

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-09-178-W
: (PERA-R-3657-W)
:
ALLEGHENY-CLARION VALLEY :
SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On May 18, 2009, the Allegheny-Clarion Valley Education Support Personnel Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification (Petition) seeking to include the position of Technology Technician in the nonprofessional bargaining unit at the Allegheny-Clarion Valley School District (District). On May 27, 2009, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on September 9, 2009, at the Pittsburgh State Office Building in Pittsburgh, Pennsylvania. During the hearing on that date, the Association and the 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 the Public Employe Relations Act (PERA). (PERA-R-3657; July 2, 1973).
2. The Association is an employee organization within the meaning of Section 301(3) of PERA. (PERA-R-3657; July 2, 1973).
3. Jeff Raybuck is the Technology Technician at the District. (N.T. 11, 28).
4. Mr. Raybuck maintains the hard drives and servers at the District. He also upgrades, maintains and loads software and databases on the District's equipment. He provides direct support to District employees. He resolves hardware, software and equipment problems. (N.T. 11-13, 16, 18; Association Exhibit 1).
5. Mr. Raybuck upgrades and maintains virus protection for District computers and servers. (N.T. 18).
6. Mr. Raybuck provides advice and direction regarding the purchase of hardware and software. (N.T. 16; Association Exhibit 1).
7. Mr. Raybuck recommends the purchase of hardware and software to the District Superintendent, Brenda Brinker, and building principals. Sometimes, Ms. Brinker also seeks the advice of outside vendors regarding these recommendations. (N.T. 16-17, 76; Association Exhibit 1).
8. Mr. Raybuck maintains the District's servers, computer network and network file service, as well as the District's e-mail and filtering systems. (N.T. 17-18, 78; Association Exhibit 1).
9. Mr. Raybuck has provided training sessions for District personnel. One session involved training teachers how to access and make changes to their District provided webpages. (N.T. 18-19; Association Exhibit 1).
10. Mr. Raybuck must perform any technology-related duties that the District directs him to perform, and he has performed computer forensic duties for the District to determine improper computer usage by students. (N.T. 20, 32-35; Association Exhibit 1).

11. Mr. Raybuck works 8:00 a.m. to 4:00 p.m., 220 days per year; he is a salaried employee. At least two secretaries in the nonprofessional bargaining unit are also salaried. Some of the secretaries, custodians and maintenance employees in the unit also work a similar work year. Mr. Raybuck sometimes works weekends and holidays to address technology-related emergencies, or to work without interference. Custodians and other employees also work weekends and holidays. (N.T. 20-21, 51, 64, 85, 97).

12. Mr. Raybuck receives the same health insurance and leave benefits as the other employees in the nonprofessional bargaining unit. (N.T. 21-22, 66).

13. Mitch Overheim is a maintenance employee who worked for the District approximately 80% of full time. Then the District increased his work time to full time in May, 2008 and directed him to work the remaining 20% with technology, which amounts to approximately 36 days of the 220-day work year. Mr. Overheim's work time was increased to assist Mr. Raybuck with technology matters. (N.T. 23-24, 30, 38-39, 79-80, 82).

14. Mr. Raybuck does not schedule Mr. Overheim's time with technology. Mr. Raybuck asks Mr. Overheim to help him with technology when he needs assistance. Mr. Overheim performs technology-related duties on his own without direction when District personnel approach him with problems. (N.T. 24, 40).

15. Mr. Raybuck does not have the authority to make hiring recommendations. In response to Ms. Brinker's inquiry about whether Mr. Raybuck thought that Mr. Overheim was good for helping in technology, Mr. Raybuck responded in the affirmative. (N.T. 25).

16. Mr. Raybuck has no authority to discipline and has not disciplined Mr. Overheim or any other District employee. Mr. Raybuck has no authority to reprimand, suspend or discharge Mr. Overheim or to effectively recommend such action. (N.T. 25-26).

17. When Mr. Overheim's work schedule was increased to full time, Ms. Brinker-not Mr. Raybuck-directed him to develop a database to track District equipment. Mr. Overheim developed the database on his own without input or training from Mr. Raybuck. Mr. Raybuck ordered the database software and Mr. Overheim installed performed the installation. (N.T. 40-41).

18. Mr. Raybuck recommends the use of outside vendors and more often than not, the District approves his request. (N.T. 36).

19. During the summer of 2009, the District hired Jackie Shook to clean computers with an air compressor. Ms. Shook worked for no more than two weeks. Mr. Raybuck showed Ms. Shook how to remove the computer covers and told her not to touch any of the computer components. Ms. Shook went through each school room, cleaned the computers and put the computers back in their place. Mr. Raybuck gave her a compressor and time sheets. He did not collect the time sheets from her. He directed her to start at the high school and clean as many computers as she could. (N.T. 41-44, 52, 87).

20. Mr. Raybuck prepares a technology budget that is reviewed by Superintendent Brinker. Ms. Brinker makes cuts and modifications based on her priorities and submits the modified budget to the business manager. In June 2009, Mr. Raybuck was asked to evaluate Mr. Overheim's performance. (N.T. 57-58, 85, 88).

21. Mr. Raybuck was part of a committee to develop a strategic technology plan for the District to be submitted to the Pennsylvania Department of Education (PDE). Ms. Brinker composed the strategic plan report that was forwarded to PDE.

DISCUSSION

In its post-hearing brief, the District challenges the Association's petition to include the position of Technology Technician in the nonprofessional bargaining unit on the following three grounds: (1) the Association has not met its burden of establishing that the position has a community of interest with the other nonprofessional employees in the bargaining unit; (2) the position is supervisory; and (3) the position is managerial.

1. Community of Interest

Section 604(1) of PERA requires that employees in a bargaining unit share an identifiable community of interest. 43 P.S. § 1101.604(1). As the party seeking to include the position of Technology Technician, the Association has the burden of establishing an identifiable community of interest. In the Matter of the Employees of Riverview Intermediate Unit No. 6, 37 PPER 106 (Final Order, 2006). In determining whether employees share an identifiable community of interest, the Board considers commonality among such factors as the type of work performed, educational and skill requirements, pay scales, hours worked or scheduled, benefits, working conditions, interchange of employees, grievance procedures and bargaining history. FOP v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999). However, an identifiable community of interest can exist despite differences in such and other factors. Id.; In the Matter of the Employees of Ambridge Area Sch. Dist., 30 PPER ¶ 30200 (Final Order, 1999).

The record shows that the employees in the nonprofessional bargaining unit of employees receive similar health and medical benefits as well as similar leave benefits. The employees share similar working conditions in that they work in and around District buildings and many utilize similar District equipment to perform their duties. The Technology Technician works 8:00 a.m. to 4:00 p.m., 220 days per year as a salaried employee. Other employees in the bargaining unit work the same work day and also receive salaries. Although Mr. Raybuck sometimes works weekends and holidays to cover emergencies unique to his computer equipment responsibilities and to work without interferences, custodians and other employees in the bargaining unit also work weekends and holidays.

In Ambridge Area Sch. Dist., *supra*, the Board, on a similar record, affirmed a hearing examiner's determination that the computer repair technician properly belonged in the bargaining unit of nonprofessional employees including custodians, cafeteria workers, watch persons, maintenance personnel, trade specialists, and janitors. In that case, the computer technician's duties and responsibilities were "to install, repair, and maintain computer hardware and software," as is the case with Mr. Raybuck. Ambridge, 30 PPER at 435. Accordingly, the Board has already determined that personnel who service, maintain, repair and/or network computers at school districts have an identifiable community of interest with the nonprofessional bargaining unit, which includes custodians, secretaries, cafeteria workers and janitors.

The District further argues that "[i]t is the position of the School District that not only is there a lack of perfect uniformity in conditions of employment between Raybuck and the bargaining unit, there is no uniformity in the positions covered by the existing bargaining unit and the position held by Raybuck." (District Post-hearing Brief at 8). However, the Board, in Ambridge, rejected this argument and opined as follows:

[I]t is not necessary that the maintenance men be able to perform the same duties as the computer repair technician. To find otherwise would force the Board to conclude that it is necessary for trade specialists such as plumbers, carpenters, electricians, and heating and cooling system mechanics be able to perform one another's jobs for a community of interest between them to exist. It is the nature and function of skilled craftsmen to possess unique skills that are not interchangeable, but nonetheless share a community of interest over wages, benefits, hours and other terms and conditions of employment under Section 701 of PERA. The District's argument would support the notion that each skilled craft would require a separate bargaining unit, this is a notion that finds no support in PERA or the case law.

Ambridge, 30 PPER at 435 (emphasis added). Therefore, although, Mr. Raybuck's specific skills, duties and educational level may differ from other employees in the unit, the Board has recognized that those are necessary differences inherent in maintaining a division of labor among employees with different positions and different job duties. Requiring each group of employees with different duties and skills to be in different units would burden a public employer with overfragmentization. Accordingly, the Association has met its burden of establishing that the Technology Technician position, currently held by Mr. Raybuck, shares an identifiable community of interest with the employees already in the nonprofessional bargaining unit.

2. Supervisory Status

The District also maintains that the Technology Technician position is supervisory within the meaning of Section 301(6) of PERA and should not be included in the bargaining unit. PERA is a statutory scheme that seeks to include, not exclude, public employees. In the Matter of the Employees of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). As the party seeking the exclusion, the District has the burden of establishing that the Technology Technician is supervisory. In the Matter of the Employees of the State System of Higher Educ., 29 PPER 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999). Section 301(6) of PERA provides as follows:

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. §1101.301(6). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5)(emphasis added); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal den'd, 568 Pa. 675, 795 A.2d 984 (2000). The Board will not find an employee to be a supervisor if the employee only exercises supervisory authority sporadically. Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1989). For an employee to be a supervisor, he or she must actually exercise authority set forth in Section 301(6) of the Act and such authority must carry with it the power to reward or sanction employees. Belle Vernon Area School District, 21 PPER ¶ 21165 (Final Order, 1990).

The District did not meet its burden of establishing that the position of Technology Technician is supervisory where the record shows that the vast majority of Mr. Raybuck's time is spent performing technical computer related functions and not supervisory functions. The Board has held that the "[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction." Findlay Township Water Authority, 21 PPER ¶ 21130 at 324 (Final Order, 1990). This record is clear that Mr. Raybuck has not rewarded, disciplined, or reprimanded any District employees nor does he have the authority to do so. At the time Mr. Overheim's hours were increased to full time, Mr. Raybuck indicated to Ms. Brinker that he thought that Mr. Overheim was a good candidate to help with technology responsibilities at the District. However, Mr. Overheim was not hired by the District at this time and the weight given to Mr. Raybuck's comment by Ms. Brinker is unclear. In this regard, the record does not establish whether Mr. Raybuck effectively recommended the hiring of Mr. Overheim, or any other District employees.

Mr. Overheim is a maintenance employee who had been working for the District approximately 80% of full time prior to May 2008. At that time, the District increased his work schedule to full time and directed him to work the remaining 20% with technology. Mr. Raybuck does not schedule Mr. Overheim's time with either technology or maintenance. Although Mr. Raybuck asks Mr. Overheim to help him with technology when he needs assistance, Mr. Overheim often performs technology-related duties on his own without direction. Although Mr. Raybuck has participated in the evaluation process of Mr. Overheim, the record is lacks substantial credible evidence that Mr. Raybuck's evaluation could effectuate any reward or sanction.

Indeed, the record shows that Ms. Brinker directs and assigns tasks to Mr. Overheim. When Mr. Overheim's hours were increased, Ms. Brinker directed him to develop a database to track District equipment. Mr. Overheim developed the database on his own without input from Mr. Raybuck. Although the District frequently approves Mr. Raybuck's recommendations for the use of outside vendors, these are not hiring or policy decisions. Rather the District's approval of vendor assistance with technology amounts to a deferral to Mr. Raybuck's technical expertise in resolving technology-related problems.

During the summer of 2009, the District hired Jackie Shook to clean District computers with an air compressor. Ms. Shook worked for no more than two weeks. Mr. Raybuck showed Ms. Shook how to remove the computer covers and asked her not to disturb any of the computer components. Ms. Shook went through each school room, blew out the computers and put the computers back in their place. Mr. Raybuck gave her a compressor and time sheets. He did not collect the time sheets from her. He directed her to start at the high school and clean as many computers as she could. The minimal assignment and direction of work that flowed from Mr. Raybuck to Ms. Shook for less than two weeks does not, on balance, qualify as the hallmark of supervisory status nor does it satisfy any of the other significant indicia the Board relies on to determine whether a position is supervisory. The extremely sporadic assignment of work involved with Ms. Shook or Mr. Overheim fails to demonstrate that Mr. Raybuck spends anymore than a negligible amount of time assigning work and directing personnel. Accordingly, the position of Technology Technician is not supervisory.

3. Management Level Status

The District further argues that the position of Technology Technician is a managerial level position and should not be included in the unit. As with establishing supervisory status, the District has the burden of proving that the position is managerial. State System of Higher Educ., supra. The District specifically maintains that Mr. Raybuck prepares the technology budget and that he holds a "significant position" with the District's Committee for preparing the Educational Technology Report submitted to PDE. (District's Post-hearing Brief at 12). The District further contends that Mr. Raybuck performs other managerial duties such as recommending software and equipment purchases and using outside vendors to assist with technology matters. (District's Post-hearing Brief at 12-13). Also, argues the District, Mr. Raybuck participated in policy decisions by providing a detailed report to the school board outlining the status of technology at the District and identifying specific problems that needed attention. (District's Post-hearing Brief at 13).

Under Section 301(16) of PERA, a management level employee is defined as follows:

[A]ny 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 held that this provision establishes a disjunctive three-part test and that an employee who satisfies any of the following criteria is a manager: (1) either the employee is directly involved in the determination of policy; (2) the employee directly implements policy; or (3) the employee is above the first level of supervision. In the Matter of the Employees of Lower Providence Township, 16 PPER ¶ 16117 (Final Order, 1985).

Contrary to the District's position, the record in this case fails to establish that Mr. Raybuck is either directly involved in the development or determination of policy, the implementation of policy or that he is above the first level of supervision. Although Mr. Raybuck has prepared a draft technology budget, Superintendent Brinker reviews that draft proposal and makes modifications based on her priorities. The Superintendent then submits the modified budget to the business manager who also reviews the technology budget before it is submitted to the school board for approval. The evidence does not establish that the school board effectively adopts the budgetary recommendations proposed by Mr. Raybuck for technology. Although Mr. Raybuck recommends the purchase of software and computer equipment throughout the school year, such recommendations are in fulfillment of his duties to maintain and upgrade equipment and software. In other words, these duties fall within his technical discretion and do not support a finding of managerial discretion. The District's managerial policy of utilizing computers as an educational tool for students and a work tool for District personnel was developed and implemented by management before Mr. Raybuck's arrival at the District. Mr. Raybuck's recommendations regarding upgrades and purchases fall within the purview of equipment maintenance much like the custodian's recommendations for new lawnmowers and tools.

Although the District claims that Mr. Raybuck held a significant position on the committee to prepare the Educational Technology Report submitted to PDE, the record does not establish that Mr. Raybuck was significantly involved in that project. Indeed, Ms.

Brinker composed the strategic plan report that was forwarded to PDE. As far as Mr. Raybuck's report to the school board outlining the status of technology at the District and identifying specific problems that needed attention, the report and the evidence of its presentation to the school board do not establish that Mr. Raybuck was engaged in policy development or implementation. In fact, there is no evidence indicating what the District did with Mr. Raybuck's suggestions and what weight if any they gave to his report.

Accordingly, the position of Technology Technician shares an identifiable community of interest with the employees in the nonprofessional bargaining unit at the District. The position is not supervisory or managerial and shall be included in the nonprofessional unit.

CONCLUSIONS

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

1. The District is a public employer within the meaning of section 301(1) of PERA.
2. The Association is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of Technology Technician, currently held by Jeff Raybuck, shares an identifiable community of interest with the other employees in the nonprofessional bargaining unit at the District.
5. The position of Technology Technician, currently held by Jeff Raybuck, is not supervisory under Section 301(6) of PERA.
6. The position of Technology Technician, currently held by Jeff Raybuck, is not a management level position within the meaning of Section 301(16) of PERA.
7. The position of Technology Technician, currently held by Jeff Raybuck, shall be included in the nonprofessional bargaining unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the bargaining unit of nonprofessional employees of Allegheny-Clarion Valley School District certified by the Board at Case Number PERA-R-3657-W is hereby amended to include the position of Technology Technician.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order 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 sixteenth day of February, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner