

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-06-436-E
: (PERA-R-760-C)
TUSCARORA SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On August 23, 2006, the Tuscarora Education Association, PSEA/NEA (Association) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to add the position of athletic trainer to the existing bargaining unit of professional employees of the Tuscarora School District (District). On December 8, 2006, the Secretary of the Board issued an order and notice of hearing directing a hearing before a Board hearing examiner on January 11, 2007. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties made closing arguments at the hearing and waived the right to file briefs.

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

FINDINGS OF FACT

1. The District is a public employer for purposes of Section 301(1) of the Public Employe Relations Act (PERA or Act).
2. The Association is an employe organization for purposes of Section 301(3) of PERA.
3. On January 29, 1971, the Board certified the Association as the exclusive representative of a bargaining unit of District employes, which is comprised of "non-supervisory professional personnel: teachers, counselors, nurses, and like work; and excluding all non-professional employes, supervisors, first level supervisors, and confidential employes as defined in the Act." (PERA-R-760-C)
4. The District has employed Vincent Amigh as an athletic trainer since the 1999-2000 school year. (N.T. 7, 16)
5. When the District interviewed Amigh for the athletic trainer position, he was advised that the position required national certification as an athletic trainer. Amigh possessed the necessary certification. (N.T. 8-9)
6. The National Athletic Trainers Association (NATA) is the national certifying body for athletic trainers. To obtain certification as an athletic trainer from NATA, a candidate must complete various college courses including anatomy, physiology and kinesiology, spend 1500 hours working with a certified athletic trainer, and pass a certification exam that is administered by NATA. (N.T. 7-9)
7. Amigh has a bachelor's degree in exercise and sports science, with a major in athletic training. Amigh completed the required 1500 hours of training to obtain his certification at the University of Florida. (N.T. 7, 16-17)
8. Amigh is certified as an athletic trainer by NATA. He also has a license from the Commonwealth of Pennsylvania. To obtain such a license, one must be a certified athletic trainer. (N.T. 7, 9-10)
9. Amigh works approximately seven hours a day from 2 p.m. to 9 p.m., Monday through Friday. He also works an occasional Saturday event. (N.T. 13-14, 17-18)

10. Amigh is required to attend all sports practices that are held between 2 p.m. and 9 p.m. He is also required to attend all varsity and middle school home games for all sports, and to travel to football away games. (N.T. 10, 17-18)
11. Amigh's duties include making sure that student athletes are in good health and attempting to prevent injuries. Amigh assesses the health of the student athletes by talking to the nurse and doctor who conduct the physical examinations for the athletes. Amigh also prepares athletes for practices and games by performing any necessary taping, wrapping, physical therapy or stretching. If an athlete sustains an injury or trauma during a practice or a game, Amigh provides therapy and determines if the athlete needs to go to the hospital or see a doctor or may be treated at the site of the injury. Amigh also determines if the athlete may continue to participate in the practice or the game. If an athlete is injured and unable to play, his doctor usually sends him to physical therapy. In some cases, the doctor will give Amigh instructions regarding treatment of the injury. (N.T. 10-14)
12. In performing his duties as an athletic trainer, Amigh must respond to various situations that arise with student athletes, including emergencies. When an athlete is injured or in distress, Amigh is ordinarily the first responder to the situation. In deciding how to respond to such situations, and determining whether the athlete may continue to practice or play, should be seen by a doctor, or should sit out or go home, Amigh relies on his discretion, judgment, training and education. Amigh's assessment may be overridden by a doctor, but not by a nurse. (N.T. 12-13, 19)
13. Amigh diagnoses injuries received by student athletes. Ordinarily there are several injuries each day. (N.T. 18)
14. The work that Amigh performs cannot be quantified on a numerical basis. (N.T. 13)
15. Amigh interacts with approximately three hundred student athletes over the course of a school year. (N.T. 13)
16. In performing his job duties, Amigh interacts with coaches, nurses and faculty. (N.T. 14)
17. Many of the coaches with whom Amigh interacts are also faculty members. (N.T. 21)
18. Amigh reports for work at the District's high school. He also travels to the middle school. (N.T. 21-22)
19. Amigh was hired by the District's school board and receives a salary, which is paid biweekly. (N.T. 15)
20. All members of the professional bargaining unit are hired by the school board and receive a salary, which is paid biweekly. (N.T. 24-26)
21. The length of the work year for the athletic trainer and the members of the professional bargaining unit is similar, running from late August to early June. (N.T. 24-25)
22. The members of the professional bargaining unit work seven and a half hours a day with a half hour duty free lunch, Monday through Friday. (N.T. 24)
23. All members of the professional bargaining unit possess degrees representing achievement of higher education. (N.T. 25)
24. All members of the professional bargaining unit possess state certification authorizing them to do the work that they do. (N.T. 25)
25. A significant number of members of the professional bargaining unit work at the high school. (N.T. 26)

DISCUSSION

The Association alleges that the position of athletic trainer is professional and should be included in the professional bargaining unit. The District contends that the position should be excluded from the petitioned-for unit because it is not professional and does not share a community of interest with the members of the professional unit. Section 604 of PERA provides in relevant part:

"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 employes must have an identifiable community of interest, and (ii) the effects of overfragmentization."

43 P.S. § 1101.604.

To determine whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, areas of work, working conditions, interchange of employes, supervision, grievance procedures, bargaining history, and employe desires. Fraternal Order of Police v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. May 26, 2000), affirming, 29 PPER ¶ 29110 (Final Order, 1998); Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours and working conditions or other factors. Id. As the Commonwealth Court stated in Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974):

"We do not read Section 604 [of PERA] to mean . . . that an identifiable community of interest cannot exist without some differences in requirements of experience, skills and education . . . To accept [that] proposition would lead to . . . over-fragmentization . . . [T]he Board's determinations may not ignore the effects of over-fragmentization and . . . the units must be as few as practicably can be"

Id. at 260.

Here both the athletic trainer and the members of the professional bargaining unit receive a salary and are paid biweekly, and they have a similar work year and work a similar number of hours and days per week. The athletic trainer is required to have national certification, which in turn requires higher education, and the members of the professional bargaining unit have a similar educational background. The athletic trainer also reports for work at the District's high school, where a significant portion of the bargaining unit members work. In performing his job duties, the athletic trainer interacts with members of the bargaining unit, including nurses and faculty members who also serve as coaches. Based on these factors, I find that the athletic trainer shares an identifiable community of interest with members of the professional bargaining unit. While there are some differences between the athletic trainer and the positions in the existing unit, they do not destroy the community of interest that otherwise exists.

The District also argues that the position of athletic trainer should be excluded from the professional bargaining unit because it is not professional. As the party seeking exclusion of the position from the unit, the District has the burden of proof. SSHE, 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). Section 301(7) of PERA defines "professional employe" as:

"[A]ny 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 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 Board has consistently found that athletic trainers are professional employes for purposes of PERA. Norwin School District, 31 PPER ¶ 31104 (Final Order, 2000); Belle Vernon Area School District, 31 PPER ¶ 31017 (Final Order, 1999); Elizabeth Forward School District, 29 PPER ¶ 29015 (Proposed Order of Unit Clarification, 1997). The same result must obtain here because the athletic trainer position meets the four-part test for a professional employe. Indeed, while the District argues that the work of the athletic trainer is routine and does not require consistent exercise of discretion and judgment, the record evidence indicates otherwise. The athletic trainer makes assessments concerning the health of student athletes, takes action to prevent injuries and facilitate recovery from injuries, responds to any situations in which student athletes incur injuries or trauma, and relies on his discretion, judgment, training and education in deciding whether the student athletes may continue to practice or play, should be referred to a physician, or should be treated by the trainer on site. In Norwin, the Board stated that performance of similar duties satisfied the four-part standard for professional status under PERA. Accordingly, the position of athletic trainer is professional and will be included in the bargaining unit represented by the Association.

CONCLUSIONS

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

1. The District is a public employer for purposes of Section 301(1) of PERA.
2. The Association is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The position of athletic trainer is professional within the meaning of Section 301(7) of PERA.
5. The position of athletic trainer shares an identifiable community of interest with members of the professional bargaining unit represented by the Association.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Certification of Representative issued on January 29, 1971 at Case No. PERA-R-760-C is hereby amended to include the position of athletic trainer, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED this twenty-second day of March, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner