervisor, as a matter of law. However, the Board will further analyze Ms. Baney's alleged supervisory status to address the Club's exceptions and to provide an alternate basis for the Board's decision.

The Club argues that the fact that Ms. Baney had not actually administered or recommended discipline is not significant. The Club asserts that the fact that Ms. Baney has not yet had the occasion to utilize her authority to discipline or reward other workers, in the past three years that the Club has employed paid workers, does not diminish the fact that she possesses such authority. After a thorough review of the record and the law, the Board concludes that the Hearing Examiner correctly analyzed this matter, and the Board adopts that analysis herein. Suffice it to say that the employer's well-recognized remedy, where an employer is placed in a new position alleged to be statutorily excluded from a bargaining unit, is the filing of a unit clarification petition when the employe has actually

performed the duties requiring the exclusion. Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), appeal den., 525 Pa. 652, 581 A.2d 577 (1990).

The Board's decision does not affect the Club's ability to seek the exclusion of Ms. Baney from the bargaining unit in the future. Once Ms. Baney actually exercises some of the functions included in Section 301(6), the Club may file a petition for unit clarification at any time and show that Ms. Baney is, in fact, actually exercising those functions and that she does, in fact, possess the requisite supervisory authority.

IV

The Club also makes a rather abstruse argument that the Examiner erred by relying on the conclusion that Ms. Baney was not a statutory supervisor, but he did not make a finding of fact or conclusion of law to that effect. We have reviewed the record and find that the Hearing Examiner's findings of fact are both supported by substantial evidence and are an accurate reflection of Baney's duties. Also, the Examiner correctly applied the legal standard to these facts in reaching this result.

The Club also argues that the Hearing Examiner erred by concluding that Ms. Baney was not a supervisor on the basis that her recommendation of discipline of a subordinate volunteer member was not legally relevant to the issue of her supervisory status. Section 301(6) expressly requires that the functions of a supervisor are with respect to "other employes." The term "employee" excludes volunteers. Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB, 383 A.2d 546 (Pa. Cmwlth. 1978). Moreover, the Commonwealth Court has held that the exercise of supervisory authority over persons who are not employes within the meaning of PERA does not support exclusion from the bargaining unit. Columbia/Snyder, supra; City of Williamsport, 24 PPER ¶ 24048 (Order Directing Submission of Eligibility List, 1993). Therefore, exercising supervisory authority over volunteers does not constitute supervising employes as required by Section 301(6). Additionally, the term "other employes" as used in the statute contemplates that the supervisor must also be a paid employe, and not a volunteer. Accordingly, Ms. Baney was not actually exercising any supervisory functions, within the meaning of Section 301(6) of PERA while she was a volunteer or while the workers she disciplined or directed were volunteers.

The Club argues that the Hearing Examiner erred by relying on Columbia/Snyder, supra. The Club correctly maintains that the Columbia/Snyder case held that a supervisor who exercises supervisory authority over paid student interns is not a statutory supervisor to be excluded from the bargaining unit. The Club contends that Columbia/Snyder is distinguishable because the determinative factor in that case was that the employes did not intend to remain employed with the employer. Contrary to the Club's argument, however, the determinative factor in Columbia/Snyder, was that the "employes did not go to work . . . in the true bargained-for exchange normally associated with the employer-employee relationship." Columbia/Snyder, 383 A.2d at 551. The Club simply cannot argue that an employe who

supervises volunteers qualifies for exclusion under PERA because, as previously demonstrated, the courts of this Commonwealth and this Board have consistently held that the exercise of supervisory authority must be over employes and not volunteers. Columbia/Snyder, supra; Williamsport, supra.

The Club next contends that the Hearing Examiner erred by concluding that the bargaining unit at issue was comprised of more than one employe under PERA. The Club maintains that the Hearing Examiner erred in concluding that Ms. Baney was not a supervisor. Therefore, argues the Club, Ms. Baney is excluded from the bargaining unit because she is a supervisor leaving only one person, Chris Klobetanz, in the bargaining unit. Consequently, the Club has no duty to bargain with a one-person bargaining unit. The issues presented by this argument were adequately addressed and resolved above. As demonstrated by this argument, the Club's position regarding the one-person bargaining unit is contingent upon concluding that Ms. Baney qualifies as a statutory supervisor who is excluded from the bargaining unit. However, the Board has already concluded, for several reasons, that Ms. Baney does not qualify as a supervisor. Ms. Baney has merely filled a vacancy created by the resignation of Christopher Walker. Accordingly, Ms. Baney filled a position that is within the broad description of the bargaining unit as certified by the Board. Therefore, the Hearing Examiner properly concluded that the bargaining unit consists of two employes.

Moreover, the Board again emphasizes that the determination of whether Ms. Baney is a statutory supervisor is not necessary to support the conclusion that the Club committed a bargaining violation for the reasons stated in Part I herein, i.e., an employer may not refuse to bargain based on its unilateral determination of whether an employe is a supervisor; only the Board has that authority.

In its fifth and final exception, the Club contends that the Hearing Examiner erred "in concluding that the club engaged in an unfair labor practice when it refused to bargain collectively with an Act 195 bargaining unit comprised of only one person" (Exceptions at 2). However, the issues raised by this exception also have been adequately addressed and resolved above.

The Board, therefore, concludes that, after a thorough review of all matters of record, the Club committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA, by refusing to bargain with the Union as mandated by Section 701 of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order, as modified herein, is hereby 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 sixteenth day of January, 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #430 :
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AFFIDAVIT OF COMPLIANCE

The Manchester Ambulance Club hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has made a written offer to the Teamsters Local Union No. 430 to bargain over a collective bargaining agreement; that it has posted a true and correct copy of the Proposed Decision and Order as directed therein; that it has posted a true and correct copy of the Final Order in the same manner as directed for the Proposed Decision and Order; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid

Signature of Notary Public