

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PERA-U-06-78-E
: (PERA-R-674-C)
:
LUZERNE INTERMEDIATE UNIT #18 :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 21, 2006, the Luzerne Intermediate Unit #18 Association, (Petitioner or Association) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to include five positions in the unit of full-time and regular part-time professional employes of the Luzerne Intermediate Unit #18 (Respondent or IU) and certified by the Board at Case No. PERA-R-674-C.

On March 22, 2006, the Secretary of the Board issued an order and notice of hearing scheduling a pre-hearing conference on April 27, 2006 and a hearing, if necessary, on May 10, 2006, in Stroudsburg.

Following the pre-hearing conference, the parties requested a continuance of the hearing to prepare stipulations of fact to submit to the hearing examiner in lieu of a hearing. On June 21, 2006, the parties submitted the stipulations of fact.

The hearing examiner, on the basis of the stipulations of fact and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Luzerne Intermediate Unit #18 is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (Act) with its address located at P.O. Box 1649, Kingston, Pennsylvania 18704-0649.

2. That the Luzerne Intermediate Unit #18 is an employe organization within the meaning of Section 301(3) of the Act, with its address located at 1188 Highway #315, Wilkes-Barre, PA 18702-6929.

3. That the Association is the exclusive representative of employes in a subdivision of the employer unit comprised of all full-time and regular part-time professional employes; excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act as set forth in the Board certification at PERA-R-674-C and amended at PERA-U-94-592-E and PERA-U-96-497-E.

4. That the parties stipulated and agreed that the IU employs the position of Management Assistant for After School Program Services (MAASPS). The position is a full-time, 12 month position. The employe holding this position oversees bachelor level after school workers who provide therapeutic programs for students with emotional and behavioral problems. (Stipulation of Parties, June 19, 2006)

5. That the job description for the Management Assistant for After School Program Services states that the employe is responsible for providing clinical supervision to mental health workers in the after school programs. (Stipulation of Parties, June 19, 2006)

6. That the parties stipulated and agreed that the position of Therapeutic Staff Support (TSS) is a part-time bachelor level position which provides one-on-one therapeutic support services for students with emotional and behavioral problems. (Stipulation of Parties, June 19, 2006)

7. That the parties stipulated and agreed that there are approximately 19 staff working in the Therapeutic Staff Support position, working from 5 to 25 hours a week. (Stipulation of Parties, June 19, 2006)

8. That the parties stipulated and agreed that the position of Behavioral Specialists Consultant (BSC) is a part-time master's level position which provides feedback and suggestions for the TSS programs. The BSC have no authority to reward or sanction employees. (Stipulation of Parties, June 19, 2006)

9. That the parties stipulated and agreed that there are approximately 6 employees working as Behavioral Support Consultants, working from 2 to 25 hours a week. (Stipulation of Parties, June 19, 2006)

10. That the parties stipulated and agreed that the position of Mobile Therapist (MT) is a part-time master's level position which provides one-on-one counseling for students with emotional problems. (Stipulation of Parties, June 19, 2006)

11. That the parties stipulated and agreed that there are approximately 3 employees working in the Mobile Therapist position, working 2 to 4 hours per week. (Stipulation of Parties, June 19, 2006)

12. That the parties stipulated and agreed that the position of After School Support Worker is a part-time bachelor level position which facilitates group activities for students with behavioral or emotional problems. Such group activities include anger management and social skills techniques. The programs are conducted after school hours. (Stipulation of Parties, June 19, 2006)

13. That the parties stipulated and agreed that there are approximately 10 employees working as After School Support Workers, working 8 to 20 hours per week. (Stipulation of Parties, June 19, 2006)

14. That the parties stipulated and agreed that all of the part-time employees are hired and work on a client-need basis. The part-time employees are essentially placed in a pool and provide services depending on client need. There are currently approximately 30 clients and 30 total part-time staff providing different services as described above. (Stipulation of Parties, June 19, 2006)

DISCUSSION

The Association has petitioned to include five positions in the unit of professional employees of Intermediate Unit #18. In lieu of a hearing, the Association and the IU submitted a stipulation of facts to the hearing examiner to allow a determination of the issues in dispute. The stipulations of fact included job descriptions of the positions at issue.

The Association, as the Petitioner, bears the burden of proving that the petitioned for positions share a community of interest with the positions already in the unit. School District of the Township of Millcreek v. Millcreek Education Association, et al, 440 A.2d 673 (1982). Mifflin County School District, 14 PPER 14263 (Final Order, 1983).

Section 604(1) of the Act provides as follows:

The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

- (1) Take into consideration, but shall not be limited to the following:
 - (i) public employees must have an identifiable community of interest, and;
 - (ii) (ii) the effects of overfragmentization.

43 P.S. § 1101.604(1).

In determining whether a community of interest exists, the Board looks to whether the employees share common or similar work duties, hours of employment, rates of pay, responsibility, interest or interchange, fringe benefits, bargaining objectives, manner of hiring, supervision, and a myriad of other factors. Allegheny General Hospital v. Commonwealth of Pennsylvania, Pennsylvania Labor Relations Board, 322 A. 2d 793, 797 (Pa. Cmwlth. 1974) An identifiable community of interest may exist among employees even though not all of their terms and conditions of employment are identical. Washington Township Municipal Authority v. Pennsylvania Labor Relations Board, 569 A. 2d 402 (Pa. Cmwlth. 1990).

The Board has recognized that Section 604 of PERA does not suggest that each employee classification within an employer unit be separated on community of interest standards due to differences in experience, skills and duties which may exist between classifications within a broader employee group. For to do so would suggest that every classification of employees demonstrating differences in skills, duties, and experience could separate any such classification from other classifications of employees in a proposed unit. See, Athens Area School District, 10 PPER 10128 at 220 (Order and Notice of Election, 1978).

Having reviewed the stipulations and the accompanying job descriptions, it must be concluded that the Association has supported its burden of showing that four of the positions share an identifiable community of interest with the other positions in the unit, as is required by Section 604(1) of the Act. Furthermore, the employees in the four positions meet the test of professional employee under Section 301 (7) of the Act, which states:

'Professional employee' means any employee whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) 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; 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. 1101.601(7).

The Association has proven that the positions of Therapeutic Staff Support, Behavioral Specialists Consultant, After School Support Worker and Mobile Therapist are professional employees. The positions require either a bachelors or masters degree. The employees in the positions work with the same student population as the other professional employees in the unit. They must follow the same Luzerne IU #18 guidelines in their work with the students. Accordingly, these four positions will be included in the unit.

As for the fifth position, the position of Management Assistant for After School Program Services, the stipulations reveal that the position is a supervisor under Section 301(6) of the Act. The employee is responsible for providing clinical supervision for the after school mental health workers. Therefore this position will not be included in the unit.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Luzerne Intermediate Unit #18 is a public employer within the meaning of Section 301(1) of the Act.

2. That the Luzerne Intermediate Unit #18 Education Association is an employee organization within the meaning of Section 301(3) of the Act.

3. The Board has jurisdiction over the parties.

4. That the positions of Therapeutic Staff Support, Behavioral Specialists Consultant, After School Support Worker and Mobile Therapist are professional employees under Section 301(7) of the Act who share a community of interest with the employees in the existing professional unit certified at PERA-R-674-C as amended.

5. That the position of Management Assistant for After School Program Services is a supervisor under Section 301(6) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the positions of Therapeutic Staff Support, Behavioral Specialists Consultant, After School Support Worker and Mobile Therapist are included in the unit previously certified at Case No. PERA-R-674-C as amended.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED and MAILED from Harrisburg, Pennsylvania, this fourteenth day of July, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

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July 14, 2006

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Enclosed is a copy of the proposed order of unit clarification issued this date.

Sincerely,

THOMAS P. LEONARD
Hearing Examiner

Enclosure

cc: Michael M. Ostrowski