

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-21-124-W
: (PERA-R-2440-W)
FORT CHERRY SCHOOL DISTRICT : (PERA-R-90-584-W)

FINAL ORDER

A Petition for Unit Clarification and Amendment of Certification under the Public Employee Relations Act (PERA) was filed with the Pennsylvania Labor Relations Board (Board) on July 9, 2021, by the Fort Cherry Educational Support Personnel Association, PSEA/NEA (Petitioner), seeking to merge two bargaining units of non-professional employees certified by the Board at Case Nos. PERA-R-2440-W and PERA-R-90-584-W. The Petitioner alleged that there are twelve (12) members of the Fort Cherry Secretaries and Aides Educational Support Personnel Association, ESPA/PSEA/NEA, and that on May 26, 2021, six (6) of the twelve members voted in favor of the merger with the Fort Cherry Educational Support Personnel Association. The Petitioner further alleged that on May 26, 2021, there were twenty-one (21) members of the Fort Cherry Educational Support Personnel Association, ESPA/PSEA/NEA, and on that date nine (9) members voted in favor, and two (2) against, the merger with the Fort Cherry Secretaries and Aides Educational Support Personnel Association.¹ On July 23, 2021, the Secretary of the Board issued an acknowledgment of the filing of the Petition to the Fort Cherry School District (District) and directed the District to post the petition in accordance with the Board's Rules and Regulations.

Based on an investigation and review of the allegations in the Petition, on August 19, 2021, the Secretary administratively dismissed the petition without a hearing. On August 27, 2021, the Petitioner filed timely exceptions to the Secretary's August 19, 2021 determination.

To warrant the Board's processing of a petition for unit clarification and amendment of certification seeking to merge two or more bargaining units, the petitioning union must allege, at a minimum, (1) that the newly combined unit will have a single slate of officers and functional leaders; (2) that steps have been taken to insure that a majority of the union members in each unit approves of the merger; (3) that there is no change in the day-to-day relationship with the employer, and; (4) that it has been made clear that all contract commitments with the employer will be honored. See Lincoln Intermediate Unit No. 12, 7 PPER 137 (Final Order, 1976).

Petitioner argues on exceptions that the Secretary erred in stating that a majority of the bargaining unit members in each unit must vote to approve a merger. However, Board law only requires that there must be a majority vote of the union members in each unit to satisfy the second requirement for a merger. Windber Area School District, 34 PPER 53 (Final

¹ The petition further alleged that the proposed merger would create a bargaining unit of forty-six (46) employees to be represented by the Fort Cherry Educational Support Personnel Association, PSEA/NEA.

Order 2003). Contrary to the Petitioner's misinterpretation of the Secretary's August 19, 2021 letter, a majority of all employees in a bargaining unit is not a requirement for the processing of a petition to merge bargaining units.

Petitioner asserts that a majority of votes of the union members in attendance at the union meeting where the vote on merger was taken is sufficient to satisfy the second element to process a petition for merger of bargaining units. However, the administrative merger of two separately certified bargaining units, without an election among the employees, is a permanent and significant change to the bargaining relationship. See Steel Valley School District, 14 PPER ¶14167 (Final Order, 1983). The Board's law requiring a majority of all union members to approve the merger precludes a minority of union members from making a permanent alteration to the bargaining unit without the consent of the employer or the support of the union membership. Having a majority of union members approve of the merger and the newly constituted bargaining unit, provides some level of assurance to the Board and the employer that following the merger internal union dynamics will not derail the alleged continuity of the collective bargaining relationship and agreement. To further the purposes and policies of PERA, at a minimum, the approval by a majority of union members is both vital and a necessary step for processing of a petition seeking to merge two or more separately certified bargaining units into one single unit.

Here, the petition included allegations that there are twelve (12) members of the Secretaries and Aides Educational Support Personnel Association, and that only six (6) of those members voted to approve the merger with Educational Support Personnel Association. Six of 12 members is not a majority of the union membership. Likewise, the Petitioner alleges that there are twenty-one (21) members of the Educational Support Personnel Association, and that only nine (9) of those members voted in favor of the merger with the Secretaries and Aides Educational Support Personnel Association. Again, a majority of union members did not approve the merger. Accordingly, because it was not alleged that a majority of union members voted in favor of the merger, the Secretary did not err in administratively dismissing the petition without a hearing.

The Petitioner further asserts that in Blackhawk School District, Case No. PERA-U-14-84-W, the Board Representative did not require a vote of a majority of union members in each unit before administratively merging three bargaining units of nonprofessional employees into a single unit. However, a dispositive fact in Blackhawk School District, which is notably absent here, is that "the [u]nion and the [e]mployer have filed letters stipulating to the appropriateness of the combined bargaining unit." The employer's agreement to the appropriateness of the combined unit in Blackhawk School District, for all intents and purposes rendered that petition similar to a joint request for certification, wherein both the union and the employer, in filings with the Board, have agreed or assented to the certification of a representative for a majority of employees in an appropriate unit, and thus the Board is required to issue such certification. See 43 P.S. §1101.602(a). Although the Petitioner alleged here that the District "does not object to the filing of this Petition", despite service of the Petition on the District, and posting of the Petition by the District, the District has not notified the Board that it wishes to join in the Petition, nor has the District advised the Board that it consents to the certification of a merged bargaining unit. Accordingly, Blackhawk School District is not controlling, and the Petitioner's reliance thereon is dismissed.

After a thorough review of all matters of record, the allegations in the present Petition for Unit Clarification and Amendment of Certification are inadequate for further processing or a hearing on the merger of the nonprofessional bargaining units represented by the Fort Cherry Educational Support Personnel Association, ESPA/PSEA/NEA and the Fort Cherry Secretaries and Aides Educational Support Personnel Association, ESPA/PSEA/NEA, certified at Case Nos. PERA-R-2440-W and PERA-R-90-584-W, respectively. Accordingly, the Secretary of the Board did not err in administratively dismissing the Petition without a hearing, and the August 19, 2021 decision of the Secretary shall be sustained.

ORDER

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 to the above captioned matter are hereby dismissed, and the Secretary's August 19, 2021 decision administratively dismissing the petition without a hearing, 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 November, 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.