

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-07-100-E
: (PERA-R-96-C)
STATE COLLEGE AREA SCHOOL DISTRICT :

FINAL ORDER

The State College Area Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 3, 2008, challenging a Proposed Order of Dismissal (POD) issued on June 19, 2008. In the POD, the Board's Hearing Examiner rejected the Association's petition to clarify the professional bargaining unit to include the position of tutor. The State College Area School District (District) did not file a response to the exceptions.

On February 21, 2007, the Association filed a Petition for Unit Clarification seeking to include the position of tutor in the professional bargaining unit. A hearing was scheduled for May 21, 2007. Following a pre-hearing conference on May 10, 2007, the parties mutually requested a continuance of the hearing. Thereafter, a hearing was scheduled for October 31, 2007. At the request of the parties, the hearing was rescheduled and held on December 4, 2007.

The Hearing Examiner's findings of fact are summarized as follows. The District maintains a program in its High School that is known as the Tutoring Center. Dr. Judith Karakawa, who is a member of the nonprofessional support staff bargaining unit, has been the tutor at the Tutoring Center since September of 1999. Dr. Karakawa holds Ph.D., Master of Science and Bachelor of Science degrees in Microbiology from the Pennsylvania State University. Although Dr. Karakawa attained teacher certification in biology and general science in 2003 and in mathematics in 2005, two of the four tutors who held the position prior to Dr. Karakawa did not have a teaching certificate.

When the District hired Dr. Karakawa in 1999, the job requirements were a High School education plus additional training in a community college. In 2002, when the job description was updated, the District continued to only require "High School plus post-secondary training." However, the District did amend the listed job duties so that whereas the old job description stated that the tutor "develops materials for tutoring purposes", the new job description provides that the tutor "utilizes teacher prepared materials." Further, following a meeting that was called in August of 2005 to discuss Association concerns that Dr. Karakawa was doing more than what was required for her job, the High School principal directed Dr. Karakawa to utilize teacher-prepared materials while performing her tutoring duties. The principal also sent a letter to teachers explaining Dr. Karakawa's job duties and emphasizing that she was to use teacher-prepared materials while performing her duties.

In the POD, the Hearing Examiner determined that because the Association did not prove that the tutor position requires knowledge of an advanced nature customarily acquired by specialized study in an institution of higher learning or its equivalent, the Association did not establish that the position meets the definition of a "professional employe" set forth in Section 301(7) of the Public Employee Relations Act (PERA). Accordingly, the Hearing Examiner dismissed the Association's Petition for Unit Clarification.

In its exceptions, the Association argues that the Hearing Examiner erred by dismissing the petition because the job description does not match the actual job requirements and the work of a tutor clearly cannot be performed by anyone who does not possess knowledge of an advanced nature customarily obtained by specialized study in an institution of higher learning. Section 301(7) of PERA provides that:

(7) "PROFESSIONAL EMPLOYE" means any 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 test as outlined in PERA is a conjunctive test and all four parts of the test must be met in order for an employe to be found to be professional under PERA." In the Matter of the Employes of Luzerne County Community College, 37 PPER ¶ 47 at 147 (Final Order, 2006); See also In the Matter of the Employes of State College School District; 35 PPER ¶ 48 (Proposed Order of Dismissal, 2004).

In State College, the Association sought to clarify the professional unit to include the position of aquatics paraprofessional. In rejecting the Association's argument, the Hearing Examiner stated that:

Although the paraprofessional happens to have a college degree, the Association did not prove that the knowledge that she obtained in earning that degree is required to perform her job function. Therefore, the Association has not demonstrated that the position is professional, and its unit clarification petition must be dismissed. Lackawanna Career Technology Center, 33 PPER ¶ 33201 (Final Order, 2002) (petitioner must establish that college degree is necessary to performance of employe's job duties to prevail on claim of professional status under PERA); Girard School District, 21 PPER ¶ 21066 (Proposed Order of Dismissal, 1990) (same), Erie Metropolitan Transit Authority, 13 PPER ¶ 13295 (Proposed Order of Unit Clarification, 1982) (same).

Id. at 155.

Similarly, in this case, Dr. Karakawa happens to have advanced degrees and also holds teacher certifications, but the Association failed to prove that the knowledge that she obtained in earning those degrees or certifications is necessary to perform the job duties of the tutor position. Teacher certification is not required for the position, as demonstrated by the fact that Dr. Karakawa worked as a tutor before obtaining certifications and prior tutors also did not possess teaching certificates. Moreover, in arguing that the tutor position is professional, the Association relies on duties that Dr. Karakawa was instructed by the District not to perform. In 2005, the District admonished Dr. Karakawa and instructed her to utilize teacher-prepared materials while performing her tutoring duties rather than generate her own materials.

The Association cannot rely upon these duties as they can in no way be considered part of the actual duties of the tutor position. Indeed, the Association challenged her performance of these very duties and that challenge led to the District's admonishing Dr. Karakawa to perform only those duties outlined in the job description of the tutor. The Association's argument that a tutor must have the professional knowledge required by Section 301(7) of PERA is belied by the fact that teacher aides perform similar duties in nonprofessional units using teacher-prepared materials. See In the Matter of the Employes of Montgomery County Intermediate Unit No. 23, 15 PPER ¶ 15099 at 228 (Order Directing Submission of Eligibility List, 1984) ("teachers are given the primary role of developing individual education programs for their students, this includes preparing lesson plans ... [t]he teacher assistant is as the name implies "to assist" the teacher in attaining the goals set for the programs they are working in."). Further, "[t]he fact that in some instances teacher assistants who possessed college degrees and teacher certificates have been able to assume more responsibility than is asked for a teacher assistant does not lift the entire job classification into the status of a professional employe (i.e., a regular teacher)." Id. Because the Association has failed to show that the work Dr. Karakawa performs requires that she hold these degrees or certifications, it would be inappropriate to include her position in the professional bargaining unit. Accordingly, the Hearing Examiner did not err by dismissing the Association's petition.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Association are hereby dismissed, and the June 19, 2008 Proposed Order of Dismissal be and hereby is made absolute and final.

SEALED, DATED and MAILED 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 sixteenth day of September, 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.