

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-20-293-W :
: :
ERIE METROPOLITAN TRANSIT AUTHORITY :

FINAL ORDER

On August 30, 2021, Erie Metropolitan Transit Authority (EMTA or Employer) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the August 10, 2021 decision of the Secretary of the Board, in which the Secretary declined to direct a hearing on the Employer's Petition for Unit Clarification. In the Petition, as amended, the Employer sought to exclude all nonprofessional white-collar positions and dispatcher positions¹ from the wall-to-wall nonprofessional bargaining unit certified at PERA-R-11,367-W.² In dismissing the Petition, the Secretary stated that the positions at issue shared an identifiable community of interest with the positions in the certified unit and that the Employer failed to provide facts supporting the exclusion of the dispatcher position as a supervisory employe or any other statutory exclusion warranting a hearing. The Amalgamated Transit Union Local 568 (ATU) filed a response to the exceptions and a brief on September 17, 2021.

On exceptions, Employer argues that a hearing is necessary to determine whether the nonprofessional positions of Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, Class C Dispatcher Supervisor, Director of Schedules, Bookkeeper, Clerk Stenographer, Clerk Typist, Payroll Clerk/Accounts Payable Clerk, D/R Phone Operator A, D/R Phone Operator B, Class A Customer Service Representative Manger, and Class B Customer Service Representative, share an identifiable community of interest with the bus drivers, vehicle maintenance employes, and maintenance supervisors in the existing certified unit of all full-time and regular part-time nonprofessional employes. In the instant case, it is undisputed that since 1978, and spanning multiple collective bargaining agreements, the appropriate certified bargaining unit includes all nonprofessional employes, not limited to "clerk stenographers, clerk typists, payroll, billing, and accounts payable clerks, bookkeepers, parts managers, dispatchers, scheduling

¹ The specific positions at issue in the Petition are Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, Class C Dispatcher Supervisor, Director of Schedules, Bookkeeper, Clerk Stenographer, Clerk Typist, Payroll/Accounts Payable Clerk, D/R Phone Operator A, D/R Phone Operator B, Class A Customer Service Representative and Class B Customer Service Representative.

² On August 25, 1978, the Board certified the Amalgamated Transit Union Local 568 as the exclusive representative of all full-time and regular part-time nonprofessional employes including but not limited to bus drivers, vehicle maintenance employes, dispatchers, stock controllers, maintenance supervisors, clerks, patrol clerks, and secretaries.

directors, and phone operators" and including the bus drivers, vehicle maintenance employes, and maintenance supervisors.

A bargaining unit is an appropriate unit for collective bargaining despite differences among employes in wages, hours, working conditions, or other factors. West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000); see In the Matter of the Employes of Wissahickon School District, 47 PPER 26 (Order Directing Submission of Eligibility List, 2015) (citing Pennsylvania State University v. PLRB, 24 PPER ¶24117 (Centre County Court of Common Pleas, 1993) (noting that where there are differences among employes in a bargaining unit, it may simply reflect the division of labor put in place by an employer and thus, will not destroy an identifiable community of interest)). The general policy of the Board is to certify units as broadly as possible in order to avoid the deleterious effects of over-fragmentization. Indeed, it is firmly established that blue and white-collar employes share an identifiable community of interest for an appropriate wall-to-wall unit for collective bargaining under PERA. See e.g. Berks County, 27 PPER ¶27110 (Final Order, 1996); and Erie Metropolitan Transit Authority, PERA-R-11,367-W (Nisi Order of Certification, 1978).

Nevertheless, the Employer seeks to fragment the existing certified appropriate unit, and relies on Amalgamated Transit Union, Local 89 v. PLRB, 498 A.2d 485 (Pa. Cmwlth. 1985), to argue that employes who are not "directly involved" with operation of EMTA's buses must be excluded from what it refers to as "the driver unit." However, Amalgamated Transit Union is not applicable to this case for several reasons. First, unlike the recognized blue-collar unit in Amalgamated Transit Union, the bargaining unit in this case was certified by the Board in 1978 as a wall-to-wall unit which included, but was not limited to, all full-time and regular part-time nonprofessional blue-collar and white-collar employes. Here, the Board's certification in Case No. PERA-R-11,367-W, expressly includes "white-collar" job classifications such as clerks, payroll clerks and secretaries, as was agreed to as an appropriate unit by EMTA.

Further, the Amalgamated Transit Union decision was specifically rejected by the Commonwealth Court in a subsequent decision, West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1994); see Washington Township Municipal Authority v. PLRB, 569 A.2d 402 (Pa. Cmwlth. 1990), *appeal denied*, 581 A.2d 577 (Pa. 1990). In West Hanover Township, the Commonwealth Court held that white-collar workers such as a bookkeeper/accountant, a billing clerk and an office worker could be included in the same unit with blue-collar workers such as water operators and laborers. The Commonwealth Court made abundantly clear that a community of interest for an appropriate bargaining unit does not require perfect alignment of duties among the employes. As such, the Board finds no error in the Secretary's dismissal of the Employer's petition for unit clarification that sought to remove the Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, Class C Dispatcher Supervisor, Director of Schedules, Bookkeeper, Clerk Stenographer, Clerk Typist, Payroll/Accounts Payable Clerk, D/R Phone Operator A, D/R Phone Operator B, Class A Customer Service Representative and Class B Customer Service Representative from the certified bargaining unit of all nonprofessional employes.

Moreover, the Employer makes no factual averments or arguments in the petition or on exceptions, that the Class A Dispatcher Supervisor, Class B Dispatcher Supervisor, or Class C Dispatcher Supervisor, perform any supervisory duties as defined by Section 301(6), or the extent to which such

duties are performed under Section 604(5) of PERA. The Board's promulgated Rules and Regulations require a "statement by the petitioner setting forth the reasons for requesting clarification." 34 Pa. Code §95.23 (b)(8). To warrant a hearing, the employer has the burden to allege in the petition facts, which if proven, would satisfy the statutory requirements for exclusion from the bargaining unit. The Employer's Petition for Unit Clarification is devoid of any such cognizable factual allegations. See Shaler Township, 20 PPER ¶ 20004 (Final Order 1988).

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Employer's exceptions and affirm the Secretary's decision not to direct a hearing on the petition for unit clarification.

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 by the Erie Metropolitan Transit Authority are hereby dismissed, and the Secretary's decision declining to direct a hearing on the Petition for Unit Clarification 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 fifteenth day of February, 2022. 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.