

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 : Case No. PERA-U-09-309-E
 : (PERA-R-1436-C)
SHAMOKIN AREA SCHOOL DISTRICT :

PROPOSED ORDER OF DISMISSAL

On July 23, 2009, the American Federation of State, County and Municipal Employes, District Council 86, (Union or Petitioner) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking clarification of a unit of non professional employes of the Shamokin School District (District or Respondent) to exclude the position of Projects Coordinator from the unit.

On August 24, 2009, the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a telephone pre-hearing conference to resolve the matters in dispute and November 12, 2009, in Harrisburg was scheduled as the time and place of hearing, if necessary.

The hearing was necessary, at which time all parties in interest were afforded a full opportunity to present evidence and cross-examine witnesses.

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. The parties stipulated and agreed that Shamokin Area School District is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (PERA), 43 P.S. § 1101.301(1). (N.T. 8)

2. The parties stipulated and agreed that the American Federation of State, County and Municipal Employes, District Council 86, is an employe organization within the meaning of Section 301(3) of PERA, 43 P.S. 1101.301(3) (N.T. 8-9)

3. That the Union is the exclusive certified bargaining representative of the "employes in a subdivision of the employer unit comprised of teacher aides, all cafeteria employes, custodians, maintenance and secretaries, and excluding supervisors, first level supervisors, and confidential employes as defined in the Act." Board Certification of Representative, PERA-R-1436-C. (Board Exhibit 1)

4. That the District and the Union have been parties to several collective bargaining agreements for employes in the certified unit. (N.T. 10, 15, Petitioner's Exhibit 1)

5. That on September 9, 2008, the District established a job description for the position of Projects Coordinator. (N.T. 13, 16, Petitioner's Exhibit 4)

6. That the parties stipulated and agreed that the Projects Coordinator has been treated as a bargaining unit position since that time. (N.T. 22, 23, Petitioner's Exhibit 4)

7. That the job description calls for Projects Coordinator to report to the Supervisor of Facilities and Maintenance. (N.T. 13, 16, Petitioner's Exhibit 4)

8. That the job description does not call for the Projects Coordinator to exercise supervisory functions. (N.T. 13, 16, Petitioner's Exhibit 4)

9. That the job description does not call for the Projects Coordinator to exercise management level functions. (N.T. 13, 16, Petitioner's Exhibit 4)

10. That District Business Manager Stephen Curran testified that the position of Projects Coordinator performs no supervisory or management level duties. (N.T. 22-23)

11. That the position of Projects Coordinator is held by Daniel Richardson. He voluntarily transferred from the position of assistant buildings and grounds supervisor into the position of Projects Coordinator on August 12, 2008. (N.T. 14, 17, 19)

DISCUSSION

The Union's petition for unit clarification seeks to exclude the position of Projects Coordinator from the nonprofessional unit on the grounds that the position is a supervisor under Section 301(6) of PERA and a management level position under Section 301(16) of PERA.

As the petitioning party, the Union has the burden of proving the reasons for the exclusion. Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977).

Section 301(6) of PERA defines a supervisor as:

'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 employes 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)

The Board has stated that in order for an employe to be excluded from a bargaining unit as a supervisor under Section 301(6) of the Act, the record must contain substantial and legally credible evidence that the employe has the authority to perform one or more of the functions listed in that section, actually exercises that authority and uses independent judgment when exercising that authority. McKeesport Area School District, 14 PPER ¶ 14165 (Final Order 1983); Millville Area School District, 15 PPER ¶ 15088 (Order Directing Submission of Eligibility List 1984). Authority that carries with it the power to reward or sanction employes is what distinguishes a supervisor who may not be included in a bargaining unit from a lead worker who may be included in a bargaining unit. Danville Area School District, *supra*.

In the present case, the Union did not place evidence in the record to support the proposition that the Projects Coordinator has the authority to perform any of the supervisory functions listed in Section 301(6) of PERA or evidence to support the proposition that the employe has actually exercised such authority. Accordingly, because the Union has not met its required burden of proof for this statutory exclusion, the petition to exclude this position as a supervisor under Section 301(6) of PERA is dismissed.

The second basis for the Union's petition to exclude the position is that the Projects Coordinator is a management level employe under Section 301(16) of PERA, which defines the term as:

"any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision."

43 P.S. 1101.301(16).

In the present case, the Union did not place evidence in the record to support the proposition that the Projects Coordinator determines policy or evidence to support the proposition that the Projects Coordinator directs the implementation of policy. Accordingly, because the Union has not met its required burden of proof for this

statutory exclusion, the petition to exclude this position as management level under Section 301(16) of PERA is also dismissed.

CONCLUSIONS

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

1. That Shamokin Area School District is a public employer within the meaning of Section 301(1) of the Act.
2. That AFSCME District Council 86 is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the position of Projects Coordinator is not a supervisor under Section 301(6) of the PERA.
5. That the position of Projects Coordinator is not a management level employe under Section 301(16) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the petition for unit clarification is dismissed.

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 order shall be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of June, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner