

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PERA-U-98-44-W
: (PERA-R-786-W)
:
AMBRIDGE AREA SCHOOL DISTRICT :

FINAL ORDER

On December 28, 1998, the Ambridge Area School District (District) filed timely exceptions to the hearing examiner's December 8, 1998 proposed order of unit clarification (POUC). In the POUC, the hearing examiner concluded that the position of computer repair technician shares a community of interest with the positions in the bargaining unit of high school floor custodians, cafeteria custodians, elementary custodians, watchmen, fieldmen, high school maintenance men, firemen, maintenance men, trade specialists, and janitresses. The unit was originally certified by the Board at Case No. PERA-R-786-W. After two agreed upon time extensions, the District filed a brief in support of its exceptions on February 25, 1999, and Local 248, Ambridge Area School Employees, AFSCME, District Council 84 (Union) filed its opposition brief on March 4, 1999. In its exceptions, the District asserts:

- (1) That finding of fact no. 9, i.e. the employer's statement that the position of trade specialist would never be filled after its removal from the collective bargaining agreement was not based on fact. Rather, it is merely a position taken by the union without proper foundation.
- (2) That the Hearing Examiner has failed to take into consideration that there is far more specialization in this era of computer technology which requires flexibility in determining the scope of a computer technician's work to enable the District to deliver that same technology to its student body. Such a position is not akin to a 'maintenance man' in the recognition clause of the collective bargaining agreement.

After review of the exceptions, briefs, and position statements, the Board makes the following:

AMENDED FINDING OF FACT

9. That the classification of trades specialist is included in the language of the 1971 Board certification at PERA-R-786-W of AFSCME as the exclusive representative. However, in 1994, the position of trades specialist was removed from the recognition article of the collective bargaining agreement. This agreement was made based upon the fact that the position was vacant.

DISCUSSION

This case arises from the union's filing of a unit clarification petition on January 29, 1998, seeking to include the position of computer

repair technician in the bargaining unit as certified by the board in 1971. In lieu of a formal hearing, the hearing examiner authorized the filing of written "position statements" by each party. Although a formal hearing is the preferred method for creating a record to assist the Board's review of contested points of fact wherein the parties may examine and cross-examine witnesses, the failure to do so here does not affect the outcome of this matter.

In its brief, the District concedes that the position of computer repair technician is that of a trade specialist, which was included in the Board's unit description at Case No. PERA-R-786-W. The unit was never subsequently amended by the Board to delete trade specialist from the unit. For a period, the District did not employ trade specialists, and it was deleted from the recognition clause of the parties' collective bargaining agreement. The District contended in its position statement that trade specialist was eliminated from the recognition clause of the parties' agreement, but disputes that it stated it would not employ trade specialists in the future.

The record discloses that there was no agreement between the parties that the District would not employ trade specialists in the future. Absent testimony or stipulation on this point, the Board amends finding of fact 9 to reflect the parties' common understanding of the decision to eliminate trade specialist from the recognition clause. The District purports that because trade specialist was deleted, it is no longer part of the unit. The District's argument is flawed.

As explained in the POUC, the Board is vested with the exclusive authority to determine the appropriateness of the unit, including the question of placement of positions in the unit. City of Philadelphia v. PLRB, 641 A.2d 709 (Pa. Cmwlth. 1994). The hearing examiner properly concluded that it is the Board's exclusive right under Section 604 of PERA to determine whether the position of computer repair technician, or any other trade specialist, should be included in the bargaining unit. Although the parties have authority to agree in a collective bargaining agreement to wages, hours, and terms and conditions of employment concerning employes in the unit, the parties do not have the authority to alter the bargaining unit as determined by the Board.

Section 604 of PERA provides that "[t]he Board shall determine the appropriateness of a unit [by taking] into consideration . . . an identifiable community of interest [and] the effects of over fragmentation." It is irrelevant to this decision that the parties agreed to remove the trade specialist from the recognition clause, because this authority rests exclusively with the Board. The Commonwealth Court has made it abundantly clear that the answer to the question of whether an employee is within a bargaining unit "is perfectly simple and straightforward - it is properly decided by the Board." Richland Education Association, 403 A.2d 1008 (Pa. Cmwlth., 1979). In a similar case, the Commonwealth Court determined that the issue of whether a position was properly designated as confidential may not be answered by the collective bargaining agreement because "it is the duty of the Pennsylvania Labor Relations Board to determine the appropriateness of a bargaining unit." AFL-CIO, Local 1598 v. Bensalem Township, 498 A.2d 1014 (Cmwlth Ct., 1985). Similarly, the issue of whether trade specialist is within this unit cannot be determined by reference to the recognition clause in the collective bargaining agreement between the parties. To remove trade specialist from the unit, the parties

must file a unit clarification petition with the Board, pursuant to the Rules and Regulations of the Pennsylvania Labor Relations Board § 95.23.

The parties were not authorized to remove trade specialist from the unit, and accordingly, the District's exception disputing the reasons behind the deletion from the recognition clause is not significant to the disposition of this unit clarification. It is irrelevant to this decision why the parties agreed to remove trade specialist from the recognition clause when that classification became vacant for a period of time. The Board does not base its conclusion on the disputed portion of the hearing examiner's finding of fact 9.

The District next argues that the computer repair technician does not share a community of interest with the employees in the bargaining unit because supervision is dissimilar, and the job requirements necessitate a unique work schedule. The Board is satisfied that the hearing examiner correctly determined that the union met its burden, and that computer repair technician does share a community of interest with the positions in the unit as certified by the Board in 1971.

In determining whether an identifiable community of interest exists, the Board considers several factors, including: common or similar work duties, hours of employment, rates of pay, responsibilities, interest or interchange, fringe benefits, bargaining objectives, manner of hiring, and supervision. Methacton School District, 11 PPER ¶ 11040 (Decision and Order, 1980). The hearing examiner properly determined that the computer repair technician's duties and responsibilities are to install, repair, and maintain computer hardware and software. The District's exceptions do not dispute this. Further, the hearing examiner found that the wages paid to the computer repair technician fall within the pay scale for the maintenance men contained in the current collective bargaining agreement, and that the technician is enrolled in the same health care plan, and has the same sick leave benefits as the maintenance men (FF 7-8, PO at 3). These similarities in job descriptions, wages and benefits overwhelmingly support the finding that the computer repair technician shares a community of interest with the employees in the bargaining unit.

The District argues that none of the employees in the maintenance/custodial unit could perform the duties and skills required of the computer repair technician. Such an ability to perform the computer repair technician's job is not necessary. The Board has consistently held that an identifiable community of interest may exist despite differences in the requirements of experience, skills and education. Western Psychiatric Institute and Clinic v. PLRB, 16 Pa. Cmwlth Ct. 304, 330 A.2d 257 (1974); Peters Township School District, 16 PPER ¶ 16070 (Order Directing Submission of Eligibility List, 1985); Washington Township Municipal Authority, 569 A.2d 402 (Pa. Cmwlth. 1990), pet. for allowance of appeal denied, 581 A.2d 595 (1990). The District's argument fails, because it is not necessary that the maintenance men be able to perform the same duties as the computer repair technician. To find otherwise would force the Board to conclude that it is necessary for trade specialists such as plumbers, carpenters, electricians, and heating and cooling system mechanics be able to perform one another's jobs for a community of interest between them to exist. It is the nature and function of skilled craftsmen to possess unique skills that are not interchangeable, but nonetheless share a community of interest over wages, benefits, hours and other terms and conditions of employment under Section 701 of PERA. The District's argument would support the notion that each

skilled craft would require a separate bargaining unit, this is a notion that finds no support in PERA or the caselaw.

Further, the Board must consider the effects of over-fragmentization as required by Section 604 of PERA. Western Psychiatric. As the hearing examiner explained, if the computer repair technician was not included in the unit of employes who are represented by AFSCME, the employe in the position would stand alone without inclusion in any recognized unit. Therefore, in order to avoid the effects of overfragmentation, it is necessary to include this position in the existing bargaining unit.

In its brief, the District expresses concern over the computer repair technician's flexible hours of work, and its ability to afford overtime compensation under the collective bargaining agreement governing the unit. While it is the Board's role to determine the appropriateness of the unit, it is beyond its jurisdiction to interpret the parties' contract. Wages, hours, overtime, etc. are for the parties to determine through the bargaining forum. The District's arguments contending that the contract should not apply to the computer repair technician position are not before the Board. "The Board has no expertise in interpreting contracts and that is not the Board's proper function." Borough of Exeter, 28 PPER ¶ 28226 (Final Order, 1997) (citing Philadelphia v. Board of Education of School District of Philadelphia, 480 PA. 194, 389 A.2d 577 (1978)). Therefore, the District's exceptions regarding the unit clarification are dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part, 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 Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to in the above case number be sustained in part, and dismissed in part, consistent with the above, and the Proposed Order of Unit Clarification 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