

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: CASE NO. PERA-U-22-27-W
: (PERA-R-06-225-W)
:
:
BUTLER COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 4, 2022, the Service Employees International Union Local 668 (SEIU or Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the position of "Poll Worker and Precinct Coordinator"¹ into a unit of all regular full-time and regular part-time administrative clerical/technical employees appointed by the Commissioners of Butler County (County or Employer) certified at PERA-R-10-699W.²

On April 12, 2022, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating June 24, 2022, via Microsoft Teams, as the time and manner of hearing, if necessary.

The hearing was held on June 24, 2022, in Butler, 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 its post-hearing brief in support of its petition on September 21, 2022. The Employer filed its post-hearing brief on October 21, 2022.

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 County is a public employer pursuant to PERA. (N.T. 7).
2. SEIU is an employe representative pursuant to PERA. (N.T. 7).
3. SEIU is the certified exclusive bargaining representative of a unit comprised of all full-time and regular part-time nonprofessional employes in the County residual unit, including but not limited to employes of the Area Agency on Aging, Bridge Crew, Car Pool, Children and Youth Agency, Communication Center, Community Action, Controller, Election Bureau, Information Technology, Facilities and Operation, MH/MR/DA, Planning Commission, Mail Room, Property and Revenue, Purchasing, Recorder of Deeds, Soil Conservation, Treasurer, and Veterans Services; and excluding management

¹ At the hearing, it was determined that the title of the position in question was Poll Worker and Precinct Captain.

² See Finding of Fact # 3 and footnote 3 for the proper description and Certification number for the bargaining unit in this matter.

level employees, supervisors, first level supervisors, confidential employees, and guards as defined in the Act ("the Residual Unit"). (PERA-R-06-225-W)³.

4. SEIU represents four bargaining units of employees of the County. In addition to the Residual Unit, SEIU represents a unit of Court-related clerical/technical employees, a unit of Court-appointed clerical/technical employees, and an administrative professional unit. All four of these units are represented by SEIU but each have different collective bargaining agreements. (N.T. 19-20).

5. There are approximately 100 employees in the Residual Unit. (N.T. 21).

6. Included in the Residual Unit are job classifications such as Accountant I and II, Accounts Clerk I and II, Administrative Assistant, Bridge Crew Helper, Bridge Crew Laborer, Carpenter, Carpenter Helper, Central Postal Circulation Clerk, Certified Welder/Laborer, Civil Engineer Technician, Clerk I and II, Clerk Steno I - III, Clerk Typist I and II, Custodial I/Utility/Election, Custodial Worker I, Data Entry Clerk, Electrician, Executive Secretary, Field Appraiser I and II, Financial and Procurement Assistant, Fiscal Officer I, Fiscal Technician, GIS Mapper, Internal Auditor I - III, Junior Planner, Laborer/Floater, Maintenance Clerk, Maintenance Repairman, Microfilm Clerk, Motor Pool Technician, Network Administrator I, Painter, Parks and Recreation Laborer, Parks and Recreation Laborer P/T, Program Assistant, Reconciliation Clerk I and II, Registrar, Support Specialist I-III, Telecommunicator I-III. (N.T. 25; Union Exhibit 1, page 60-61).

7. Of the job classifications listed above, Registrars work in the Department of Elections full time. During peak times for the Department of Elections, the Custodial I/Utilities/Elections position also works with and in the Department of Elections. (N.T. 24).

8. In addition to the Registrars, the County also has a Poll Worker and Precinct Captain. The Poll Worker and Precinct Captain was hired in September, 2021. (N.T. 48, 107)

9. There are three Registrars and one Poll Worker and Precinct Captain. The job duties for these positions are similar, however only the Registrars update and perform new voter registrations of qualified voters in Butler County. After an election, Registrars and the Poll Worker and Precinct Captain record voter history from poll worker books and review data from the books and voting equipment to reconcile voting numbers. If irregularities are found, the Registrars along with the Poll Worker and Precinct Captain call poll workers to figure out the irregularities. The Registrars and the Poll Worker and Precinct Captain also keep a judge's journal, which is a journal of voting irregularities found with notations.

³ The Petition described the bargaining unit as a "unit of all regular full-time and regular part-time administrative clerical/technical employees appointed by the Commissioners of Butler County." Post-hearing research by the Hearing Examiner and Board staff determined that the proper description of the Unit is as put forth in Finding of Fact # 3. The Petition also cited PERA-R-10-699W as the underlying Certification for the Union. Further Post-hearing research by the Hearing Examiner and Board staff determined that that citation is for a prior union which disclaimed interest in the bargaining unit. Board records show that the current Union, SEIU local 668, was certified at PERA-R-06-225-W.

Registrars and the Poll Worker and Precinct Captain also answer phone calls to the Department, answer emails to the department, and talk to people who come to the Department counter who are usually poll workers, voters and people running for office. From time to time, seasonal part-time workers may also be in the Elections office to help with clerical duties. From time to time a Registrar and the Poll Worker and Precinct Captain may appoint a judge of elections or other poll worker when an absence occurs. The assignments are made from a poll worker interest form. The Poll Watcher and Precinct Captain is responsible for making sure that all voting precincts have suitable voting locations. (N.T. 48-49, 85-88, 114, 129).

10. Registrars work in Butler in the main Government Center. Registrars work in the same office with the Poll Worker and Precinct Captain. From time to time, Registrars and the Poll Worker and Precinct Captain visit voting locations throughout the County and to conduct poll worker training and inspections before elections. (N.T. 49-53).

11. The Registrars and the Poll Worker and Precinct Captain are paid hourly and have similar healthcare benefits. (N.T. 184-185).

12. Voting or polling places in the County typically have an area for poll workers, a judge of elections, a majority inspector, a minority inspector, and anywhere from zero to 14 clerks depending on the election. The clerks check in voters. There is one or more voter scanners located near the exit. There are also voting booths. There may be poll watchers who must be certified by the County solicitor. (N.T. 53-54).

13. The positions of judge of elections, inspector and clerks are elected officials. The Registrars and the Poll Worker and Precinct Captain interact with these officials almost daily and train them on how to conduct elections. Training usually happens over a two-week period a month before an election. These trainings are held throughout the County. The Registrars and the Poll Worker and Precinct Captain provides the trainees a guidebook (the Poll Worker Guidebook) which describes and summarizes election law and shows them how to use the equipment. (N.T. 55-51).

14. The Poll Worker Guide is designed to help a poll worker perform their duties as judge of elections and inspector of elections. The guide is continuously updated based on changes in voting law and to make it more usable. The Registrars and the Poll Worker and Precinct Captain all work on revising the Guidebook. Registrars and the Poll Worker and Precinct Captain make changes to the Guidebook based on information they receive from the Department of State. (N.T. 61-65, 77-78; Union Exhibit 4).

15. At the time of the hearing, the position of Director of Elections was vacant. The staff of the Department of Elections therefore reported to the County Solicitor, Wil White and to the head of HR, Lori Altman. The Solicitor provides, at times, daily oversight and direction to the Elections staff. When the staff needs help interpreting Pennsylvania election law, the staff asks the County Solicitor or employes within the Commonwealth Department of State. If the Department of Elections needs to differ from standards set by the Department of State, such a change must be authorized by the Solicitor. When the position of Director is staffed, the Director makes decisions about office policy. The County Board of Elections ultimately decides election policy in the County. (N.T. 67-70, 80-83, 111, 135-139, 155-156).

16. Registrars and the Poll Worker and Precinct Captain cannot hire and fire. (N.T. 70).

17. The job description for the Poll Worker and Precinct Captain, which is an accurate summary of the job duties performed by the positions, states in relevant part:

PURPOSE OF THE POSITION: The primary purpose of this position is to coordinate poll workers and polling locations ("Precincts") throughout Butler County, making sure that each precinct has an up to date contract to function as a polling location, and that each location is properly staffed in advance of each election in accordance with applicable County, State and Federal rules/regulations.

REPORTING RELATIONSHIPS: This position reports directly to the Butler County Director of Elections and Voter Registration and is responsible for keeping the Director up to date on an ongoing basis regarding issues, progress, and overall readiness.

SUPERVISORY RESPONSIBILITIES: This position works directly with both elected and appointed Judges of Election, Inspectors of Election, and Clerks with varying degrees of experience and commitment, in accordance with county policy and applicable law. The people holding these positions are county employees two days out of the year (Primary Election Day, and General Election Day). Supervisory responsibilities include making sure each polling location is appropriately staffed for each election, and that a sufficient number of "at large" poll workers are ready to fill in when last-minute changes create vacancies in the runup to Election Day.

PHYSICAL DEMANDS: Must be able to cope with the physical and mental stress of the position in an often fast paced and rapidly changing election environment. Lifting, setup, and staging of election equipment required.

WORK ENVIRONMENT: Work is generally performed indoors within an office setting but does require local travel to inspect polling locations for compliance with state and federal laws under the Americans with Disabilities Act. The ability to write reports, business letters, and participate in the poll worker training process.

QUALIFICATIONS: The ideal candidate is expected to perform planning and administrative tasks in the Bureau of Elections. This work requires initiative, sound judgment, organization, communication, and planning skills. This work includes, but it not limited to, the use of computers, dedicated election management software, and knowledge of ADA regulations that

each polling location/ precinct must meet for certification. The ideal candidate will also have experience managing volunteers and working with members of the community, along with the ability to understand general election terminology and the various roles and responsibilities required to facilitate elections.

REASONING ABILITY: Ability to solve practical problems and deal with a variety of situations where only limited standardization exists. Ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

ADDITIONAL REQUIREMENTS: Valid Pennsylvania Driver's License and reliable transportation.

(N.T. 155; Union Exhibit 7).

18. The Poll Worker and Precinct Captain spends approximately 50-60% of his time working with poll workers. Of this time, approximately 30% of it is spent convincing poll workers to work another election and finding additional poll workers to replace those that have resigned in order to make sure polling places are staffed. Of the remaining time, the Poll Worker and Precinct Captain investigates polling places to determine if they are ADA compliant. After an election, he reviews materials returned by poll workers to determine if their materials are complete. If he finds that some materials are not complete, he consults with the Solicitor to determine what to do. He also trains poll workers twice a year. (N.T. 172-176).

DISCUSSION

SEIU petitioned to include the position of Poll Worker and Precinct Captain into its nonprofessional Residual 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.

It is the burden of the petitioning party, in this case SEIU, to show an identifiable community of interest. 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 employes, grievance procedures, bargaining history, and employes' 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).

Differences among employees in a unit may reflect the division of labor at an employer and do not destroy a clearly identifiable community of interest. 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).

The general policy of the Board is "to certify units as broadly as possible in order to avoid the deleterious effects of over fragmentation." Berks County, 27 PPER ¶ 27110 (Final Order, 1996). The Board favors unit descriptions that use "including" language "so that unit clarification petitions need not be filed whenever an employee within the coverage of the unit is hired." Beaver County Community College, 23 PPER ¶ 23070 (Final Order, 1992), aff'd 24 PPER ¶ 24110 (1993).

In this case it is clear that the Poll Worker and Precinct Captain shares an identifiable community of interest with workers in the bargaining unit. The Poll Worker and Precinct Captain is a regular full-time nonprofessional position, works intimately with the Registrars in the Department of Elections, does many of the same work tasks as the Registrars, works in the same office as the Registrars, works at similar polling sites as the Registrars, and has similar healthcare to Registrars. There was no evidence that the Poll Worker and Precinct Captain was court-appointed, court-related or professional.

The County argues the Poll Worker and Precinct Captain should nevertheless be excluded from the unit because the position meets the statutory definition of managerial employee and supervisor. (County's Brief at 10). 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).

Moving first to the argument that the Poll Worker and Precinct Captain is a supervisor, Section 301(6) of PERA provides as follows:

"Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees 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).

In determining the difference between a lead worker and a statutory supervisor, the Board has examined the requirement that the employe "responsibly" "direct" other employes. The Board explained the meaning as follows:

'Direct' infer[s] authority to order employes as to the nature, quality and quantity of their work. "Responsibly" infers authority to grant reward or sanction should such orders not be followed, or, to a substantial degree, to be able to effectively recommend such reward or sanction. The right to order the work force and the ability to effect reward or sanction are what distinguish a "supervisor" from a "task leader."

In the Matter of the Employes of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). The Board has repeatedly and consistently emphasized that "an employe who lacks the authority to effect reward or sanction simply cannot be excluded from a bargaining unit as a supervisor." In the Matter of the Employes of Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER 20126 (Final Order, 1989); Findlay Township Water Authority, 21 PPER ¶ 21130 (Final Order, 1990) (reiterating that "[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction").

Section 604(5) of the Act states that "... [i]n 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). The Board, with appellate court approval, has looked to the extent to which supervisory duties are performed and concluded that employes who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are not supervisors within the meaning of PERA. West Perry School District v. PLRB, 752 A.2d 462 (Pa. Cmwlth. 2000), petition for allowance of appeal denied, 795 A.2d 984 (2000); State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999); Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, 409 A.2d 532 (Pa. Cmwlth. 1980). Conversely, where the employe performs predominantly supervisory duties, that employe is excluded from the rank-and-file unit as supervisory. AFSCME v. PLRB, 342 A.2d 155 (Pa. Cmwlth. 1975).

Moving to this matter, the record does not support a conclusion that the Poll Worker and Precinct Captain is a supervisor. The record shows the Poll Worker and Precinct Captain does from time to time assign and schedule various poll workers to voting sites during elections. The record also shows that the Poll Worker and Precinct Captain will appoint poll workers to vacant positions. The Job Description for the Poll Worker and Precinct Captain states that they make sure each polling location is appropriately staffed for each election, and that a sufficient number of "at large" poll workers are ready to fill in when last-minute changes create vacancies in the runup to Election Day.

However, these tasks are not supervisory under PERA as these tasks are performed in the role as a lead worker or task leader. The record shows that the nature of these tasks is mostly routine or clerical in nature. For example, while the Poll Worker and Precinct Captain may appoint a judge of elections or other poll worker when an absence occurs, these assignments are

made from a poll worker interest form. Thus, this action is more akin to a routine duty of filling a schedule rather than a more supervisory duty of hiring new employes to fill vacancies.

The County has also not met its burden of showing on this record that the Poll Worker and Precinct Captain has the independent authority to effect reward or sanction.

Even if the record had showed that the Poll Worker or Precinct Captain did have the independent authority to effect reward or sanction in his supervisory duties, the County has not met its burden in showing that the Poll Worker and Precinct Captain performs these duties for a substantial period of their work time. The record shows that the Poll Worker and Precinct Captain spends approximately 15% of his total time working convincing poll workers to work another election and finding additional poll workers to replace those that have resigned. I find, therefore, that the Poll Worker and Precinct Captain does not spend the predominant amount of his time performing the functions the County alleges are supervisory pursuant to PERA.

Moving to the County's argument that the Poll Worker and Precinct Captain is a management level position, Section 301(16) of PERA states:

"Management level employe" means any 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). Under this provision, a position is at the management level if the employe holding that position (1) is involved directly in the determination of policy; (2) directs the implementation of policy; or (3) is above the first level of supervision. Pennsylvania Association of State Medical Hospital Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1988); Commonwealth of Pennsylvania (Attorneys Examiner I), 12 PPER ¶ 12131 (Final Order, 1981). In Pennsylvania Association of State Medical Hospital Physicians, the Commonwealth Court adopted the Board's definition of the first part of Section 301(16) of PERA as set forth in Horsham Township, 9 PPER 9157 (Final Order, 1978):

An individual who is involved directly in the determination of policy would include not only a person who has authority or responsibility to select among options and to put proposed policies into effect, but also a person who participates with regularity in the central process which results in a policy proposal and a decision to put such proposals into effect. Our reading of the statute does not include a person who simply drafts language for the statement without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal.

Id.

The Board's policy is that the use of independent judgment and discretion by the employe when implementing the employer's policies is necessary to satisfy the second prong of the statutory test for management

level employe under Section 301 (16) of PERA. Id.; Municipal Employees of Borough of Slippery Rock v. PLRB, 40 PPER 64 (Proposed Order of Unit Clarification, 2009), 40 PPER 122, (Final Order, 2009), aff'd 14 A.3d 189 (Pa. Cmwlth. 2011). To be considered a management level employe, the employe must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found. Slippery Rock, 14 A.3d 189 (Pa. Cmwlth. 2011).

Further, the Commonwealth Court has opined that an employe's decisions are not managerial if they are part of the employe's routine discharge of professional duties. Borough of Slippery Rock, 14 A.3d 189 (Pa. Cmwlth. 2011). The Board has held that making decisions that effectuate the responsibilities of the position is not synonymous with managerial policy formulation or implementation. Pennsylvania State University (Penn State), 19 PPER ¶ 19156 (Final Order, 1988). The Penn State Board held that a nurse practitioner's formulation of medical protocols was the result of professional expertise and not indicative of managerial authority. The Penn State Board relied on General Dynamics Corp., 1013 NLRB 851 (1974) and opined as follows:

Judgments of professional employes which transcend the technical discipline of professionals should be distinguished from those instances where the natural and normal performance of professional duties may affect the employer's policy merely by the specialized nature of the professional's normal tasks.

Penn State, 19 PPER at 378. When the only policies developed by the person holding the position in question are policies entirely within the expertise of the position and applicable to the duties of the position, such policies are not considered managerial, even though there may be some indirect impact on operations or managerial policy. Id.

The record in this matter shows that the Poll Worker and Precinct Captain is not a management level employe. The Poll Worker and Precinct Captain does not determine County policy. The record shows that Poll Worker and Precinct Captain does work every day with Commonwealth laws and regulations regarding elections, but they do not determine those laws and regulations at all. The Poll Worker and Precinct Captain also does not have the authority or responsibility to select among options and to put proposed policies into effect. The election policies of the County's Election Department come from statute and Department of State regulations.

The Poll Worker and Precinct Captain does update and edit a Poll Worker Guidebook, but this is clearly a routine clerical task where the employe uses their limited expertise to reduce and condense Commonwealth election law and regulations into a digestible form that can be used by poll workers. The Poll Worker and Precinct Captain is not determining at any point the Commonwealth election law which is the backdrop and source of the Poll Worker Guidebook.

Additionally, the record in this matter does not show that the Poll Worker and Precinct Captain directs the implementation of policy. The record in this matter shows that the implementation of election law in the County is the responsibility of the County Board of Elections, the County Solicitor,

and the Director of Elections. The County Board of Elections ultimately oversees election policy in the County. Additionally, the record shows that at the time of the hearing the Solicitor was providing daily oversight and guidance to the employes of the Department of Elections with respect to the County's election policies. Furthermore, the Solicitor, not the Poll Worker and Precinct Captain, must authorize any changes from standards set by the Department of State when needed.

The record does show that the Poll Worker and Precinct Captain has some responsibility for monitoring compliance with election law. The record shows that after an election, if voting irregularities are found, the Poll Worker and Precinct Captain will call poll workers to figure out the irregularities. The Poll Worker and Precinct Captain also keeps a judge's journal, which is a journal of voting irregularities found with notations. The Poll Worker and Precinct Captain from time to time investigates polling places to determine if they are ADA compliant. Additionally, the Poll Worker and Precinct Captain reviews materials returned by poll workers to determine if their materials are complete. If he finds that some materials are not complete, he consults with the Solicitor to determine what to do. However, the record shows that this monitoring is clerical in nature and the Poll Worker and Precinct Captain does not have the independent judgment and discretion to act in situations where noncompliance is found other than routine, clerical corrections. For example, there was no evidence on this record that the Poll Worker and Precinct Captain had the authority to independently prosecute on behalf of the County any alleged election law noncompliance in a Magisterial District Court or the Court of Common Pleas or any other tribunal.

Thus, for the reasons stated above, the Poll Worker and Precinct Captain shall be included in the Residual Unit.

CONCLUSION

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. SEIU is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Poll Worker and Precinct Captain is not a supervisor or management level position.
5. The Poll Worker and Precinct Captain shares an identifiable community of interest with the other members of the bargaining unit and is 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 bargaining unit is amended to include the position of Poll Worker and Precinct Captain.

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 seventh day of December, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner