

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-U-08-11-E  
: (PERA-R-95-369-E)  
TEMPLE UNIVERSITY HEALTH SYSTEM<sup>1</sup> :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On January 10, 2008, the Temple University Hospital Nurses Association, Pennsylvania Association of Staff Nurses and Allied Professionals (Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include case managers employed by the Temple University Health System (Temple) in the unit currently certified by the Board.

On January 23, 2008, the Board Secretary issued an Order and Notice of Hearing, wherein a hearing was scheduled for February 27, 2008, in Philadelphia. After a series of granted continuance requests, the hearing was rescheduled for, and held on April 1, 2008, at which time all parties in interest were afforded a full opportunity to present evidence and to cross examine witness. Each party filed a post-hearing brief.

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

FINDINGS OF FACT

1. The certified bargaining unit is comprised of nine hundred eighty staff nurses, as of April, 2008. (In the Matter of the Employes of Temple University Health System, 39 PPER 138, at 468, (Proposed Order of Unit Clarification, 2008)).

2. Case managers, who number about twenty-five, are required by Temple to be registered nurses. Case managers collaborate with the medical staff to plan and coordinate patient care in a "timely fashion," and lead in discharge planning efforts to manage patients at the "most appropriate level of care." This involves daily interaction with doctors and nurses. (N.T. 26-33, 48).

3. Case managers handle problem discharges. They also coordinate with insurance companies to insure that Temple will be reimbursed for the care it provides insured patients. (N.T. 26-29, 41-43).

4. Case managers corporeally assess each patient within twenty-four hours of admission. They also coordinate with outside social service and health agencies for discharge planning of patients. (N.T. 33-36).

5. Logistics coordinators and utilization review nurses are currently in the bargaining unit. The latter contacts insurance companies to certify that they will reimburse Temple for whatever procedure newly admitted patients are to have done. Logistics coordinators interact with physicians, case managers and social workers, *inter alia*, to coordinate the admission of patients new to Temple. Logistics coordinators provide no bedside care to patients. (N.T. 54-57; Petitioner Exhibit 3).

6. Case managers are trained in the use of InterQual criteria. InterQual is a proprietary list of mandatory symptoms a patient must display before the hospital will be reimbursed by an insurance company for the admission and treatment of that patient. (N.T. 28, 38-40).

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<sup>1</sup> The caption appears as amended by the hearing examiner.

## DISCUSSION

The Union seeks to accrete a group of employees called case managers into an existing unit of "all full-time and regular part-time general duty and staff nurses[,] including all graduate nurses, clinical nurse instructors, nurse anesthetists, and cardiac catheterization technologists; and excluding assistant head nurses, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act."<sup>2</sup> (PERA-R-95-369-E, as later clarified). The Union asserts that the case managers share a sufficient, identifiable community of interest so as to be properly accreted into the existing nurses' unit. Temple does not agree.

Temple urges that the case managers do not share an identifiable community of interest to properly be accreted into the existing nurses' unit, and asks that the petition be dismissed. Temple argues that the case managers' job is a "fundamentally different job than staff nursing." (Temple brief at 8).

Nevertheless, case managers are properly incorporated into the existing nurses' unit because they do share an identifiable community of interest with other members of that unit. A review of Board law on this issue sets forth the framework for our analysis.

When determining whether an identifiable community of interest exists, the Board will consider such factors as work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining objectives, manner of hiring, bargaining history, supervision, and myriad other factors. State System of Higher Education v. PLRB, 757 A.2d 442 (Pa. Cmwlth. 2000) (citing Fraternal Order of Police v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999)).

Further, it is well-settled that an identifiable community of interest can exist despite differences among employee classifications. Id.; 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).

In point of fact, in Washington Township, *supra*, the Court sustained the Board's conclusion that there was an identifiable community of interest so as to put blue-collar and white-collar employees in the same unit. More specifically, the Court sanctioned the Board's determination that bookkeepers, laboratory technicians, laborers and waste water operators shared an identifiable community of interest to be properly in one employer unit.

The Board need only be satisfied that it is appropriate for the case managers to be in the requested bargaining unit, not that the requested unit is the best possible unit for that position. In the Matter of the Employees of Upper Merion Area School District, 34 PPER 35 (Proposed Order of Unit Clarification, 2003); County of Allegheny, 11 PPER ¶ 11031 (Court of Common Pleas of Allegheny County, 1979).

Moreover, in making unit determinations, the Board is guided by its broad-based bargaining unit policy. This 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. City of Philadelphia, 10 PPER ¶ 10059 (Final Order, 1979).

With that legal framework in mind, we now review the duties of case managers on this record.

Case managers are registered nurses who regularly interact with Temple's physicians, nurses, and social workers, *inter alia*, in the planning and coordination of patient care. They also take the lead in discharge planning efforts "to make sure that the patient's discharge is managed efficiently and as quickly as possible." (N.T. 280).

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<sup>2</sup> The Public Employee Relations Act, 43 P.S. § 1101.101 to 1101.2301. (PERA).

Case managers also coordinate daily with insurance companies to make sure that patients meet all the criteria to remain hospitalized, so that Temple can receive insurance reimbursement for those patients.<sup>3</sup> Within twenty-four hours of admission, case managers corporeally assess each patient.

Case managers collaborate daily with physicians and other nurses to assess a patient's condition and oversee that all ordered tests are performed "in a timely fashion." (N.T. 32). These duties require case managers to be registered nurses in order for them to have the medical knowledge necessary to understand and appreciate a patient's condition and the resultant care necessary to support that patient's recovery and the effect of any treatment anomalies that may arise. Such a medical background is also essential in dickering with insurance companies when patients exceed the allotted trim. (See footnote 3).

Temple argues that the above-described duties should preclude the case managers from being accreted into the existing staff nurses' unit because staff nurses "provide bedside care of the patient, dealing with their physical and emotional needs 24/7," while the "case management function focuses on a different area of care, and that is the care that relates more to an extension of the physician," because case managers "are focused on the management of the process of care through the organization." (Temple brief at 8; N.T. 99, 100). What this argument overlooks is that there are other positions in the nurses' bargaining unit that do not provide bedside care to patients.

Logistics coordinators and utilization review nurses<sup>4</sup> do not supply bedside care to patients, but rather, like the case managers, use their medical knowledge in ways that support patient care in arenas other than immediate bedside care. (N.T. 53-57; Petitioner Exhibit 3).

Amazingly, Temple makes the argument that while case managers currently perform some utilization review functions, Temple has plans to remove those functions and place them with the utilization review nurses who are already in the bargaining unit. That argument is a tacit admission that case managers are now performing bargaining unit work. Since I am limited to reviewing the *current*, actual job duties, to determine whether or not case managers belong in the unit, Bethel Park School District, 18 PPER ¶ 18140 (Final Order, 1987), Temple has simply highlighted a factor that *supports* the inclusion of case managers in the unit.

Temple next argues that "work schedules and differences in competencies also weigh against finding a community of interest," between the case managers and the existing nurses' unit. Case managers work only the day shift, while bargaining unit nurses are scheduled twenty-four hours a day, seven days a week. Nevertheless, different work schedules cannot be the singular difference that negates an otherwise identifiable community of interest, or else part-time positions could never be in the same unit as full-time positions.

What Temple refers to as "differences in competencies" is really just a difference in job duties, and the Board has been clear that different classifications do not preclude the finding of an identifiable community of interest. In Bucks County Public Defender's Office, 13 PPER ¶ 13109, *aff'd* 15 PPER ¶ 15062 (Court of Common Pleas of Bucks County, 1984), the Court affirmed the Board's finding that public defenders and prosecutors, although they had obvious "differences of competencies," shared an identifiable community of interest, sufficient to be in the same bargaining unit. And, it is safe to say, that the job duties of public defenders and prosecutors are certainly more at cross purposes than are the job duties of staff nurses and case managers who work toward the same end - the patient's quick and complete recovery.

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<sup>3</sup> Case managers need only contact insurance companies when the patient's stay exceeds the number of days the insurance company has generically calculated that a person with that patient's condition hypothetically needs to be hospitalized. This calculation is called the "trim." It is when the real-life needs of the patient exceed what the insurance company presupposes them to be, that the case managers take to the telephones in an attempt to have the insurance companies pay the actual, rather than the lesser, hypothetical cost. (N.T. 41-43).

<sup>4</sup> It appears from the record that pre-certification nurses and utilization review nurses are simply different names for the same position. (N.T. 53, 66).

Despite some differences in actual job duties, the Board has said that,

[t]he community of interest standard in PERA attempts to assure that the bargaining units in the public sector are organized in a manner that permits smooth and efficient negotiation of collective bargaining agreements and to 'assure that an employe group neither embraces employes having a substantial conflict of economic interest nor omits employes showing an [*sic*] unity of economic interest....'

Philadelphia Housing Authority, 32 PPER ¶ 32046 at 125 (Final Order, 2001)(citation omitted). So, while the discussion of an identifiable community of interest usually turns on similar job duties and the other factors enumerated in State System of Higher Education v. PLRB, *supra*, those factors are really just benchmarks that establish the underlying unity of economic interests that foster the smooth and efficient bargaining of labor contracts for the largest common group.

Having the case managers in the requested unit would foster just the kind of efficient bargaining the Board talked about in Philadelphia Housing Authority. Granted, case managers and staff nurses do have different job duties, and case managers do work fewer shifts. Nevertheless, case managers and staff nurses have a shared knowledge base since both are registered nurses, and their common purpose is treating the patient, albeit, in different spheres of care. These facts create an identifiable community of interest sufficient to have them in the same unit. Additionally, there are other nurses in the unit who do not offer bed-side care to patients,<sup>5</sup> and Temple has not asserted that they do not belong in the unit.

Perhaps more to the point, the Board in Pennsylvania State University (Hershey Medical Center), 23 PPER ¶ 23129 (Proposed Order of Unit Clarification, 1992), 23 PPER ¶ 23209 (Final Order, 1992), *aff'd*, 24 PPER ¶ 24117 (Court of Common Pleas of Center County, 1993), found an identifiable community of interest between an existing unit of staff nurses and the employes sought to be accreted, called InterQual coordinators.

The InterQual coordinators performed essentially the same job functions as do the case managers. While not engaging in "direct patient care," the Hearing Examiner found that the InterQual coordinators "play a direct role in the extent to which a patient gets the opportunity for direct patient care." 23 PPER at 333. That is also the case here.

The Board, in its Final Order, based its conclusions, *inter alia*, on the fact that "the InterQual coordinators' work directly affects the care/or continued stay of the patient..." and that they "frequently discuss current patients with physicians and nurses." 23 PPER at 526.

In affirming the Board's Final Order, the Court concluded that "the InterQual coordinators are intimately involved in the provision of care to patients..." and also noted that, as here, "the bargaining unit already includes...nurses who do not perform direct patient care functions." 24 PPER at 308, 309.

Taking into consideration the areas of inquiry as set forth in State System of Higher Education v. PLRB, *supra*, and how those factors further the policy considerations set forth in Philadelphia Housing Authority, *supra*, and the precedent set forth in Pennsylvania State University (Hershey Medical Center), *supra*, the case managers, on balance, share an identifiable community of interest such that they are properly accreted into the nurses' unit. It is so ordered.

#### CONCLUSIONS

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

1. Temple is a public employer within the meaning of Section 301(1) of PERA.

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<sup>5</sup> Logistics coordinator and utilization review nurses.

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. Case managers share a sufficient community of interest so as to be accreted into the certified unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that for purposes of collective bargaining, case managers are accreted into the existing bargaining unit, defined in PERA-R-95-369-E, as later clarified.

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 and become absolute and final.

SIGNED, DATED and MAILED this Second day of February, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner