

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-16-345-E
: (PERA-R-38-C)
THE CITY OF WILKES-BARRE :
:

PROPOSED ORDER OF DISMISSAL

On December 5, 2016, the City of Wilkes-Barre (City or Employer) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude seventeen (17) classifications from a unit of employees certified by the Board at Case No. PERA-R-38-C.

On January 3, 2017, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating March 22, 2016, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary. After a number of continuations, a hearing was ultimately held on October 2, 2017, in Harrisburg, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The City filed a post-hearing brief in support of its petition on December 6, 2017. The Professional and Public Service Employees Local #1310 (Union) filed its post-hearing brief on January 17, 2018.

The Hearing Examiner, on the basis of the evidence presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer within the meaning of PERA. (N.T. 4).

2. The Union is an employee organization within the meaning of PERA. (N.T. 3).

3. The Union is the exclusive collective bargaining representative of a bargaining unit certified in 1971 as:

All those clerical white-collar salaried employees performing duties for the City Administration and including the Deputy City Controller, the Deputy Treasurer, the City Clerk, the Chief Building Inspector and the Assistant Director of Public Works Assistant Engineer; included are the Civilian Clerk, the Chief Dispatcher, Dispatchers Class Three, Dispatchers Class Two, and Telephone Operator in the Bureau of Fire, also the Clerk Four, Civilian Clerk, Meter Repairman and Meter Collectors in the Bureau of Police; excluding,

however, all other employees in the Police and Fire Departments, Garbage Truck Drivers, the Mayor, Councilmen, City Manager, City Controller, City Treasurer, Tax Collector, City Solicitor, Assistant City Solicitor, Director and Assistant Director of the Bureau of Administration, City Physician, City Health Officer, Public Health Nurse, City Health Inspector, City Assessor, further excluding all supervisors, first level supervisors and confidential employees defined in Act 195.

4. The unit was clarified in 1985 to include the following positions: Visitors Bureau; Program Coordinator; Recreation Manager 1; Secretary-Bookkeeper; Park Facility Worker 2; Operations Supervisor; Recreation Manager 2; and Parks Recreation Coordinator. The unit was further clarified in 1997 to include the position of parking enforcement attendant. (N.T. 11; PERA-R-38-C, PERA-U-83-645-E, PERA-U-97-90-E).

5. The City and the Union are parties to a collective bargaining agreement (CBA) which had an initial term from January 2, 2007 through December 31, 2011. The CBA was most recently extended in May, 2017, through December 31, 2017. (N.T. 33; City Exhibit 1).

6. The City withdrew its Petition with respect to the following classifications: Administrative Assistant (to the City Administrator); Animal Control Officer; Building Code Official/Code Enforcement Officer; Chief Building Inspector/DPW Director; City Revitalization Coordinator/Health Inspector Supervisor; Deputy Director DPW; Deputy Finance Officer; Director of Economic and Community Development; Executive Assistant to the Mayor; Finance Officer; Master Electrician; Human Resource Assistant; IT Director; Fiscal Officer for Revenue/Payroll/Pension; Associate Director for Preventative Health Services. (N.T. 4).

7. The City employs seven Paramedics and one Chief Paramedic. They are known collectively as "the paramedics". (N.T. 24, 159-160).

8. Also included in the bargaining unit are nurses, electricians, parking attendants, and other City administrative and clerical employees. Approximately 75% of the bargaining unit employees are employed in clerical positions. The remaining members of the bargaining unit perform in specialty positions such as electrician, property foreman, parking enforcement, and the paramedics. (N.T. 47, 92-93).

9. Paramedics have been members of the bargaining unit since at least 1981. (N.T. 148, 163).

10. Pursuant to the CBA, paramedics are covered by similar health insurance, pension benefits, payment schedules, grievance procedures, and disciplinary procedures compared to the other members of the bargaining unit. (N.T. 34-38; City Exhibit 1).

11. Paramedics perform clerical duties. Clerical duties comprise approximately 50% of the paramedics' duties. (N.T. 104-105, 139, 153-154, 169).

12. The fire department is usually scheduled on four shifts. On each shift there are approximately twelve firefighters and two paramedics. The chief paramedic reports to the fire chief. (N.T. 54-55).

13. The paramedics work at the City's two fire stations. (N.T. 71-72).

14. The Fire Department office manager is also a member of the bargaining unit. The fire department office manager is supervised by the fire chief and performs administrative and clerical duties for the fire department. (N.T. 55-56, 84).

15. Included in the bargaining unit are two nurses. The nurses provide medical care. (N.T. 103, 115).

16. Paramedics, like all members of the bargaining unit, must be residents of the City. (N.T. 89).

17. The Mayor has ultimate authority on hiring and firing decisions for all members of the bargaining unit, including paramedics. (N.T. 89-90).

DISCUSSION

The City's Petition sought to exclude the following classifications from the bargaining unit: Administrative Assistant (to the City Administrator); Animal Control Officer; Building Code Official/Code Enforcement Officer; Chief Building Inspector/DPW Director; Chief Paramedic; City Revitalization Coordinator/Health Inspector Supervisor; Deputy Director DPW; Deputy Finance Officer; Director of Economic and Community Development; Executive Assistant to the Mayor; Finance Officer; Master Electrician; Human Resource Assistant; IT Director; Paramedic; Fiscal Officer for Revenue/Payroll/Pension; Associate Director for Preventative Health Services.

Prior to the hearing, the Union and the City reached agreement on all the classifications listed in the Petition save for Chief Paramedic and Paramedic classifications, which are known collectively as "the paramedics". The hearing thus proceeded on the issue of the classification of the paramedics, only. (N.T. 5). The City argues that the paramedics do not share an identifiable community of interest with the other members of the bargaining unit and thus should be excluded from the bargaining unit.

Section 604 of PERA provides, in relevant part, as follows:

The [B]oard 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 [B]oard shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604.

When determining whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed,

educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining history, and employees' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). 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. Id.

In addition, the Board has long favored a policy of certifying broad-based units. In the Matter of the Employees of University of Pittsburgh, 16 PPER ¶ 16205 (Order Directing Amendment of or Request to Withdraw Petition for Representation, 1985) citing Athens Area School District, 10 PPER ¶ 10128 (Order and Notice of Election, 1978).

The party arguing for the exclusion of an employee from a unit on a statutory ground bears the burden of proving a basis for the exclusion. School District of Philadelphia v. Commonwealth of Pennsylvania, PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998).

In this matter, the City has not met its burden and the record supports a conclusion that the paramedics share an identifiable community of interest with the other members of the bargaining unit. This conclusion rests on the following facts from the record. First, the paramedics, like all other members of the bargaining unit, are employees of the City. Like all other members of the bargaining unit, all decisions regarding the hiring and termination of paramedics ultimately rests with the Mayor. Second, paramedics have been members of the bargaining unit since at least 1981 - a continuous bargaining history of over thirty-six years. Third, similar to other members of the bargaining unit, paramedics perform clerical duties. Fourth, similar to other members of the bargaining unit, paramedics deliver medical services. Fifth, paramedics are covered by similar health insurance, pension benefits, payment schedules, grievance procedures, and discipline procedures compared to the other members of the bargaining unit. Sixth, the paramedics work with another bargaining unit member in the Fire Department.

The conclusion that paramedics share an identifiable community of interest with the members of the bargaining unit is further supported by the Board's policy of supporting broad-based bargaining units. In the Matter of the Employees of University of Pittsburgh, *supra*. What differences that may exist between the paramedics and the other members of the bargaining unit are not sufficient to destroy the community of interest and overcome the Board's policy of certifying broad based bargaining units.

To support its argument that the paramedics do not have an identifiable community of interest with the other members of the bargaining unit, the City, at the hearing and in its brief, highlights many differences between the paramedics and other members of the bargaining unit including: the type of work performed; the lack of interchange amongst employees; differing lines of supervision; differences in shifts and hours; differences in fringe benefits; differences in working conditions; and conflicts between bargaining interests. (City's Brief at 2-3). However, 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. West Perry School District, *supra*. The differences among employees in this unit reflect the division of labor at the City and do not destroy the clearly identifiable community of interest found in this record. See In the Matter of the Employees of Wissahickon School District, 47 PPER ¶ 26 (Order Directing Submission of Eligibility List, 2015); In the Matter of the

Employees of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) *citing* Pennsylvania State University v. PLRB, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (Holding that the Board need not find an identical community of interest but merely an identifiable community of interest).

Additionally, in its Brief, the City relies on Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974), in which the Commonwealth Court upheld a Board decision which excluded certain classifications from a bargaining unit due to differences in working conditions. In the years following 1974, however, the Board adopted a broad-based bargaining unit policy and therefore the City's reliance on Allegheny General Hospital is misplaced. See Community College of Philadelphia, 10 PPER 10020 (Final Decision, 1978); Philadelphia County, 10 PPER 10062 (Final Decision, 1979); Westmoreland Intermediate Unit, 12 PPER 12347 (Chief Counsel's Decision, 1981); Athens Area School District, *supra*; University of Pittsburgh, *supra*. The Board in Athens Area School District aptly elucidates the policy behind broad based bargaining units:

Section 604 of PERA does not suggest that each employee classification within an employer unit be separated on community interest standards due to differences in experience, skills, duties, etc., which may exist between classifications within a broader nonprofessional employee group. For to do so would suggest that every classification of employees demonstrating difference in duties, skills and experience could separate any such classification from other classifications of employees in a proposed unit. Further, the Board must consider the effects of overfragmentization as required by Section 604 of the Act. The purpose behind this consideration is, in part, to protect the public employer from the whipsaw effect that collective bargaining with a multiplicity of unions would have on its operation. This would tend to suggest fewer and larger units are appropriate if a community of interest exists among such employees.

Athens Area School District, *supra*.

The City has not shown that the paramedics lack an identifiable community of interest with the other members of the bargaining unit and, therefore, the paramedics' inclusion in the unit is proper under PERA. The City's Petition must be dismissed.

CONCLUSION

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

1. The City is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employee organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The paramedics share an identifiable community of interest with the other members of the bargaining unit and are properly included in the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Petition for Unit Clarification is dismissed.

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 and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this nineteenth day of January, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner