

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED ORDER OF DISMISSAL

On August 7, 2019, the East Stroudsburg Area Education Association (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification, pursuant to the Public Employee Relations Act (Act or PERA), alleging that the East Stroudsburg Area School District (District) employs two Coordinators of Social Services and that those positions should be accreted into the professional bargaining unit.

On August 29, 2019, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Wednesday, January 22, 2020, in Harrisburg. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. The Union and the District both filed their post-hearing briefs on May 15, 2020.

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

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6-7)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. The parties stipulated and agreed that the position of Coordinator of Social Services is a professional position. The parties further stipulated that, if the Coordinator positions are determined not to be managerial under the Act, the Coordinators share an identifiable community of interest with the employes in the professional bargaining unit. (N.T. 6-7)
4. In August 2002, the school board adopted a written policy establishing its Student Assistance Program (SAP). The policy was 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.” (Association Exhibit 5)

5. The SAP policy further provides:

The Superintendent or designee shall develop, implement 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 and options to deal with 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.

(Association Exhibit 5)

6. In November 2006, the school board adopted a Student Services policy, which was revised in December 2015. The Student Services policy provides, in relevant part, that “Services 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 policy further provides for the categories of services that shall be provided including the following: developmental services for academic, behavioral, health, personal and social development issues; diagnostic, intervention and referral services to achieve learning and social potential; coordination of services for students who are experiencing chronic problems requiring multiple services by teams or specialists. 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.” (Association Exhibit 6)

7. The Pennsylvania Committee on Crime and Delinquency, the Pennsylvania Department of Drug and Alcohol Programs and the Pennsylvania Department of Education issue a report called the PAYS report. The 2017 PAYS report for the District was a 115-page report concluding 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) without access to mental health services. The District created the position of Coordinator of Social Services in response to the 2017 PAYS report. (N.T. 20-21, 56-57)

8. On March 28, 2018, the District posted the "Announcement of Vacancy Coordinator of Social Services" for two positions. In the posting, the District designated the two Coordinator positions as "Act 93" positions. (N.T. 54-55; Association Exhibit 4)

9. Brian Baddick has been the Assistant Superintendent for Pupil Services since October 2017. He is one of two Assistant Superintendents at the District. Mr. Baddick oversees all pupil services, i.e., guidance, nursing and special education. He supervises the two Directors of Pupil Services, under which are two supervisors of Special Education. The Coordinators report directly to Mr. Baddick. (N.T. 9-10, 36, 45)

10. The posting further provided as follows:

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

(Association Exhibit 4)

11. During the June 18, 2018 school board meeting, the District hired Shahida Jones and Erin Dreisbach, effective July 2, 2018.¹ The two positions were fully funded by the "Ready-to-Learn" Grant. The District classified the two positions as Act 93 administrators. The Coordinators of Social Services serve all 10 buildings within the District. Shahida Jones is currently the Coordinator of Social Services for grades K-5. Erin Dreisbach is currently the Coordinator of Social Services for grades 6-12. (N.T. 10-11, 19, 27, 41-43, 54-55, 101; Association Exhibit 1; Association Exhibit 4)

12. Ms. Dreisbach did not testify at the hearing. The parties stipulated and agreed that she would testify consistent with the testimony of Ms. Jones regarding her job duties and responsibilities. (N.T. 210)

¹ Although the school board meeting minutes do not provide the effective date of employment for Ms. Dreisbach, Brian Baddick testified that her effective date would have been at about the same time as that of Ms. Jones. (N.T. 43)

13. The Coordinators perform some of their job duties after regular school hours, during evenings, weekends, holidays and other school breaks. They are licensed Pennsylvania social workers; they are clinicians with expertise in family counseling. Phillip Kerzner is the High School South Co-Chair for the Guidance Department. He is in the Bargaining unit. Unlike the Coordinators, he does not have the authority to write a memorandum of understanding (MOU) on behalf of the District with outside service providers. He does not have authority to develop or implement District-wide policies affecting students across the District. (N.T. 22, 98-99, 213, 271)

14. The Coordinator of Social Services positions is a 12-month position. The Coordinators have been treated as Act 93 administrators by the District. Act 93 employees ensure that school board policies are implemented and effectuated. Bargaining unit positions are 180-day positions. Guidance Counselors are bargaining unit members, and they work during part of the summer. Guidance Counselors do not establish policies or programs. They do not obtain funding specifically for guidance policies developed by them. (N.T. 31-32, 98-99, 189-191, 199)

15. Together, the two Coordinators assess the needs for services in all District buildings. They locate mental health agencies and connect those agencies with students and families. They create and oversee individualized programs which are established in MOUs with third-party service providers. They negotiate and draft the individual MOUs with the third-party service providers. (N.T. 23-24, 68-69)

16. Ms. Jones and Ms. Dreisbach create, develop and budget for programs without permission from Mr. Baddick or other administrators. The Coordinators can change and implement program operations, as can building principals, with direction from Mr. Baddick. The Coordinators have the authority to make decisions that impact pupil services in District buildings. Coordinators have responsibilities District-wide in their grade level coverage. Mr. Baddick supervises the building principals in the Act 93 unit. Mr. Baddick can override a building principal's desire to change or implement a policy. (N.T. 189-190, 192-198, 204)

17. The MOUs are drafted by Ms. Jones and Ms. Dreisbach, reviewed by the District's solicitor and then by Mr. Baddick and the Superintendent, Dr. William Riker. Dr. Riker then places the MOU on the school board agenda for approval at a public school board meeting. (N.T. 25-26, 68-69)

18. Ms. Dreisbach, the grades 6-12 Coordinator, created a mental health clinic at the District's High School North. Ms. Jones and Ms. Dreisbach decide whether a certain service is needed in a particular District building, based on the data from that building, and then look for a matching service for that building. Services are building specific and not all buildings need the same service. (N.T. 23, 27-28)

19. The Coordinators seek the best third-party service provider to match the necessary services required for a particular building. In doing so, the Coordinators collaborate with building level administrators, supervisors and sometimes building guidance counselors and psychologists to determine whether to enter into an MOU with a third-party provider and the

manner in which that provider will conduct services on the premises. (N.T. 28, 123)

20. The Coordinators make recommendations regarding the District's need for a particular service in a particular building based on balancing the demands on existing service providers, the school guidance department or the school psychologists. (N.T. 29-30)

21. The Coordinators recommendations have always been followed. After matching and procuring the service, the Coordinators ensure that students and families are connected with those services and that the agency is providing the appropriate services to students and their families. The Coordinators meet with personnel from the provider to ensure that they are receiving referrals from building staff and that provider personnel are meeting with students in a timely manner. (30-31, 123)

22. Ms. Jones determines whether an outside agency and its staff are qualified with proper certifications and training to provide trauma therapy to District students. (N.T. 130)

23. The Coordinators schedule student-provider meetings and make space available on District property for those meetings. They ensure that parents' questions are answered during the day, in the evening and on weekends, holidays and school breaks. (N.T. 31-32)

24. Ms. Dreisbach established a program that had not existed in the District called the "Alternative-to-Expulsion" program or "A2E." This program reduces expulsion time and reintegrates expelled students back into school. The program involves an MOU with a third-party provider that works for 8 weeks with the student and family. The program focuses on goal setting, decision making, stress management, substance abuse and family counseling to re-integrate the expelled student back into the school setting within a truncated time period. A one-year expulsion can be reduced to six months. (N.T. 32-34)

25. 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. Ms. Dreisbach oversees the provider's counseling services during the 8-week period. (N.T. 33-34, 78-79)

26. The A2E meetings during the developmental stages were designed to update and share new information about the progress of the program with administrators. Administrators made recommendations to Ms. Dreisbach so adjustments could be made to fit the program into the District in terms of funding, timeline and interacting with families and students qualifying for the program. (N.T. 81-82).

27. At the conclusion of the developmental stage meetings, Ms. Dreisbach initiated the A2E program. She coordinated the program with the District's 2 high schools. She 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. (N.T. 83-85)

28. Ms. Dreisbach developed the model for the A2E program with input from the team of administrators. She recommended the final program to Dr. Riker and Assistant Superintendent Baddick. Dr. Riker presented the program to the school board, which approved it. (N.T. 80-81)

29. 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 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 student is on track to return to school. She also ensures that the student has a mentor for transitioning upon returning. (N.T. 86)

30. The Coordinators also locate and write grants for funding programs. Normally they write grants in partnership with the District's Grant Coordinator, Angela Byrne, who typically finds the grants. However, the Coordinators found and wrote a grant for trauma-informed schools to pay for expert training of staff to recognize traumatized students. The Coordinators selected the training book to be used for training teachers and bus drivers in identifying trauma sufferers. (N.T. 34-36, 87-90, 106-115, 155-156)

31. The District had already implemented a "Response to Intervention" (RTI) program for identifying students requiring intervention for the "Multi-tiered System Support (MTSS)." MTSS is a three-prong program that incorporates academics, behaviors and social-emotional learning. However, MTSS was missing the behavioral and the social-emotional components of the program. (N.T. 103-105)

32. SAP did not exist in all the school buildings, but Ms. Jones and Ms. Dreisbach developed an SAP program in the buildings that lacked a program. The Coordinators apply for funding for SAP and negotiate MOUs with third-party providers to ensure that proper staff training is in place. The Coordinators ensure that a referral system is functioning in each of the District's 10 buildings and that all the buildings are in compliance. (N.T. 36-37, 60-61; Association Exhibit 5)

33. With aid from grant funding, Ms. Jones developed ways to improve classroom management, SAP and the identification of students needing MTSS. Ms. Jones and Ms. Dreisbach found the grant that was used for developing the Tiers 2 and 3 identifications and interventions for MTSS. Ms. Jones had authority to make these changes on her own without consulting with any manager or District administrator above her. She informed the Director of Pupil Services what specific changes that she and Ms. Dreisbach were going to make to the Multi-Tier Program. (N.T. 106-115, 151-152)

34. Generally, Coordinators foster consensus within a building leadership team which may include the building principal, the Director of Pupil Services, guidance counselors or department chairs. Coordinators make their recommendations to the building principal and assistant principal at the building level, then to Assistant Superintendents Brain Baddick and Ryan Moran, supervisors of Special Education, the Directors of Elementary and Secondary Education as well as the 2 directors of Human Resources. (N.T. 71-77, 116, 167, 204)

35. The Coordinators assess students' needs by speaking with teachers, cafeteria workers, bus drivers, nurses, guidance counselors and administrators. (N.T. 64-65)

36. Ms. Jones calls a team meeting to discuss her recommendations for policy changes. They will meet several times to exchange ideas, after which she will present her recommendations to the Superintendent's Office for review. The Superintendent will present the recommendations to the school board for review and approval. Ms. Jones recommended to administrators changes and updates to the District's suicide prevention policy to meet changes to Commonwealth policies. The suicide prevention policy updates have not yet been implemented. (N.T. 132-135)

37. Social work has an administrative component. Social work involves overseeing companies providing mental health services to children, adolescents and adults in the District. Ms. Jones holds quarterly meetings at school buildings regarding the development of positive intervention support. She evaluates the information she obtains from these meetings to determine what student support programs to develop and implement. (N.T. 145, 169-170)

38. Ms. Jones and Ms. Dreisbach developed an MOU for the District to enter into a contractual relationship with Lehigh University. The MOU allowed the District to obtain training for school staff for the "Check-in, Check-out" Program. The Program, as it existed, was not completely administered. Both Coordinators obtained more training for staff so that all District buildings would have adequate staff to participate in "Check-in, Check-out." In pursuing the training, Ms. Jones required staff to attend "check-in, Check-out" training on a specific day, and the administration agreed. In those District buildings without a "Check-in, Check-out" Program, Ms. Jones dictated to those building principals that they needed the program in their buildings. Ms. Jones informed Assistant Superintendent Baddick and her immediate Director, Maria Casciotta, that she was holding the training and when it was scheduled. Ms. Jones makes all final determinations regarding the "Check-in, Check-out" Program and the administration follows her recommendations. (N.T. 104-105, 157-160)

39. Ms. Jones develops a proposed budget projecting the cost of programs within her oversight. She presents her projections to the Superintendent and the Business Office Director. Ms. Jones has procured money through grants to fund and implement programs. These funds are outside of the District's budget. (180-181, 184)

40. Ms. Jones and Ms. Dreisbach are currently developing an attendance improvement plan. Superintendent Riker and Assistant Superintendent Baddick will have the final say on that program. (N.T. 182)

41. In June 2019, Ms. Dreisbach set up a meeting agenda and held open discussions about social-emotional learning and discussed the Multi-tiered Program at the High Schools. At the time, there was no social-emotional learning curriculum at the High School. The social-emotional curriculum serves to teach students about their feelings, emotions, coping skills, help-seeking skills and handling social situations. She wanted to bring in

different products at the High Schools. Staff at that meeting participated in reviewing different programs and brought feedback to subsequent meetings. As of the hearing in January 2020, the social-emotion curriculum at the High School had not yet been implemented. (N.T. 233-238)

DISCUSSION

The parties disagree over whether the Coordinators of Social Services are managers under the Act. Section 301(16) of PERA defines a management level employe as follows:

[A]ny individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

43 P.S. § 1101.301(16). The Board has held that the statutory definition establishes the following three-part disjunctive test for determining whether an employe is a manager: The Board will evaluate whether the employe is involved in the determination of policy; whether the employe directly implements policy; or whether the employe is above the first level of supervision. In the Matter of the Employes of Lower Providence Township, 16 PPER 16117 (Final Order, 1985). The third prong is not at issue in this case.

The District relies on the Board's explication of Section 301(16) in the case In the Matter of the Employes of Horsham Township, 9 PPER 9157 (Order and Notice of Election, 1978), in support of its position that the Coordinators are managers. The Horsham Board opined that the statutory language under the second prong, referring to employes who responsibly direct the implementation of policy, means the following:

Persons 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.

Horsham, 9 PPER 9157.

At issue here is whether the Coordinators exercise technical discretion based on education, training, experience and expertise or whether they exercise managerial discretion by implementing District policies. In the case, In the Matter of the Employes of the Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016), the Board stated as follows:

In distinguishing between management level employees and employees who exercise professional or technical judgements in the performance of their duties, the Board has long recognized that a public employer's policy is not synonymous with the technical expertise of its employees. City of Lebanon, 4 PPER 24 (Order and Notice of Election, 1974). "To define the problem and directly implement the proposed solution to a problem is not the same as performing a function within a known discipline with competence. The former has to do with policy and the latter deals with technical expertise." Allegheny County, 47 PPER 4 at 9 (Proposed Order of Unit Clarification, 2015).

Port Authority of Allegheny County, 48 PPER 47.

In this case, the Coordinators certainly exercise technical and professional discretion in performing their job duties. However, they also exercise managerial discretion implementing the District's policies. The Coordinators responsibly direct and implement the SAP and Student Services policies of the school board as the Superintendent's designees. Both Coordinators "have a responsible role in giving practical effect to and ensuring the actual fulfillment of" both policies in a manner that "is not of a routine or clerical nature." Horsham, *supra*. The SAP and Student Services policies, as written, provide general policy goals for the Superintendent's designees to fulfill and execute. The Coordinators analyze data and student performance to discover ways to develop and create staff training to recognize the need for services as well as programs and services that specifically comply with and apply the matrix set forth by the school board to effectuate the SAP and Student Services policies by concrete measures on behalf of the administration.

Specifically, the District hired the Coordinators to improve upon their SAP and Student Services policies after the PAYS report concluded that the District had a mental health crisis that impeded student learning and which made the District realize that it was not fulfilling its own policy objectives. The Coordinators were designated with the task of properly implementing the existing, stated policy goals of the school board. By assessing the need for and designing specific programs to breathe life into the general policy goals of the school board, the Coordinators are giving practical effect to the SAP and Student Services policies of the board. Also, the record shows that the Coordinators report directly to Assistant Superintendent Baddick, which places them hierarchically on the same level as other District Act 93 administrators and directors.

After identifying the problem and determining a need for services, the Coordinators locate mental health agencies that are qualified to provide those services and connect those agencies with students and families. This endeavor also requires the Coordinators to assess the qualifications of the agencies and their staff as well as continued monitoring of those third-party services. In effectuating the provision of services to fulfill the SAP and Student Services policies, the Coordinators create and negotiate MOUs that delineate the mental/behavioral health services for students and families required by the District. Every program and policy must be approved by the

school board, even ones that are created and developed by the Superintendent. The fact that the Coordinators' program development and MOUs must also be approved by the Superintendent's Office and the school board, therefore, does not undermine the managerial status of the Coordinators. Indeed, all administrators have to obtain approval from their superiors and the school board. In procuring these services for the District, the Coordinators' recommendations have always been followed by higher administration officials and the school board as properly effectuating the policy goals of the District. Coordinators can change and implement program operations with approval from Mr. Baddick across the District in ten buildings for their grade level responsibilities. Even the building principals are supervised by Mr. Baddick who can override the principals and any other administrator who reports to him.

In fulfillment of the Student Services policy goals of developing services that address students' needs, Ms. Dreisbach created a mental health clinic at the High School North. The Coordinator's service determinations are not routine in nature. Those determinations require discretion based on assessed needs in the particular school building and the best way to effectuate the policy goals of the school board by creating and developing those specific programs. Although the Coordinators consult with other administrators in developing programs, their coordination and consensus seeking efforts are for the purpose of gathering information and ideas from other professionals for their program designs. To ensure that services are properly and effectively provided, the Coordinators make themselves available evenings, weekends, holidays and other school breaks by communicating with parents, answering their questions and obtaining their feedback on the effectiveness of the services.

Ms. Dreisbach created the A2E program designed to shorten student expulsion time and provide counseling services to reintegrate expelled or suspended students into the school environment. She developed the MOU with the third-party provider who provides the 8-week program to reintegrate the students. Additionally, in developing the program, she led a team of administrators, coordinated with County Drug and Alcohol and joined the District's cyber staff with the provider so students could engage in learning while serving their expulsion. The A2E program focuses on teaching expelled students goal setting, decision making and stress management. It also provides counseling for any substance abuse or family issues. After completing the program, a one year expulsion can be reduced to 6 months. By developing the A2E program, Ms. Dreisbach implemented and augmented the District's Student Services policy which established the goal of developing services that address students' needs and their academic, behavioral, health, personal and social issues. It also fulfilled the District's goal of improving mental/behavioral health among students at the District after the PAYs report concluded that a deficiency existed at the District in those areas.

In order to create and develop programs and services that are not funded in the District's budget, the Coordinators have also located and obtained grants to provide funding for training and intervention. Although the District employs a Grant Coordinator, the Coordinators of Social Services found and obtained a grant for "Trauma Informed Schools" to pay for expert training of staff to recognize traumatized students. The

Coordinators determined that the District needed to provide the training, obtained the funding for the training beyond the District's budget and selected the training book and materials for the training. By designing and effectuating a training program for staff, the Coordinators again implemented the District's SAP and Student Services policies. Identifying student problems and needs as well as providing intervention services are express policy goals of both policies.

Additionally, the Coordinators developed and negotiated an MOU for the District to enter into a service provider relationship with Lehigh University to train District staff for the "Check-in, Check-out" program because the program was inadequately administered. The training required by the Coordinators ensured that all buildings had adequate staff to participate in the program. In those buildings without adequate staff, Ms. Jones dictated to those building principals that they needed the program in their buildings. She designated and scheduled a training session and required attendance of all participating staff. Ms. Jones makes all final determinations regarding the effective operation of the "Check-in, Check-out" program and the administration follows her recommendations. Determining whether training is required to properly administer a program and effectuate the Student Services and SAP policies as well as allocating District resources for that solution is a managerial function. The implementation of the training program as a solution to properly administer the program not just follows or applies policy, it is a change in method of operation to revive and improve the functionality of the policy by repairing a dysfunctional program.

The District has in place a "Response to Intervention" program designed to identify students requiring intervention for MTSS. MTSS is a 3-pronged program that incorporates: (1) academics, (2) behaviors and (3) social-emotional learning. The previously existing MTSS program was missing the second and third components. The Coordinators identified the deficiency and implemented the necessary changes and additions to the program. These were policy changes by concrete measures recognized as a managerial function by the Board in Horsham, supra. The Coordinators also observed and determined that the District's SAP policy was not being implemented in all the buildings. Consequently, they developed an SAP program in those buildings lacking the program. They negotiated MOUs with third-party providers and obtained funding to train staff to identify student needs for SAP. They monitor the program and ensure that all buildings are in compliance with SAP. In this manner, although they did not directly change or modify the original SAP policy, the Coordinators directed program and operational changes in District buildings and required staff receive proper training to comply with school board SAP policy, which constitutes policy implementation by concrete measures with managerial authority and discretion.

The Union cites Abington Heights, 42 PPER 18 (Final Order, 2011), where the Board affirmed a hearing examiner's conclusion that a behavioral analyst in a school district was not managerial because the policies he developed were part of his professional expertise. (Union's Brief at 28-29). The Union argues that the facts in the instant case are similar to those in Abington Heights, supra. However, the facts and managerial analysis in Abington Heights were different. The focus in Abington Heights was on policy determination under the first test of managerial status, not policy

implementation, under the second test. In Abington Heights, the behavioral analyst developed a mental health policy for mental health workers who visit the district's buildings. That policy had yet to be adopted by the District by hearing time, so it was insufficient to establish that the analyst effectively recommended and developed policy for the district and that the district gave him the authority to formulate policy. The analyst in Abington Heights also developed a student behavior policy at his supervisor's request which parroted state statutory and regulatory requirements. In this regard, he did not identify the problem or the solution. He was acting under the direction and discretion of his supervisor, who was exercising authority to develop or implement policy changes that were required by state law. He further conducted trainings and developed behavior support plans and restraint procedures, which were within his professional expertise. It is also unclear whether the analyst in Abington Heights, supra, had the authority to require the staff to participate in the training or compliance with the support plans and restraint procedures developed at the behest of his supervisor.

By contrast, the case sub judice turns more on the Coordinators' implementation of school board policy. They identify problems and, within their discretion and authority, develop solutions, protocols, procedures and changes to solve problems that implement the school board's SAP and Student Services policies. Port Authority, supra. It is their unique discretion and authority to identify how to properly implement District policies and make the necessary changes in programs and procedures to achieve that goal that makes the Coordinators managerial under the second prong of the managerial test and which distinguishes this case from Abington Heights, supra and other cases cited by the Union.

In the case, In the Matter of the Employees of Pennsylvania State System of Higher Education (Edinboro University), 49 PPER 53 (Proposed Decision and Order, 2017), the exclusive bargaining representative filed a petition for unit clarification to accrete the position of manager of campus life and student services into a bargaining unit of administrators at the State System of Higher Education. The examiner concluded that the decision making and policy formulation effectuated by the manager of campus life and student services at Porreco College (a satellite campus of Edinboro University) was within her professional and technical expertise. In State System, the manager of student life changed the student orientation program which improved students' adjustments and performance in academic life at Porreco College by relying on her training and experience as contemplated by her director. As here, the manager of student life policy changes affected students. However, unlike here, those decisions did not affect employees or the employer's enterprise directly.

In this case, the Coordinators' program changes have a direct impact on the District's educational mission, goals and enterprise, which is to provide safe academic education for all students by providing behavioral, mental, social-emotional support for those students in need. Ensuring that qualified outside agencies provide those services under the Coordinators' oversight for compliance goes to the very core of the District's enterprise in fulfillment and implementation of its SAP and Student Services policies. Additionally, the programs established by the Coordinators directly impact administrative and other staff who, under the Coordinators' direction, are

required to take training and participate in their program of ensuring heightened identification of students' emotional, behavioral and trauma needs. The Coordinators in this case have the authority to develop and implement programs that affect staff and students across the District, which has adopted all of their recommendations after consultation. Bargaining unit staff do not have this type of authority.

In the case, In the Matter of the Employees of Jefferson Morgan School District, 31 PPER 31115 (Proposed Order of Unit Clarification, 2000), Examiner Wallace aptly stated that "[t]he exercise of authority to take remedial action in the event of non-compliance with governmental regulations is the hallmark of a management level employe. Id. In that case, the school district asserted that the school psychologist/coordinator of special services was a management level employe because she responsibly ensured compliance with state and federal regulations regarding special education by developing procedures for independent educational programs and by training teachers for what is required for special education services. In Jefferson Morgan, however, examiner Wallace found that "the superintendent has the authority to decide what is to be done if she determines that the District is not in compliance with the rules and regulations regarding special education services. Without that authority, she cannot be found to responsibly direct the implementation of policy." Id. In this case, however, the Coordinators, not the Superintendent or the Assistant Superintended, are trusted with the authority to determine what is to be done or changed to bring the District into compliance with its own Student Services and SAP policies or state law, unlike Jefferson Morgan. No other administrators actually determine what program/policy developments will target and remedy deficient or dysfunctional programs regarding the Student Services and SAP policies, but the Coordinators.

In Municipal Employees of the Borough of Slippery Rock v. PLRB, 14 A.3d 189 (Pa. Cmwlth. 2011), the Commonwealth Court opined that "in order to be considered a management level employee, the employee must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found." Id. At 192. Therein lies the crux of this case and where the Coordinators' program changes crossed over into managerial authority, while also utilizing technical expertise. While 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.

Their program changes including staff training and selecting qualified outside vendors were approved by the District. Ms. Dreisbach created a mental health clinic at the High School North and the A2E program which were approved by the Administration. The Coordinators entered into a service provider relationship with Lehigh University to train District staff for the "Check-in, Check-out" program because the program was inadequately administered. The previously existing MTSS program was missing the second and third components. The Coordinators identified the deficiency and implemented the necessary changes and additions to the program. These all constitute taking action by concrete measures where noncompliance with the District's SAP and Student Services policies were found.

Accordingly, although the Coordinators exercise technical expertise, they also identify problems and implement solutions to those problems across the entire District in all of its buildings. They give practical effect to the District's Student Services and SAP policies by the concrete measures of designing, developing and implementing specific programs and procedural changes that affect principals and other staff at the District, as well as responsibly oversee and monitor multiple third-party agencies and providers to ensure compliance with District policies across the District.

Employees who implement policies for their employer generally rely on their professional training and expertise in their field. Indeed, that is why they are hired into the position. Therefore, the inquiry cannot end there or no employe could be deemed a manager and the second prong of the managerial employe test would become a nullity. Simply because an employe utilizes technical expertise in policy implementation cannot prevent the further evaluation of the nature of the policy implementation and whether it directly affects the work or behavior of other employes, labor relations or the employer's enterprise.

CONCLUSION

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Coordinators of Social Services are management level employes under Section 301(16) of PERA and are properly excluded from the professional 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 third day
of September, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Jack E. Marino
JACK E. MARINO, Hearing Examiner