

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PERA-U-06-251-E
: (PERA-R-103-C)
: (PERA-R-01-216-E)
LUZERNE COUNTY COMMUNITY COLLEGE :

PROPOSED ORDER OF UNIT CLARIFICATION

On June 6, 2006, Luzerne County Community College (Petitioner or College) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the Director of Student Activities/Athletics the unit of professional employes of the College represented by Luzerne County Community College Association of Higher Education (Association) and certified by the Board at Case No. PERA-R-103-C and PERA-R-01-216-E.

On August 3, 2006, the Secretary of the Board issued an order and notice of hearing scheduling a pre-hearing conference on September 6, 2006 and a hearing for November 3, 2006, if necessary. The hearing was necessary but was continued to November 9, 2006 and again to February 5, 2007, in Nanticoke before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was held as rescheduled, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The 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 Luzerne County 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 1333 South Prospect Street, Nanticoke, Pennsylvania 18634. (N.T. 6-7, Board Exhibit 1)
2. That the Luzerne County Community College Association of Higher Learning-PSEA/NEA is an employe organization within the meaning of Section 301(3) of the Act, with its address located at 1188 Highway #315, Wilkes-Barre, Pennsylvania 19702. (N.T. 6-7, Board Exhibit 1)
3. That on May 28, 1971, at PERA-R-103-C, the Board certified the Association as the exclusive representative of a subdivision of the employer unit comprised of all full-time and regular part-time professional employes, excluding Departments Heads, the Coordinator of Development Studies and Director of Public information Service and also excluding supervisors, first level supervisors and confidential employes and guards as defined in Act 195." On April 18, 2006, the Board amended the unit at PERA-R-216-E. (N.T. 6-7, Board Exhibit 1)
4. That the College employs Joseph R. Clark as the Director of Student Activities/Athletics. He was hired in 2002. (N.T. 9)
5. That Clark is responsible for ten (10) varsity sports, including the scheduling of all events, transportation, budgeting, and hiring of officials. In addition, he must be on-site for any home contests. (N.T. 10-11).

6. That there are twenty-one coaches and assistant coaches and an athletic trainer. In the four years that Clark has held his current position, he has done all of the hiring of coaches and assistant coaches. He has hired five head coaches. (N.T. 11)

7. That when a coach is needed, Clark sends the requirements necessary for the position to the Director of the Human Resources Department. The Human Resources Department then publishes the job vacancy and requirements in local newspapers and the responses are given directly to Clark. The Human Resources Department does not screen the applications before they are given to Clark. (N.T. 11)

8. That Clark was directly involved in the recent hiring of the head basketball coach. Clark screened the eight applicants for the position to determine whether they met the basic requirements. He had changed the requirements from those utilized by the previous Director of Athletics. He did not have to obtain approval from anyone in the College to determine what requirements were necessary for the coaching position. (N.T. 12-13, 54-55)

9. That Clark then proceeded to interview all eight candidates individually, and based on the interviews, he offered the coaching position to the individual who now holds the position. (N.T. 13)

10. That Clark did not need the approval from anyone to make the offer of employment for the basketball coaching position. (N.T. 13-14, 54)

11. That Clark determines the budget for his office. He prepares it and presents it to a committee. During the four years that he has presented his budget, the College has always accepted it as presented. (N.T. 26)

12. That the College has created a budget account for student activities and athletics. It is one budget and it is the largest budget on campus. Clark discussed the procedure for creating the budget, which has line items for each club and varsity sport. (N.T. 28)

13. That Clark's budget submissions for the department have never been decreased by the College, only increased, during the four years that he has been the Director of Student Activities/Athletics. (N.T. 29)

DISCUSSION

The College has petitioned the Board to clarify the unit of professional employees to exclude the position of Director of Student Activities/Athletics, held by Joseph R. Clark. The College asserts the position is a supervisor under Section 301(6) of the Act and a management level employe under Section 301(16) of the Act.

As the Petitioner, the College bears the burden of proving the factual elements to meet the basis for the statutory exclusions. 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).

As for the first allegation that Clark is a supervisor, Section 301 (6) of the Act defines a supervisor as follows:

"(6) 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 employees 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).

Employees must be excluded from a bargaining unit as supervisors if they have the authority to perform one (1) or more of the functions listed in Section 301 (6), actually exercise any such authority they have and use independent judgment in exercising that authority. PLRB v. McKeesport Area School District, 14 PPER 14165 (1983).

Employees are supervisors if they make effective recommendations regarding the items listed in Section 301 (6) of the Act, effective meaning that their recommendations are not subject to independent investigation but rather are given "controlling weight" by the decision maker. Lancaster County Commissioners, 3 PPER 208 (Court of Common Pleas of Lancaster County, 1973); Keystone Central School District, 12 PPER 12044 (Nisi Order of Unit Clarification, 1981); South Western School District, 9 PPER 9124 (Order and Notice of Election, 1978).

The College has met its burden of proof regarding its claim that the position is supervisory under Section 301(6) of the Act. The evidence relating to Clark's role in hiring coaches amply demonstrates that the position is a supervisor. Clark established the job requirements for the basketball coach and then went on to interview the candidates and hire the successful applicant. He has exercised this activity on his own authority, independently of higher level administrators.

As for the College's second allegation, management level employe is defined in Section 301(16) of the Act as:

(16) '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).

The Board has interpreted Section 301(16) on various occasions. In Pennsylvania Ass'n of State Mental Hosp. Physicians v. PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989) the Commonwealth Court adopted the Board's test for determining whether an employe is a management level employe under Section 301(16). This test provides that an employe will be managerial if any one of the following three factors are established: (1) the employe is involved directly in the determination of policy; (2) the employe directs the implementation of policy; or (3) the employe is above the first level of supervision. id at 1023. See also Lackawanna Career Technology Center, 33 PPER 33201 (Final Order, 2002).

In Commonwealth of Pennsylvania (Attorney Examiners 1), 12 PPER 12131 (Final Order, 1981), the Board stated:

Section 301(16)...speaks in terms of 'any individual who is involved directly in the determination of policy.' This definition necessarily includes those employes who have been shown to have meaningful participation in the decisional process as well as those with statutory authority to make the final determination.

11 PPER at 316 (emphasis in original) (citing Employees of Carlynton School District v. Carlynton School District, 377 A.2d 1033 (Pa. Cmwlth. 1977)).

However, in order to demonstrate that a person at a given position is management level, the Board further stated that a person directly involved in the determination of policy "should have some control of or responsibility for authorship in the employer's policy making process." 11 PPER at 317. (Citation omitted). As stated in Carlynton, "the Act does not require that, in order to be classified as a 'management level employe' an individual be involved in the determination of policy or responsibly direct the implementation of policy at all times or in every aspect of his job." 377 A.2d at 1035 (emphasis in original). Indeed, employes will be considered management level "if some of their functions are management functions." AFSCME, Council 13 v. PLRB, 510 A.2d 150 (Pa. Cmwlth. 1986).

An employe who plays a meaningful role in the development of a budget is a management level employe within the meaning of the first part of Section 301(16) of the Act dealing with direct involvement in the determination of policy. Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 525 Pa. 590, 575 A.2d 119 (1990). Luzerne County Community College, 37 PPER 47 (Final Order, 2006)

The College has sustained its burden of proving the Director of Student Activities and Athletics is a management level employe. In his four years in the position, Clark has established a record of independence in developing the budget for Student Activities and Athletics, the largest in the College.

CONCLUSIONS

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

1. That Luzerne County Community College is a public employer within the meaning of Section 301(1) of the Act.
2. That the Luzerne County Community College Association of Higher Education is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. That the Director of Student Activities/Athletics is a supervisor under Section 301(6) of the Act and a management level employe under Section 301(16) 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 professional unit certified at PERA-R-103-C is amended to exclude the position of Director of Student Activities/Athletics.

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 thirteenth day of April, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner