

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
: Case No. PERA-U-08-313-E  
: (PERA-R-298-C)  
:  
WYOMING AREA SCHOOL DISTRICT :

**FINAL ORDER**

The Wyoming Area School District (District) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) challenging a Proposed Order of Unit Clarification (POUC) issued on October 30, 2009. In the POUC, the Board's Hearing Examiner granted the Petition for Unit Clarification filed by the Wyoming Area Education Association, PSEA/NEA (Association) and determined that the position of athletic trainer should be included in the professional bargaining unit. On December 10, 2009, the Association informed the Board that it did not intend to file a response to the District's exceptions.

The Hearing Examiner's Findings of Fact (FF) are summarized as follows. The Association is certified to represent a unit of professional employees at the District, which includes teachers, guidance counselors, nurses and librarians for purposes of collective bargaining under the Public Employee Relations Act (PERA). On August 13, 2008, the Association filed a petition for unit clarification seeking to include the position of athletic trainer in the professional bargaining unit. The person who currently occupies this position, Laura Mudlock, has been employed by the District as an athletic trainer since the 2000-2001 school year. The District required Mudlock to maintain a Class A Certification as an Athletic Trainer. To do so required attaining a college degree and passing the National Athletic Training Association (NATA) Board of Certification examination. Mudlock graduated from West Chester University in 2000, with a Bachelor of Science degree in Sports Medicine/Athletic Training, and passed the NATA exam that same year. In order to be a licensed athletic trainer in Pennsylvania, one must have taken and passed the NATA examination.

Mudlock works approximately seven hours a day from 2 p.m. to 9 p.m., Monday through Friday, although she may occasionally be called upon to work on the weekends as well. Her work day has, at times, included starting as early as 7:00 a.m., and finishing as late as 10:00 p.m. Mudlock is the athletic trainer for the District's 60 sports teams, including football, baseball, basketball, softball, track, tennis, golf, soccer, swimming, wrestling, volleyball and cheerleading. She is responsible for both male and female sports teams. Mudlock's work year starts two and one-half weeks before the students return to classes, and finishes in May, unless the District's teams are in play-offs, in which case her work year is longer.

Mudlock's job includes the prevention, recognition, treatment and rehabilitation of athletic injuries sustained by the District's athletes. She accomplishes these tasks by determining if an athlete has, in fact, sustained an injury; and if so, ascertains just what the injury is. She then determines whether continued play is proper. Mudlock also determines whether the injury warrants either a physician's care or hospitalization. She works under the direction of a supervising physician. Mudlock exercises independent judgment for medical decisions, including diagnosis, treatment and referrals, based upon her knowledge of an advanced nature, gained from her degree in Sports Medicine. Mudlock is trained to recognize and evaluate head trauma. She is trained to recognize and evaluate joint injuries.

In performing her duties as an athletic trainer, Mudlock must respond to various situations that arise with student athletes, including emergencies occurring on the field. The work that Mudlock performs cannot be quantified on a numerical basis, and is different every hour of every day. In performing her job duties, Mudlock interacts with coaches and nurses. Many of the coaches with whom Mudlock interacts are also faculty members. Mudlock's office is in the District's high school. She also travels to the District's football stadium field house. Mudlock was hired by the District's school board and receives a salary. She receives the same number of paid sick days and personal days as do members of the professional bargaining unit. Mudlock also receives the same health, dental and vision insurance as do professional bargaining unit members.

In the POUC, the Hearing Examiner relied on well-settled case law involving other school districts and the Pennsylvania State System of Higher Education in concluding that the position of athletic trainer should be included in the professional bargaining unit. Accordingly, the Hearing Examiner granted the Association's petition for unit clarification. In its exceptions, the District argues that the position of athletic trainer is not professional and does not share a community of interest with the other positions in the professional bargaining unit.

Section 301(7) of PERA defines a "professional employe" as follows:

(7) "PROFESSIONAL EMPLOYE" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) 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 test as outlined in PERA is a conjunctive test and all four parts of the test must be met in order for an employe to be found to be professional under PERA." In the Matter of the Employes of Luzerne County Community College, 37 PPER ¶ 47 at 147 (Final Order, 2006); See also In the Matter of the Employes of State College School District; 35 PPER ¶ 48 (Proposed Order of Dismissal, 2004).

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, interaction and interchange of employees, grievance procedures, and bargaining history. 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 employe 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).

The Board and the Courts have consistently held that athletic trainers are professional employes who share a community of interest with other professional positions that are included in professional bargaining units. See State System of Higher Education v. PLRB, 757 A.2d 442 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 565 Pa. 569, 771 A.2d. 1293 (2001); Norwin School District, 31 PPER ¶ 31104 (Final Order, 2000); Belle Vernon Area School District, 31 PPER ¶ 31017 (Final Order, 1999). See also Tuscarora School District, 38 PPER ¶ 55 (Proposed Order of Unit Clarification, 2007); Elizabeth Forward School District, 29 PPER ¶ 29015 (Proposed Order of Unit Clarification, 1997). However, contrary to all authority on point, the District contends that the athletic trainer position is not professional, and does not share a community of interest with the existing members of the professional bargaining unit.

The District does not contest the Hearing Examiner's conclusion that the athletic trainer meets the first three prongs of the test for professional status under PERA. Rather, the District relies solely on the fourth prong in arguing that the position is not professional. The District contends that "[t]he methods by which the athletic trainer performs her duties are contained in a physician approved standard operating procedure" and therefore "the work she performs is not of such a character that the output or result accomplished cannot be standardized in relation to a given period of time." (District's brief at 4).<sup>1</sup>

This argument clearly misperceives the fourth prong of the test for a professional employe, which requires only that the employe's "output" or result not be standardized in

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<sup>1</sup> The District does not specifically argue that the athletic trainer position fails to meet prong 2 of the test for a professional employe. Moreover, the Hearing Examiner found that the athletic trainer position requires consistent exercise of discretion and judgment. (FF 11). This finding is supported by substantial evidence of record.

relation to a given period of time. Here, the fourth prong is clearly satisfied because the work of the District's athletic trainer cannot be quantified on a numerical basis, and is different every hour of every day. (FF 14). Indeed, the athletic trainer, who is responsible for the District's sixty sports teams, must respond whenever student athletes incur injuries that require the services of the athletic trainer. (FF 10-12). Thus, the position clearly meets the fourth prong of the test for a professional employe. The Hearing Examiner's conclusion that the position meets all four prongs of the statutory definition of a professional employe is fully supported by the Hearing Examiner's findings and the substantial record evidence upon which those findings are based. As such, the Hearing Examiner did not err by concluding that the athletic trainer is a professional employe.

With regard to the community of interest issue, the District argues that certain factors relied on in prior athletic trainer cases are not present here, and that there are various differences between the position at issue and other positions in the professional unit. However, as found by the Hearing Examiner, the athletic trainer position requires professional certification and a college degree, receives a salary, reports for work at the high school, receives the same health, dental and vision coverage as members of the professional bargaining unit, receives the same number of personal days and sick days as members of the professional unit, and has frequent interaction with the school nurse, who is a member of the professional unit. We concur with the Hearing Examiner that the differences cited by the District do not destroy the identifiable community of interest that otherwise exists between the athletic trainer and the other professional employes. See Allentown City School District, 38 PPER ¶ 100 (Final Order, 2007).

Furthermore, pursuant to its broad-based bargaining unit policy, the Board will certify classifications of employes in a single unit when those employes perform the same general function. See Philadelphia Housing Authority, 31 PPER ¶ 31110 (Order Directing Submission of Eligibility List, 2000), 32 PPER ¶ 32046 (Final Order, 2001). As such, the Board recognizes all-inclusive blue-collar units, all-inclusive white-collar units and wall-to-wall nonprofessional units as appropriate under the Act. In the Matter of the Employes of Lansdale Borough, 24 PPER ¶ 24053 (Final Order, 1993). See also Methacton School District, 11 PPER ¶ 11040 (Decision and Order, 1980), 11 PPER 11227 (Final Order, 1980); Montgomery County Intermediate Unit 23, 11 PPER ¶ 11036 (Decision and Order, 1980). The Board has also determined, in Chester Upland School District, 16 PPER ¶ 16089 (Final Order, 1985), affirmed, 532 A.2d 925 (Pa. Cmwlth. 1987), that a unit of all professional employes is appropriate because creating more than one unit of professional employes promotes overfragmentization.

In this case, accepting the District's argument would violate the Board's broad-based bargaining unit policy because there would be one professional unit consisting of teachers, guidance counselors, nurses and librarians, and a second separate unit consisting only of athletic trainers. Absent evidence that a community of interest is totally lacking between the athletic trainer and the other professional employes, such a result is untenable. Furthermore, there is only one athletic trainer at this school district. The result advocated by the District would create a unit with a single employe, and units of single employes are inappropriate under the Public Employe Relations Act (PERA). Western Berks Water Authority, 12 PPER ¶ 12075 (Order and Notice of Election, 1981); Borough of Slatington, 13 PPER ¶ 13073 (Order Directing Submission of Eligibility List, 1982). Thus, acceptance of the District's position would deny this professional employe the right to collective bargaining granted under PERA, despite the existence of a certified professional unit which represents the District's other professional employes.

In sum, we reject the District's contention that the position of athletic trainer does not share an identifiable community of interest with other members of the professional bargaining unit. Accordingly, the Hearing Examiner did not err by granting the Association's petition for unit clarification.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the District's exceptions and make the Proposed Order of Unit Clarification final.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Order of Unit Clarification be and the same are hereby dismissed and the Proposed Order of Unit Clarification be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this sixteenth day of February, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.