

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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:
PENNSYLVANIA HIGHLANDS COMMUNITY : Case No. PERA-U-05-369-W
COLLEGE : (PERA-R-01-432-W)
:

PROPOSED ORDER OF UNIT CLARIFICATION

On September 1, 2005, the Pennsylvania Highlands Community College (College or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the position of Human Resources and Financial Assistant as a confidential employe from the unit of full-time and regular part-time nonprofessional employes represented by the Pennsylvania Highlands Community College Federation of Teachers Support Unit (Federation or Respondent) and 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 Employe 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 Federation and the College have negotiated collective bargaining agreements for the nonprofessional employes and are currently parties to a collective bargaining agreement for the period of July 1, 2005 to June 30, 2008. (N.T. 5-6, Joint Exhibits 1 and 2)
5. That the Federation is also the exclusive representative of a certified unit of professional employes at the College. The Federation and the College have entered into collective bargaining agreements over the years, the most recent being the agreement for the period July 1, 2003 to June 30, 2006. (N.T. 7, Joint Exhibit 3)
6. That the College and the Federation are currently involved in bargaining a successor to the professional unit's collective bargaining agreement. (N.T. 39, 57-58)
7. That Sue Hunt is the Human Resources and Financial Assistant. She began her employment with the College on July 26, 2003. (N.T. 43)

8. That in 2005, the College was engaged with the Federation in collective bargaining negotiations for health care benefits. Amy O'Hara, the college's Human Resources Director, and Lorraine Sylvia, the Vice-President for Administration and Finance and Administrative Services, provided Hunt with the bargaining proposals before they were made to the Federation. They told Hunt that the information was to be kept confidential. (N.T. 19-22, 31, 48-51)

9. That Hunt's office is in close proximity to the human resources office. (N.T. 22, 41-42, 44-45, College Exhibit 3)

DISCUSSION

The College has petitioned the Board to exclude the position of Human Resources and Financial Assistant as a confidential employe under Section 301 (13) of the Act.

As the petitioning party seeking to exclude the position, the College bears the burden of proving the factual elements to meet the statutory exclusion. State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999); Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977).

Confidential employes are defined 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 College has presented clear and convincing evidence that the position at issue is confidential and should be excluded from the unit. It has demonstrated that Sue Hunt, the Human Resources and Financial Assistant, works in close proximity to the College officials who are engaged in collective bargaining and that she has access to collective bargaining proposals in advance of their presentation to the Federation. If her position would remain in the unit, the College's ability to engage in collective bargaining on a fair and level basis with the Federation would be detrimentally affected. Excluding the position from the unit complies with both Section 301(13) of the Act and the landmark case interpreting that provision. PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978).

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 Human Resources and Financial Assistant is confidential within the meaning of Section 301(13) 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 unit is amended to exclude the position of Human Resources and Financial Assistant.

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 fourth day of May, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner