COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF

:

: Case No. PERA-U-08-41-E : (PERA-R-5795-C)

:

BETHLEHEM AREA SCHOOL DISTRICT

ORDER

The Bethlehem Area School District (District) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 15, 2008, challenging a Proposed Order of Unit Clarification (POUC) issued on June 24, 2008. In the POUC, the Board's Hearing Examiner concluded that the position of school bus monitor shares an identifiable community of interest with the existing bargaining unit of bus drivers, and amended that unit to include the bus monitors. In doing so, the Hearing Examiner rejected the District's argument that the bus monitors should not be included in the existing unit of bus drivers because they allegedly share a stronger community of interest with school building hall monitors, who are included in a different bargaining unit. Teamsters Local 773 (Teamsters) did not file a response to the District's exceptions.

Initially, we note that the District's exceptions are untimely. Section 95.98(a)(1) of the Board's Rules and Regulations addresses filing of exceptions and provides, in relevant part, as follows:

A party may file with the Board within 20-calendar days of the date of issuance ... an original and four copies of a statement of exceptions and a supporting brief to a proposed decision... Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

The Board has also held that a party substantially complies with the timeliness requirements of Section 95.98(a)(1) where a United States Postal Service postmark or postmark cancellation indicates that the exceptions were mailed within twenty days of issuance of the proposed decision. Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 32 PPER 32137 (Final Order, 2001).

The Board actually received the District's exceptions on July 17, 2008. The United States Postal Form 3817 which accompanied the exceptions indicates that they were mailed on July 15, 2008. The envelope containing the exceptions also has a postmark of July 15, 2008. Accordingly, that is the date of filing of the District's exceptions. However, the last day to file the exceptions was July 14, 2008, which was twenty days after issuance of the June 24, 2008 POUC. Because the District's exceptions were filed on July 15, 2008, more than twenty days after issuance of the POUC, the exceptions are untimely.

Both the POUC and Section 95.98(b) of the Board's Rules provide that when no exceptions are filed within twenty days, a proposed decision of a Board Hearing Examiner becomes final. Accordingly, the District has waived any objections to the POUC and its exceptions must be dismissed as the POUC became final in the absence of timely filed exceptions. Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469 (Pa. Cmwlth. 1988), appeal denied, 523 Pa. 638, 565 A.2d 446 (1989).

 $^{^1}$ Although Section 95.100(b) of the Board's Rules and Regulations, 34 Pa. Code ¶ 95.100(b) extends the filing deadline when the last day for filing exceptions is a Saturday or Sunday or a legal holiday, this provision is inapplicable because July 14, 2008 was a Monday and was not a legal holiday.

Even if the exceptions had been timely filed, the District would not have been successful in challenging the Hearing Examiner's order. The District argues that the Teamsters failed to show that a community of interest exists between the bus monitors and the bus drivers. However, the Hearing Examiner's findings of fact, which are supported by substantial evidence of record, indicate that bus drivers and bus monitors report for work at the same building, share the same parking facility, share the same break room, rest rooms and vending machines, use the same time clock to punch their time cards, attend meetings together at the transportation center, work together on buses, and have the same supervisor. The Hearing Examiner also found that both bus monitors and bus drivers write disciplinary reports concerning students, and that bus drivers sometimes serve as bus monitors. Clearly, these findings regarding substantial interaction and interchange between bus monitors and bus drivers and similarities in working conditions, supervision and duties provide ample support for the Hearing Examiner's determination that there is a community of interest between the petitioned-for employes and the existing unit. See West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 675, 795 A.2d 984 (2000); Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). Moreover, the fact that there may be some differences between these employes does not destroy the identifiable community of interest that otherwise exists. Id.

The District also argues that the bus monitors should not be included in the petitioned-for unit because they allegedly share a stronger community of interest with hall monitors who are included in another bargaining unit. However, the District has not filed a petition for unit clarification seeking to include the bus monitors in the other bargaining unit. The District's claim regarding the alleged greater community of interest between the bus monitors and employes in another bargaining unit is irrelevant and does not preclude clarification of the bus driver unit to include bus monitors. See In the Matter of the Employes of Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991). Furthermore, as noted by the Hearing Examiner, the District did not adduce any evidence of record to demonstrate any community of interest between the bus monitors and the hall monitors.

After a thorough review of the District's exceptions and supporting brief and all matters of record, the Board shall dismiss the exceptions as untimely filed.

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 District are hereby dismissed as untimely filed.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, Anne E. Covey, Member, and James M. Darby, Member, this nineteenth day of August, 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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² Furthermore, as noted by the Hearing Examiner, in other cases Board hearing examiners have concluded that bus monitors or bus aides have an identifiable community of interest with bus drivers. In the Matter of the Employes of Plum Borough, 31 PPER ¶ 31114 (POUC, 2000); In the Matter of the Employes of Penn Hills School District, 24 PPER ¶ 24029 (POUC, 1993).