

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-07-76-E
: :
YORK CITY SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 12, 2007, York City School District (District) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board), seeking clarification of a unit of nonprofessional employes the District represented by the York City Educational Support Professionals (Association) to exclude the position of Employee Insurance/Records Manager.

On March 9, 2007, the Secretary of the Board issued an Order and Notice of Hearing in which April 10, 2008, was assigned as the time and place of a telephone pre-hearing conference for the purpose of resolving the matters in dispute without a hearing and June 19, 2007, in Harrisburg was assigned as the time and place of hearing, if necessary. The hearing was necessary and was held as scheduled.

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

FINDINGS OF FACT

1. That the York City School District (District) is a public employer as defined in the act.

2. That the York City Educational Support Professionals Association, PSEA/NEA (Association) is an employe organization as defined in the Act.

3. That on December 15, 1970, the Board certified the York Public School Non-instructional Employees Association as the exclusive bargaining agent for a group of employes of the District. The original unit was described as follows:

In a subdivision of the employer unit comprised of cafeteria, clerical, custodial and maintenance, and paraprofessionals; and excluding supervisors, first level supervisors, and confidential employes as defined in the Act.

(Board Exhibit 1, PERA-R-355-C)

4. That in 2004, by vote of the members of the bargaining unit, the York Public School Non-instructional Employees Association was replaced by the York City Educational Support Professionals Association, PSEA/NEA, as the exclusive bargaining agent of the unit of employes recognized at PERA-R-355-C.

5. That on July 21, 2005, the Board amended the original certification issued at Case No. PERA-R-355-C to include the positions of Middle School Building Manager, *Employee Insurance/Records Manager*, Network Support I and II, Chief Cook and Human Resources Secretary in the unit. (Board Ex. 1,) (Emphasis added by Hearing Examiner.)

6. That in July, 2005, the incumbent in the position of Employee Insurance/Records Manager was Kathy Dellinger. (N.T. 48)

7. That the present incumbent in the position of Employee Insurance/Records Manager is Eileen Price. She has held that position since August, 2006. (N.T. 11, District Ex. 1)

8. That Ms. Price is supervised by Dolores Penn, Director of Human Resources. She has held that position since 2002. (N.T. 97)

9. That in Ms. Penn's words, "Ms. Price is running the benefits program for HR." (N.T. 98)

10. That in addition to the Director of Human Resources and Employee Insurance/Records Manager, the other employees in the Human Resources Department are the personal assistant and board secretary. These two additional positions are excluded from the certified unit. (N.T. 10)

11. That the Employee Insurance/Records Manager is responsible for a variety of duties in related to the collection, compilation and transmission of personnel information necessary for the employees' insurance benefits. (N.T. 52-53, District Exhibit 1)

12. That Ms. Price is the District's management representative to the Lincoln Benefit Trust, a joint employer/employee trust governed by representatives from labor and management from several school districts in south central Pennsylvania that purchases insurance for employees in the districts. She is also a member of the Trust's Board of Directors and Executive Committee. (N.T. 18, 19, 20-21, 81-82)

13. That the Trust determines the plan design of the various insurance benefits. The plan design, in turn, determines the benefits to pay employees. (N.T. 18, 19, 20-21, 87)

14. That the collective bargaining agreement between the Association and the District provides for certain employee benefits. The District also offers a cafeteria plan of benefits that are outside the CBA, offering such benefits as dental, vision, short-term disability and an indemnity plan. Some of these cafeteria plan benefits are purchased by the District through the Trust and other benefits are purchased by the District directly on a self-insured basis. (N.T. 20-21)

15. That the Employee Insurance/Records Manager has the authority and has exercised the authority to request the third party administrator of insurance benefits to make exceptions to the plan for payment of benefits to employees. For example, on February 5, 2007, Ms. Price approved a request for a re-processing of a claim for benefits for services that were not covered under the plan. (N.T. 22-24, 41, 106, District Exhibit 12).

DISCUSSION

The District has filed a petition for unit clarification to exclude the position of Employee Insurance/Records Manager, currently held by Eileen Price, from the nonprofessional bargaining unit represented by the Association on the grounds that the position is confidential within the meaning of Section 301(13) of the Act and management level within the meaning of Section 301(16) of the Act.

As the petitioner, the District bears the burden of proving the factual elements to meet the basis for the statutory exclusion. 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).

For the first grounds for excluding the position, the Act defines confidential employees in Section 301(13) of the Act, as follows,

"Confidential employee" shall mean any employee who works (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer."

43 P.S. 1101.301(13)

The lead case in interpreting the confidential exclusion under PERA is PLRB v. Altoona Area School District, 480 Pa. 148, 389 A.2d 553 (1978), in which the Pennsylvania Supreme Court affirmed the Board's adoption of a narrow construction of the confidential

exclusion stating that the Board was correct in reading the confidential exclusion in PERA to "exclude only those employees whose inclusion in the bargaining unit would seriously impair the employer's ability to bargain on a fair and equal footing with the union." 389 A.2d at 557.

On this record the Petitioner has not proven that Ms. Price has been involved with the District's collective bargaining efforts in a way that would "seriously impair the employer's ability to bargain on a fair and equal footing with the union." Ms. Price is the District's HIPPA officer. This aspect of her job gives her access to employees' confidential personnel and medical records. But access to such confidential information is not a determining factor for proving the confidential employee exclusion.

Turning to the next ground advanced by the District for excluding the position, "management level employee" is defined in Section 301(16) of the Act as:

(16)'Management level employee' means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision.

43 P.S. 1101.301(16).

The Board has interpreted Section 301(16) on various occasions. In Pennsylvania Ass'n of State Mental Hosp. Physicians v. PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989) the Commonwealth Court adopted the Board's test for determining whether an employee is a management level employee under Section 301(16). This test provides that an employee will be managerial if any one of the following three factors are established: (1) the employee is involved directly in the determination of policy; (2) the employee directs the implementation of policy; or (3) the employee is above the first level of supervision. id at 1023. See also Lackawanna Career Technology Center, 33 PPER 33201 (Final Order, 2002).

In Commonwealth of Pennsylvania (Attorney Examiners 1), 12 PPER 12131 (Final Order, 1981), the Board stated:

Section 301(16)...speaks in terms of 'any individual who is involved directly in the determination of policy.' This definition necessarily includes those employees who have been shown to have meaningful participation in the decisional process as well as those with statutory authority to make the final determination.

11 PPER at 316 (emphasis in original) (citing Employees of Carlynton School District v. Carlynton School District, 377 A.2d 1033 (Pa. Cmwlth. 1977)).

In Horsham Township, 9 PPER P. 9157 (Final Order, 1978), the Board interpreted the policy determination part of the test of management level status as follows:

"An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the Statute does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal."

9 PPER at 327.

The Board went on to interpret policy implementation to include the following:

"[T]hose persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, provided that such role is not of a routine or clerical nature and bears

managerial responsibility to ensure completion of the task. The administration of policy involves basically two functions:

(1) observance of the terms of the policy and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine and ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy."

Id.

Both the District and the Association pointed to Ms. Price's experience and education to support their legal arguments. Ms. Price has extensive work experience in human resources and benefits with private companies in York County. The District contends that this experience lends support to the argument that her position is management level. On the other hand, Ms. Price's formal education did not extend beyond high school. The Association contends that this lends support to its argument that the position is not management level. However, both parties' arguments are irrelevant to the present inquiry because neither the Act, the Board nor the courts use experience and education as a factor in the inquiry into management level status.

Also, both the District and the Association argued that the content of the position's old job description compared the new job description aided their respective cases. The Board has long and frequently held that it is the actual job duties, not a written job description that determines bargaining unit status. See In the Matter of Employes of West Chester Area School District, 1 PPER 92, 93 (Nisi Order of Certification, 1971). It remains the Board's policy to determine the status of positions based on the duties actually performed rather than a written job description. See also McAdoo Borough, 14 PPER 14049 (Proposed Order of Dismissal, 1986); Albert Einstein Medical Center v. PLRB, 330 A. 2d 264 (Pa. Cmwlth. 1975) and Mifflin County, 14 PPER 14012 (Proposed Order of Unit Clarification), 14 PPER 14051 (Final Order, 1983).

Based on the evidence, the District has met its burden of proving that the position of Employee Insurance /Records Manager is a management level position under Section 301(16) of the Act. The District's Human Resources Director has entrusted entirely to Ms. Price the management of the benefits program for this large public employer. Ms. Price certainly performs a variety of administrative tasks, such as maintaining employee personnel records and databases, that are not probative of management level status. However she exercises discretion on financial decisions regarding employee benefits. For example, on February 5, 2007, Ms. Price approved a request for a re-processing of a claim for benefits for services that were not covered under the plan. (District Exhibit 12). Ms. Price's override of the plan is an example of the implementation of policy with regard to a fundamental element of the District's operation, its exposure to liability for benefits claims and the rendering of a financial benefit to employees.

The District argues that this case is similar to City of Erie, 28 PPER 28131 (Proposed Decision and Order, 1997), 28 PPER ¶ 28228 (Final Order, 1997). In that case, the Board affirmed the Hearing Examiner's finding that the benefits coordinator was management level based on the benefits coordinator's implementation of the City's program involving workers' compensation disability claims including making recommendations to the city's private insurance carrier as well as having the authority to place an insured employee under surveillance as a means of deciding whether to challenge the employee's compensation claim.

The District's assignment of workers' compensation surveillance duties to Ms. Price were done just a few weeks before the hearing in this matter, after the petition for unit clarification was filed. (District Exhibit 8) The Association correctly points out that the Board cannot consider post-petition job duties in judging the merits of a unit clarification petition. See North Hills School District v. PLRB, 722 A. 2d 1155 (Pa. Cmwlth. 1999). "This policy is designed to deter an employer from assigning activities to an employee after a petition is filed simply to create the appearance that the employee should be excluded from the unit." Elizabeth Township, 33 PPER 33053 (Final Order, 2002).

The same weight will be given to additional District offers of proof regarding purported examples of management level work that occurred after February 12, 2007, the date the District filed the Unit Clarification Petition. These include District Exhibits 2 through 10, and 13 and 14.

The Association argues that the Employee Insurance/Records Manager's is only responsible for technical and clerical work, to make sure that the plan documents prepared and presented by insurance carriers in fact match the plans requested by the District, and is not reflective of the implementation of policy. However, as seen by the example above, the District has chosen to give responsibility to Ms. Price to implement its policy regarding the payment of benefit claims. It is not necessary that all of Ms. Price's duties be management level. In Employes of Carlynton School District v. Carlynton School District, 377 A. 2d 1033 (Pa. Cmwlth. 1977), the Commonwealth Court held that an individual is a management level employe under Section 301(16) of PERA where that individual implements the policies of others, even if such duties are performed only part of the time and even if the employe's decisions are subject to review by a superior manager. Ms. Price is such an individual and her position should be excluded from the unit as management level.

CONCLUSIONS

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

1. That York City School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the York City Educational Support Professionals Association, PSEA/NEA is an employe organization within the meaning of the Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the Employee Insurance/Records Manager is not a confidential employe.
5. That the Employee Insurance/Records Manager is a management level employe.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the nonprofessional bargaining unit certified by the Board at PERA-R-355-C and amended at PERA-U-05-121-E is amended to exclude the Employee Insurance/Records Manager as a management level employe.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to Pa. 34 Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this fourteenth day of February, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner