

DISCUSSION

The Union seeks to accrete a class of employees called pool nurses into an existing unit of "all full-time and regular part-time general duty and staff nurses." The Union asserts that the pool nurses are, in reality, regular, part-time employees, as defined by the Board.

Temple is opposed to this inclusion of the pool nurses in the bargaining unit. Temple argues that the pool nurses are casual employees, who do not have a sufficient community of interest with nurses currently in the bargaining unit and that, even if the pool nurses had a sufficient community of interest so as to be in the unit, a Westmoreland I.U.² election is necessary to decide their inclusion.

Over Temple's objections, seventy-six of the pool nurses are properly accreted into the existing unit, because the Union has shown them to be regular, part-time employees who share a sufficient community of interest with the nurses already in the unit. A review of what must be proved to establish regular, part-time status for employees is a good place to start the analysis. We will then examine the pool nurses' community of interest with the existing bargaining unit members

Regular, part-time status exists when an employee works on a recurring basis with a reasonable expectation of continued employment. Community College of Philadelphia v. Commonwealth, PLRB, 432 A.2d 637 (Pa. Cmwlth. 1981), *aff'd*. 437 A.2d 942 (Pa. 1982). It is when employees work as a matter of special engagement with no reasonable expectation of continued employment that they are excluded from the bargaining unit as merely casual employees. Erie County Vocational-Technical School v. PLRB, 417 A.2d 796 (Pa. Cmwlth. 1980).

Temple argues that the pool nurses are merely casual employees who are ineligible to be in any bargaining unit. As authority for that proposition, Temple cites a twenty-four year old proposed order of dismissal, in which a prior hearing examiner found "flex-time" nurses to be casual employees, albeit, under facts similar to the facts here.³ Allegheny County, 15 PPER ¶ 15052 (Proposed Order of Dismissal, 1984).

In that case, flex-time nurses told the employer in the middle of the prior month when they were available to work the following month. These nurses were free, though, not to report to work on their scheduled shift with no repercussions from the employer. Flex-time nurses were also free to simply take themselves off the work schedule for periods of time.

The hearing examiner concluded that with so much latitude in determining their own schedule, flex-time nurses "do not have the consistent and recurring pattern of permanency and stability in their positions as would be evidenced by a bargaining unit employee...." *Id.* at 130. Therefore, ruled the examiner, they don't have "a sufficient community of interest with regular employees to be included in the bargaining unit." *Id.* I would use the following analysis to decide that case, and would come to the opposite conclusion.⁴ The following analysis is more in keeping with the Board's definition of what constitutes regular, part-time status.

The Board has consistently said "that the focus of the inquiry must be on whether the [employees in question] have a reasonable expectation of continued employment based on the showing that the nature of the [employer's] personnel needs and its hiring practices have[,] in fact[,] provided regular employment to those who want it...." Community College of Philadelphia v. PLRB, 432 A.2d 637 at 641.

It is, therefore, the *employees* expectation of continued employment by the employer that controls; not whether the employee is free to choose a schedule to work, or disregard the schedule of work chosen, without repercussion. In point of fact, in Allegheny County, the nurses' expectation of continued employment was so strong that they could simply not

² Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981). When a unit clarification petition seeks to accrete a number of employees into an existing unit greater than 15% of the existing unit, the Board treats it as a representation petition and requires an election.

³ It is telling to note that in Allegheny County, pool nurses were *in the unit*. 15 PPER ¶ 15052 at 130.

⁴ Hearing examiner decisions may be persuasive, but are not binding authority on another examiner.

report for a mutually agreed-upon work shift, and yet be scheduled again. Clearly, under the facts of Allegheny County, and the instant case, "the nature of the [employer's] personnel needs and its hiring practices have[,] in fact[,] provided regular employment to those who want it...." 432 A.2d at 641.

In this case, the pool nurses are free to commit to a future schedule. But then, even at the last minute, they can choose not to work that previously agreed-upon schedule, virtually without repercussion.⁵ Should regular, full-time nurses cancel, last minute, with the aplomb of pool nurses, they would be terminated. Under these facts, pool nurses have an even greater expectation of continued employment than do the regular full-time nurses.

The Board has also held that employes exhibit a "regularity of employment with consistent and repeated service" when they have worked at least one-half of the examined prior time period. Gettysburg Borough, 22 PPER ¶ 22083 at 190 (Order Directing Submission of Eligibility List, 1991); Westmoreland County, 27 PPER ¶ 27038 (Order Directing Submission of Eligibility List, 1996) (same). The Union has established that seventy-six pool nurses have worked at least one-half the pay periods in the previous year. So, under the facts of this case, the pool nurses have satisfied the requirement that they work on a recurring basis with a reasonable expectation of continued employment.

The question then becomes whether those pool nurses also share a sufficient community of interest to be accreted into the existing bargaining unit of nurses. They do.

In determining whether a community of interest exists, the Board looks to whether the employes share common or similar work duties, hours of employment, rates of pay, responsibility, interest or interchange, fringe benefits, bargaining objectives, manner of hiring, supervision, and a myriad of other factors. Allegheny General Hospital v. Commonwealth of Pennsylvania, Pennsylvania Labor Relations Board, 322 A.2d 793, 797 (Pa. Cmwlth. 1974).

An identifiable community of interest may exist among employes even though not all of their terms and conditions of employment are identical. Washington Township Municipal Authority v. Pennsylvania Labor Relations Board, 569 A.2d 402 (Pa. Cmwlth. 1990)⁶. PERA does not suggest that each employe classification be separated on community of interest standards because of slight differences in skills, duties, and experience because "to do so would suggest that every classification of employes demonstrating differences in skills, duties, and experience could separate any such classification from other classifications of employes in a proposed unit." Athens Area School District, 10 PPER ¶ 10128 at 220 (Order and Notice of Election, 1978). An examination of the record establishes that the pool nurses share a sufficient community of interest to be in the nurses bargaining unit.

In the medical-surgical unit, pool nurses and staff nurses⁷ perform the same job. Pool nurses work the same schedule as do staff nurses and receive their assignments in the same way as do staff nurses. Temple, when advertising for open nursing positions, solicits for "Full Time, Part Time & Pool Opportunities." (Union Exhibit 3). Moreover, pool nurses are assigned to whatever department has the greatest need on any given day.

Some pool nurses, with special expertise, are assigned only to the emergency room, operating rooms and the maternity unit. Some pool nurses are prior staff nurses at Temple. While it is true that pool nurses do not receive fringe benefits, as do staff nurses, that difference is of no moment to this analysis. Westmoreland County, *supra*. Moreover, the Board has held that the "interchange of employees," and "the type of work

⁵ There is some testimony that consistent, repeated, last-minute cancellations of previously agreed-upon shifts can lead to that pool nurse simply not being scheduled for work, at Temple's discretion. But that is clearly the *rara avis*. (N.T. 127, 129, 130).

⁶ In Washington Township, the Court sustained the Board's finding of a sufficient community of interest so as to put blue and white collar employes in the same unit. If bookkeepers, laboratory technicians, laborers and waste water operators can share a community of interest sufficient to be in the same unit, surely nurses, albeit, with some different work experiences, also share a sufficient community of interest so as to be in one employer unit.

⁷ When I use the term "staff nurse" I refer to registered nurses in the bargaining unit.

performed" are factors to consider. Here, pool nurses work as registered nurses, when there are insufficient numbers of bargaining unit nurses to fill the necessary compliment. West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000).

On this record, the Union has shown that seventy-six of the pool nurses are regular, part-time employes who share a sufficient community of interest so as to be properly included in the existing unit of staff nurses.

Temple argues that because the Union never before sought to include pool nurses in the bargaining unit, the attempt to include them now is somehow untimely. The fact that the Union never before sought to include the pool nurses in the certified bargaining unit is inconsequential to whether or not they are properly regular, part-time employes who share a sufficient community of interest to now be accreted into the existing unit. Temple's arguments to the contrary are simply not supported by the law, and, in fact, the law clearly undercuts their argument on this issue.

Temple's argument was dismissed by the Board twenty-four years ago, and that dismissal is equally applicable today: "This logic ignores the fact that it is not the parties, but rather the Board which is charged with the duty to determine the appropriate unit by virtue of Section 604 of the Act, 34 P.S. §1101.604." Cumberland Valley School District, 15 PPER ¶ 15166 at 368 (Final Order, 1984). See also Chambersburg Area School District, 20 PPER ¶ 20149 (Final Order, 1989) (we see no need to now restrict the right of the parties to raise unit determinations at any time).

Temple also asserts that because the total number of pool nurses is greater than 15% of the existing unit, even if there is a sufficient community of interest, there must be a Westmoreland I.U. election held.⁸

What this argument overlooks is that the number of pool nurses that qualify to be regular, part-time employes is less than 15% of the existing unit.⁹ A Westmoreland I.U. election is necessary only when the number of employes to be accreted into the unit is greater than 15% of the existing bargaining unit. No election is necessary to accrete the seventy-six pool nurses who worked more than half the pay periods in question into the bargaining unit.

Temple also suggests that the pool nurses cannot have a community of interest with bargaining unit nurses because there is a conflict of economic interest between the two groups. As an example of this conflict, Temple highlights that "it has been the Union's consistent and unwavering position that the bargaining unit nurses have priority over the Pool Nurses when it comes to assignments and overtime." (Temple's brief at 18). What this argument overlooks is that when pool nurses are part of the bargaining unit, they will be part of the group that the Union argues has "priority," and the conflict will disappear. This is simply a case of the Union arguing for its members: and when the pool nurses are part of the unit, the Union will be arguing for them.

CONCLUSIONS

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

1. Temple is a public employer within the meaning of Section 301(1) of the Act.
2. The Union is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.

⁸ See footnote 1.

⁹ The parties have stipulated that as of April, 2008, the staff list for nurses in the bargaining unit was nine hundred eighty (Exhibit A to the Union's post-hearing brief). Dividing 76 by 980 equals .077551, or 7.7%: a percentage well less than the 15% required by the Westmoreland I.U. standard.

4. Those seventy-six pool nurses who worked at least one-half of the pay periods in the immediately preceding year are regular, part-time employees who share a sufficient community of interest so as to be accreted into the certified unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that for purposes of collective bargaining, those pool nurses who have worked at least one-half of the pay periods in the immediately preceding year are accreted into the existing bargaining unit, defined in PERA-R-95-369-E, as later clarified.

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 and become absolute and final.

SIGNED, DATED and MAILED this eighteenth day of September, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner