

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-09-140-E
 : (PERA-R-793-C)
ABINGTON HEIGHTS SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

A Petition for Unit Clarification was filed with the Pennsylvania Labor Relations Board (Board) on April 14, 2009, by the Abington Heights Education Association (Association), seeking to accrete the position of social worker/therapeutic support (social worker) into an existing unit of professional employes working for the Abington Heights School District (District). This bargaining unit was previously certified by the Board under Case No. PERA-R-793-C.

On May 12, 2009, the Secretary of the Board issued an order and notice of hearing, wherein a hearing was set for May 26, 2009, in Clarks Summit, Pennsylvania. After rescheduling because of the Commonwealth's budget impasse, the hearing was scheduled for October 1, 2009, and was held on that date. At that time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

The 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 an employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA).
2. The Association is an employe organization within the meaning of Section 301(3) of PERA and represents a bargaining unit of professional employes.
3. The position of social worker is occupied by Bruce Amendolaro. He was hired into the newly created position by the District in January, 2009. Amendolaro has a bachelor's degree in sociology and social welfare. Before he was hired by the District, Amendolaro had thirty-five years experience providing mental health services to students and adolescents. (N.T. 8-9, 11, 19, 20, 50-52; Association Exhibit 1, 3, 4).
4. At Tri-County Services, his prior position, Amendolaro served the roles of case worker supervisor, treatment team leader, crisis intervention specialist, risk manager, program coordinator, outreach program coordinator, and summer camp coordinator. Tri-County Services provided mental health services to children, including public school students. Amendolaro's primary function at Tri-County was working with the partial hospitalization program. That program provided various diagnostic therapies to public school students. (N.T. 11-12, 17; Association Exhibit 3).
5. Amendolaro's employment at Tri-County required a college degree. In point of fact, all Amendolaro's thirty-five years of prior work experience required a college degree. (N.T. 37-38, 41-42).
6. Starting in the 2008-2009 school year, the District instituted an emotional support classroom for students with severe emotional and behavioral issues. Initially, the room was staffed by a teacher and one or two teacher's aids. The initial staffing complement was unable to control the student population of that class, and, in the Superintendent's own words, "a very, very serious problem" developed that required additional expertise. The Superintendent and the Special Education Director, Sam Sica,

decided to issue a job posting for a social worker. The job posting asked for a "[f]ull[-]time Social Worker with experience in Partial Hospitalization Program." (N.T. 43, 58-60, 62, 66-67, 81; Association Exhibit 2).

7. Sica was familiar with Amendolaro's work at Tri-County for the last twelve to fifteen years, and had referred students to Amendolaro. Because he was familiar with Amendolaro's prior experience, Sica invited Amendolaro to apply for the newly created position of social worker. (N.T. 13, 14, 17, 62, 69, 82, 83, 91-92, 96, 100).

8. When Sica interviewed Amendolaro for the social worker position, he told Amendolaro that the position "would be conducive to what I [Amendolaro] was doing [at Tri-County], implementing therapy in the classroom, helping with behavioral management." Amendolaro's current duties overlap about eighty percent with his Tri-County duties as a therapeutic team treatment leader. (N.T. 14, 15, 21).

9. Amendolaro regularly performs these tasks: oversees the emotional support classroom for behavioral management; assesses the condition and status of students; provides crisis intervention when necessary; provides individual, group and family therapy; communicates with, and obtains information from parents; works with students who have extreme emotional and behavioral issues such as depression, obsessive-compulsive disorder, oppositional disorders, suicidal ideation, family and domestic problems, drug and alcohol related problems; refers students to guidance, the school nurse and the student assistance program; and participates in individual educational plan meetings. (N.T. 14, 22, 25, -26, 28-33, 43-44, 48-49, 97-98).

10. In performing his job duties Amendolaro relies on the education and training he received from his bachelor's degree, and he utilizes independent judgment in his decision making. (N.T. 27-28, 32, 34, 35-36, 39, 43, 44, 48).

DISCUSSION

The Association seeks to accrete the position of social worker into the certified professional unit. The District urges that the position is not professional as defined by PERA. Because the Association has proved that the position performs work as described in Section 301(7) of PERA, this position is properly in the professional unit.¹ The District's arguments to the contrary are makeweight.

Perusing what is necessary to show professional status under PERA is helpful in understanding how the facts presented by the Association establish that the position is professional.

PERA defines the term "professional employe" as 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;
- (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). All four parts of the test must be met to acquire professional status under PERA. Beaver County Community College, 26 PPER ¶ 26201 (Final Order, 1995).

¹ To put a finer point on it, the District stipulated that the social worker position, if shown to be professional, shares an otherwise sufficient, identifiable community of interest so as to be properly in the bargaining unit. (N.T. 3-4). Because professional status is part of the overall community of interest determination, the burden of proof remains with the Association to show that the position is professional. In the Matter of the Employes of Riverview Intermediate Unit #6, 37 PPER 106 (Final Order, 2006).

A review of the social worker's education and duties, coupled with current Board law, lead to the inescapable conclusion that the position is professional.

Bruce Amendolaro, who currently holds the social worker position, has a bachelor's degree in sociology and social welfare. That degree enabled him to accumulate the prior job experience which made him attractive to the District for the social worker position.

Despite the District's simplistic assertion that the social worker's job is simply to "stop disruptions in the classroom," the record reveals the true nature and complexity involved in reaching that goal. In reality, reducing classroom disruptions is itself a byproduct of the social worker's interactions with the disruptive children. A look at the social worker's tasks shows why this is true.

The social worker regularly performs these tasks: oversees the emotional support classroom for behavioral management; assesses the condition and status of students; provides crisis intervention when necessary; provides individual, group and family therapy; communicates with, and obtains information from parents; works with students who have extreme emotional and behavioral issues such as depression, obsessive-compulsive disorder, oppositional disorders, suicidal ideation, family and domestic problems, drug and alcohol related problems; refers students to guidance, the school nurse and the student assistance program; and participates in individual educational plan meetings. The District agrees that these are the duties performed by the social worker.² (N.T. 83).

In performing these tasks, the social worker relies upon the specialized knowledge gained from his bachelor's degree, and uses independent judgment in his decision making.

The Board has consistently found positions that have duties semblable to those performed by the social worker in this case are professional under PERA. See In the Matter of the Employees of Luzerne Intermediate Unit #18, 37 PPER 100 (Proposed Order of Unit Clarification, 2006)(position that has bachelor's degree and provides therapeutic support for students with emotional and behavioral problems, and similar position that facilitates after school anger management and social skills techniques programs are both professional); Colonial Northampton Intermediate Unit #20, 26 PPER ¶ 26022 (Proposed Decision and Order,³ 1994)(organizing group therapy activities, working in collaborative professional teams, providing crisis intervention, and individually meeting with students for therapy, establish professional status under PERA); In the Matter of the Employees of Venango County, 20 PPER ¶ 20118 (Order Directing Submission of Eligibility List, 1989)(caseworkers who had college degree and did crisis intervention, individual counseling and assessments, and ascertained "other psycho-social needs" of clients were professional under PERA); West Chester Area School District 13 PPER ¶ 13196 (Proposed Order of Unit Clarification, 1982)(social worker who deals with students to diagnose and resolve social problems and interacts with other professionals and parents is a professional under PERA).

Clearly, the social worker's duties are predominantly intellectual and varied in nature; they require the consistent exercise of discretion and judgment, based upon his knowledge of an advanced nature; and, the result accomplished is of such a character that it cannot be standardized in any given time period.

The District is adamant that it does not require a college degree for anyone in the social worker position. That assertion rings particularly hollow in the face of the fact that the District's job posting asks for a "[f]ull time Social Worker..." and the District's Special Education Director admitted that social workers must have a college degree to be social workers. (N.T. 101; Association Exhibit 2).

Obviously then, the District required a college degree for the social worker by simply giving the position that title. Moreover, it is hard to accept, given the tasks

² In point of fact, it was the District's Special Education Director who agreed with the social worker's description of his duties. The Director has thirty-four years experience in the field, holds two master's degrees, a supervisory certificate in special education, an elementary and secondary principals certificate, and a superintendent's letter (N.T. 80).

³ Although this was a unit clarification, and should, therefore, have been titled "Proposed Order of Unit Clarification," the reporting company incorrectly titled it as a proposed decision and order.

the social worker performs, that the District wanted merely a "support person," as the District's Special Education Director testified. (N.T. 100). Given the Director's extensive experience and impressive academic credentials in the field, it stretches the imagination that he somehow forgot that a social worker needed a college degree to be a social worker. Tellingly, the first question that the District asked Amendolaro in his job interview had to do with his educational qualifications. (District Exhibit 1).

So, essentially, the District asks me to believe that when it advertised a position that, by its very title required a college degree (i.e. a social worker), it wasn't requiring the candidate to have a college degree. I am reminded of Hamlet's retort to Guildenstern, "do you think I am easier to be played on than a pipe?"⁴

And, while certainly not determinative, the fact that the District paid the social worker, not in the \$16,000 to \$17,000 range that support persons are paid, but rather, \$40,000, further highlights the exiguousness of the District's arguments. (N.T. 92; Association Exhibit 4). Even though he was hired in January of 2009, there is still no job description for Amendolaro's position as a social worker. (N.T. 14, 55).

The District hired Amendolaro, in large part, because it wanted to utilize his prior experience in the new social worker position. The District's Superintendent and the Special Education Director both were quite clear on that fact. (N.T. 62, 69, 82, 83, 91-92, 96, 100). But, the only way Amendolaro could have accumulated that experience was because of his college degree.

The District is adamant that the current social worker's job is very different from the last "partial hospitalization program" position that Amendolaro held. (N.T. 84-85). Given that assertion, it is surprising to see that the District's job posting specifically states, "[f]ull[-]time Social Worker with experience in Partial Hospitalization Program." Evidently, the District wanted experience in a program that was supposedly "just the opposite" of the District's program. (N.T. 84).

In its post-hearing brief, the District makes some assertions that need to be addressed. The District states, "Superintendent Mahon very credibly testified that he was not seeking a degreed individual when he envisioned this job. He testified that had he needed or wanted an individual with a degree, the job posting would have so stated." (District's post-hearing brief at 4). But, it did so state. Albeit, not with the express statement "college degree needed," but by naming a job that required a college degree.

The District goes on to state, "Mr. Amendalro [sic] would have been hired with or without his higher level degree and he would have been qualified to perform the assigned duties with or without a degree." No, he wouldn't.

The District constantly harps on Amendolaro's experience as the bellwether of its hiring decision. What the District conveniently ignores is that without his college degree he would not have that experience. That is the operative fact that must be ignored if the District's argument is to have any cogency.

In a last, vain attempt to explain away the college degree indigenous to the title social worker, the District blames simply sloppy wordsmithing. To that end, the District writes, "[t]he Social Worker description was likely a poor description...." (District's post-hearing brief at 6). Nevertheless, it was the description chosen by the Superintendent and the Special Education Director for the District, the latter having thirty-four years experience in special education.⁵ To argue now that they just didn't quite realize the import of the title social worker is blatantly disingenuous.

Because the position of social worker/therapeutic support meets all the criteria set forth in Section 301(7) of PERA, it shares a sufficient, identifiable community of interest so as to be accreted into the professional bargaining unit, and it is so ordered.

⁴ Shakespeare, William (1564-1616), *Hamlet*, circa 1601, Act 3, Scene II.

⁵ The Superintendent was quite clear that he and Sica "decided to post the position of social worker[,] to "eliminate and control [a] very, very serious problem that had been developing." (N.T. 59).

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of the Act.
2. The Association is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The position of social worker/therapeutic support shares a sufficient, identifiable community of interest to be included in the professional bargaining unit for purposes of collective bargaining.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the unit certified at Case No. PERA-R-793-C, is hereby amended to include the position of social worker/therapeutic support.

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 at Harrisburg, Pennsylvania this twenty-ninth day of April, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner