

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-U-08-221-W  
: (PERA-R-585-W)  
CLEARFIELD COUNTY CAREER AND :  
TECHNOLOGY CENTER :

**FINAL ORDER**

On July 29, 2008, the Clearfield County Career and Technology Center (Employer) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the July 9, 2008 decision of the Secretary of the Pennsylvania Labor Relations Board (Board) declining to direct a hearing on a Petition for Unit Clarification filed jointly by the Employer and the Clearfield County Career and Technology Center Association, PSEA/NEA (Association). In the petition, the Employer and the Association seek to exclude five Practical Nursing Instructors from the unit of professional employes certified at PERA-R-585-W.

In dismissing the petition, the Board Secretary noted that if the Practical Nursing Instructors were removed from the existing professional unit they would, of necessity, constitute a separate, single-classification unit standing alone. The Secretary determined that absent an allegation that a community of interest is totally lacking, supported by specific factual allegations, the requested unit clarification would be in violation of the Board's broad-based bargaining unit policy.

In its exceptions,<sup>1</sup> the Employer alleges that the Practical Nursing Instructors completely lack an identifiable community of interest with the other professional employes in the bargaining unit because, unlike the other professional employes, they 1) participate directly in the admissions selection process for students, 2) educate only adult students who are high school graduates, 3) plan, direct and develop student policies, 4) have a greater degree of academic freedom, 5) are regulated by the State Board of Nursing rather than the Department of Education, 6) are required to obtain a Master's Degree within five years of their hiring date, 7) teach a curriculum in a clinical hospital setting for two days out of the week and 8) assume supervisory and administrative authority of the Practical Nursing Director when she is unavailable.

First, we must address the Employer's allegation that the Practical Nursing Instructors exercise supervisory authority. The Employer does not argue that the Practical Nursing Instructors are supervisors within the meaning of Section 301(6) of PERA who should be excluded from the unit under Section 604(5). Even if the Employer was making such an argument, it does not allege that the Practical Nursing Instructors spend a significant amount of their time performing supervisory functions such as making effective recommendations regarding employe discipline. See State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999) (where supervisory exclusion is sought, Board takes into account the extent of supervisory duties performed by employe); Penns Manor Area School District, 30 PPER ¶ 30198 (Final Order, 1999) (in order for a disciplinary recommendation to be effective, it must be routinely followed at a higher level of authority without an independent investigation). Indeed, the Employer only alleges that the Practical Nursing Instructors may perform supervisory functions of the Practical Nursing Director if she is unavailable. However, an employe is only a supervisor if the employe exercises supervisory authority in his or her own right, not when the employe fills in for his or her own supervisor. Troy Area School District, 34 PPER ¶ 37 (Proposed Order of Unit Clarification, 2003) (citing Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991), affirmed, 23 PPER ¶ 23029 (Court of Common Pleas of Philadelphia, 1992)). As such, the Employer's allegations, even if proven, would not support exclusion of the Practical Nursing Instructors from the unit as supervisory employes.

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<sup>1</sup> It is noted that although the Association and the Employer jointly filed the Petition for Unit Clarification, the Association did not join in the exceptions filed by the Employer.

The remainder of the Employer's exceptions attempt to show that the Practical Nursing Instructors do not share a community of interest with the other employes in the professional unit. However, it is well-settled that an identifiable community of interest can exist despite differences among employee classifications. Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), appeal denied, 525 Pa. 652, 581 A.2d 575 (1990); Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1971); Pittston Area School District, 12 PPER ¶ 12180 (Final Order, 1981); Peters Township School District, 16 PPER ¶ 16070 (Order Directing Submission of Eligibility List, 1985); and Neshannock Township School District, 17 PPER ¶ 17153 (Final Order, 1986).

In making unit determinations, the Board is guided by its broad-based bargaining unit policy. This policy is based on Section 604(1)(ii) of PERA, which directs the Board, when making the determination of an appropriate unit, to take into account the effects of overfragmentization of bargaining units. In City of Philadelphia, 10 PPER ¶ 10059 (Final Order, 1979), the Board stated that:

The public policy of the Commonwealth and the purpose of the Act as set forth in Section 101 is to promote orderly and constructive relationships between public employers and their employes and to preserve at the same time the rights of the citizens of the Commonwealth to keep inviolate the guarantees for their health, safety and welfare. It is our considered judgment that the public policy of the Act will best be effectuated by avoiding the dangers of overfragmentization inherent in the certification of a bargaining unit limited to a small number of employes from among a much larger group. The whipsaw effect bargaining with a myriad of fragmented bargaining units has on an employer undermines rather than fosters harmonious employe-employer relations and the rights of the public.

Id. at 97. Further, in County of Allegheny, 11 PPER ¶ 11031 (Court of Common Pleas of Allegheny County, 1979), the Court affirmed the Board's rejection of a request to isolate a single classification for bargaining unit purposes as a violation of PERA's admonition against overfragmentization of bargaining units.

Pursuant to its broad-based bargaining unit policy, the Board will certify classifications of employes in a single unit when those employes perform the same general function. See Philadelphia Housing Authority, 31 PPER ¶ 31110 (Order Directing Submission of Eligibility List, 2000), 32 PPER ¶ 32046 (Final Order, 2001). As such, the Board recognizes all-inclusive blue-collar units, all-inclusive white-collar units and wall-to-wall nonprofessional units as appropriate under the Act. Lansdale Borough, supra, citing Methacton School District, 11 PPER ¶ 11040 (Decision and Order, 1980), 11 PPER 11227 (Final Order, 1980); Montgomery County Intermediate Unit 23, 11 PPER ¶ 11036 (Decision and Order, 1980). The Board has also determined, in a case also involving Practical Nursing Instructors, that a unit of all professional employes is appropriate because creating more than one unit of professional employes promotes overfragmentization. Chester Upland School District, 16 PPER ¶ 16089 (Final Order, 1985), affirmed, 532 A.2d 925 (Pa. Cmwlth. 1987).

Consistent with its broad-based bargaining unit policy, the Board stated in Chester Upland School District:

The Board has ruled that practical nursing instructors are professional employes who share an identifiable community of interest with teachers and other professional employes in a vocational-technical school. Fayette County Area Vocational-Technical School, 11 PPER ¶ 11083 (Nisi Order of Unit Clarification, 1980) and Jefferson County DuBois Area Vocational-Technical School, 6 PPER 259 (Nisi Order of Unit Clarification, 1975). The basis for the Board's ruling in the above-cited cases was the fact that the practical nursing instructors received the same fringe benefits and performed the same professional teaching function as the other employes in the unit. Further, the Board found it irrelevant that the practical nursing instructors taught high school graduates while the other teachers instructed secondary students. The Board also found it immaterial that the instructors' hours are similar

but not identical to the other teachers and that they do not teach exclusively at the vocational-technical school. The same facts are present in the instant case and therefore compel the same result.

Id. at 233.

In this case, as in Chester Upland School District, the Practical Nursing Instructors and the other professional employes may teach different types of students in different classroom environments. However, this does not change the fact that the Practical Nursing Instructors and the other teachers in the bargaining unit all perform the professional function of teaching. Further, the Employer makes no claim that there are any differences in the other community of interest factors routinely relied upon by the Board (e.g. pay scales, hours and benefits and other working conditions.) See Allentown City School District, 38 PPER ¶ 100 (Final Order, 2007). Accordingly, the allegations in the Employer's petition failed to support a conclusion that the Practical Nursing Instructors do not share an identifiable community of interest with other members of the professional bargaining unit. Therefore, the Secretary did not err by dismissing the petition for unit clarification.<sup>2</sup>

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Employer are hereby dismissed and the Secretary's decision declining to direct a hearing on the Petition be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of November, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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<sup>2</sup> The Employer also argues in its exceptions that none of the Practical Nursing Instructors are members of the Association. However, the individuals' membership in the Association is not relevant to the inquiry of whether the classification of Practical Nursing Instructor is properly included in the professional bargaining unit.