

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 :

PROPOSED ORDER OF UNIT CLARIFICATION

On January 30, 2008, Teamsters Local 773, (Union) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification (Petition) seeking to include bus monitors in the bargaining unit of bus drivers. On February 20, 2008, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Tuesday, March 4, 2008, in Harrisburg, Pennsylvania. The hearing was continued, and it was rescheduled for March 19, 2008. During the hearing on that date, the Union and the Bethlehem Area School District (District) were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents 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. 7).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7).
3. The District has one transportation building. The bus monitors and bus drivers both report to that building for work. The bus drivers and bus monitors use the same parking facility. The bus drivers and bus monitors both share the same break room, rest rooms and vending machines at the transportation building. The bus monitors work on buses with bus drivers. Bus monitors and drivers use the same time clocks to punch their time cards. (N.T. 12-15, 28).
4. The Superintendent of Transportation, David Himmelberger, supervises both the bus drivers and the bus monitors. He also determines which bus runs are assigned monitors. Mr. Himmelberger is in charge of discipline for both the bus monitors and the drivers. (N.T. 20, 25).
5. Both bus drivers and bus monitors attend meetings together at the transportation building. Drivers and bus monitors get on buses together at the transportation compound. Both drivers and bus monitors receive memos from the District at the transportation building with their time cards regarding school closings and early dismissals. (N.T. 17, 23, 29).
6. Bus monitors observe and assist special needs students on District buses. Bus monitors also assist drivers with behavioral problems of special needs students on buses. Bus monitors ensure that students wear seatbelts and behave. Bus monitors assist students' getting on and off the bus. Bus monitors write disciplinary reports on children. Drivers also write disciplinary reports when monitors are not on the bus. Sometimes bus drivers serve as bus monitors. (N.T. 21-27, 33, 39).

DISCUSSION

In determining whether to clarify the bargaining unit of regular part-time bus drivers to include regular part-time bus monitors, Section 604 (1) of PERA requires the

Board to determine whether the employees at issue have an "identifiable community of interest" and to consider the "effects of over fragmentation." However, the bus monitors are seeking to join an existing unit, and the District asserts that the bus monitors should join a different existing bargaining unit. Therefore, the petition under consideration does not present any potential effects of overfragmentization.

In deciding whether there is "an identifiable community of interest", the Board must consider the employees' skills, duties, areas of work, working conditions, interchange of employees, supervision, grievance procedures, hours of work, trade requirements, pay scales, and employee desires. Allegheny General Hospital v. Pennsylvania Labor Relations Board, 322 A.2d 793 (Pa. Cmwlth. 1974).

The District argues that the bus monitors have more of a community of interest with the hall monitors in the school buildings. The Commonwealth Court has long held that employees need not have an identical community of interest in order to be included in the same bargaining unit and that some differences may exist in the wages, hours, working conditions, skills, education and experience of the employees 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). The Board will additionally consider holidays, vacation, sick leave, pension and health plans. West Hanover, supra.

Also, the Board has already rejected the District's stronger-community-of-interest argument. In the Matter of the Employees of Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991). In Philadelphia Housing Authority, the Board stated that "[i]t is not the Board's obligation to certify the most appropriate unit which may be advanced by a party in a Board proceeding but rather to find an appropriate unit." Id. at 476-477 (emphasis added). The Philadelphia Housing Authority Board emphasized that the examiner in that case "correctly rejected the [e]mployer's argument that the non-community service employees could not be included in the petitioned-for unit because they have a 'stronger' community of interest with the existing unit." Id. at 477. The Board further opined as follows:

The hearing examiner rightly limited his inquiry as to the appropriateness of the petitioned-for residual bargaining unit of nonprofessional employees. The hearing examiner did not err in disregarding the proffered testimony that the non-community service employees may have a community of interest with the employees in the existing certified bargaining unit. As the hearing examiner pointed out, the Employer and the existing representative have not seen fit to petition the Board for inclusion of these positions in the existing unit. Such inaction should not act to deny these employees the right to bargain in a residual unit of nonprofessional employees.

Id. at 477. Accordingly, this examiner's inquiry is limited, as a matter of law, to consideration of the petitioned-for unit only, and may not embark on a comparative unit analysis.

In this case, the bus monitors and bus drivers both report to the same building for work, i.e. the transportation building. The bus drivers and bus monitors use the same parking facility. The bus drivers and bus monitors both share the same break room, rest rooms and vending machines at the transportation building. The bus monitors work on buses with bus drivers. Both bus monitors and drivers use the same time clocks to punch their time cards. Moreover, the Superintendent of Transportation, David Himmelberger, supervises both the bus drivers and the bus monitors. He also determines which bus runs get a monitor. Mr. Himmelberger is in charge of discipline for both the bus monitors and the drivers. Both bus drivers and bus monitors attend meetings together at the transportation building. Drivers and bus monitors get on buses together at the transportation compound. Both drivers and bus monitors receive memos from the District at the transportation building with their time cards regarding school closings and early dismissals.

Bus monitors observe and assist special needs students on buses. The bus monitors also assist drivers with behavioral problems of special needs students during bus trips. Bus monitors ensure that students are wearing seatbelts and behave. Bus monitors assist

students' getting on and off buses. Bus monitors write disciplinary reports on student bus passengers. Drivers also write disciplinary reports when monitors are not on the bus. Sometimes bus drivers serve as bus monitors.

The record establishes that the bus monitors and bus drivers in the transportation department share the same supervision and/or management under the superintendent of transportation. Indeed, the name of the transportation supervisor is denoted on the bus monitors' paychecks, not a building principal or the District Superintendent. The bus monitors share areas of work, break areas, working conditions, schedules and supervision with the bus drivers. The bus drivers also interchange with and serve as bus monitors, although the reverse does not occur. Clearly, the bus monitors' job duties and working conditions, like those of the bus drivers, depend upon the safe and effective transportation of children to and from school. Also, by filing the petition sub judice, the bus monitors have expressed an ambition to be included in the same bargaining unit as bus drivers, a relevant factor under applicable case authority. Allegheny General Hospital, supra.

Moreover, Board examiners have previously 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 (Proposed Order of Unit Clarification, 2000); In the Matter of the Employes of Penn Hills Sch. Dist., 24 PPER 24029 (Proposed Order of Unit Clarification, 1993). Given the entire record and precedent, it must be concluded that an identifiable community of interest does exist between the school bus monitors and the bus drivers and that inclusion of bus monitors in the unit with drivers is appropriate. It is simply not relevant whether the bus monitors have a more identifiable community of interest with the school building hall monitors or whether inclusion in the unit with the hall monitors would somehow be more appropriate.¹ Philadelphia Housing Authority, supra. If the District believed that the bus monitors should have been included in the same unit with the school building hall monitors, it could have filed its own petition for unit clarification seeking that result.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.
2. That the Union is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the position of school bus monitor shares an identifiable community of interest with the employes in the bargaining unit certified at case number PERA-R-5795-C.
5. The appropriate unit for the purpose of collective bargaining with respect to wages, hours and terms and conditions of employment is a subdivision of the employer unit comprised of all regular part-time bus drivers and bus monitors, excluding management level employes, supervisors, first level supervisors, confidential employes and guards and defined in the Act [PERA].

ORDER

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

¹ Even if such a comparative inquiry were proper, the District did not place on the record evidence of job duties, working conditions, salaries, schedules, benefits or management/supervision for the District's hall monitors. Therefore, the examiner would be precluded from examining the appropriateness of including the bus monitors in the hall monitors' bargaining unit by the record as well as by the petition which, as a matter of law, precludes consideration of another bargaining unit under Philadelphia Housing Authority, supra.

HEREBY ORDERS AND DIRECTS

That the unit certified by the Board at case number PERA-R-5795-C is hereby amended to include the position of school bus monitor.

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 at Harrisburg, Pennsylvania this twenty-fourth day of June, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner