

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-07-368-E
 :
 :
UPPER DARBY SCHOOL DISTRICT :

PROPOSED ORDER OF DISMISSAL

On August 23, 2007, the International Brotherhood of Electrical Workers, Local Union No. 98 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation (Petition) pursuant to the Public Employee Relations Act (PERA) alleging that thirty per cent or more of the five non-professional computer technician employes of the Upper Darby School District (District) wish to be exclusively represented by the Union. By letter dated September 5, 2007, the Secretary of the Board (Secretary) dismissed the Petition "because the petitioned-for unit, limited to only five (5) information technology employes, is inappropriate under the Board's broad based bargaining unit policy." On September 24, 2007, the Union timely filed exceptions to the Secretary's decision. On November 20, 2007, the Board issued an Order Directing Remand to Secretary for Further Proceedings. Consequently, on December 5, 2007, the Secretary issued an Order and Notice of Hearing directing that a hearing be held on Thursday, December 27, 2007, in Harrisburg.

On December 17, 2007, the Board received a joint request for a continuance of the hearing. On December 18, 2007, the Board received another joint request for a continuance with two alternative available hearing dates. The hearing examiner was unavailable on the dates supplied by the parties. The examiner rescheduled the hearing for February 15, 2008. By letter dated December 21, 2007, the attorney for the District advised the examiner that he was unavailable on February 15, 2008. The examiner again rescheduled the hearing to Friday, March 14, 2008, in Harrisburg. On that date, the hearing was in fact held, and both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On April 2, 2008, the notes of testimony from the hearing were filed with the Board. Both the Union and the District timely filed post-hearing briefs.

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

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. There are three bargaining units of employes at the District.

The Board certified the Upper Darby Education Association as the exclusive bargaining representative for the professional unit of teachers, librarians, guidance counselors, nurses, school social workers, etc. at Case No. PERA-R-508-E. The Board certified the Upper Darby Education Support Personnel Association, PSEA, as the exclusive collective bargaining representative for the white-collar, non-professional unit of support staff including secretaries, library aides, clerical staff, etc. at Case No. PERA-R-5154-E (name changed via amended certification at Case No. PERA-U-06-66-E). The Board also certified the Transportation Workers Union, Local No. 289 (TWU) as the exclusive collective bargaining representative for the unit of transportation and maintenance workers including electricians, locksmiths, glazers, HVAC employes, bus drivers, food service, etc. at Case No. PERA-R-812-E. (Board File Documents).

4. The District employs approximately 1,700 employees, of which approximately fifteen (15), including the five computer technicians, are not members of a bargaining unit. (N.T. 111).

5. In its petition for representation, the Union seeks an additional and fourth bargaining unit limited to five computer technician employees. (Petition for Representation).

6. The job duties performed by the computer technicians include software maintenance, repair, updates and installation; computer hardware repair; network equipment maintenance and configuration; telephone system connections and installations; public address system installations and connections; wires, cables and fiber optic installations and connections; and e-mail server maintenance. During construction at the District in 1999/2000, the computer technicians installed new cabling and telephone systems. They also "wired" an elementary school in 2005. The computer technician employees are all required by the District to have Apple Certification. (N.T. 10-14, 40, 48, 51-53; District Exhibit 3).

7. Computer technicians sometimes work together on projects and sometimes work alone. All five computer technicians begin and end their work day at the same time. They all receive the same benefits. If one of them is absent, the remaining computer technicians on duty divide the work. All five computer technicians are supervised by Joseph Troy. (N.T. 12-14, 18, 51, 54).

8. The computer technicians were once part of the certified bargaining unit of transportation and maintenance workers represented by TWU. The computer technicians as a group asked to be removed from the TWU unit because the salaries under that contract were below industry standards for computer technicians. Since the five computer technician employees left the TWU unit in 1999, they have received TWU benefits and vacation days. The computer technician hires are given copies of the TWU contracts and the support operations handbook and other information to inform them of their benefits, terms and conditions of employment. (N.T. 26-28, 32-33, 61, 77, 81, 112, 114-116, 136, 139-140).

9. The computer technicians report for work in the Golf Building.¹ TWU employees also report for work at the Golf Building, i.e., the bus drivers, electrical workers, plumbers, glazers, etc. The electricians, plumbers, glazers, locksmiths and drivers in the TWU unit are also required to have certifications for their respective fields of work. The secretary assigned to the computer technicians is a member of the support personnel bargaining unit of white-collar, non-professional employees represented by PSEA. She also works in the Golf Building. The computer technicians and all the employees in the TWU unit wear a colored shirt with the District's logo. The computer department employees' shirts are black and the TWU employees' shirts are blue. (N.T. 29, 54, 108-109).

10. Employees in the professional bargaining unit at the District also perform duties similar to those of the computer technicians. Mr. Peterkin is in the professional unit and directs the audio-visual department. During summer months, Mr. Peterkin receives a stipend in addition to his professional salary to perform computer installation duties that overlap the duties of the computer technicians. (N.T. 61, 87, 90, 116).

11. Mr. Eshelman is a physics teacher in the professional bargaining unit at the District. He has assisted in the installation of computers, computer labs and wires as well as the loading of software and the repairing of computers and printers. (N.T. 83, 90-91, 116).

12. The District maintains a computer coordinator at each of its schools. These computer coordinators resolve computer-related problems so that the computer technicians do not have to be called upon to address all the computer problems that arise. These computer coordinators are both teachers and support staff who have independent knowledge of computers. They receive a stipend from the District for their duties as computer coordinators.² (N.T. 83-84, 94-97).

¹ The name of this building is spelled "golf" in the hearing notes of testimony, however, the District spells the name of the building "Gulf" in its post-hearing brief.

² There is a conflict in testimony between computer technician Heneghan on page 59 of the notes of testimony and the testimony of Superintendent Joseph Galli on pages 83-84 of the notes of testimony. Based upon the appearance of the witnesses as well as the general appearance, bearing, conduct on the stand, demeanor and manner of testifying (e.g. candor, frankness, clearness of statements), and certainty of the witnesses with respect to the facts, I resolve these conflicts in favor of Superintendent Galli.

13. The computer laboratory teachers at the District have extensive knowledge and experience with computers. These computer lab teachers often resolve computer-related problems themselves without submitting a work order for the computer technicians to come address the problem. (N.T. 94-97).

DISCUSSION

The issue presented by this Petition is whether the five computer technicians completely lack an identifiable community of interest with any other bargaining unit employes at the District. In its exceptions to the Secretary's dismissal and in its post-hearing brief, the Union argues that the petitioned-for unit of five computer technicians is appropriate because a community of interest is completely lacking between the computer technicians and either the employes in the white-collar, non-professional unit represented by the PSEA or the employes in the TWU unit. The Union contends that the type of work, job duties, pay scale, education and certification requirements of the computer technicians are all substantially different from those of the District employes in the other bargaining units.

Although there is no dispute that the five computer technicians share among them an identifiable community of interest, the District opposes the instant representation petition on the grounds that placing five computer technicians in an additional, separate bargaining unit would result in overfragmentization of the bargaining units at the District, contrary to PERA and Board policy favoring broad-based bargaining units. The District does not oppose representation for the five computer technicians. Rather, the District maintains that they would be more appropriately included in one of the existing non-professional bargaining units. The District emphasizes that the current petition seeks to form a separate bargaining unit of five employes out of approximately 1,700 unionized District employes, or three-tenths of one percent of the District's employes, which is exactly the type of overfragmentization that the Board's broad-based bargaining policy is meant to prevent. I agree with the District.

The Board recently affirmed the Secretary's dismissal of a similar representation petition, without a hearing, where the union failed to allege that a group of twenty (20) information technology employes at a school district completely lacked an identifiable community of interest with employes in existing bargaining units and thereby warranted consideration under the exception to the statutory prohibition against overfragmentization. In the Matter of the Employes of Allentown City School District, 38 PPER 100 (Final order, 2007). The Allentown Board opined as follows:

[I]t is well-settled that an identifiable community of interest can exist despite differences among employe classifications. In the Matter of the Employes of Lansdale Borough, 24 PPER ¶ 24053 (Final Order, 1993) (citing 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)).

The Board has a long-standing policy of certifying broadly-based bargaining units, the application of which would, in this case, militate against the separate certification of the information technology employes. See West Perry School District, 29 PPER ¶ 29110 (Final Order, 1998), aff'd, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 675, 795 A.2d 984 (2000). The broad-based bargaining unit 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 are 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. See also County of Allegheny, 11 PPER ¶ 11031 (Court of Common Pleas of Allegheny County, 1979).

The Board will deviate from its broad-based bargaining unit policy upon a showing that an identifiable community of interest is completely lacking between those employes included in and excluded from the proposed unit. West Perry, supra, citing Bucks County (Public Defender's Office), 13 PPER ¶ 13109 (Final Order, 1989), aff'd sub nom. District 65, United Autoworkers v. PLRB, 15 PPER ¶ 15062 (Court of Common Pleas of Bucks County, 1984). The Petitioner makes no claim that an identifiable community of interest is completely lacking between the information technology employes and the existing white-collar nonprofessional unit. Moreover, while identifying certain alleged differences between the information technology employes and the members of the existing unit, the Petitioner does not claim that there are differences in the other community of interest factors relied on by the Board (e.g. pay scales, hours and benefits, areas of work and other working conditions). Thus, the Petitioner's allegations, even if proven, would not warrant a departure from the Board's broad-based bargaining unit policy.

Allentown, 38 PPER at 283-284 (emphasis added). Similar to the Allentown case, the Union here has identified certain differences between the five computer technicians and the other District employes in the TWU unit and the white-collar support unit. However, the asserted differences in job duties, educational reimbursements and wages are insufficient to establish that a community of interest is completely lacking with those employes.

Perhaps there are no greater differences between the job duties, training, education, certifications and necessary equipment for different groups of employes than the differences which exist between deputy sheriffs and the secretaries in the prothonotary's office in a court-related unit. However, the Board has held that deputy sheriffs share an identifiable community of interest with employes of other elected row officials and are to be included in one broad-based court-related unit in the interest of protecting county government from the ill-effects of overfragmentization. In the case, In the Matter of the Employes of Luzerne County, 31 PPER ¶ 31061 (Final Order, 2000), the Board affirmed a hearing examiner's dismissal of a petition for representation seeking to represent a unit of deputy sheriffs separate and apart from the existing bargaining unit of court-related employes. The Luzerne Board opined as follows:

The Petitioner notes the various different job duties of the deputy sheriffs and the fact that the deputy sheriffs wear uniforms, carry guns and have different work schedules than other county employes, relying upon these differences to support its argument that an identifiable community of interest is lacking. However, in a case with a virtually identical record, the Board, with judicial approval, concluded that the deputy sheriffs shared an identifiable community of interest with the other court-related, non-court-appointed employes. See Montgomery County, 26 PPER ¶ 26086 (Final Order, 1995), affirmed sub nom. Deputy Sheriffs Association of Montgomery County v. PLRB, 27 PPER ¶ 27100 (Court of Common Pleas of Montgomery County 1996), affirmed in unreported decision, 687 A.2d 432 (Pa. Cmwlth. Ct. 1996), petition for allowance of appeal denied, 548 Pa. 639, 694 A.2d 623 (1997). Similarly here, although differences in job functions and requirements exist between the deputy sheriffs and the other court-related, non-court-appointed employes, those differences are not numerous enough to destroy the identifiable community of

interest that otherwise exists between these employes in their wages, hours and other terms and conditions of employment.

Luzerne County, 31 PPER at 150.

There are approximately 1,700 employes at the District. All but fifteen non-administrative employes, including the five computer technicians at issue here, are members of the following three existing bargaining units of employes at the District: (1) the professional unit of teachers, etc.; (2) the non-professional unit of white-collar secretaries, aides, etc.; and (3) the non-professional unit of transportation, maintenance and food service employes. The record shows that the computer technicians perform a unique set of job duties. They install software and perform software maintenance, repairs and updates; they perform computer hardware repairs; they perform network equipment maintenance and configuration; they install and connect telephone and public address systems; they connect and install wires, cables and fiber optic lines; and they maintain the mail server. During construction at the District in 1999/2000, the computer technicians installed new cabling and telephone systems. They also wired an elementary school in 2005. They are all required by the District to have Apple Certification.

The mere performance of job duties embraced by the computer technicians' particular expertise, training and classification, does not destroy the community of interest they share with other employes in existing bargaining units throughout the District. The Commonwealth Court has held that employes need not have an identical community of interest in order to be included in the same bargaining unit and that differences may exist in the wages, hours, working conditions, skills, education and experience of the employes in the bargaining unit without destroying the identifiable community interest. Washington Township Municipal Authority v. Pennsylvania Labor Relations Board, 569 A.2d 402 (Pa. Cmwlth. 1990); West Hanover Township v. Pennsylvania Labor Relations Board, 646 A.2d 625 (Pa. Cmwlth. 1994). It is inherent in any employment setting that employes with different job classifications will have different specific job duties and responsibilities. That is the nature of having employes perform various functions. However, those differences alone do not destroy the community of interest shared by and among those employes with different job duties, but similar terms and conditions of employment.

Contrary to the Union's position, the record fails to establish a complete lack of an identifiable community of interest with either of the two non-professional units in existence at the District, where benefits and terms and conditions of employment could be aligned with either unit of employes. In fact, the record demonstrates that the computer technicians share similar benefits and terms and conditions of employment with the employes in the TWU unit. The computer technicians were once part of the TWU unit. The computer technicians as a group asked to be removed from the TWU unit because the salaries under that contract were below industry standards for computer technicians. Since the five computer technician employes left the TWU unit in 1999, they have received TWU benefits and vacation days. The computer technician hirees are given copies of the TWU contracts and the support operations handbook and other information to inform them of their terms of employment as well as benefits. Also, the computer technicians report for work in the Golf Building. TWU employes also report for work at the Golf Building. The electricians, plumbers, glazers, locksmiths and drivers in the TWU unit are also required to have certifications for their respective fields of work. The secretary assigned to the computer technicians is a member of the support personnel bargaining unit of white-collar, non-professional employes represented by PSEA. She also works in the Golf Building. The computer technicians and all the employes in the TWU unit wear a colored shirt with the District's logo. The computer department employes' shirts are black and the TWU employes' shirts are blue. Accordingly, there are many shared job related conditions and requirements between the computer technicians and the skilled, certified employes in the TWU unit.

In the District, the electricians probably have substantially different job duties than the plumbers and bus drivers, yet they all share an identifiable community of interest and are included in the TWU unit. Indeed, individual secretaries in the white-collar support personnel unit probably have different daily job duties and responsibilities depending on the particular administrator(s) for whom they work. Also,

aides in that same unit probably have different specific job duties than the secretaries. Clearly, the computer technicians do not perform the same job duties or have the same responsibilities as the secretaries in the white-collar, non-professional unit or the electricians, bus drivers, plumbers or locksmiths or food service employees in the TWU unit. But those differences alone do not demonstrate a complete lack of community of interest with either group of employees.

Additionally, although the details of the daily specific job duties differ, the record shows that, at times, employes in other units perform work that is similar in kind to that which is performed by the computer technicians. Although the professional unit may not be appropriate for the computer technicians, the record shows that teachers are paid additional money to serve as computer coordinators in the various District buildings and resolve problems without the need for calling the computer technicians. In some buildings, members of the white-collar, non-professional unit serve in those positions. Computer Lab teachers also perform minor software installation and computer related repairs. Also, during summer months, Mr. Peterkin receives a stipend, in addition to his professional salary, to perform computer installation duties that overlap the duties of the computer technicians. Mr. Eshelman is a physics teacher in the professional bargaining unit at the District. He has assisted in the installation of computer labs at several elementary schools in the District. He also has installed computers and wires; he has loaded software and repaired computers and printers.

Accordingly, the Union has simply failed to establish, with substantial, competent evidence, that a community of interest is completely lacking between the five computer technicians and the employes in the other three existing bargaining units. In light of the fact that the Board's long established broad-based bargaining unit policy prohibits the certification of twenty (20) information technology employes as inappropriate, Allentown, supra, the certification of a unit comprised of only five (5) computer technicians is certainly even less appropriate, especially since the computer technology employes do not lack, but rather share, an identifiable community of interest with existing bargaining unit employes. This examiner will not permit the Union's ambitions to contradict Board policy and the statutory prohibition against overfragmentization simply because this small group of employes has chosen not to be represented by PSEA and is unhappy with the representation previously provided by TWU. To permit the certification sought by the Union would encourage the future proliferation of unnecessary bargaining units to the detriment of public employers and the collective bargaining process as a whole within the Commonwealth. Therefore, the proposed bargaining unit of five computer technology employes at the District is inappropriate and the Petition must be dismissed.

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 within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The five computer technicians in the petitioned-for unit do not completely lack an identifiable community of interest with the District employes in other existing bargaining units.
5. The petitioned-for, separate unit of five computer technicians is inappropriate and violates the Board's broad-based bargaining unit policy and the statutory prohibition against overfragmentization.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the petition for representation is dismissed.

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 fourteenth day of August, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner