

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 :
 : Case No. PERA-U-09-440-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 November 4, 2009, by the Abington Heights Education Association (Association), seeking to accrete the position of Behavioral Specialist Consultant/Behavioral Analyst (Analyst) 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 November 30, 2009, the Secretary of the Board issued an order and notice of hearing, wherein a hearing was set for March 1, 2010, in Allentown, Pennsylvania. The hearing was held on that date and 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 Behavioral Specialist Consultant/Behavior Analyst was created in September of 2008, and filled that month by David Bechtel. Bechtel's areas of expertise include student behavioral issues and agency counseling. (N.T. 5, 22, 28, 52; District Exhibit 1).

4. As part of his duties, Bechtel oversees and reviews the District's social worker, offering suggestions on treating and analyzing student behavioral issues. Bechtel provides similar services to the District's classroom teachers. Bechtel also meets with the social worker to explain the social worker's duties, ensures that the social worker has the equipment and information necessary to do his job, and monitors that the social worker completes his work in a timely manner. (N.T. 8-9, 30-32, 51, 55-56).

5. Bechtel has never evaluated the social worker, and the social worker has never been evaluated by the District. (N.T. 23-24, 53, 57, 58).

6. At the direction of Sam Sica, the District's Director of Special Education and Bechtel's immediate supervisor, Bechtel once gave the social worker a verbal reprimand, after Sica received a parental complaint about the social worker. Bechtel does not possess an Act 93 Supervisor Certificate, nor is one required in his job description. (N.T. 9, 20, 50, 51-53; District Exhibit 1).

7. According to Bechtel, he developed a mental health policy for mental health workers who visit the District's buildings. That policy was developed in either October or November of 2008. It has yet to be adopted by the District. (N.T. 9-10, 27, 32).

8. At Sica's request, Bechtel developed a student behavior policy. That policy deals with Bechtel's area of expertise. This policy largely parroted state statutory and regulatory requirements, which teachers were already following. Bechtel did not attend the

school board meeting when the policy was adopted and played no role in recommending or presenting the policy to the school board. (N.T. 28-30, 35, 36, 38; District Exhibit 2).

9. Bechtel, drawing on his professional expertise, conducted in-service trainings for teachers, developed behavior support plans and restraint procedures. (N.T. 10-12, 32-34; District Exhibit 1).

10. Bechtel made up a draft budget for crisis management training which included such items as supplies, costs for substitute teachers, training costs. After preparing this draft, Bechtel gave it to Sica, who prepares the strategic budget for the District. Bechtel does not know how the budget procedure works in the District. (N.T. 10, 13-14, 15, 36-37, 40-41, 45; District Exhibit 3).

11. Bechtel acts as liaison with local mental health agencies and completes certain documents about students' progress necessitated by Department of Education regulations. He also works with kindergarten through twelfth grade special education teachers.

DISCUSSION

The Association seeks to accrete the position of Analyst into a certified professional unit. The District resists that move because it asserts that the Analyst position is "managerial and/or supervisory." The District does agree, however, that if the position is not shown to be "managerial and/or supervisory," then it shares a sufficient, identifiable community of interest to be placed in the professional unit. (N.T. 4).

Because the District has not shown that the position of Analyst is either supervisory or managerial, the petition is granted, and the Analyst position is properly placed in the professional unit. We will first examine the criteria necessary to establish supervisory status under PERA.

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

[A]ny 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).

The ability to reward or sanction is the "hallmark of supervisory status." In the Matter of the Employes of Lehigh Carbon Community College, 40 PPER 58 at 232 (Proposed Order of Dismissal, 2009). If an employe directs others, but does not reward or sanction them, that employe is not a supervisor. Id. An employe, who evaluates others but does not reward or sanction them, is not a supervisor. Id.

An employe who "effectively recommends" the discipline of another employe is a supervisor. But, for that recommendation to be effective, it must be routinely followed at a higher level of authority without other investigation. Merely reporting a co-worker's misconduct is not supervisory activity. In the Matter of the Employes of Jefferson Morgan School District, 31 PPER ¶ 31115 (Proposed Order of Unit Clarification, 2000).

The District asserts that the Analyst supervises the District's Social Worker. As evidence of that, the District offers the fact that the Analyst gave a verbal reprimand to the Social Worker. That fact, however, does not establish supervisory status. See Penns Manor Area School District, 30 PPER ¶ 30198 (Final Order, 1999) (mere verbal reprimand of co-worker insufficient to establish supervisory status).¹ The District offers scant other evidence to support its allegation that the Analyst is a supervisor.

¹ It wasn't even the Analyst's decision to verbally reprimand the Social Worker, but rather, the District's Director of Special Education told the Analyst to do so. (N.T. 53).

Moreover, it is "entirely appropriate for the Board to consider such factors as frequency, duration and importance of the various supervisory duties" alleged to be performed. Penns Manor Area School District, 30 PPER at 430. The District has not established that the Analyst spends any time performing supervisory duties, as defined by PERA.

We now turn to the criteria necessary to establish a management level position under PERA. Section 301(16) of PERA provides as follows:

Section 301(16) of PERA defines a management level position as:

[A]ny 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).

Under this rubric, the District urges that the Analyst is a manager because he has "determined, developed and implemented policies" that are "broad sweeping" and are "followed by all employees within the District." (District's post-hearing brief at 10). The District further posits that the Analyst has "committed the District to expenditures which are discretionary and non-routine in nature." (District's post-hearing brief at 11). The District makes no argument that the Analyst is a manager because he is an employe above the first level of supervision.

In an attempt to show that the Analyst determined policy, the District introduced evidence that he was involved with two policies; mental health and student behavior. As to the first, the Analyst, testified that he "developed" it in the Fall of 2008.² It has yet to be adopted by the District! Such facts hardly support that the Analyst has the authority to "put proposed policies into effect," a necessary element of being "involved directly in the determination of policy," as PERA requires. Eastern State School and Hospital, 20 PPER ¶ 20063 at 178-179 (Pa. Cmwlth. 1985).

As for the second policy—student behavior—the Analyst authored it at the behest of the director of special education. But even more importantly, the policy was one entirely within the Analyst's area of professional expertise. Since 1974, under Board law, the development of such a policy is simply not evidence of managerial duties. In the Matter of the Employees of the City of Lebanon, 4 PPER 24 (Order and Notice of Election, 1074) (policy formulation and implementation must be distinguished from technical expertise); In the Matter of the Employees of Pennsylvania State University, 19 PPER ¶ 19001 ((Order Directing Submission of Eligibility List, 1987), 19 PPER ¶ 19156 ((Final Order, 1998) (nurse practitioners formulation of hospital policy is as a result of professional expertise and not indicative of managerial authority).

The District also argues that the Analyst is a manager because he "was afforded the ability to commit District money which did not have to be committed[,] and was also given the authority to make a choice in how best to commit that money." (District's post-hearing brief at 11-12). The basis of that assertion is that the Analyst prepared a document titled, "Estimated Budget for Crisis Management Training."

While the Analyst testified that this budget was "put into effect" (N.T. 14), there is no testimony about whether any changes were made in the amounts. According to the Analyst, he simply passed that document on to the director of special education. Incredibly, when asked about the budget process, the Analyst admitted, "I don't know how the procedure works." (N.T. 37). Even more to the point, the Analyst testified that the "strategic budget" was developed by the director of special education! (N.T. 10).

In order for his budget involvement to prove the Analyst is a manager, the District must show that he had a "meaningful role in the development of a budget[.]" In the Matter of the Employees of the Jefferson Morgan School District, 31 PPER at 277 (Proposed Order of Unit Clarification, 2000) (citations omitted). Suffice it to say; when the Analyst

² This policy was done by the Analyst so long ago that he could only narrow its completion to "I believe October or November of 2008." (N.T. 10).

doesn't even know how the budget process works, he certainly can't have a meaningful role in a budget.

Board law is also clear that when an employe's involvement in budgetary matters is "limited to providing the facts upon which budgetary decisions are made at a higher level of authority [that employe] is not a management level employe." Id. And, that's exactly what happened here. The Analyst merely put together his draft budget, passed it along to his superiors, and doesn't know what happened to it, thereafter, other than it was "put into effect," whatever that may mean. The Analyst is not a manager based on his involvement with this draft budget document.

A perusal of the record reveals that the Analyst does not meet any of the necessary criteria to be a manager. He does not develop or implement policy as required by Section 301(16) of PERA. Neither does the Analyst play an effective role in the budgetary process.

Since the parties stipulated that, if not proved supervisory or managerial, the Analyst shares a sufficient, identifiable community of interest so as to be accreted into the professional bargaining 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. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The position of Behavioral Specialist Consultant/Behavioral Analyst is neither supervisory nor managerial as defined by PERA.
5. The position of Behavioral Specialist Consultant/Behavioral Analyst 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 PERA, 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 Behavioral Specialist Consultant/Behavioral Analyst.

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-eighth day of July, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner