

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-05-318-W
 PENNSYLVANIA HIGHLANDS COMMUNITY : (PERA-R-01-432-W)
 COLLEGE :

PROPOSED ORDER OF DISMISSAL

On July 20, 2005, the Pennsylvania Highlands Community College Federation of Teachers Support Unit (Federation or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the position of security and safety coordinator in a unit of full-time and regular part-time nonprofessional employes of the Pennsylvania Highlands Community College (College or Respondent) certified by the Board at PERA-R-01-432-W.

On October 19, 2005, the Secretary of the Board issued an order and notice of hearing fixing January 12, 2006 in Pittsburgh as the time and place of hearing. The hearing was held as scheduled, but the location of the hearing was changed to Johnstown. At that time, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Pennsylvania Highlands Community College 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 68, Johnstown, Pennsylvania 15907-5300. (N.T. 6, Board Exhibit 1)
2. That the Pennsylvania Highlands Community College Federation of Teachers Support Unit is an employe organization within the meaning of Section 301(3) of the Act, with its address located at 10 South 19th Street at the River, Pittsburgh, Pennsylvania 15203 (N.T. 6, Board Exhibit 1)
3. That the Federation is the exclusive representative of a bargaining unit of all full-time and regular part-time nonprofessional employes including but not limited to secretaries, custodians, maintenance workers, site administrators and clerks; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act, as certified at Case No. PERA-R-01-432-W. (N.T. 5, Board Exhibit 1)
4. That the college conducts classroom activity at two sites: the Richland Vo-Tech School and Ebensburg. The primary place for classroom activity is the Richland site. The college's administrative offices are in downtown Johnstown. (N.T. 16-17, 25-26)
5. That Paul Hromulak is the security and safety coordinator. He was hired for this position on June 28, 2005, after he completed a three-month temporary assignment in the position in 2004, in which he was assigned to review and make recommendations on college safety and emergency procedures. For this three-month period, the college granted him a leave of absence from his position of Information Desk Attendant, a bargaining unit position. (N.T. 7, 27, 51 College Exhibits 1, 2 and 3)
6. That when Hromulak took the temporary assignment in May, 2004, he did so with the understanding that the position was not in the bargaining unit. (N.T. 29)

7. That Hromulak works out of the downtown Johnstown site. He reports to Lorraine Sylvia, the vice-president for finance and administration. (N.T. 52, College Exhibits 1 and 3)

8. That Hromulak is the only college employe working in security. The College contracts with a private provide security at the Richland and Ebensburg sites. The landlord of the downtown site provides security there. (N.T. 11, 18- 19, 43, Joint Exhibit 7)

9. That as of the date of the hearing on this matter, Hromulak was about to complete his Act 120 training (Municipal Police Training Act) which would qualify him to be employed as a police officer in the Commonwealth of Pennsylvania. (N.T. 28-29)

10. That Hromulak is responsible for developing, recommending and updating emergency procedures specific to each college location to ensure compliance with federal, state and local laws. (N.T. 36, Joint Exhibit 7)

11. That Hromulak is responsible for coordinating the development of plans and policies for the college security operations. (N.T. 36, 44-45 Joint Exhibit 7)

12. That Hromulak is responsible for developing and implementing a master plan for parking and traffic control. (N.T. 36, 44, 45 Joint Exhibit 1)

13. That Hromulak is responsible for developing and maintaining the College's safety plan. (N.T. 36, Joint Exhibit 7)

14. That Hromulak designed the uniform, patch and shield he wears to work. (N.T. 43, 44)

15. That Hromulak has enforced rules and policies of the college designed to protect property and safety. There have been occasions when Hromulak has had to escort persons off the college property because of their violation of college rules. (N.T. 40)

DISCUSSION

The Federation has petitioned to include the position of safety and security coordinator in the College's nonprofessional unit. The College opposes the petition on the grounds that the position is management level under Section 301(16) of the Act and that the position is a guard under Section 604(3) of the Act.

Section 301(16) defines management level employes as "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 In the Matter of the Employes of Commonwealth of Pennsylvania (Attorney Examiners I), 12 PPER ¶ 12131 (Final Order, 1981), the Board set forth a three-part disjunctive test for the application of Section 301(16), wherein it held that a management level employe is: (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. Id. This test has been consistently applied by the Board and its hearing examiners and was adopted by the Commonwealth Court in Pennsylvania Assoc. of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1985).

The College has supported its argument that the safety and security coordinator is a management level employe under Section 301(16) of the Act. Hromulak has been responsible for developing and recommending a number of plans and policies relating to the College's safety and security since he moved out of his bargaining unit position. The college has approved his recommendations, so that they are now the policy of the college.

As for the College's argument that the position should also be excluded as a guard under Section 604(3) of PERA, the Board is guided by Erie County Area Vocational-Technical School v. PLRB, 417 A.2d 796, (Pa. Cmwlth. 1980), which involved security/maintenance workers employed by a school. This Court stated:

[C]haracterization of the employees as 'guards' under the Act is not solely dependent on whether their main function is the enforcement of the employer's rules against other employees. The critical element of the 'guard' function is that the employees are responsible for enforcing the employer's rules to protect the employer's property. During a strike or labor dispute this could mean possibly protecting the employer's property from striking employees; there the divided loyalty problems which necessitate the guards' exclusion from the bargaining unit could become apparent.

Id. 417 A.2d at 798.

The College has supported its argument that the security and safety coordinator is a guard under Section 604(3) that should not be included in the nonprofessional unit. In addition to placing Hromulak in the position of managing the College's safety and security functions, the College has also entrusted Hromulak with the responsibility for directly enforcing the college's rules and policies. He has had the occasion to have to actually enforce the College's rules to the point of removing persons from college property.

CONCLUSIONS

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

1. That the Pennsylvania Highlands Community College is a public employer within the meaning of Section 301(1) of the Act.
2. That the Pennsylvania Highlands Community College Federation of Teachers Support Unit is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties.
4. That the position of security and safety coordinator is a management level employe within the meaning of Section 301(16) of the Act.
5. That the position of security and safety coordinator is a guard under Section 604(3) 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 petition for unit clarification is dismissed.

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 third day of May, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

Direct Dial 717-783-6021

May 3, 2006

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PENNSYLVANIA HIGHLANDS COMMUNITY COLLEGE
Case No. PERA-U-05-318-W

Enclosed is a copy of the proposed order of dismissal in the above captioned case.

Sincerely,

THOMAS P. LEONARD
Hearing Examiner

Enclosure

cc: Anna Weitz
Paul Sibeto, Jr.
Pittsburgh Regional Office