

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-19-184-E
: (PERA-R-542-C)
:
EAST STROUDSBURG AREA SCHOOL DISTRICT :

FINAL ORDER

The East Stroudsburg Area Education Association, PSEA (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 23, 2020, to a Proposed Order of Dismissal (POD) issued on September 3, 2020. Pursuant to an extension of time granted by the Secretary of the Board, the East Stroudsburg Area School District (District) filed a response to the exceptions on October 27, 2020.

This matter arose when the Union filed a Petition for Unit Clarification on August 7, 2019, seeking to include the Coordinator of Social Services (Coordinator) positions in the professional bargaining unit certified under the Public Employee Relations Act (PERA or Act).¹ A hearing was held on January 22, 2020, at which time the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. After a review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

42. The grant for trauma-informed schools provided District-wide funding across school department, including Security and Technology. The Coordinators reserved \$25,000 of those grant funds to pay for expert training of staff to recognize traumatized students, and selected the training book to be used for training teachers and bus drivers in identifying trauma sufferers. (N.T. 114-115).

DISCUSSION

For purposes of addressing the exceptions to the POD, the facts are summarized as follows. In August 2002, the School Board adopted a written policy establishing its Student Assistance Program (SAP), which was then revised in November 2006. The policy defines the SAP as "a systematic process using effective and accountable professional techniques to mobilize school resources to remove the barriers to learning and, when the problem is beyond the scope of the school, to assist the parent/guardian and student with information so they may access services within the community." (FF 4, 5).

The SAP policy further provides:

The Superintendent or designee shall develop, implement

¹ In Case No. PERA-R-542-C the Board certified the bargaining unit "comprised of teachers, librarians, nurses and guidance counselors, and excluding supervisors, first level supervisors and confidential employees."

and monitor a Student Assistance Program (SAP) that complies with state regulations.

The Student Assistance Program (SAP) shall provide assistance in:

1. Identifying issues that pose a barrier to a student's learning and/or academic achievement.
2. Determining whether or not the identified problem lies within the responsibility of the school.
3. Informing the parent/guardian of a problem affecting the student's learning and/or academic achievement.
4. Making recommendations to assist the student and the parent/guardian.
5. Providing information on community resources to help resolve the problem.
6. Establishing links with resources to help resolve the problem.
7. Collaborating with the parent/guardian and agency when students are involved in treatment through a community agency.
8. Providing a plan for in-school support services for the student during and after treatment.

(FF 5).

Further, in November 2006, the School Board adopted a Student Services policy, which was revised in December 2015, providing in relevant part, that "[s]ervices offered by community agencies in schools of the school district shall be coordinated by and be under the general direction of the School District." The Student Services policy also provides that "[t]he Superintendent or designee shall be responsible to develop, implement, and monitor a Student Services Plan that complies with state regulations and is available to all students." (FF 6).

In 2017, a report was issued jointly by the Pennsylvania Committee on Crime and Delinquency, the Pennsylvania Department of Drug and Alcohol Programs and the Pennsylvania Department of Education (known as the "PAYS report"), which concluded that the District's student population had a mental health crisis that was impeding their education (e.g., suicide ideation and attempts, students coping with family trauma). In response, the District created the two Coordinator of Social Services positions at issue in this case. (FF 7).

On March 28, 2018, the District posted the two Coordinator positions and designated them as "Act 93" positions.² (FF 8). The posting provided, as follows:

The primary functions are: supervise and coordinate the direct and indirect services, serve as an advocate, and assist

² Act 93 of the Public School Code of 1949, 24 P.S. § 11-1164. Act 93 applies to school administrators who are not public employees under PERA. 43 P.S. § 1101.301(2).

students/families to gain access to needed resources while addressing their personal, social/emotional and developmental issues.

The positions are (12) month, with the salary established consistent with the experience and credentials, and approved by the Board of Education.

(FF 10).

During a School Board meeting, held on June 18, 2018, Shahida Jones and Erin Dreisbach, were hired, effective July 2, 2018, to fill the newly created Coordinator positions. The two positions were fully funded by the "Ready-to-Learn" Grant. The Coordinators serve all ten of the school buildings within the District. Ms. Jones is currently the Coordinator for grades K-5, and Ms. Dreisbach is currently the Coordinator for grades 6-12. (FF 11). The Coordinators report directly to Bruce Baddick, Assistant Superintendent for Pupil Services. Mr. Baddick oversees all services affecting students, including guidance, nursing, and special education. He also supervises the two Directors of Pupil Services, under which are two supervisors of Special Education. (FF 9).

The Coordinators assess the behavioral and mental health needs of the District, determine the needs for each school and obtain third-party service providers, where necessary, to meet the services required for a particular building. The Coordinators assess the District's need for a specific service in a particular building based on balancing the demands on existing service providers, the school guidance department or the school psychologists. (FF 20). The Coordinators' assessments of the needed social and mental health services for the District and individual schools have always been followed by the Administration and School Board. (FF 21).

The Coordinators collaborate with building level administrators, supervisors and sometimes building guidance counselors and psychologists. (FF 19). The Coordinators then locate mental health agencies, connect those agencies with students and families, and create and oversee individualized programs which are established in Memorandums of Understanding (MOU) with third-party service providers. (FF 15).

To provide for the social and mental health services needs in the District and individual schools, the Coordinators have created new District programs and significantly altered existing District-wide programs in order to assist students. Ms. Dreisbach created a new program in the District called the "Alternative-to-Expulsion" program or "A2E." This program focuses on reintegrating an expelled student back into the school setting within a truncated time period, through provision of social and mental health services addressing goal setting, decision making, stress management, substance abuse and family counseling. (FF 24).

In creating the A2E program, Ms. Dreisbach led a team of District administrators on the secondary level (i.e., intermediate and high school) along with the District's central office and County Drug and Alcohol agency and developed the model for the program with input from the team of administrators. (FF 25, 28). She presented the final program to Mr. Baddick and Superintendent Dr. William Riker, after which Dr. Riker presented the program to the School Board, which approved it. (FF 28). Thereafter, Ms. Dreisbach coordinated the program with the District's two high schools, and

also brought in the third-party provider to work with the District's cyber staff and engage with the students and families enrolled in the program. (FF 27). Ms. Dreisbach monitors the A2E program to ensure that it is functioning properly and that enrolled students are meeting the requirements of the program. She also ensures that the third-party provider, the Carbon-Monroe-Pike Alcohol and Drug Agency, is properly staffed and on schedule with the 8-week program so the students are on track to return to school. She further confirms that the students have a mentor for transitioning upon returning to school. (FF 29).

The Coordinators also implemented protocols and procedures to improve existing classroom management, SAP and the identification of students needing "Multi-tiered System Support (MTSS)." The District had in place a "Response to Intervention" (RTI) program for identifying students requiring intervention for MTSS, which is a three-prong program that incorporates academics, behaviors and social-emotional learning. Ms. Jones and Ms. Dreisbach developed social emotional and behavioral components of the MTSS program that were missing. Ms. Jones informed the Director of Pupil Services what specific changes that she and Ms. Dreisbach were going to make to the Multi-Tier Program, and the Coordinators have the authority to implement their changes without consulting with any manager or District administrator above them. (FF 33). Further, Ms. Jones and Ms. Dreisbach implemented individualized SAP programs in all the buildings that lacked such a program. The Coordinators ensure that a SAP referral system, and MTSS, is functioning appropriately in each of the District's school buildings and that all the buildings are in compliance with SAP and Student Services policies. (FF 32).

The "Check-in, Check-out" Program³ also existed prior to the hiring of the Coordinators but was not completely implemented or administered throughout the District. For those District buildings lacking a "Check-in, Check-out" Program, Ms. Jones informed those building principals that they must have the program in their buildings. Ms. Jones makes all determinations regarding implementation and administration of the "Check-in, Check-out" Program. (FF 38). Ms. Jones and Ms. Dreisbach developed an MOU with Lehigh University to obtain training for school staff regarding the "Check-in, Check-out" Program, and advised Mr. Baddick of the training and when it was scheduled. Ms. Jones required staff to attend "Check-in, Check-out" training on the scheduled day. The Coordinators obtained additional training for staff to ensure that all District buildings will have adequate staff to participate in "Check-in, Check-out" procedures and protocols.

The Coordinators also locate and write grants for funding programs they create or implement, usually coordinating with the District's Grant Coordinator, Angela Byrne. The Coordinators found and wrote and received a grant to the District for trauma-informed schools. While the grant provided District-wide funding across departments, the Coordinators had the authority to prioritize the use of those funds over other departments and reserve the first \$25,000 to pay for expert training of staff to recognize traumatized

³ The "Check-in, Check-out Program" is an intervention tool to utilize with students identified as having various issues (excessive absenteeism or detentions) in which a school district employee (teacher, secretary, or custodian) who has been appropriately trained will make contact (check-in) with a student at the beginning of the school day to identify specific goals for that student, and then will follow up (check-out) with that student at the end of the school day to ascertain the student's progress towards his or her individualized goals. (N.T. 109-113).

students, and selected and purchased the training book to be used for training teachers and bus drivers in identifying trauma sufferers. (FF 30 and 42).

In the POD, the Hearing Examiner dismissed the Petition for Unit Clarification filed by the Union, thereby excluding the two Coordinator of Social Services positions from the professional bargaining unit represented by the Union. In doing so, the Hearing Examiner found that the positions at issue were management level employees within the meaning of Section 301(16) of the PERA.

On exceptions, the Union challenges the Hearing Examiner's conclusion that the Coordinator positions are management level employees pursuant to Section 301(16) of PERA. Section 301(16) of PERA defines "Management level employee" as "any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision." 43 P.S. §1101.301(16). It is well-settled that the test for a management level employee is disjunctive and includes "(1) any individual who is involved directly in the determination of policy; (2) any individual who directs the implementation of policy; or (3) employees above the first level of supervision." Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021, 1023 (Pa. Cmwlth. 1989); Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010); Commonwealth of Pennsylvania (Department of Education), 14 PPER ¶ 14136 (Final Order, 1983).

With regard to the first prong of the statutory test, the Board opined in Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), that an employee who is "involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect." Id. at 327. Further, the Board stated that it "does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal." Id.

As to the second prong of the statutory test in Section 301(16), concerning an employee who responsibly directs the implementation of policy, the Horsham Board noted that:

[P]ersons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures provided that such role is not of a routine or clerical nature and bears managerial responsibility to ensure completion of the task. The administration of policy involves basically two functions: (1) observance of the terms of the policy, and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who

effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy.

Id.

The Board has long held that mere professional or technical expertise that affects or has an impact on employer policies does not render the position management level. Commonwealth of Pennsylvania, 49 PPER 41 (Proposed Order of Unit Clarification, 2017), *affirmed*, PERA-U-16-334-E and PERA-U-16-335-E (Final Order, April 17, 2018); Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016). Indeed, the Board has stated that "[j]udgments of professional employees which transcend the technical discipline of professionals should be distinguished from those instances where the natural and normal performance of professional duties may affect the employer's policy merely by the specialized nature of the professional's normal tasks." Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1988) at 378. Only the former are considered management level employees pursuant to PERA. Id. Put another way, "managerial status may not be based on decision making which is part of the routine discharge of professional duties." Id.; Slippery Rock, *supra*. at 192.

Here, the Hearing Examiner concluded that the Coordinator positions are managers under the second test for managerial status in that they responsibly direct implementation of the District's policies.⁴ The Union excepts to this conclusion, maintaining that these positions should be included in the bargaining unit because the Coordinators' duties do not involve the independent exercise of discretion, but rather, are limited entirely to their area of professional expertise, which is that of a "Social Worker." (Union's brief at 18). The Union's main argument is that despite their title as Coordinators of Social Services, the duties of Ms. Jones and Ms. Dreisbach are entirely consistent with the routine duties of a social worker, making their involvement in the District's policies and programs merely an exercise of their education and professional expertise which does not stray into the realm of management. The Union then points to a myriad of examples in the record where the Coordinators dealt with students, faculty and family regarding mental health issues to buttress their claim that the Coordinators' "exclusive role at the District is to lend professional expertise on mental health and behavior issues, rather than play a management role." (Union's brief at 23).

The Board has consistently held that determining whether an employee should be excluded from the bargaining unit is fact driven and requires an inquiry into the actual job functions performed by that employee, as opposed to reliance on a job title, written job description or alleged prospective job functions. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010), *petition for allowance of appeal denied*, 17 A.3d 1256 (Pa. 2011). The evidentiary burden is on the party seeking to exclude the position from the protections of the Act. Id. It is the Board's exclusive province under PERA to determine based on the actual duties performed by the employee, whether a

⁴ No exception was filed to the Hearing Examiner's failure to address or find that the Coordinators were also management level employees for the creation or determination of District policy under the first prong of Section 301(16) of PERA. Accordingly, that issue is waived and not addressed herein. 34 Pa. Code §95.98(a)(3).

statutory exclusion applies such that the position should be excluded from a collective bargaining unit. Id.

The Union cites to Abington Heights School District, 42 PPER 18 (Final Order, 2011) for the proposition that an employee "does not become a manager simply because she makes recommendations within her area of professional expertise even when those recommendations result in the formulation of new policy." (Union's brief, p. 19). The Union argues that the Hearing Examiner incorrectly distinguished Abington Heights from the instant case. However, our review of that case against the facts of record in this case leads us to the conclusion that the Hearing Examiner correctly contrasted the behavioral analyst in Abington Heights who drew up a student behavior policy which parroted statutory and regulatory requirements, to the Coordinators here, who routinely identify problems in the District, develop programs, protocols, and policies to solve those problems, and then negotiate and execute agreements with outside agencies on behalf of the District to implement those solutions.

The Union further cites to Pennsylvania State System of Higher Education (PASSHE), 49 PPER 53 (2017). In PASSHE, the State College and University Professional Association (SCUPA) filed a unit clarification petition seeking to include a newly created Manager of Campus Life position into the bargaining unit, arguing that the position was not managerial in nature. PASSHE countered that because her job duties involved making independent decisions in developing programs for student orientation, she met the second prong of the managerial test in that she "responsibly implemented" policy. However, the Hearing Examiner found otherwise, concluding that although the disputed position required a higher degree of independence than other bargaining unit positions, it did not rise to management level within the meaning of Section 301(16) of PERA because her decisions regarding student orientation programs did not create or implement a university policy that had an effect on the enterprise directly. Here, to the contrary, the Coordinators developed the A2E program, changed existing social and behavioral programs, allocated District resources for training and MOUs for services for those programs, and implemented SAP and MTSS throughout the District, for students, staff and administrators.

Additionally, the Union asserts that the Coordinators cannot be considered managers under PERA because they do not have independent authority to address issues of non-compliance with District policy, citing Jefferson Morgan School District, 31 PPER ¶ 31115 (Proposed Order of Unit Clarification, July 21, 2000). In that case, a school district asserted that the position of school psychologist/coordinator of special services should be excluded from the bargaining unit as a management level employee because she ensured that the schools within the district were adhering to federal and state regulations concerning special education. There, however, unlike the instant case, the issue was compliance with federal and state regulations, and the Superintendent of the school district alone held the authority to determine how to address instances of noncompliance. For that reason, the Hearing Examiner in Jefferson Morgan School District rejected the employer's claim that the school psychologist was a manager, stating that an employee who merely monitors compliance with federal or state regulations without authority to "take remedial action in the event of non-compliance with governmental regulations" is not a management employee. Id.

Here, by contrast, as the Hearing Examiner properly concluded, the record evidence demonstrates that the Coordinators possess the independent authority to address noncompliance with District policies by creating

programs or developing services to address the deficiencies. Indeed, "[w]hile monitoring compliance with District policies, the Coordinators determined that the District's policies were not being complied with and they identified and developed the necessary changes to ensure compliance with District policies as well as state law." (POD at 13). In particular, the record shows that the Coordinators directed building administrators to implement the District's SAP and Student Services policies where those school building were in noncompliance with the policy. Further, the Coordinators identified deficiencies in the MTSS program, and the "Check-in, Check-out" Program, after which they devised ways to augment those programs to bring the District into compliance with its own policies and state regulatory requirements.

In the instant matter, the record is replete with examples of how Ms. Dreisbach and Ms. Jones exercise independent judgment and authority to develop and direct programs which directly affect District policies regarding students, faculty, staff, and the enterprise as a whole by implementing and changing numerous policies and programs offered by the District, and to establish new ones, to address the needs of students pursuant to the SAP and Student Services policies previously established by the School Board. Mr. Baddick unequivocally testified that although the Coordinators had social work degrees, their job duties required the consistent use of independent judgment which affected the District as a whole. Indeed, Mr. Baddick stated that the Coordinators make the decision as to what services are needed in each individual building, and then they choose the best agency to provide those services, after which they negotiate on behalf of the District to enter into contracts or Memorandums of Understanding. (N.T. 27-30). Moreover, Ms. Jones testified that she and Ms. Dreisbach decided that the first \$25,000 of a District-wide grant would be used by the Coordinators to ensure the schools were "trauma informed," even though the grant money was also available to other departments, such as Security and Technology. (N.T. 114-115). Mr. Baddick further testified that Ms. Dreisbach developed the A2E program with the administration, and she led the team of administrators in implementing it. (N.T. 32-34). Finally, Mr. Baddick offered that the social and mental health services and programs implemented by the Coordinators are followed and supported by the District leadership, including "assistant principals, central office administration, the superintendent, the assistant superintendent, the directors of pupil services, supervisors of special education, the directors of elementary and secondary education, department chairs and other coordinators". (N.T. 93).

Although the Coordinators certainly drew upon their education and expertise as social work professionals in the performance of their vast array of duties, they had a "responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures." Horsham Township, 9 PPER at 327. The mere fact that the primary focus of their efforts was on the mental health and behavioral issues relative to the District's student body does not dilute their position as managers pursuant to Section 301(16). As such, the Coordinators are managers within the meaning of PERA and are properly excluded from the bargaining unit.

Therefore, after a review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the Coordinator of Social Services positions are management level employees within the meaning of Section 301(16) of PERA. As such, the disputed positions are properly excluded from the bargaining unit comprised of all full-time and regular part-time professional employees, including teachers, librarians, nurses and guidance counselors, and excluding supervisors, first level supervisors and

confidential employees. Accordingly, the Board shall dismiss the Union's exceptions and make the Proposed Order of Dismissal final.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the East Stroudsburg Area Education Association, PSEA are hereby dismissed, and the September 3, 2020 Proposed Order of Dismissal, shall 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, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this sixteenth day of February, 2021. 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 on February 19, 2021.