

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
:
: Case No. PERA-U-10-126-E
: (PERA-R-5070-C)
:
TOWANDA AREA SCHOOL DISTRICT :

PROPOSED ORDER OF UNIT CLARIFICATION

On April 12, 2010, the Towanda Area School District (Petitioner or District) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA) seeking to exclude the position of building head custodian from a unit of nonprofessional employees of the District and represented by the Towanda Area Educational Support Personnel Association (Respondent or Association)

On April 27, 2010, the Secretary of the Board issued an order and notice of hearing establishing May 11, 2010 as the time of a telephone pre-hearing conference to resolve the matters in dispute and establishing May 18, 2010 in Wilkes-Barre as the time and place of hearing, if necessary. The hearing was necessary but was rescheduled to July 21, 2010 and moved to Towanda.

At that time, all parties in interest were afforded an opportunity to present testimony, introduce evidence and cross-examine witnesses.

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. That Towanda Area School District (District) is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (PERA).
2. That the Towanda Area Educational Support Personnel Association (Association) is an employee organization within the meaning of Section 301(3) of PERA.
3. That in 1975, the Board, at PERA-R-5070-C, certified the Association as the exclusive representative of a unit described as

"In a subdivision of the employer unit comprised of all full-time and regular part-time Cafeteria Workers, Clerical Employees, Crossing Guards, Custodians, Electrician, Teacher Aides and excluding management level employees, supervisors (Cafeteria Managers and Supervisor of Buildings and Grounds), confidential employees (Board of Education Secretary, Secretary to the Superintendent, Secretary to the Assistant Superintendent, Secretary to the Business Manager, Secretary to the Board of Education Secretary), temporary employees, student employees and guards as defined in the Act PERA, (Board Exhibit 1, PERA-R-5070-C)

4. That the District employs building head custodians in its three buildings. They are classified as building head custodian I, II and III for the high school building, elementary school building and primary school building (K-4 to grade two), respectively. (N.T. 12, 69, District Exhibits 1, 2 and 3)
5. That Rick Smiley is the building head custodian I, working at the high school. (N.T. 61)
6. That Diane Landmesser is the building head custodian II at elementary school. (N.T. 17)
7. That Kevin Sheehan is the building head custodian III at the primary school building. (N.T. 18, 22-23)

8. That the building head custodians effectively recommend the hiring of new employes. For example, Mr. Sheehan recently made a recommendation to hire an individual in his building. He was part of an interviewing committee made up of the building principal, Business Manager Doreen Secor and maintenance supervisor Ron Cook. When the committee decided on the top two candidates for position, Mr. Sheehan decided who to recommend based on his observation of each of them working with him for a day. (N.T. 23)

9. That the building custodians effectively recommend the disciplining of employes. For example, Ms. Landmesser recommended the disciplining of two different employes. The maintenance supervisor followed Ms. Landmesser's recommendation. (N.T. 25-27, District Exhibit 35)

10. That the building custodians have responsibility to determine if overtime is necessary and what employe should work it. (N.T. 14-18, District Exhibits 40, 41 and 42)

11. That Smiley began working in that position on December 1, 2009. (N.T. 61)

12. That Mr. Smiley is responsible for supervising seven employes to see that their work is performed properly. (N.T. 62)

13. That Mr. Smiley decides whether overtime should be worked and who works overtime. (N.T. 62)

14. That Mr. Smiley has been a member of an interviewing committee with Ron Cook (Maintenance Supervisor), Doreen Secor (Business Manager) and the building principal. He has made recommendations to hire for those positions and his recommendations have been accepted. (N.T. 21-22, 63)

15. That Mr. Smiley has changed the hours of a custodial employe in the high school. (N.T. 64)

16. That during the day, Mr. Smiley does occasional custodial work but most of his time is spent supervising the employes in the high school. (N.T. 62-65, 66)

17. That the parties stipulated and agreed that the supervisory duties and responsibilities of Kevin Sheehan, the building head custodian at the primary school building, and Diane Landmesser, the building head custodian at the elementary school building, were similar to Rick Smiley's supervisory duties and responsibilities. (N.T. 69, District Exhibits 1, 2 and 3)

DISCUSSION

The District's petition for unit clarification seeks to exclude the position of building head custodian from the bargaining unit of nonprofessional employes on the grounds that the position is a supervisor under Section 301(6) of PERA.

As the petitioning party, the District has the burden of proving the grounds 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 PERA, 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 employees 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, McKeesport Area School District, supra, the Board excluded a custodial supervisor from the bargaining unit on the basis that he did not regularly perform custodial work but directed work performed by subordinate custodians; he effectively recommended the hiring of permanent custodial employees, and he possessed authority to schedule overtime work.

In the present case, the District has met its burden of proof. The District introduced evidence showing that the building head custodians direct the work of other custodial employees; schedule overtime work; effectively recommend the hiring of new custodial employees and discipline employees when deemed necessary. Having proven the requisite elements of supervisory authority and the exercise of that authority, the District's petition for unit clarification is granted. The position of building head custodian will be excluded from the bargaining unit.

CONCLUSIONS

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

1. Towanda School District is a public employer within the meaning of section 301(1) of PERA.
2. Towanda Area Educational Support Personnel 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 building head custodian is a supervisor within the meaning of Section 301(6) of PERA.

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 certified by the Board at Case Number PERA-R-5662-E is hereby amended to exclude the position of building head custodian.

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 ninth day of August, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner