

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 :

PROPOSED ORDER OF DISMISSAL

On February 21, 2007, the State College Area Education Association, PSEA-NEA (Association or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the position of tutor in the unit of professional employes of the State College Area School District (District or Respondent) certified by the Board at PERA-R-96-C.

On April 12, 2007, the Secretary of the Board issued an order and notice of hearing fixing May 21, 2007 as the time of a telephone pre-hearing conference to resolve the matters in dispute and October 31, 2007 in State College as the time and place of hearing if necessary. The hearing was necessary, but was continued to December 4, 2007.

At that time, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The State College Area Education Association, PSEA-NEA is the exclusive representative of employes in a subdivision of the employer unit comprised of "teachers, coordinators, librarians, guidance counselors, home-school visitor, nurses, dental hygienist, and therapists." (N.T. 6, Board Exhibit 1, Association Exhibit 1)
2. The State College Area School District is a public employer within the meaning of Section 301(3) of PERA.
3. The District maintains a program at its High School South Building known as the Tutoring Center. The Tutoring Center is defined by the District "as an area where individual students can be assisted with various components of their instructional program. . ." The center is in a separate room. It has several desks for students and a large desk for the tutor. (N.T. 30-31, 69, 96, Association Exhibits 12, 13, and 14, District Exhibit No. 15)
4. The District currently employs Dr. Judith Karakawa as the tutor in the Tutoring Center. She started in this position in September, 1999, and is currently, in her ninth year of employment in that capacity. (N.T. 8, 33, 66, 96 Association Exhibit 2, District Exhibits 2 and 3)
5. Dr. Karakawa's position of tutor is covered by the District's collective bargaining agreement with the support staff. She is classified as a Grade III paraprofessional, the highest pay grade for paraprofessionals. Grade III paraprofessionals include computer lab paraprofessionals, health care paraprofessionals, library media paraprofessionals and literacy paraprofessionals. (N.T. 88, District Exhibit 17)
6. Dr. Karakawa holds a Ph.D. in microbiology; a Master of Science Degree in microbiology and a Bachelor of Science Degree in microbiology, all from the Pennsylvania State University. (N.T. 8, 66, Association Exhibit 2)
7. There are two high school buildings in the School District. The South Building, where the Tutoring Center is located, houses grades 9 and 10. The North Building houses grades 11 and 12. (N.T. 7-8)

8. When the District hired Dr. Karakawa in 1999, the job description required these educational requirements: "High School plus additional training in Community College." (N.T. 10, 66, Association Exhibit 3)

9. The job description was revised by the District administrators in or about 2002. As for educational requirements, the description states, "High School plus additional post-secondary training." The only difference with regard to duties is that the phrase "Develops materials for tutoring process" was stricken, and replaced with the phrase "Utilizes teacher prepared materials." (N.T. 10, 66, Association Exhibit 3, p.2)

10. The job description also states that the tutor "assists in the instructional program by working with individual students referred or assigned by professional staff person." The job description also makes reference to working with students to approve motivation, study habits and work organization, developing materials for the tutoring process, meeting with teachers and counselors to review progress problems, etc., ordering materials, maintaining files and records, participating in faculty team meetings and parent meetings as necessary and performing other duties to meet "overall requirements of the program." (N.T. 10, 66, Association Exhibit 3)

11. Dr. Karakawa estimated that about 90 percent of her time is taken up with tutoring. (N.T. 17)

12. Dr. Karakawa testified that approximately 70 percent of her tutoring work is math and 10 to 20 percent is science, biology and chemistry. Occasionally, an English as a second language (ESL) student will come in for grammar. (N.T. 14, Association Exhibit 7)

13. When Dr. Karakawa begins her workday, she has no idea what students are coming to the tutoring center that day. The program is purely voluntary. She has to be prepared for a variety of mathematics subjects from college prep math through pre-calculus and to keep up on biology. (N.T. 15)

14. Although the tutoring center is located in the South Building, occasionally eleventh and twelfth graders from the North Building return for assistance because they found that they benefited from tutoring while they were in the South Building. (N.T. 15)

15. Dr. Karakawa testified that she stays familiar with the students' various academic courses. For example, she stays apprised of where in the textbook each math teacher is teaching. She has worked and solved the problems in their math books and worksheets. (N.T. 12-13 18)

16. Dr. Karakawa works the same workday as regular classroom teachers. She works alone in the Tutoring Center. Administrators do not come into her room to actually conduct a formal observation. The high school principal, Mrs. Debra Latta, is her immediate supervisor. (N.T. 18, 67-69)

17. Dr. Karakawa is responsible for handling all disciplinary issues as they arise in the tutoring center. (N.T. 19)

18. In the process of securing her certification as a teacher by the Pennsylvania Department of Education, Dr. Karakawa requested that her work in the Tutoring Center qualify as the equivalent of a student teaching assignment. By letter dated May 21, 2003, the Pennsylvania Secretary of Education decided that Dr. Karakawa's experience at the Tutoring Center did qualify as the equivalent of a student teaching assignment and granted her appeal. (N.T. 19, 66, Association Exhibit 4)

19. Dr. Karakawa must know the mathematical concepts that are the foundation for the courses she tutors. As an example of how this knowledge is used, she produced examples of tests sent in with students where a student has essentially received a zero. Dr. Karakawa would go over every question with the student; and if the student did not seem to understand the question, she would go back, explain the mathematical concept and work through the problem step-by-step "to see where they were going wrong and try to correct them as they were doing it." (N.T. 25, Association Exhibit 8)

20. Dr. Karakawa interacts with classroom teachers on a regular basis, either by e-mail or seeing them in person, asking if the student has improved and monitoring progress. (N.T. 28)

21. When students transfer from another school district, Dr. Karakawa is often required to assess their subject matter knowledge to help recommend their appropriate placement in math classes. (N.T. 28-29)

22. In August, 2005, Dr. Karakawa met with her building principal, Mrs. Latta, her local Association president and a PSEA Uniserve Representative to discuss the District's expectations of Dr. Karakawa's job duties. The meeting was called because the Association representatives were concerned that Dr. Karakawa was going beyond what the job was of the tutor paraprofessional. The meeting concluded with Mrs. Latta directing that Dr. Karakawa follow the job description, which included utilizing teacher prepared materials. (N.T. 70-80)

23. At the conclusion of the meeting, the District sent a letter to the faculty explaining Dr. Karakawa's duties, which reiterated part of the job description and also stated that the position was to "Utilize teacher prepared materials and instructions to assist students with the completion of a specific assignment." (N.T. 69-73, 79-82, District Exhibit 15)

24. Dr. Karakawa attained teacher certification from the Pennsylvania Department of Education in biology and in general science in May 2003, and in mathematics, grades 7 to 12, in July, 2005. (N.T. 10, 66, Association Exhibit 6)

25. Two of the four prior tutors before Dr. Karakawa had no teaching certificate. (N.T. 93-95)

DISCUSSION

The Association has petitioned the Board to include the position of tutor in the professional unit of the District. The District contends the position is not professional.

As the petitioning party, the Association has the burden to prove that the position is professional under Section 301(7) of PERA. State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999); Danville Area School District, 8 PPER ¶ 195 (Order and Notice of Election, 1977).

Section 301(7) of PERA, defines a professional employe as

"any employe whose work: is predominantly intellectual and varied in character; requires consistent exercise of discretion and judgment; 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 language of Section 301(7) is in the conjunctive; the Board has held that for a petition to be successful, the petitioner must prove all four parts of the statutory test for a professional employee. The failure to prove a single part of the test renders the position nonprofessional. Beaver County Community College, 26 PPER ¶ 26201 (Final Order, 1995).

For the reasons set forth below, the Association did not prove that the work meets subsection (iii), that it "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."

The position of tutor is currently held by Dr. Judith Karakawa, who has held the position for nine years. Dr. Karakawa tutors students in a variety of subjects, but the majority of her work involves mathematics. She tutors students in all high school math

subjects, including college prep mathematics, advanced algebra and pre-calculus. She does not know what students she will see in a day. She tutors transfer students who need to catch up to where the bulk of the students in the District are working. She sees students who are literally getting zeroes on their tests. Teachers have submitted letters of support that the position involves "teaching."

However, the evidence shows that the District's administrators never required that the position have the "knowledge of an advanced nature...customarily obtained by specialized study in an institution of higher learning or its equivalent" for the position, either explicitly in job descriptions or implicitly in the expectations that administrators had for Dr. Karakawa.

The District did not require a college degree for the position when it hired Dr. Karakawa. Although Dr. Karakawa had earned a college degree and advanced degrees, they were not a condition of her being hired as tutor. The Association contends that Dr. Karakawa's attaining a teaching certification in mathematics should also be considered as the equivalent of a degree from an institution of higher learning because the Department of Education credited her tutoring work toward the student teaching requirement for certification. However, the District did not require her to obtain a teaching certificate to do the tutoring job. Two of the four prior tutors had no teaching certificate.

The Association also contends that the District has operated a successful tutoring center because Dr. Karakawa does in fact possess knowledge of an advanced nature that she acquired before becoming a tutor. As a result of this knowledge, the Association argues that she was able to develop a variety of materials to assist students and tutor a number of students at varying levels of learning. However, the District points out that it has asked Dr. Karakawa to use teacher prepared materials in the tutoring center. More importantly, the District argues that the relevant fact in an inquiry of whether a position meets the test of subsection (iii) is what knowledge the employer requires the employe to have, not what knowledge the employe has or later achieved on her own initiative or what knowledge she thinks is necessary to do the job.

It is indisputable that Dr. Karakawa is performing an important and valuable service for the District. Her work is held in high regard by the District's teachers and administrators. However, because the Association has not established the position as one that "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," the four part test for professional employes in Section 301(7) of PERA has not been proven. The position of tutor will not be deemed professional under Section 301(7) of PERA. The position will remain in the nonprofessional unit.

CONCLUSIONS

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

1. That the State College Area School District is a public employer within the meaning of Section 301(1) of PERA.
2. That the State College Area Education Association, PSEA-NEA, is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties.
4. That the position of tutor is not professional within the meaning of Section 301(7) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the petition is dismissed.

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 final.

SIGNED, DATED and MAILED from Harrisburg, Pennsylvania, this nineteenth day of June, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner