

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PERA-R-01-216-E
: (PERA-R-103-C)
LUZERNE COUNTY COMMUNITY COLLEGE :

FINAL ORDER

On June 30, 2005, Luzerne County Community College (Employer) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) from a Proposed Order of Unit Clarification issued on June 10, 2005, wherein a hearing examiner concluded that various positions were included and excluded from a bargaining unit of the Employer's professional employees represented by the Luzerne County Community College Association of Higher Education (Association). Also on June 30, 2005, the Association filed timely exceptions to the Proposed Order of Unit Clarification and requested an extension of time in which to file its brief in support of those exceptions. On July 19, 2005, the Association filed its brief in response to the Employer's exceptions and on August 1, 2005, the Association filed its brief in support of its own exceptions. On August 18, 2005, the Employer filed its brief in response to the Association's exceptions. After a thorough review of the record, the Board makes the following:

AMENDED FINDINGS OF FACT

113. That the Director of Corporate Learning Center, Wilkes-Barre, David Manzo, is responsible for coordinating the academic and corporate scheduling of the facilities at the Center, for marketing the Center and for working with other college divisions and departments to assure appropriate services are provided for extension and off-campus students. There are two part-time secretaries and two part-time evening administrators at the Center, along with adjunct instructors. Manzo interviews and recommends the hiring of the evening administrators. His recommendations have always been followed. Manzo recommended that an adjunct instructor not return to teach at the Center and that recommendation was followed. He has the authority to approve or disapprove requests for vacation or personal time for the secretaries at the Center and has exercised that authority. (N.T. 812, 815, 817, 819-821, Association Exhibit 28).

145. That Dr. Clark is the Director of Nursing. Reporting to Clark are two (2) clinical coordinators. The clinical coordinators schedule and assign the students to the clinical agencies and monitor their progress. Four team leaders report to the clinical coordinators. The team leaders are responsible for a particular course and its manner of delivery to the students. Faculty members report to the team leaders. There are seventeen (17) full-time and eight (8) adjunct faculty on the Director's staff. She has the authority to make changes in the nursing curriculum if she deems it necessary. The Director of Nursing prepares the nursing budget annually. The budget is approximately \$500,000. The Director of Nursing controls supplies, capital funding requests, consultants for special projects and financing for special projects. Her budgetary recommendations have been accepted. (N.T. 1125, 1128, 1130-1131, 1138 and 1150).

DISCUSSION

In its exceptions, the Association contends that the hearing examiner erred in 1) making various findings of fact and failing to make other findings of fact; 2) concluding that the Network Administrator, the Coordinator/Instructor of Truck Driving Program, the Assistant to the Vice President of Academic Affairs, the Director of Alumni Relations and the Accountant/Finance are not professional employees within the meaning of the Public Employee Relations Act (PERA); 3) concluding that the Director of Student Support Services, the Director of the Hazleton Branch Campus, the Director of Extension Program,

Shamokin, the Director of the Dental Health Department and the Director of Financial Aid are supervisory within the meaning of PERA; 4) concluding that the Director of Learning Resources is both supervisory and management level within the meaning of PERA; 5) concluding that the Director of Printing and Publications is not professional and is supervisory within the meaning of PERA; and 6) concluding that the Director of the School of Nursing is management level within the meaning of PERA.

In its exceptions, the Employer contends that the hearing examiner erred in 1) failing to conclude that the Director of Corporate Learning Center and the Director of Student Activities/Athletics are either supervisory or management level employees within the meaning of PERA; 2) failing to conclude that the Director of College Relations and the Curriculum and Faculty Development Specialist are either confidential or management level employees within the meaning of PERA; and 3) failing to conclude that the Director of Business and Industry Education is management level within the meaning of PERA. The Employer also requests that the Board remand this case to the hearing examiner for the production of additional evidence regarding the Director of Student Activities/Athletics because at the time of the hearing, the incumbent had only held the position for a period of five weeks.

With respect to the Association's contention that various findings of fact made by the hearing examiner are not supported by substantial evidence on the record, those findings of fact have been reviewed by the Board and accurately reflect the job duties of the various positions at issue in this case. For example, the Association excepts to numerous findings of fact (findings of fact 29, 30, 31, 35, 43, 73, and 107) contending that the various positions that the hearing examiner determined were supervisory do not have the ultimate authority to approve or disapprove leave requests from subordinate employees or approve or disapprove overtime or compensatory leave requests from those subordinates. However, an examination of the record reveals that, with minor clarifications,¹ each of those findings is supported by testimony and exhibits that reflect the authority set forth in each of those findings. Similarly, the Association excepts to findings of fact that reflect supervisory authority in the hiring process of the Director of Learning Resources (finding of fact 36) and the Director of the Dental Health Department (finding of fact 101). However, the record reveals that those positions possess, at the least, the ability to effectively recommend the hiring of subordinate employees. Since the hearing examiner's findings of fact challenged by the Association accurately reflect the job duties of the positions at issue, the Board will neither amend nor supplement those findings.

The Employer, in challenging the hearing examiner's orders, has also challenged the hearing examiner's failure to make certain findings of fact regarding the job duties performed by the Director of Corporate Learning Center, Wilkes-Barre. A review of the record substantiates the Employer's contention in this regard and an amended finding of fact is set forth above that more fully sets forth the duties of that position. Further, in examining the job duties of the Director of Nursing, it has been determined that the hearing examiner's findings did not fully set forth the job responsibilities of that position and the Board has therefore amended the findings to accurately reflect the job duties of the Director of Nursing.

In examining the parties' contentions that the hearing examiner erred in either including or excluding the various positions at issue in this case, a recitation of the underlying statutory definitions under PERA is necessary. Section 301(7) of PERA defines "professional employe" as follows:

"Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced

¹ In finding of fact 30, the hearing examiner found that the Director of Student Support Services ultimately decides conflicts between her subordinates regarding requests for time off. While the testimony reveals that the Director has the authority to resolve such disputes, there are no cited instances in which she exercised that authority. Similarly, the hearing examiner found in finding of fact 35 that the Director of Learning Resources approves leave without approval from higher authority. The testimony reveals that she does not have the final say on disapproval of leave, but the record does not contain instances where her disapproval of leave was overruled by higher authority.

nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7). The test as outlined in PERA is a conjunctive test and all four parts of the test must be met in order for an employee to be found to be professional under PERA.

The management level exclusion is provided for in Section 301(16) of PERA as follows:

"Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

43 P.S. § 1101.301(16). In Commonwealth of Pennsylvania (Attorney Examiners) 12 PPER ¶ 12131 (Final Order, 1981), the Board interpreted Section 301(16) of PERA in the following fashion:

The statute may be read to state a three-part test in determining whether an employe will be considered managerial. Those three parts are 1) any individual who is involved directly in the determination of policy; 2) any individual who directs the implementation of policy; or 3) employes above the first level of supervision.

12 PPER at 1203. There is no contention, and the hearing examiner did not find that any of the employes at issue in this case are above the first level of supervision, so only the first two parts of the test for managerial status are operative in this case. In Horsham Township, 9 PPER ¶9157 (Final Order, 1978), the Board interpreted the policy formulation part of the test of management level status as follows:

An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the Statute does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of the policy proposal.

9 PPER at 327. The Board went on in Horsham Township to discuss the second part of the test for management level status, i.e. policy implementation, to include the following:

[T]hose persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, provided that such a role is not of the routine or clerical nature and bears managerial responsibility to ensure completion of the tasks. The administration of the policy involves basically two functions: (1) observance of the terms of the policy and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine and ministerial function. There will be occasion where the implementation of a policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy.

id. Accordingly, in order to be excluded from a unit as a management level employe under PERA, the employe must either engage in meaningful participation in the development of the employer's policy or must ensure fulfillment of that policy by concrete measures.

Section 301(6) of PERA sets forth the definition of supervisor as follows:

"Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. § 1101.301(6). Employes must be excluded from the bargaining unit as supervisory if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise such authority and use independent judgment in exercising that authority. McKeesport Area School District, 14 PPER ¶ 14165 (Final Order, 1983). It must also be noted that Section 604(5) of PERA provides that the Board, in making supervisory determinations, "may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5). The Board, with appellate court approval, has looked to the extent to which supervisory duties are performed and concluded that employes who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are not supervisors within the meaning of PERA. West Perry School District v. PLRB, 752 A.2d 462 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 568 Pa. 675; 795 A.2d 984 (2000); State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999); Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, 409 A.2d 532, 532 (Pa. Cmwlth. 1980). Conversely, where the employe performs predominantly supervisory duties, that employe is excluded from the rank and file unit as supervisory. AFSCME v. PLRB, 342 A.2d 155 (Pa. Cmwlth. 1975).

The confidential exclusion is set forth in Section 301(13) of the Act as follows:

"Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer."

43 P.S. § 1101.301(13). The lead case in interpreting the confidential exclusion under PERA is PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), in which the Pennsylvania Supreme Court affirmed the Board's adoption of a narrow construction of the confidential exclusion stating that the Board was correct in reading the confidential exclusion in PERA to "exclude only those employes whose inclusion in the bargaining unit would seriously impair the employer's ability to bargain on a fair and equal footing with the union." 389 A.2d at 557.

The Association initially excepts to the hearing examiner's conclusion that the Network Administrator, Santo Agati is not a professional employe within the meaning of PERA. The hearing examiner found that the Network Administrator maintains the college's network switches and technical devices, along with the network servers and he sets up network users on the servers. Agati testified that he does not consistently exercise discretion and judgment, but that he is more of an "implementer" and that most of the control resides elsewhere. Department managers tell him what individuals should have access to the network or a particular file and he simply provides the requested access. Agati has degrees in law and business administration, even though the Employer's job description sets forth the requirement of a bachelor's degree in computer science or information technology. Agati testified that most of the knowledge for his position is self-taught by studying instruction manuals.

The hearing examiner concluded that the Network Administrator did not meet the test for professional employes because the position does not require knowledge of advanced

nature in the fields of science or learning customarily acquired by a specialized study in an institute of higher learning or its equivalent and does not require the consistent exercise of discretion and judgment. The Association points out that the job description requires a degree in either computer science or information technology. However, the current Network Administrator has neither and is self-taught. He also testified that he does not consistently exercise discretion and judgment in his work but merely is "an implementer" in accomplishing his computer networking tasks. Accordingly, the hearing examiner's determination that the Network Administrator is not a professional employe within the meaning of PERA will be affirmed.

The Association challenges the exclusions of the Director of the Hazleton Branch, Maria Bauder, and the Director of Financial Aid, Mary Kosin, from the bargaining unit as supervisory. The hearing examiner based his supervisory exclusions solely upon these two employes' ability to approve leave and overtime for subordinate employes. The Board has previously concluded that the approval of leave is a supervisory responsibility. See Luzerne County Community College, 23 PPER ¶ 23037 (Proposed Decision and Order, 1992), Gateway School District, 12 PPER ¶ 12008 (Nisi Decision and Order, 1980; affirmed on other grounds, 13 PPER ¶ 13022 (Final Order, 1981)). However, in each of those cases, the authority to approve leave and overtime was present in conjunction with other significant indicia of supervisory authority. For example, in Luzerne County Community College, supra., the employe found to be a supervisor approved leave requests, but was also responsible to assign and direct the work of 32 subordinate employes. The employe found to be supervisory in Gateway School District, supra., also directed the work of subordinate employes and made effective hiring recommendations. In this case, the only indicia of supervisory authority exercised by Bauder and Kosin is the approval of leave and overtime requests. In light of PERA's provision that the Board may take into consideration the extent to which supervisory and nonsupervisory duties are performed, in this instance, where the only indicia of supervisory status is the authority to approve leave and overtime, it must be concluded that it has not been shown that these positions perform sufficient supervisory duties to be excluded from the bargaining unit. Accordingly, the hearing examiner's exclusion of these positions will be reversed.

The Association's next challenge is to the hearing examiner's determination that the Director of Student Support Services is supervisory within the meaning of PERA. The record reveals that Regina Barren, who has four counselors, six academic support personnel, and two secretaries reporting to her, holds that position. Barren has the authority to approve or disapprove leave requests and overtime and has exercised that authority. Barren has and actually exercises the additional supervisory authority to assign work to her subordinate employes. The Association contends that there are other individuals who have leave requests and overtime approval authority who are included in the bargaining unit. However, simply because other employes may be exercising similar supervisory duties and are included in the bargaining unit does not mean that the Board should ignore the Director of Student Support Services' exercise of clearly supervisory duties. Additionally, the Association ignores Barren's ability to assign duties to the subordinate employes. The Association also argues that the position does not have the ability to reward or sanction subordinate employes. The Association's argument ignores the fact that a supervisor can reward or sanction rank and file employes in the way in which they assign and responsibly direct those employes' work. Further, those job functions are specifically listed in the definition of "supervisor" in PERA and may not be ignored by the Board. Accordingly, the hearing examiner correctly concluded that the Director of Student Support Services is supervisory within the meaning of PERA.

The Association next challenges the hearing examiner's conclusion that the Director of Learning Resources is excluded from the unit because she is both supervisory and management level within the meaning of PERA. The record reveals that Mia Bassham holds the position and oversees the work of nine full-time employes and one part-time employe. Bassham has the authority and has exercised the authority to grant overtime and time off requests. Bassham has interviewed candidates and recommended the hiring of part-time student help and her recommendations in that regard were always followed. The hearing examiner also found that Bassham has extensive participation in the library's budget proposal and its subsequent administration. She prepared a line item estimate for how much she would spend in the next year. After passage of the budget, she was responsible

to assure that the expenditures were properly made. She also formulated and implemented policies on behalf of the Employer with reference to the library's collection development, media services, and overdue fines. These policies were implemented without the necessity of her obtaining approval from higher levels in the administration. The Association again argues that other bargaining unit employees have the authority to sign off on leave requests and overtime. As noted above, the performance of supervisory duties by bargaining unit employees does not negate the significance of the exercise of the same duties by the position at issue here and Bassham not only approves leave but also oversees the work of at least ten subordinate employees. Accordingly, the record supports the hearing examiner's supervisory conclusion. The Association further argues that the hearing examiner's conclusion that Bassham is a management level employee is based upon her involvement in policy formulation that merely encompasses her area of professional expertise and her budgetary involvement is limited to making recommendations. However, the policy that Bassham formulated was not the mere exercise of her professional expertise that impacts upon the employer's policy, such as an engineer directing that a building be built in a particular manner, but involves the direct formulation of the Employer's policy with respect to the library's collection development, media services, and overdue fines. Further, her budgetary involvement goes beyond mere suggestions and includes the preparation of a full line item budget of her department. Accordingly, the Association objections to Bassham's exclusion from the unit are without merit.

The Association next excepts to the hearing examiner's conclusion that the Coordinator/Instructor of the Truck Driving Program is not professional within the meaning of PERA and that that employee is excluded from the bargaining unit. Harold Fisher, who has worked for 32 years as a truck driver and trainer, holds the position. Fisher teaches students skills and knowledge necessary to become an over-the-road truck driver. The teaching is done by hands-on driving and some limited classroom instruction. While Fisher has extensive experience in the truck driving industry, he does not have a college degree. The hearing examiner concluded that Fisher's 32 years of truck driving experience is not the equivalent of knowledge of an advanced nature in the field of science or learning which is customarily acquired by specialized study in an institute of higher learning as is required of a professional classification under Section 301(7) of PERA. The Association argues that Fisher is a teacher and his experience is vocational as opposed to academic. However, we agree with the hearing examiner that the position at issue fails to meet the requirement of knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning set forth in the definition of professional employee in PERA. This case is similar to State System of Higher Education, 28 PPER ¶ 28046 (Final Order, 1997) which concluded that athletic coaches were not professional employees because the knowledge of an advanced nature requirement was not met where the main requirement of the coaches was not an advanced degree, but merely prior experience as either a player or a coach. Here, it is Fisher's 32 years of experience driving a truck that recommends him to this job and not any knowledge of an advanced nature in the field of science or learning. Accordingly, the hearing examiner's determination that the position is not professional within the meaning of PERA will be affirmed.

The Association also challenges the hearing examiner's conclusion that the Director of Extension Programs, Shamokin, Thomas Fletcher, is a supervisory employee based upon Fletcher's evaluating three part-time evening administrators, which performance evaluations are used to reward or sanction the part-time evening administrators. The Association contends that the job evaluations must be approved by superiors in the organization and should therefore not be the basis for a supervisory exclusion. However, although the record reveals that the Fletcher's evaluations are also initialed by his superiors, there is no evidence that any of Fletcher's evaluations were ever altered in any way by those superiors. Accordingly, the hearing examiner correctly relied upon those performance evaluations to conclude that the Director of Extension Programs, Shamokin, is supervisory.

The next position at issue is the Director of Printing and Publications, Kathleen Goeringer. Goeringer works in the print shop and is responsible for preparing, designing and printing all of the publications and brochures distributed at the college. There are three other full-time employees in the print shop under Goeringer's direction. Goeringer approves time off requests from individuals in her office including requests from the print shop foreman. The hearing examiner concluded that the Director of Printing and

Publications is not a professional employe within the meaning of PERA because the position does not require "knowledge of an advanced nature customarily acquired by specialized study in an institution of higher learning." The hearing examiner also concluded that Goeringer is supervisory as a result of her directing the work of the three subordinate employes including the approval of leave requests. The Association argues that Goeringer possesses a master's degree in English and does graphic design for the college. The Association contends that the hearing examiner failed to make a finding of fact that no advanced degree is required of the position. However, it was incumbent upon the Association to establish the factual underpinning to support the conclusion that the position meets all four parts of the test for professional employe under PERA. Having failed to do so, the hearing examiner's conclusion that the position is not professional must be affirmed. Even if it were concluded that the position meets PERA's test for professional employe, the direction of subordinate employes and the approval of leave requests are sufficient to support the hearing examiner's conclusion that the position is supervisory and excludable from the bargaining unit on that basis.

Similarly, with respect to the Association's exceptions to the exclusion of the Assistant to the Vice-President of Academic Affairs as a nonprofessional employe, the Association again argues that the incumbent in that position has a bachelor's degree in management and that the job description requires such a degree. However, the Association failed to produce evidence that the position requires the knowledge gained by the attainment of such a degree. The incumbent in that position, Margaret Gorham, described her position as a liaison between the faculty and the vice-president of academic affairs. She answers questions and schedules appointments and sets up meetings with faculty, including meetings with the Association. She specifically testified that in the last few years she has not used her bachelor's degree in the position that she currently holds. (N.T. 682) In light of that testimony, the hearing examiner could not find that the position requires knowledge of an advanced nature in the field of science or learning so as to meet that part of the test for professional employe in PERA. Accordingly, the record supports the hearing examiner's conclusion that the position is not professional within the meaning of PERA.

The next position is the Director of the Dental Health Department, Gerald Kazmerski. The record reveals that Kazmerski directs a staff of five full-time dentists who supervise in the program's dental hygiene and dental assistant clinics, 15-20 adjunct faculty and two full-time secretaries. He approves leave requests for the secretaries. Kazmerski independently determines how many adjunct faculty members he needs and hires the people to fill those positions without approval from his supervisors. Kazmerski also has the right to terminate employes in his department, although the Association argues that Kazmerski has no right to hire or effectively recommend the hiring of full-time faculty. His lack of authority in that regard does not diminish his authority to direct and approve time off for subordinate employes, independently hire adjunct faculty without approval from any of his superiors and to decide not to renew adjunct faculty in subsequent years. Accordingly, the record amply supports the hearing examiner's supervisory exclusion.

The Association next excepts to the hearing examiner's determination that the Director of Alumni Relations, Bonnie Lauer, is not a professional employe within the meaning of PERA. The record reveals that Lauer's primary responsibility is coordinating alumni association events and raising funds for the college. She has no paid staff but works with volunteers and publishes a newsletter, coordinates a phone-a-thon, runs a flea market, and conducts bus trips and other social events. The hearing examiner concluded that the Association failed to prove that the work performed by the Director of Alumni Relations requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent. The Association argues that the hearing examiner made no findings regarding the qualifications and knowledge used in the work. However, the hearing examiner did find that the Director of Alumni Relations coordinates fund raising events, bus trips and other social events and produces an alumni newsletter. We agree with the hearing examiner that those job duties do not rise to the level of professional status and will affirm the hearing examiner's determination in that regard.

The next classification challenged by the Association is the Director of Nursing, Dana Clark. The hearing examiner concluded that Clark is a management level employe

within the meaning of PERA. The record reveals that Clark is the head of the nursing department. Two clinical coordinators report to Clark and the clinical coordinators assign students to the clinical agencies and monitor the students' progress. Four team leaders report to the clinical coordinators. The team leaders are responsible for a particular course and the manner of its delivery to the students. Seventeen full-time and eight adjunct faculty members report to the team leaders. The hearing examiner concluded that the Director of Nursing is a management level employe because she implements policy by ensuring that the nursing program meets national standards. The Association argues that the Director of Nursing meets no prong of the test for management level employe and also has no more authority than others in the bargaining unit. We agree with the hearing examiner that the Director of Nursing is a management level employe, although the hearing examiner's findings of fact regarding this position do not fully reflect this position's authority and have been amended above to set forth the position's duties in more detail. Clark testified that she has the authority to make changes in the nursing curriculum. The record also reveals that the Director of Nursing submits an annual budget for the nursing department and that budget is approximately \$500,000. Clark controls supplies, capital funding requests, consultants for special projects and financing for special projects. Her budgetary recommendations have been accepted. (N.T. 1125, 1128 and 1131). Based upon this budgetary authority and the authority relied upon by the hearing examiner, the Director of Nursing is a management level employe.

The Association finally excepts to the hearing examiner's conclusion that the Accountant/Finance, William Merkel, is a nonprofessional position. The record reveals that Merkel has occupied the position for over a year and holds a bachelor's degree in business administration. Merkel pays the Employer's bills, which encompasses basically inputting the information into the Employer's data system. Merkel testified that 80% of his day is spent on paying bills. The record also revealed that two clerical employes in the Finance Office also perform the same duties. While the Association argues that not all of Merkel's job duties consist of clerical duties, it is undisputed that he testified that 80% of his workday is spent performing routine clerical duties. Although the hearing examiner reasoned that his job duties do not require the knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning, it is our determination that the position of accountant also fails to meet the first two parts of the test for professional employe in that the work is not (1) "predominantly intellectual and varied in nature" and does not (2) "require the consistent exercise of discretion and judgment." Accordingly, we will affirm the hearing examiner's conclusion that the accountant is not a professional employe within the meaning of PERA, albeit on additional grounds.

Turning to the Employer's exceptions, the Employer initially excepts to the hearing examiner's inclusion of Director of Corporate Learning Center, Wilkes-Barre, David Manzo, in the bargaining unit. The hearing examiner concluded that this position performs no supervisory or management level duties. The Employer argues that the record would support findings of fact that Manzo interviews and recommends hiring of evening administrators and his recommendations are always followed, and that he has also requested the non-retention of an adjunct faculty member and that member was not retained. The Employer contends that the record also reveals that Manzo approves leave requests of his subordinates. An examination of the record reveals that Manzo does indeed perform these supervisory duties and amended finding of fact number 113, above, reflects this record evidence. Given these duties, the Employer is correct in its contention that the Director of Corporate Learning Center, Wilkes-Barre is at least a supervisory employe and will be excluded from the bargaining unit.

The Employer next excepts to the hearing examiner's inclusion of the Director of College Relations in the bargaining unit. The record reveals that the Director of College Relations is responsible for writing news releases, feature articles, news advisories and public service announcements for print and electronic media and other publications. The Employer argues that the testimony reveals that Nelson has independence in public relations which the Employer contends equates to management level status, citing McConnellsburg Borough, 33 PPER ¶ 33100, (Order Directing the Opening of Impounded Ballots, 2002). That case is inapposite for two reasons. First, that case was decided under Act 111 of 1968 and involves the exclusion of management level employes in police

and fire settings under Act 111. The test for management level employe under Act 111 is not the same as the test under PERA, as the case law under PERA, such as Horsham Township, springs from the specific definition of management level employe contained in PERA, a definition that is lacking in Act 111. Second, the independence in public relations as it is framed under Act 111 is evidenced by the authority to commit departmental resources in dealing with public groups. Nothing in this record supports the notion that the Director of College Relations has the authority to commit the department's resources in dealing with public groups. Accordingly, the Employer's reliance on McConnellsburg Borough is misplaced.

The Employer also contends that the Director of College Relations is a confidential employe, but the Employer has failed to substantiate on the record any information that the Director of College Relations would have such specific collective bargaining information that the Employer would be put at a disadvantage in the collective bargaining negotiations with the Association or any other representative of the Employer's employes as is required by the cases cited above in order for an employe to be excluded from a bargaining unit as confidential. Nelson testified that she faxed news releases regarding collective bargaining negotiations that were given to her by her superiors and that she did not write the news releases regarding those negotiations. This is hardly the type of confidential information would justify the exclusion of the position from the bargaining unit.

The Employer next takes exception to the inclusion of the Director of Business and Industry Education, David Sawicki, in the unit. The Employer relies upon Sawicki's involvement in the budgetary process to support its argument that Sawicki is a management level employe within the meaning of PERA. The hearing examiner found that the budget that includes Sawicki's area of responsibility is developed by his supervisor, Linda Reid-Falcone, after Sawicki gives her his recommendations. However, the record fails to substantiate the extent to which Sawicki's recommendations are followed by Reid-Falcone in the final budget for the department. In the absence of such evidence, the hearing examiner correctly concluded that the position is not a management level position and should be included in the bargaining unit.

The Employer next excepts to the inclusion of the Curriculum and Faculty Development Specialist, Elizabeth Yeager in the bargaining unit. The findings of fact reveal that Yeager is responsible for investigating student complaints against faculty and reporting on the results of her investigation to the Vice-President for Academic Affairs. These complaints could include such matters as unfair grades, missed classes, and over-enrolled classes. The Vice-President for Academic Affairs then decides on the appropriate course of action. Yeager is also responsible for advising the Vice-President for Academic Affairs on issues relating to the college's eligibility for funding. For example, she is knowledgeable about the requirements of Pennsylvania's Act 31 involving reimbursement for video interactive courses. She interprets state regulations and advises the college on how to comply with those regulations. She is also knowledgeable on the requirements for course syllabi and course addition procedures. She also advises two faculty committees, the Calendar Committee and the General Education Committee. She assists these committees by researching data and preparing reports, but the committee decides on whether to accept or reject her reports.

The Employer argues that the interpretation of the Commonwealth Regulations regarding Act 31 funding makes Yeager a management level employe. However, it appears from the record that her duties are merely to follow the regulations set forth by the Commonwealth of Pennsylvania. The Employer cites no evidence that Yeager has performed any duties that go beyond the mere observance of the regulations and would rise to the level of ensuring the actual fulfillment of policy by concrete measures as is required by Horsham Township, *supra*. The Employer also argues that the position should be excluded as confidential because of Yeager's involvement in the investigation of complaints against faculty members. The confidential exclusion is premised upon an employe's involvement in the collective bargaining process and requires, as noted above, that the duties performed by the employe must be of such a nature that the employe's inclusion in the bargaining unit would seriously impair the Employer's ability to bargain on a fair and equal footing with the union. PLRB v. Altoona Area School District, *supra*. The Employer has failed to substantiate how any of Yeager's duties render the Employer unable to bargain on a fair

and equal footing with representatives of its employees and accordingly, the position is not confidential as defined in PERA.

The Employer finally excepts the inclusion of the Director of Student Activities/Athletics in the bargaining unit. Joseph Clark holds that position, but had only held the position for a period of six months prior to the conduct of the hearing. For the two years prior to Clark's hiring, that position had been vacant and during that time, the head of the Physical Education Department and the Vice-President for Student Development performed the responsibilities of the position. The Employer asserts that the position should be excluded as a supervisory and a management level employee. However, the hearing examiner concluded that there was no meaningful record to support the conclusion that the position met either the supervisory or the management level exclusion under PERA. In its exceptions, the Employer requests that the case be remanded in order for additional testimony to be adduced regarding the actual job duties of the Director of Student Activities/Athletics that have occurred since the initial hearing. The Employer's request will be denied because the Employer has a right to file a Petition for Unit Clarification alleging a change in facts has occurred since the hearing examiner in this case made his determination. Accordingly, no remand is necessary and the position will remain included in the bargaining unit until such petition is filed and disposed of by the Board.

CONCLUSIONS OF LAW

That CONCLUSIONS number 1 through 23, 25 through 38, 40 through 42 and 44 through 64 as set forth in the Proposed Order of Unit Clarification, are hereby affirmed and incorporated herein by reference and Conclusions number 24, 39 and 43 are hereby vacated.

65. That the Director of the Hazelton Branch Campus, Maria Bauder, is not a supervisory or a management level employee.

66. That the Director of Financial Aid, Mary Kosin, is not a supervisory employee.

67. That the Director of Corporate Learning Center, Wilkes-Barre, David Manzo, is a supervisory employee.

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 Unit Clarification by the Luzerne County Community College Association of Higher Education and Luzerne County Community College in the above-captioned case are sustained in part and dismissed in part; that the Nisi Order of Certification issued on May 28, 1971 to Case No. PERA-R-103-C be amended to include the positions of Director of the Hazelton Branch Campus and Director of Financial Aid and to exclude the position of Director of Corporate Learning Center, Wilkes-Barre; and that the Proposed Order of Unit Clarification as amended herein is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 April, 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.