

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-97-685-E
:
PENNSYLVANIA STATE UNIVERSITY :

FINAL ORDER

On July 2, 1998, the Berks/Lehigh College Faculty Association (Association) filed timely exceptions to a proposed order of dismissal issued on June 29, 1998, by a hearing examiner of the Pennsylvania Labor Relations Board (Board) in which the hearing examiner dismissed the petition for representation filed by the Association seeking to represent a group of faculty members employed by Pennsylvania State University (University) at the Berks/Lehigh Valley College, one of eighteen colleges at 23 geographic locations that comprise Pennsylvania State University. On July 21, 1998, the University filed its response to the Association's exceptions.

In the proposed order of dismissal the hearing examiner referenced his previous decision and order issued on June 5, 1998, in which the hearing examiner determined that the petitioned for unit, limited to the faculty at the University's Beaver Valley location was inappropriate in that the faculty members at that location shared an identifiable community of interest with the faculty at the University's various other campuses, and afforded the Association twenty days to either amend the petition to set forth an appropriate bargaining unit or request withdrawal of the petition. When the Association failed to either amend or request withdrawal of its petition, the hearing examiner issued the proposed order of dismissal.

In its exceptions the Association contends that the hearing examiner erred in (1) placing undue emphasis on the fact that the faculty members at all University locations perform the same basic job function, (2) making various findings of fact that the Association contends are not supported by the record, (3) failing to make various findings of fact, and (4) concluding that the unit petitioned for is inappropriate.

With respect to the Association's challenge to the findings of fact made by the hearing examiner, the Board has thoroughly reviewed the record and concludes that findings made by the hearing examiner are supported by substantial evidence on the record and accurately reflect the underlying facts necessary to decide this case. The hearing examiner's failure to find the facts proffered by the Association also was not error. In Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975), our Supreme Court stated as follows regarding a claim that the fact finder erred in failing to make findings inconsistent with the facts as actually found:

When the fact finder in an administrative proceeding is required to set forth its 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 461. See also Birriel v. Workmen's Compensation Appeal Board, 435 A.2d 292 (Pa. Cmwlth. 1981). The proffered findings of fact that the Association alleges to be erroneously omitted from the hearing examiner's decision concentrate in large measure upon the alleged autonomy over wages, hours and working conditions exercised by the administration at the Berks/Lehigh Valley College of the University over various wages, hours and working conditions of the faculty at the Berks/Lehigh Valley College. Although such autonomy may be evidence not in the record, the hearing examiner was not required to make individual findings of fact on all of the various issues of autonomy exercised by the administrators at Berks/Lehigh Valley College. It should be remembered that the administrators at Berks/Lehigh Valley College are, like the deans of the various colleges that comprise the University, representatives of the management of the University.

The hearing examiner correctly concluded that the petitioned for bargaining unit limited to the faculty at Berks/Lehigh Valley College is not an appropriate unit. The question presented in this case is whether the petitioned for employees demonstrate a community of interest separate and apart from the remaining faculty of the University. Section 604(1) of PERA directs the Board in making unit determinations to take into consideration that public employees must have an identifiable community of interest and also directs the Board to consider the effects of overfragmentization of bargaining unit. 43 P.S. § 1101.604(1). In construing this section of the Act, the courts have concluded that differences may exist in wages, hours and working conditions without destroying the identifiable community of interest among various employees. Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), pet. for allowance of appeal denied, 525 Pa. 652, 581 A.2d 577 (1990), and that "the units must be as few as practically can be." Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974), pet. for allowance of appeal denied, February 28, 1975.

In order to avoid the effects of overfragmentization the Board has adopted a broad-based bargaining unit policy in which the Board will certify the broadest unit possible while still observing the statutory community of interest requirement. See Pittsburgh Board of Education, 24 PPER ¶ 24170 (Final Order, 1993). In Bucks County (Public Defenders Office), 13 PPER ¶ 13109 (Final Order, 1981), aff'd sub nom. District 65, United Autoworkers v. PLRB, 15 PPER ¶ 15062 (Court of Common Pleas of Bucks County, 1984), the Board determined that it would certify a more narrow unit only upon a showing by complete and substantial evidence that an identifiable community of interest is lacking between the petitioned for employees and other employees of the employer with whom the petitioned for employees may share a community of interest.

In determining whether an identifiable community of interest exists, the Board takes into consideration a variety of factors including the employees skills, their duties, areas of work, working conditions, interchange of employee, supervision, grievance procedure, ours of work, trade requirements, pay scales and employee desires. Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). In this case, the hearing examiner determined that an identifiable community of interest exists among the petitioned for faculty at Berks/Lehigh Valley College and the faculty at the various other locations of the University based upon the fact that all faculty of the University engage in teaching research and public service and are covered by a wide variety of University policies including ones dealing with tenure, leave of absence, fringe benefits, promotions, educational privilege, grants and aids for dependents, academic freedom, moving expenses, private consulting practices, and conflicts of interest. All University faculty are also covered by worker's compensation

insurance and are covered under the State Employees Retirement System. The hearing examiner's conclusion that an identifiable community of interest exists between the faculty at the Berks/Lehigh Valley College and the other faculty members of the University is fully supported by the record and the established case law involving what constitutes an appropriate unit under the Act.

The Association's reliance on APSCUF v. PLRB, 383 A.2d 243 (Pa. Cmwlth. 1978) is inapposite. In that case the Board rejected a request to include in the same bargaining unit faculty and non-faculty University administrators. The Commonwealth Court affirmed based upon the long list of factors differentiating faculty and non-faculty University administrators. Just as those factors differentiated the employees at issue in APSCUF, the same factors are present in this case and support the hearing examiner's determination that the faculty at Berks/Lehigh Valley College shares an identifiable community of interest with the remaining faculty of the University. Not only do all employees share their prerogatives of the faculty status system, but the petitioned for employees job functions are not merely similar, but are identical with the remaining faculty of the University coupled with the additional factors cited by the hearing examiner that these two groups of faculty share, an identifiable community of interest clearly exists among all of the faculty of the University.

The Association's further reliance on Fraternal Order of Police v. PLRB, 695 A.2d 926 (Pa. Cmwlth. 1997), aff'd, ____ Pa. ____, ____ A.2d ____ (1999), pet. for reconsideration pending, is also misplaced. In that case, the Commonwealth Court essentially concluded that employees in two different job classifications did not share an identifiable community of interest because the employees performed different job functions. In this case the employees at issue perform exactly the same job functions as the remaining faculty of the University. The Association cites no case in which the Board has separated into separate bargaining units employees holding the same job classification for the same employer. The Association's further reliance on Community College of Philadelphia, 10 PPER ¶ 10020 (Order and Notice of Pre-Election Conference, 1978), aff'd, 10 PPER ¶ 10123 (Final Order, 1978), aff'd, Community College of Philadelphia v. PLRB, 496 Pa. 415, 437 A.2d 942 (1981) is also in apposite. In that case the Board certified a separate unit of part-time instructors and visiting lecturers in light of the fact that the Board had previously certified a separate unit of full-time faculty members of the community college. The Board noted that the significance differences between the part-time instructors and visiting lecturers and the full-time faculty and specifically noted that the employer in that case had historically treated the two groups as separate and apart. The factors relied upon included differences in compensation the lack of participation by the part-time faculty in the University governance, the unavailability of tenure for part-time faculty and differences in working conditions. In this case the Association cannot cite significant differences between the faculty at Berks/Lehigh Valley College and the University's other faculty so as to justify a separation of the two groups of employees into separate bargaining units. Accordingly, the hearing examiner appropriately concluded that the petitioned for unit limited to the faculty at Berks/Lehigh Valley College was inappropriate under the statute and correctly dismissed the Association's petition for representation.

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

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 order of dismissal in the above-captioned matter be and the same are hereby dismissed and the proposed order of dismissal be and the same is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this twenty-second day of September, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN MARKLE JR., CHAIRMAN

L. DENNIS MARTIRE, MEMBER

EDWARD G. FEEHAN, MEMBER