

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF : Case No. PERA-U-14-212-E  
: (PERA-U-04-475-E)  
: (PERA-R-80-285-E)  
WISSAHICKON SCHOOL DISTRICT : (PERA-R-581-E)

**FINAL ORDER**

The Wissahickon Education Alliance (WEA) filed exceptions with the Pennsylvania Labor Relations Board (Board) on October 26, 2015 to a Nisi Order of Dismissal issued by the Board Representative on October 7, 2015, dismissing WEA's Petition for Unit Clarification under the Public Employee Relations Act (PERA). On November 18, 2015, the Wissahickon School District (Employer) filed a response to the exceptions. Following extensions of time granted by the Secretary of the Board, the WEA filed a brief in support of the exceptions on December 15, 2015, and the Employer filed a brief in response to the exceptions on January 22, 2016. The facts, relevant to the exceptions, are summarized as follows.

The WEA represents separate units of the Employer's professional and nonprofessional employees. On July 7, 2014, the WEA filed a Petition for Unit Clarification with the Board seeking to combine the professional and nonprofessional bargaining units into a single unit. On July 28, 2014, the Secretary of the Board issued an Order and Notice of Hearing, and a hearing was held on February 19, 2015. On July 16, 2015, the Hearing Examiner issued an Order Directing Submission of Eligibility List finding that the professional and nonprofessional employees share an identifiable community of interest and directing the Employer to submit a list of names and addresses of the professional employees eligible to vote in an election. That list was received by the Board on August 3, 2015, and included three hundred eighty-nine (389) eligible professional employees.

On September 2, 2015, an Order and Notice of Election was issued directing that a secret ballot election be held and conducted on September 22, 2015 to ascertain whether a majority of the professional employees desired to be included in a combined professional and nonprofessional unit pursuant to Section 604(2) of PERA.<sup>1</sup> The Board conducted a secret ballot election on September 22, 2015, among the 389 professional employees within the defined appropriate unit. A tally of the ballots cast by the professional employees revealed the following result: one hundred eighty-three (183) ballots were cast in favor of being included in a unit comprised of professional and nonprofessional employees, and twelve (12) ballots were cast in favor of being included in a unit comprised of only professional employees.<sup>2</sup> Following the election results, the Board Representative issued a Nisi Order of Dismissal on October 7, 2015, holding that because a majority of the eligible professional employees did not vote to be included in a combined professional/nonprofessional unit, the Petition for Unit Clarification must be dismissed, citing **Northampton County**, 11 PPER ¶11167 (Nisi Order of Certification and Dismissal, 1980), 12 PPER ¶12139 (Final Order, 1981) and **Bedford County**, 14 PPER ¶14160 (Final Order, 1983).

In its exceptions, the WEA argues that the September 2, 2015 Order and Notice of Election was defective and created confusion regarding the election and voting requirements. The WEA's exception to the Order and Notice of Election is an objection to the Board's conduct of the election. Section 95.57 of the Board's Rules and Regulations provides that "[o]bjections to the conduct of a Board agent regarding the election shall be filed within five working days of the final tally of votes." 34 Pa. Code §95.57. The WEA's exceptions were filed thirty-four days after the tally of votes and nineteen days after issuance of the Nisi Order of Dismissal. Accordingly, the WEA's exception to the Order and Notice of Election must be dismissed as untimely.

The remainder of the WEA's exceptions aver that the Board should have applied Section 605 of PERA, which requires a majority of valid ballots cast for certification of a representative, as opposed to

<sup>1</sup> Section 604 of PERA provides in relevant part that "[i]n determining the appropriateness of the unit, the board shall... (2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit." 43 P.S. §1101.604.

<sup>2</sup> No (0) ballots were challenged, and no (0) ballots were void.

Section 604(2), which provides that a majority vote of the eligible professional employees is required for their inclusion in a combined unit with non-professional employees. The words of the statute are clear with regard to the voting requirements for a merger of professional and nonprofessional bargaining units. As the Board held in **Northampton County**, “[u]nlike Section 605(3) of the Act which states that a representative may not be certified *unless it receives a majority of the valid ballots cast* in an election, Section 604(2) of the Act states that the Board shall not decide that any unit is appropriate if it includes both professional and nonprofessional employees unless a *majority of such professional employees* vote for inclusion in such a unit.” **Id.**, 11 PPER at 290 (emphasis in original). Given the express words of the statute, the Board Representative did not err in holding in the Nisi Order of Dismissal that professional employees may be included in a unit with nonprofessional employees only if a majority of the eligible professional employees vote for inclusion in such a unit.

After a thorough review of the exceptions and all matters of record, because less than a majority of the eligible professional employees voted in favor of inclusion in a combined bargaining unit with the non-professional employees, dismissal of WEA’s Petition for Unit Clarification seeking to merge the professional and nonprofessional bargaining units was required as a matter of law under PERA. Accordingly, the Board shall dismiss WEA’s exceptions and make the Nisi Order of Dismissal final.

### **ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

### **HEREBY ORDERS AND DIRECTS**

that the exceptions filed by the Wissahickon Education Alliance are hereby dismissed, and the October 7, 2015 Nisi Order of Dismissal, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this sixteenth day of August, 2016. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.