

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: CASE NO. PERA-U-21-268-W
: (PERA-R-11,955-C)
:
CAMBRIA COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On December 12, 2021, 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 Deputy Coroner into an existing unit of nonprofessional, court-related employes of Cambria County (County or Employer) certified at PERA-R-11,955-C.

On January 5, 2022, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating March 25, 2022, via Microsoft Teams, as the time and manner of hearing, if necessary.

The hearing was held on March 25, 2022, in Ebensburg 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 June 2, 2022. The Employer filed its post-hearing brief on June 30, 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. 6).
2. SEIU is an employe representative pursuant to PERA. (N.T. 6).
3. SEIU is the exclusive representative of a bargaining-unit consisting of all full-time and regular part-time professional, nonsupervisory, court-related employes working in the offices of the Sheriff, Prothonotary, Register of Wills, Clerk of Courts, District Attorney, and Public Defender, and in the Children and Youth Service Agency, Juvenile Detention Home, and Family Counseling; and excluding all professional employes, management level employes, supervisors, confidential employes, and guards, as defined by the Act. (N.T. 11; PERA-R-11,955-C).
4. This unit is referred to as the "2A" unit by the County.¹ Employes within this 2A unit include clerks and deputy clerk for the Clerk of Courts; clerk typist, tip staff, and court reporters under the Courts; court clerks and clerks under the District Attorney; court reporter under Domestic Relations; clerk and Second Deputy under the Prothonotary; clerks under

¹2A is not a Board designation or Board terminology. I will use it however as it is a term used by the parties to refer to the unit in question.

Records Storage; clerks and Second Deputy under the Register of Wills; and clerks under the Sheriff. The unit is mostly clerks in various offices throughout the County. (N.T. 55-58).

5. Current members of the 2A unit are paid hourly wages. They all receive the same healthcare benefits as every other employe of the County through UPMC. The employes contribute to a 403b plan. The employes of this unit mostly work from 9:00 am to 4:00 pm in offices in the County Courthouse except for the Records Storage employes who work in another County building. (N.T. 58-61).

6. The Cambria County Coroner's office is headed by the Coroner, which is an elected position. Jeffrey Lees has been the Coroner for Cambria County since 2016. Under the Coroner is one Chief Deputy Coroner, two full-time Deputy Coroners and approximately seven part-time per-diem Deputy Coroners. (N.T. 63-64).

7. Michael Brewer works in the Cambria County Coroner's office. He has been an employe for over four and a half years. His title is Deputy Coroner. As Deputy Coroner, Brewer's job is generally to determine the cause of manner of death of people who die in the County and respond to emergency scenes in the County. He also notifies the next of kin of deaths. (N.T. 9-17).

8. One of the two Deputy Coroners is on-call for the weekend and responds to contacts about deaths in the County. When the Deputy Coroner gets a call on the weekend, he calls the Coroner to let the Coroner know what is happening and requests direction from the Coroner. (N.T. 29-30).

9. Though the Deputy Coroners must be available to work at any time, they keep regular office hours of 8:00 am to noon Monday through Friday. At other times, they are on-call. Deputy Coroner's are salaried employes. Brewer earns approximately \$35,000 in salary. Deputy Coroners receive health care through the County. (N.T. 35-37, 81).

10. The Deputy Coroners work in downtown Johnstown in the Glosser Building Complex. Brewer normally works in the office with the other Deputy Coroner. The Coroner and Chief Deputy Coroner also work in the office. In addition to these employes, there are often per-diem deputy coroners in the office. (N.T. 20-22).

11. No formal post-secondary education is required to be hired as a Deputy Coroner. (N.T. 90).

12. Deputy Coroners must complete the basic coroner's education program that is conducted by the Pennsylvania State Coroner's Association and the Attorney General's office. (N.T. 65).

13. Brewer has a two-year associate's degree from Penn Highlands. (N.T. 18-19).

14. Ira Hart is the other Deputy Coroner. He has been a Deputy Coroner for approximately a few months. Previous to being a Deputy Coroner, he was a paramedic for approximately 30 years. (N.T. 103).

15. Deputy Coroners have a job description which is an accurate summary of their actual job duties. The job description for Deputy Coroner states in relevant part:

BASIC FUNCTIONS: The Deputy Coroner investigates the facts and circumstances concerning deaths. This position is investigative in nature and will require administration duties as directed by the Coroner or Chief Deputy Coroner. Performs other related duties as assigned.

NATURE AND SCOPE: It is the duty of the Deputy Coroner to determine the cause and manner of death. This will require having knowledge of advanced investigative techniques, medical terminology, and forensic procedures. This position requires the knowledge of all Cambria County Coroner's Office procedures and policies, as well as all County policies and procedures. Writes comprehensive reports detailing investigations, complete an electronic investigation report. Performs other related duties as assigned.

MINIMUM QUALIFICATIONS: Must be certified by the Pennsylvania State Coroner's Association and Attorney General's Office within one year of full-time employment. Must become American Board of Medicolegal Death Investigators (ABMDI) certified within three years of full-time employment. Must meet Pennsylvania State and ABMDI yearly continuing education requirements thereafter. Requires a driver's license and a vehicle. Mileage expenses are provided by the County. Inhouse testing of the candidate's abilities, given by the Coroner, may be required prior to any employment offer.

HUMAN RELATIONS SKILLS: The Deputy Coroner position must demonstrate the ability to represent the department in a courteous and professional manner when dealing with the general public, elected officials, department heads, employees, and other co-workers. The employee must maintain integrity of cases and confidentiality of decedent and families. Employee must be articulate and able to communicate effectively in a positive manner via the phone, Internet, and/or in person with various levels of personnel and the general public.

REQUIREMENTS:

1. Considerable knowledge of forensic investigative techniques.
2. Considerable knowledge of medical terminology.
3. Knowledge of County rules, regulations, procedures and functions.
4. Ability to work independently on difficult and complex death investigations.
5. Ability to relate to grieving individuals on a one to one basis with compassion and dignity.
6. Ability to prepare accurate records and maintain complex clerical records.
7. Ability to exercise good judgment, courtesy and tact in receiving office callers and making proper disposition of problems.

8. Ability to establish and maintain effective working relationships with other employees, the general public, and agencies that the Coroner's Office works with.

9. Available to assist with 24/hour availability on a Rota basis.

10. Must be able to multi-task and work independently.

11. Ability to remove and transport decedents to appropriate locations.

12. The Deputy Coroner will frequently be exposed to certain biohazards. Must be familiar with using universal precautions as outlined in the operating guidelines of the Cambria County Coroner's Office.

CERTIFICATES, LICENSES, REGISTRATIONS: See minimal qualifications.

ESSENTIAL DUTIES AND RESPONSIBILITIES: The Deputy Coroner shall investigate the facts and circumstances concerning deaths which appear to have happened with[in] the county, regardless of where the cause thereof may have occurred, for the purpose of determining whether or not criminal acts have taken place. He/she will investigate the following:

- a. All natural and sudden deaths.
- b. Deaths occurring under suspicious circumstances.
- c. Deaths occurring from the result of violence or trauma.
- d. Operative or Peri-operative deaths.
- e. Any death where the body is unidentified or unclaimed.
- f. Deaths due to contagious disease and constituting a public hazard.
- g. Deaths occurring in a prison or penal institution.
- h. Sudden Infant Death Syndrome.
- i. Stillbirths.
- j. Any death that the Coroner or Chief Deputy Coroner determines to be investigated.
- k. Authorizations of cremations.
- l. Handling hospice and under 24-hour deaths that occur in hospitals and nursing agencies.
- m. Issue death certificates in a timely manner to funeral homes.

The deputy Coroner shall determine the identity of the deceased and notify the next of kin of the deceased. If, upon investigation, the Deputy Coroner shall be unable to determine the cause and manner of death, he/she will have an

autopsy performed on the deceased. The Deputy Coroner will attend this autopsy. This position requires the employee to work on varied days, weekends, holidays, and carry a cell phone at all times and be able to respond in a timely manner set in the Operating Guidelines of the Cambria County Coroner's Office.

Full-time Deputy Coroner will supervise Per Diem Deputy Coroners. Full-time Deputy Coroners also supervise the office for day to day operations at the direction of the Coroner. . . .

(N.T. 16; Union Exhibit 2).

16. During a typical call to the Coroner's Office, usually from the County 911 center, the Deputy Coroner will usually respond. Lees had made it an office policy that the Deputy Coroners must notify him whenever they respond to a call for a death investigation. When they arrive at the scene, they start their investigation including the collection of evidence. Brewer typically informs the Coroner what is happening at the scene and seeks direction from the Coroner when he has questions. The Deputy Coroner identifies the decedent and makes death notifications to the next of kin. The Deputy Coroner determines if an autopsy is required. It is the responsibility of the Deputy Coroner to transport the decedent to the forensic facility so that an autopsy can be performed. They do not perform the autopsy. The Deputy Coroner makes a determination as to the cause and manner of death. The Deputy Coroner then completes a death certificate. (N.T. 26-29, 39, 67-79, 91, 104-107).

17. Deputy Coroners follow Coroner's Office policies when making determinations such as cause and manner of death and autopsies requests. When Deputy Coroners are unsure of what to do in a situation they call the Coroner or Chief Deputy Coroner for guidance. (N.T. 27-28, 38, 73, 94).

18. Deputy Coroners do not hire, evaluate or discipline any other employees in the Coroner's office. (N.T. 46, 116-119).

19. The Coroner reviews and edits death certificates before they are issued. (N.T. 44).

20. While in the office, the Deputy Coroners perform a variety of clerical and administrative duties such as the processing of cremation authorizations and death notifications, completion of death certificates, inputting data into a computerized database, and making sure documents are appropriately filed. (N.T. 44, 80, 98, 110).

DISCUSSION

SEIU petitioned to include the position of Deputy Coroner into its bargaining unit of nonprofessional, court-related employees of the County. 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 Employes 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 employes 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 Employes of Wissahickon School District, 47 PPER 26 (Order Directing Submission of Eligibility List, 2015); In the Matter of the Employes 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 employe 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 Deputy Coroners share an identifiable community of interest with other members of the SEIU's unit of nonprofessional, court-related employes (the "2A" unit). "Court-related" refers to those County employes who are directly involved with and necessary to the functioning of the Court but who are not hired, fired and directed by the Court. Allegheny County, 11 PPER ¶ 11035 (Final Order, 1980). The Deputy Coroners are full-time nonprofessional employes of the County who perform clerical and administrative work and work under an elected row officer (the Coroner) of the County. This is similar to other members of the bargaining unit which mainly consists of full-time nonprofessional clerks in various offices throughout the County who work under row officers such as the Register of Wills and Sheriff. Like members of the bargaining unit, the Deputy Coroners also work in a County office building at regular hours and also have the same health and retirement benefits.

The County argues that the Deputy Coroners should be excluded from the bargaining unit based on their status as professional employes and supervisors. (County's Brief at pages 6-8). The party arguing for the exclusion of an employe 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).

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). In this matter it is clear that the Deputy Coroners are not professional employes pursuant to PERA as the record shows that the work performed by the position does not require an advanced degree or formal post-secondary education of any kind. The minimal qualifications listed in the job description for the position does not require any four-year degree or professional degree. While certification with the Pennsylvania State Coroner's Association, Attorney General's Office and the American Board of Medicolegal Death Investigators are required by the position, the record does not show that such certification is sufficient to meet the third prong of Section 301(7). The record shows that the Deputy Coroner's do undertake investigations into the cause of death and do make determinations such as the cause of death and the need for an autopsy, but the record does not show that these activities require advanced knowledge acquired by specialized study in an institute of higher learning (a bachelor's degree or master's degree or doctorate).

Additionally, the record shows that while Deputy Coroners do have some discretion in determining the cause and manner of death and the necessity for autopsies, they are following office policies in making these determinations and are overseen closely by the Coroner. The Deputy Coroners work in a structure of existing policies and largely use those policies and the guidance of the Coroner for their determinations. The record shows that their work is not "predominantly intellectual and varied in character" but tends to be closer to routine responses to an unvaried set of circumstances. When Deputy Coroners are faced with a situation beyond their ability to determine, they rely on the advice of the Coroner and the official performing the autopsies.

For these reasons, the Deputy Coroners are not professional employes as defined by the Act and are properly included in a unit of nonprofessional employes.

The County also argues that the Deputy Coroners are supervisors. 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 employee "responsibly" "direct" other employees. The Board explained the meaning as follows:

"Direct" infer[s] authority to order employees 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 Employees of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). The Board has repeatedly and consistently emphasized that "an employee 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 Employees 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 employees 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 employee performs predominantly supervisory duties, that employee 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 Deputy Coroners are supervisors. The record shows that the Deputy Coroners are plainly lead workers with respect to the part-time per diem employees. Importantly, the record shows that Deputy Coroners do not have any authority at all to reward or sanction employees. In addition, to the extent that Deputy Coroners perform any statutory supervisory duties, the record

does not support a conclusion that they perform them for a substantial period of their work time.

Thus, for the reasons stated above, the Deputy Coroners shall be included in the nonprofessional, court-related bargaining unit.

My decision to include the Deputy Coroners into a nonprofessional court-related bargaining unit in this matter is in accord with previous Board decisions to include deputy coroners into such bargaining units. See Berks County, 26 PPER ¶ 26218 (Proposed Decision and Order, 1995) (Hearing Examiner includes deputy coroners into a bargaining unit of nonprofessional, court-related employes); Berks County, 27 PPER ¶ 27110 (Final Order, 1996) (Board upholds Hearing Examiner decision to include deputy coroners into a unit of nonprofessional, court-related employes), aff'd, 28 PPER ¶ 28234 (Court of Common Pleas of Berks County, 1997).

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 Deputy Coroners share an identifiable community of interest with the other members of the bargaining unit and are properly included in the nonprofessional, court-related 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 nonprofessional, court-related bargaining unit is amended to include the position of Deputy Coroners in the Coroner's Office.

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 thirteenth day of July, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner