

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
:
:
Case No. PERA-U-02-78-E
:
(PERA-R-2017-E)
WILLIAM PENN SCHOOL DISTRICT :

FINAL ORDER

On February 3, 2003, the William Penn Education Association (Association) filed timely exceptions to a Proposed Order of Dismissal issued on January 15, 2003 by a duly designated hearing examiner of the Pennsylvania Labor Relations Board (Board). In the Proposed Order of Dismissal, the Hearing Examiner concluded that the position of medical building assistant employed by William Penn School District (Employer) had previously been litigated by the parties, resulting in the exclusion of that position from the unit of professional employees. Because the parties agreed here that the duties of the medical building assistant position have not changed since that time, the Hearing Examiner dismissed the Association's petition seeking to include the position in the professional bargaining unit represented by the Association. On February 24, 2003, the Employer filed its brief in opposition to the Association's exceptions.

In its exceptions, the Association contends that the Hearing Examiner erred as a matter of law in determining that the issue of the professional status of the medical building assistant position was decided in the previous case because the actual job duties of that position were not previously examined, and accordingly the Hearing Examiner erred in dismissing the Association's petition where the duties of the medical building assistant have not changed.

We agree with the Hearing Examiner that the Association is barred from raising the status of the medical building assistant as a professional employe within its bargaining unit. While the Hearing Examiner relied upon the concept of *res judicata*, the Board's specific case law regarding unit clarification petitions could not be clearer. The Board limits the filing of unit clarification petitions where the position(s) at issue have been included or excluded in a previous Board proceeding. Where the position has been previously litigated, the Board will not process a unit clarification petition unless there has been a change in the law or facts. Gateway School District v. PLRB, 470 A.2d 185 (Pa. Cmwlth. 1984); Chambersburg Area School District, 20 PPER ¶ 20149 (Final Order, 1989); Northeastern Intermediate Unit #19, 11 PPER ¶ 11232 (Nisi Order of Unit Clarification, 1980). Here, the Association alleges no change in the law and the parties stipulated that there has been no change in the facts since the prior exclusion of this position from the professional unit (Proposed Order of Dismissal, Finding of Fact 4).

The Association's contention that the status of the position of medical building assistant was not previously litigated on the merits is without support. In the prior proceeding, the Association requested that the Board include the positions of noontime nurse and medical building assistant. With respect to the medical building assistant,

the Hearing Examiner stated that "...the Association has shown that the District required applicants to possess a registered nurse's license and also introduced a list of job duties into the record. However, there is no testimony of record that any employes in that position actually perform the job duties as enumerated in the job description. Absent that evidentiary nexus, the position cannot be deemed professional, for it is what the employe actually does, not what the job description says, that determines an employe's professional status." 32 PPER at 361. The Association did present evidence regarding the job duties of the medical building assistant, but simply failed to prove its case. The Association did not except to the prior determination and is bound by it. Therefore, we agree that the status of the medical building assistants was litigated in the previous proceeding. Essentially, what the Association requests this Board to do is to grant it another opportunity to bolster the weak proofs that it proffered in the prior proceeding. Having failed to prove its case the first time around, the Association is not entitled to a second bite at the apple. The well-established case law regarding the litigation of positions addressed in previous proceedings applies and the Hearing Examiner's dismissal of the Association's petition was appropriate.

After a thorough review of the exceptions and all matters of record the Board shall dismiss the Association's exceptions and affirm the Hearing Examiner's Proposed Order of Dismissal.

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 by the Association are hereby dismissed and the Proposed Order of Dismissal 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 Anne E. Covey, Member, this sixteenth day of September, 2003. 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.