

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-03-36-E
 : (Case No. PERA-R-11,447-C)
 :
 STATE SYSTEM OF HIGHER EDUCATION :

FINAL ORDER

On December 24, 2003, the State College and University Professional Association, PSEA/NEA (Union) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions and a supporting brief to a Proposed Order of Dismissal (POD) issued December 4, 2003. In the POD, the Examiner dismissed the petition for unit clarification filed by the Union and concluded that four grant and special fund analysts (Analysts) employed by the State System of Higher Education (SSHE) are management level employes within the meaning of Section 301(16) of the Public Employee Relations Act (PERA) and shall not be included in a unit of administrative professionals.

After a review of the exceptions, the brief in support of exceptions and the record, the Board makes the following:

ADDITIONAL FINDING OF FACT

6. The Union entered into evidence the individual job descriptions for all four Analysts. Each of the four Analysts composed the job description language, in collaboration with other employes, explaining the specific duties and responsibilities for his or her particular job. Certain portions of all four job descriptions contain identical language. All the Analysts perform similar duties at the same administrative level. The four Analysts testified that their job descriptions accurately reflect their actual job duties. (N.T. 44, 53, 60, 64, 66, 67, 69, 74, 77).

DISCUSSION

SSHE employs four Analysts (Joseph J. Zimmer, Tammy L. Hamilton, Judy L. Simpson and Robert C. Britcher) whom the Union seeks to include in the bargaining unit of professional, non-faculty administrators. These Analysts have the same work schedule as the bargaining unit employes; they have the same benefits as unit employes, they work with bargaining unit employes and they possess bachelor degrees, as do many of the unit employes. The Analysts ensure that certain funding that SSHE receives from outside sources, such as the federal government, is spent according to the terms of the relevant grants. All four Analysts have similar duties and independently analyze unique problems caused by the overall complexity of newer grants, take actions to resolve these issues and implement new procedures to minimize the recurrence of those problems. Zimmer, Hamilton and Britcher also assist other state system staff in solving compliance and disbursement problems with awards by

analyzing the situation, researching all feasible solutions and initiating the best course of action.

In its exceptions, the Union claims that Findings of Fact Numbers 4 and 5 in the POD are unsupported by substantial evidence because those findings rely solely on the four Analysts' job descriptions. The Union argues that the Board has held that a job description alone is insufficient to establish the actual job duties of employees for purposes of determining their inclusion in a bargaining unit where the duties of the position were at issue. The Union contends that there is no testimony to corroborate the language relied upon by the Examiner in the job description that these Analysts actually perform those functions. The Union maintains that, although the Analysts exercise professional judgment, the testimony reveals that they do not engage in management level decision-making. Accordingly, argues the Union, the legal conclusion that the four Analysts are management level employees is not supported by the record.

Findings of Fact Numbers 4 and 5 provide as follows:

4. The duties of three of the grant and special fund analysts (Mr. Britcher, Ms. Hamilton and Mr. Zimmer) include "[i]ndependently analyz[ing] unique problems caused by the overall complexity of the newer awards, tak[ing] actions to resolve these issues and implement[ing] new procedures to minimize their reoccurrence" and "[a]ssist[ing] all members of the university in solving problems with awards by analyzing the situation, researching all feasible solutions and initiating the best course of action." (N.T. 44, 53, 60, 74, 77; Association Exhibits 2-3, 5)

5. The duties of the fourth grant and special fund analyst (Ms. Simpson) include "[i]ndependently analyz[ing] unique problems caused by the overall complexity of the funding awards and the university's financial system, tak[ing] actions to resolve these issues and implement[ing] new procedures to minimize their reoccurrence." (N.T. 67; Association Exhibit 4)

(POD at 2). Findings of fact must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737 A.2d 313, 315, n.6 (Pa. Cmwlth. 1999); Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000); Manuel Zavala-Lopez v. Kaolin Mushroom Farms, Inc., 29 PPER ¶ 29025 (Final Order, 1997). Substantial evidence is "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kaufman, supra (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)).

In support of Finding of Fact Number 4, the Examiner relied upon pages 44, 53, 60, 74, 77 of the hearing transcript and the self-written job descriptions of Zimmer, Hamilton and Britcher (i.e., Association Exhibits 2, 3 and 5) offered by the Union. On pages 44 and 53 of the hearing transcript, Zimmer testified that he and two co-workers composed his job description with the specific understanding that the position of grant and special fund analyst was being reviewed for

classification purposes. On page 53, Zimmer testified that he "worked on" the language on page two of his job description that explains how he spends 80% of his time. Also on page 53, Zimmer specifically testified that the language that he and his colleagues chose to include in his job description accurately reflects his actual job duties. Included in that section of his job description is the language quoted by the Examiner in Finding of Fact Number 4, i.e., "[i]ndependently analyz[ing] unique problems caused by the overall complexity of the newer awards, tak[ing] actions to resolve these issues and implement[ing] new procedures to minimize their reoccurrence" and "[a]ssist[ing] all members of the university in solving problems with awards by analyzing the situation, researching all feasible solutions and initiating the best course of action." (F.F. 4)(quoting Association Exhibits 2, 3 & 5). Therefore, contrary to the Union's claims, Zimmer's testimony indeed supports a finding that he actually performs the duties included in his written job description and constitutes substantial evidence that Zimmer takes action to resolve unique problems with funding awards, implements new procedures to minimize recurrences and initiates the best course of corrective action.

The identical language appeared in the job descriptions for Britcher and Hamilton. The Examiner cited to page 60 of the hearing transcript where Ms. Hamilton testified that her job description is "word for word essentially the same." She also testified that she participated in the writing of her job description and that all the grant and fund analysts were on the same level. (N.T. 64). Mr. Britcher testified that despite the differences between his job responsibilities and those of the other Analysts, his job description accurately describes his duties and he contributed to the preparation of his job description. (N.T. 77). Britcher's job description also provides that he independently analyzes unique problems caused by the complexity of funding awards, that he takes actions to resolve these issues and that he implements new corrective procedures to minimize recurrences, as found by the Examiner.

Ms. Simpson also testified on page 69 of the hearing transcript that her job description was a fair reflection of her duties. The Union placed these job descriptions in the record, the Analysts wrote their own job descriptions and they testified that their job descriptions accurately reflect their actual job responsibilities. Accordingly, the managerial responsibilities that are provided in the job descriptions for the Analysts constitute substantial evidence that these employes perform managerial functions.

In Employes of Carlynton Sch. Dist. v. Carlynton Sch. Dist., 377 A.2d 1033 (Pa. Cmwlth. 1977), the Commonwealth Court held that an individual is a management level employe under Section 301(16) of PERA where that individual implements the policies of others, even if such duties are performed only part of the time and even if the employe's decisions are subject to review by a superior manager. The term "implement" has been defined in the following manner: "to put into effect according to or by means of a definite plan or procedure." Webster's Encyclopedic Unabridged Dictionary, 961 (Random House 2d Ed. 1996). As the Examiner properly noted, in School Dist. of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998), the Commonwealth Court held that, although routinely discharging one's professional duties or

monitoring compliance with established rules and policies is insufficient to qualify for managerial status, the authority to take action where non-compliance is found and have an impact on the implementation of those rules and policies does qualify an individual as a manager within the meaning of Section 301(16) of PERA. Id. at 838.

The record clearly demonstrates that the four Analysts effectuate the terms and conditions of the awards established by others. As provided in Findings of Fact Numbers 4 and 5, which are supported by substantial evidence, all four Analysts also take actions to correct and solve problems regarding compliance with the terms of the grants and funding awards that they administer. They also implement new procedures to minimize similar future compliance and disbursement problems. Therefore, the Analysts have a definite impact on the overall administration of grants and funds as well as the implementation of the terms and conditions governing the disbursement of those funds. Accordingly, the Examiner properly concluded that they are managers within the meaning of Section 301(16) of PERA.

After a thorough review of the exceptions, brief in support and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Order of Dismissal of the Hearing Examiner.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee 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 that the Proposed Order of Dismissal, as amended herein, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this seventeenth day of February, 2004. 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.