

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : PERA-U-17-149-W
 : (Grandfathered Unit)
UNIVERSITY OF PITTSBURGH :
 :

PROPOSED ORDER OF UNIT CLARIFICATION

On June 8, 2017, the International Union of Operating Engineers, Local 95-95a, AFL-CIO (Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the Energy Center Technician classification into an existing unit of non-professional employees. The existing unit is a grandfathered unit.

On June 26, 2017, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating August 11, 2017, in Pittsburgh, as the time and place of hearing, if necessary.

After multiple continuances, a hearing was held on August 23, 2018, in Pittsburgh, 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 Union filed a post-hearing brief in support of its petition on November 19, 2018. The University of Pittsburgh (University or Employer) filed its post-hearing brief on November 19, 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 University is a public employer within the meaning of PERA. (N.T. 11).
2. The Union is an employe organization within the meaning of PERA. (N.T. 11).
3. The Union represents a grandfathered unit of all full-time and regular part-time operating engineers, lead engineers, foremen, energy management technicians, unit coordinators, maintenance mechanics, Utility I and Utility II employes. There are 105 employes in the bargaining unit working in the Employer's Facility Management and Property Management (Housing) departments. (N.T. 13-14; Union Exhibit 1).
4. Bargaining-unit members in the Facilities Management department are responsible for maintaining the 78 education and research buildings on the University's campus. They generally are the first responders to maintenance calls, take care of hot/cold complaints, equipment issues, and preventative maintenance on campus. More specifically, the operating engineers in the bargaining unit that work in the Facilities management department are responsible for: properly operating all mechanical systems;

performing select preventative and corrective maintenance; and monitoring building automation system hardware, software, sensors and components. (N.T. 15-16, 69, 116, 152-153, 167-168; Union Exhibit 2).

5. The University's building automation software is referred to as the Direct Digital Control System (DDC). It is a computer system which operates the equipment and lighting on campus. (N.T. 16, 122).

6. Three bargaining-unit operating engineers have offices in the Eureka Building, fifth floor. This is also called the Energy Center. The Energy Center is a large office space with the capability to monitor the DDC. The operating engineers in the bargaining unit are also assigned to other buildings on campus. (N.T. 19, 34, 74-75, 84, 174).

7. The University employs EMS Coordinators and MEP Commissioning Coordinators. EMS refers to energy management system and MEP refers to mechanical, engineering and plumbing. (N.T. 149).

8. EMS Coordinators and MEP Commissioning Coordinators work in the Energy Center. (N.T. 149).

9. MEP Commissioning Coordinators commission new equipment and recommission existing equipment on campus to make sure that equipment is operating correctly, running efficiently, and has proper installation. Bargaining-unit operating engineers often work with MEP Commissioning Coordinators to commission and recommission equipment. (N.T. 37-38, 85-88, 108-109, 168-169, 184-186, 198, 220).

10. EMS Coordinators maintain and update the DDC through programming. They work in the Energy Center and monitor campus buildings through the DDC. If they detect a problem, they will investigate the issue and dispatch an operating engineer, if necessary. (N.T. 90-93, 107-108, 195-196).

11. The EMS Coordinators and MEP Commissioning Coordinators work shifts similar to the bargaining-unit operating engineers. (N.T. 19-20, 152).

12. The EMS Coordinators and MEP Commissioning Coordinators have pension benefits and health insurance benefits similar to the bargaining unit operating engineers. (N.T. 20).

13. Bargaining-unit operating engineers EMS Coordinators and MEP Commissioning Coordinators often interact. The EMS Coordinators and MEP Commissioning Coordinators dispatch calls to the bargaining-unit operating engineers. The bargaining-unit operating engineers also interact with the EMS Coordinators and MEP Commissioning Coordinators to obtain information regarding service calls and to tell the EMS Coordinators and MEP Commissioning Coordinators that jobs have been completed. The EMS Coordinators and MEP Commissioning Coordinators and bargaining-unit operating engineers normally interact through a two-way radio system. EMS Coordinators and MEP Commissioning Coordinators also attend weekly meetings also attended by bargaining-unit operating engineers. (N.T. 21-22, 36, 69-73, 85-86, 95, 153, 158).

14. Aside from one employe, EMS Coordinators and MEP Commissioning Coordinators do not have college degrees. The EMS Coordinators and MEP

Commissioning Coordinators positions do not require a professional license. (N.T. 180, 186, 190, 196, 198, 202, 205, 215-216).

15. No bargaining-unit members are required to have a college degree or professional degree. (N.T. 30-31; Union Exhibit 2).

DISCUSSION

The Union's Petition seeks to include the Energy Center Technician classification into a previously existing unit of non-professional employees. At the hearing, it was established that the correct titles of the positions are: EMS Coordinators and MEP Commissioning Coordinators.

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 employees must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604.

When determining whether employees 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.

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 Union has met its burden of showing that EMS Coordinators and MEP Commissioning Coordinators share an identifiable community of interest with the members of the non-professional unit. The EMS Coordinators and MEP Commissioning Coordinators and the operating engineers in the bargaining unit have the following similarities: they work for the same employer; they all work on the University's campus including together in the Energy Center; they often interact in the performance of their respective job duties; they have similar educational backgrounds; they perform some similar job functions; they have similar benefits; and they work similar shifts. For these reasons, it is clear from the record that there is an identifiable community of interest among the EMS Coordinators and MEP Commissioning Coordinators and members of the non-professional bargaining unit.

The University argues that the EMS Coordinators and MEP Commissioning Coordinators are professional employees and thus should not be included in the

non-professional bargaining unit. Section 301(7) of PERA provides as follows:

"Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

43 P.S. § 1101.301(7). The test is conjunctive, and all four parts must be met in order for an employe to be deemed professional under PERA. In the Matter of the Employes of Luzerne County Community College, 37 PPER 47 (Final Order, 2006). The record in this matter clearly shows that the EMS Coordinators and MEP Commissioning Coordinators classifications have not been required have a college or professional degree, and thus the classifications do not meet the statutory definition of professional employe.

The University also argues that the EMS Coordinators and MEP Commissioning Coordinators are supervisors under PERA and thus should be excluded from the bargaining unit. Section 301(6) of PERA defines a supervisor as follows:

...any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. 1101.301(6). Employes must be excluded from the bargaining unit as supervisory if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise such authority and use independent judgment in exercising that authority. McKeesport Area School District, 14 PPER ¶ 14165 (Final Order, 1983). The distinguishing characteristic of an alleged supervisor is that the person holds authority that calls for the use of independent judgment and carries with it the power to reward or sanction employes. Mifflin County, 14 PPER ¶ 14012 (Proposed Decision and Order, 1982), 14 PPER ¶ 14051 (Final Order, 1983).

Section 604(5) of the Act provides that the Board shall:

(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed.

43 P.S. § 1101.604(5). When assessing supervisory status under Section 604(5), the Board may consider such factors as frequency, duration and importance of the various supervisory duties performed. State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999). Further, the issue of supervisory status under PERA was recently addressed by the Board in Cumberland Township, 49 PPER 66 (Final Order, 2018). In Cumberland Township, the Board noted that it "has consistently held that employes who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are lead workers and not supervisors within the meaning of PERA." Id.; State System of Higher Education, supra.

Turning to this matter, the record does not support a finding that the EMS Coordinators and MEP Commissioning Coordinators are supervisors under the Act. The record does not establish any substantial instances where an EMS Coordinator or MEP Commissioning Coordinator had the independent authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline any other employes. Moreover, the record in this matter does not show that any EMS Coordinators or MEP Commissioning Coordinators performed supervisory duties for a substantial period of their work time.

CONCLUSION

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

1. The University is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The EMS Coordinators and MEP Commissioning Coordinators are non-professional employes and 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 grandfathered bargaining unit is amended to include the positions of EMS Coordinator and MEP Commissioning Coordinator.

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 third day of January, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner