

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HAVERFORD TOWNSHIP EDUCATIONAL :
SUPPORT PERSONNEL ASSOCIATION, :
PSEA/NEA :
 : Case No. PERA-C-98-370-E
v. :
 :
HAVERFORD TOWNSHIP SCHOOL DISTRICT :

FINAL ORDER

On July 14, 1999, Haverford Township School District (Employer) filed timely exceptions to a proposed decision and order (PDO) entered on June 24, 1999. Along with its exceptions the Employer included a request for a thirty day extension of time in which to file its brief in support of exceptions. Although the Haverford Township Educational Support Personnel Association, PSEA/NEA (Union) opposed the Employer's request, the Secretary of the Board granted the Employer's request and the Employer filed its brief in support of exceptions on August 13, 1999. The Union, having previously filed an answer to the Employer's exceptions on July 28, 1999, requested and was granted an extension of time to file its brief in opposition to the Employer's exceptions, which the Union filed on September _____, 1999.

In the PDO the hearing examiner concluded that the Employer violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act) by failing to bargain over 53 positions that the hearing examiner concluded fell within the broad description of the certified bargaining unit. The hearing examiner directed the Employer to bargain in good faith over the terms and conditions of employment regarding the 53 positions at issue.

The essential facts of this case as found by the hearing examiner are as follows. Pursuant to a nisi order of certification issued by the Pennsylvania Labor Relations Board (Board) the Union is the certified representative of all full-time and regular part-time nonprofessional white-collar employes of the Employer including but not limited to secretaries and instructional aides; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act. Since its certification in 1986 the Union has relied on the Employer to provide it with a list of employes occupying positions covered by the Board's certification. The most recent collective bargaining agreement between the parties expired on June 30, 1998, and covered two general job classifications, secretarial/clerical employes and assistants. In preparation for bargaining a successor collective bargaining agreement, the Union discovered that there existed classifications that had not been considered by the parties to be covered by the existing collective bargaining agreement. The Union sought to negotiate over the positions in question during negotiations through a proposed amendment in the recognition clause in the contract. The classifications at issue were building assistants, library assistants, technical assistants and medical building assistants. The Employer refused

to negotiate over these classifications unless the Union filed either a unit clarification or a petition for representation with the Board. The hearing examiner concluded that the positions are covered under the broad description of the bargaining unit contained in the Board's certification and the Employer's refusal to bargain over the terms and conditions of those positions constitutes a failure to bargain in good faith in violation of the Act.

In its exceptions and brief in support of exceptions, the Employer contends that the hearing examiner erred in concluding that the Employer refused to bargain in good faith because it offered to return to the bargaining table and resume negotiations on September 29, 1998. The Employer further contends that the hearing examiner erred in determining that the Employer had unilaterally removed the 53 positions from the bargaining unit because at least 27 of the employees in dispute worked less than three hours a day, the collective bargaining agreement between the parties specifically excludes those 27 employees from the bargaining unit (Employer's exception 2) and the Union made no proposal to include employees who work less than three hours a day in the collective bargaining agreement.

The hearing examiner correctly concluded that the classifications at issue are covered by the broad description of the bargaining unit contained in the Board's certification. The purpose of the Board's describing bargaining units broadly is to obviate the need for the parties to return to the Board every time the employer establishes a new job classification that is encompassed in the Board's broad unit description. The job classifications at issue in this case, i.e., building assistant, library assistant, technical assistant and medical building assistant are positions that fall within the broad description of the of the white-collar nonprofessional bargaining unit. Indeed, the Employer's own exhibits reveal that certain library assistants are presently considered to be included in the unit (Exhibits D-4 and D-5). The Employer's contention that these positions are not included in the certified bargaining unit is without merit and the Employer's refusal to bargain over these positions constitutes a failure to bargain in good faith. Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992), aff'd, 24 PPER ¶ 24110 (Court of Common Pleas of Beaver County, 1993). The Employer's reliance upon its September 29, 1998 offer to return to the bargaining is misplaced since the charge of unfair practices was filed on August 17, 1998, more than a month before the Employer's offer to return to the bargaining table.

The Employer couches its refusal to bargain in terms of a refusal to agree to concession in bargaining because the Union initially sought to amend the recognition clause of the parties' agreement by adding the classifications at issue. The Employer is correct that Section 701 of the Act sets forth that the obligation to bargain in good faith does not require either party to agree to make a concession in bargaining. However, the Union subsequently took the position that the classifications at issue were covered by the broad description of the bargaining unit set forth in the Board's certification and incorporated in the recognition clause of the parties' contract and that the positions were covered even absent a modification of the recognition clause. Although an amendment of the recognition clause to reflect the current white-collar classifications utilized by the Employer would seem logical, the broad description of the bargaining unit is sufficient to bring these classifications within the scope of the certified unit. Accordingly, the Employer was obligated to

bargain over these classifications. The totality of the circumstances in this case reveals that the Employer has refused to negotiate over those positions and accordingly the hearing examiner's conclusion that the Employer has failed to bargain in good faith is supported by the record.

However, the Employer correctly argues that it has not committed an unfair practice with respect to the 27 employes who are employed in the contested classifications but who are regularly scheduled to work less than three hours a day. In order to carry its burden to prove that the Employer has unlawfully refused to bargain over these 27 employes, the Union must prove that (1) the employes are included in the bargaining unit, the Union, (2) the Union demanded to bargain over these employes, and (3) the Employer refused to bargain.¹ The Union did not seek to represent these 27 employes as evidenced by the Union's bargaining proposal that excluded all employes who work less than 3 hours a day from the contract's coverage (Exhibit D-1). The Union has failed to prove the essential element that it demanded to bargain over these employes. Accordingly, to the extent that the PDO concludes that the Employer violated the Act by refusing to bargain over these 27 employes and directs the Employer to bargain over these employes, it is hereby amended.²

After a thorough review of the exceptions and all matters of record, the Board shall sustain in part and dismiss in part the exceptions and make the Proposed Decision and Order final as amended herein.

¹ This case is not one in which the Employer makes a unilateral change in a mandatory subject of bargaining without first negotiating with the exclusive bargaining representative. In those instances, the bargaining representative need not prove a demand to bargain to bargain. Garnet Valley School District, 8 PPER 365 (Final Order, 1977); Philadelphia School District, 29 PPER ¶ 29085 (Final Order, 1998). Here, the Union is seeking through its charge of unfair practices to change the status quo with respect to the 27 employes who work less than three hours a day but the Union has not sought this change through its bargaining proposals.

² It should be noted that the Board's certification includes all regular part-time white-collar nonprofessional employes and "regular part-time" has been interpreted by the Board to include employes whose service to the employer is consistent and repeated and there exists a reasonable expectation that such service will continue. See Westmont Hilltop School District, 8 PPER 236 (Nisi Decision and Order, 1977). The Board has consistently declined to create an arbitrary line, such as the parties have done in their contract with respect to the number of hours worked, in order to meet the requirement for regular part-time employment. Dauphin County Commissioners, 7 PPER 7 (Order and Notice of Election, 1976). Indeed, the Commonwealth Court has expressly concluded that employes who work as few as six hours a week are regular part-time employes where their employment history establishes regular service to the employer. Albert Einstein Medical Center v. PLRB, 330 A.2d 264 (Pa. Cmwlth. 1975).

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 sustained in part and dismissed in part and the proposed decision and order be and the same is hereby made absolute and final as amended herein.

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

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AFFIDAVIT OF COMPLIANCE

Haverford Township School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the

Act, that it has offered to bargain in good faith over the terms and conditions of employment of the classifications at issue, that it has posted the proposed decision and order and final order as directed, and that it has served a copy of this affidavit on the Association 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