COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	Case No. PERA-U-08-502-W
	:	(Case No. PERA-R-1121-W)
ALLEGHENY INTERMEDIATE UNIT 3	:	

PROPOSED ORDER OF UNIT CLARIFICATION

On December 17, 2008, the Alternative Education Association, PSEA/NEA (Association), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include early behavior intensive intervention early childhood teachers, early behavior intensive intervention instructional assistants, early behavior intensive intervention mental health workers and early behavior intensive intervention mental health treatment specialists in a bargaining unit of professional employes of the Allegheny Intermediate Unit 3 (Intermediate Unit) that was previously certified by the Board at Case No. PERA-R-1121-W. On January 12, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on April 1, 2009, if the parties were not able to agree on the matters raised in the petition by then. On March 27, 2009, the hearing examiner continued the hearing upon the parties' representation that they would be submitting the case on stipulated facts and set a briefing schedule of two weeks after their submission of the stipulated facts or as they otherwise might agree. On August 30, 2010, the parties submitted stipulated facts. Neither party has filed a brief.

The hearing examiner, on the basis of the stipulations submitted by the parties and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On June 27, 1980, the Board certified the Association as the exclusive representative of a bargaining unit that includes "counselors, and teachers, and child care workers" of the Intermediate Unit and excludes "all non-professional employes, supervisors, first level supervisors and confidential employes as defined in the [Public Employe Relations] Act [(PERA)]." (Case Nos. PERA-R-1121-W and PERA-U-80-120-W)

2. The Intermediate Unit employs early behavior intensive intervention early childhood teachers whose qualifications, certification, licensing requirements, supervision, evaluation and duties are similar to those of employes in the bargaining unit and who work closely with bargaining unit employes in the delivery of education services to students. (Stipulations A 1-4)

3. The Intermediate Unit employs early behavior intensive intervention instructional assistants whose qualifications, educational background, degrees, licensing requirements, supervision, evaluation and duties are similar to those of employes in the bargaining unit and who work closely with bargaining unit employes in the delivery of education support services to students, assisting certified professionals with instructional and non-instructional activities. (Stipulations B 1-4)

4. The Intermediate Unit employs early behavior intensive intervention mental health workers whose qualifications, educational background, degrees, licensing requirements, supervision, evaluation and duties are similar to those of employes in the bargaining unit and who work closely with bargaining unit employes in the delivery of education services and support services to students. (Stipulations C 1-4)

5. The Intermediate Unit employs early behavior intensive intervention mental health treatment specialists whose qualifications, educational background, degrees, licensing requirements, supervision, evaluation and duties are similar to those of employes in the bargaining unit and who work closely with bargaining unit employes in the delivery of education services and support services to students. (Stipulations D 1-4)

DISCUSSION

The Association has petitioned to include early behavior intensive intervention early childhood teachers, early behavior intensive intervention instructional assistants, early behavior intensive intervention mental health workers and early behavior intensive intervention mental health treatment specialists in a bargaining unit of professional employes of the Intermediate Unit that was previously certified by the Board at Case No. PERA-R-1121-W. As set forth in the petition, the Association alleges that the petitioned-for employes should be included in the bargaining unit because they are professional employes who share an identifiable community of interest with employes already included in the bargaining unit.

Section 301(7) of the PERA provides as follows:

> "'Professional employe' means 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; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time."

Section 604(1) of the PERA provides as follows:

> "The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:
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> (1) Take into consideration but shall not be limited to the following:
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> (i) public employes must have an identifiable community of interest, and
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> (ii) the effects of overfragmentization."

In FOP v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999), our Supreme Court held as follows: "To determine whether employees share an identifiable community of interest, the [Board] and/or the court should consider such factors as the type of work performed, educational and skills requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures and bargaining history. See, e.g. School District of the Township of Millcreek [v. Millcreek Education Association, 64 Pa. Cmwlth. 389, 440 A.2d 673 (1982)]; Warren Borough v. International Brotherhood of Electrical Workers, Local No. 1124, 55 Pa. Cmwlth. 570, 423 A.2d 1117 (1980); Western Psychiatric Institute [v. PLRB, 16 Pa. Cmwlth 204, 330 A.2d 257 (1974)]; Allegheny General Hospital v. PLRB, 14 Pa. Cmwlth. 381, 322 A.2d 793 (1974). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. See Western Psychiatric Institute, supra."

557 Pa. at 594, 735 A.2d at 100.

As set forth in the findings of fact, the record shows that the qualifications, duties, supervision and evaluation of the petitioned-for employes are similar to those of employes in the bargaining unit.

On that record, it is apparent that the petitioned-for employes are professional employes who have an identifiable community of interest with employes in the bargaining unit. See Norwin School District, 31 PPER ¶ 31104 (Final Order 2000)(Board clarified a professional bargaining unit to include an athletic trainer who performed professional work as members of the bargaining unit did, interacted on a daily basis with members of the bargaining unit and was supervised by a building principal who supervised members of the bargaining unit).

CONCLUSIONS

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

1. The Intermediate Unit is a public employer under section 301(1) of the PERA.

2. The Association is an employe organization under section 301(3) of the PERA.

3. The Board has jurisdiction over the parties.

4. Early behavior intensive intervention early childhood teachers, early behavior intensive intervention instructional assistants, early behavior intensive intervention mental health workers and early behavior intensive intervention mental health treatment specialists are professional employes under section 301(7) of the PERA.

5. Early behavior intensive intervention early childhood teachers, early behavior intensive intervention instructional assistants, early behavior intensive intervention mental health workers and early behavior intensive intervention mental health treatment specialists have an identifiable community of interest with employes in the bargaining unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the unit previously certified at Case No. PERA-R-1121-W is clarified to include all full-time and regular part-time early behavior intensive intervention early childhood teachers, early behavior intensive intervention instructional assistants, early behavior intensive intervention mental health workers and early behavior intensive intervention mental health treatment specialists.

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 final.

SIGNED, DATED and MAILED from Harrisburg, Pennsylvania, this sixteenth day of September 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner