

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

STATE COLLEGE AND UNIVERSITY PROFESSIONAL :  
ASSOCIATION PSEA/NEA :  
v. : Case No. PERA-C-05-283-E  
STATE SYSTEM OF HIGHER EDUCATION :  
CLARION UNIVERSITY :

**FINAL ORDER**

The State System of Higher Education (Clarion University) (hereinafter "SSHE") filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 30, 2006, challenging a Proposed Decision and Order (PDO) of May 10, 2006, in which the hearing examiner concluded that SSHE violated Section 1201(a)(1) of the Public Employe Relations Act (PERA) by unilaterally removing the position held by DeAnne Martz, Director of Orientation and Transition, from the bargaining unit represented by the State College and University Professional Association (SCUPA) after it reclassified her position. SCUPA filed a response to the exceptions and a brief in opposition to the exceptions on June 10, 2006.

The relevant facts of this case, found by the hearing examiner, are that SSHE employed DeAnne Martz in a bargaining unit position represented by SCUPA. (Finding of Fact 2). Ms. Martz was designated a manager by Clarion University based on the April 22, 2005 recommendation of Timothy Fogarty, the Clarion University's Associate vice president for finance and administration, following his review of Ms. Martz's job duties. (Findings of Fact 3 and 4). SSHE did not petition the Board for a unit clarification prior to reclassifying Ms. Martz a manager and unilaterally removing her from the bargaining unit. (Finding of Fact 5). Based on these findings, the hearing examiner concluded that SSHE violated Section 1201(a)(1) of PERA.

On exceptions, SSHE argues that the hearing examiner failed to make several findings of fact, which if found would support SSHE's argument that it did not commit an unfair practice. SSHE's proposed findings are that SCUPA had acquiesced in the removal of Ms. Martz from the bargaining unit, because it had known that SSHE would be reclassifying Ms. Martz to management and did not complain either before or after the reclassification. SSHE's remaining proposed facts are offered to show that Ms. Martz, as the Director of Orientation and Transition, was in fact a manager, and therefore it could not be found to have violated PERA in unilaterally removing Ms. Martz from the bargaining unit after it reclassified her position to management.

Upon review of the record, SSHE's proposed facts cannot support the finding of an agreement between SSHE and SCUPA over the reclassification of Ms. Martz to management. Indeed, SSHE's referenced discussions between Ms. Martz and her union representative about the reclassification did not directly involve SSHE, and further, the failure to appeal Ms. Martz's reclassification under the collective bargaining agreement process, is not acquiescence to the removal of work from the bargaining unit.

Concerning Ms. Martz's duties, SSHE's arguments fundamentally fail to apprehend the difference between the employer's managerial right to assign duties and the Board's statutory role to define bargaining units, including unit clarification to address new or reassigned duties in the employer's workforce. As repeatedly stated by the Board and courts with regard to the composition of the unit due to reclassification of employes or the creation of new positions, "the consequence to the unit and continued inclusion in the unit is a matter reserved exclusively to the Board." Public Utility Commission, 20 PPER ¶20047 at 131 (Final Order, 1989). DuBois Area School District v. Pennsylvania Labor Relations Board, 27 PPER ¶27083 (Common Pleas, 1996), relied on by SSHE, does not hold otherwise. Where there is an agreement on changes to the bargaining unit, Section 95.23(c) provides the exclusive means for a joint request for unit clarification by the Board.

We repeat our admonition ... that a public employer which, under the guise of "reclassification," attempts to remove employes from a unit commits an unfair practice.... [T]he [employer] may assign additional job duties to a position, reclassify the employes into a newly-created position, and thereafter petition the Board to remove the newly-created position out of the bargaining unit based upon the additional job duties.

Public Utility Commission, 20 PPER at 131. "Although an employer has a managerial right to reclassify employes, it violates section 1201(a)(1) if it removes reclassified employes from a bargaining unit in the absence of a unit clarification from the Board. Public Utility Commission, 21 PPER ¶21057 at 149 (Final Order, 1990).

After a thorough review of the exceptions and all matters of record, the hearing examiner did not err in concluding that SSHE violated Section 1201(a)(1) of PERA based upon the Findings of Fact that SSHE removed Ms. Martz from the bargaining unit by reclassifying her position as management level without seeking a unit clarification from the Board, and accordingly, SSHE's exceptions to the PDO are dismissed.

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 exceptions filed by State System of Higher Education (Clarion University) are hereby dismissed, and the May 10, 2006 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of July, 2006. 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.

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**AFFIDAVIT OF COMPLIANCE**

SSHE hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) of PERA, that it has reinstated Ms. Martz as a member of the bargaining unit and made her whole for any loss of pay or benefits resulting from its removal of her from the bargaining unit, that it has posted the Final Order and Proposed Decision and Order as directed, and that it has served a copy of this executed affidavit on SCUPA.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
The day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public