

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: CASE NO. PERA-U-24-245-W
:
: (PERA-R-443-W, PERA-R-311-W, PERA-
: R-837-W, PERA-R-172-W, and PERA-
: 825-W)
:
:
ALLEGHENY COUNTY :

PROPOSED ORDER OF UNIT CLARIFICATION

On October 17, 2024, the American Federation of State, County and Municipal Employees, AFL-CIO, Council 13, District Council 84 (Union) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to include the positions of discharge planner, mental health registered nurse, mental health specialist, registered nurse, substance abuse counselor and therapist into a county-wide residual unit of professional employees of Allegheny County (County or Employer) certified at PERA-R-443-W, PERA-R-311-W, PERA-R-837-W, PERA-R-172-W, and PERA-R-825-W. These classifications all work at the Allegheny County Jail (Jail).

On November 15, 2024, the Secretary of the Board issued an Order and Notice of Hearing assigning the petition to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties and designating February 19, 2025, in Pittsburgh, as the time and manner of hearing.

The hearing was necessary and held on April 28, 2025, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union and the County both filed post-hearing briefs on June 6, 2025.

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. 9).
2. The Union is an employee organization pursuant to PERA. (N.T. 9).
3. The Union is a certified exclusive bargaining representative of a county-wide professional unit of employees of the County. PERA-R-443-W, PERA-R-311-W, PERA-R-837-W, PERA-R-172-W, and PERA-R-825-W.
4. The positions of discharge planner, mental health registered nurse, mental health specialist, registered nurse, and substance abuse counselor share an identifiable community of interest with members of the Union's professional unit. (N.T. 8-10).
5. At the Jail, there are eight mental health therapists who work throughout the Jail. Their job includes meeting with individual inmates for one-hour sessions and developing treatment plans for the inmates. These

mental health therapists were hired by the Jail beginning in the summer of 2024. (N.T. 16-18, 34-35).

6. Part of the newly hired mental health therapists' duties were to inform the Jail and give feedback on mental health policies at the Jail so that the Jail could comply with the external demands from ongoing litigation over the Jail's mental health services for inmates. As part of the litigation, the Jail was required to design and implement new mental health policies. The new mental health therapists were also trained on how to comply with the outstanding litigation over the mental health policies of the Jail. (N.T. 48-49, 54-56; Respondent's Exhibit 1).

7. Mental health therapists work daily with other professional employees in the Jail. (N.T. 18).

8. Mental health therapists have the following job description which is an accurate summary of their duties and required qualifications:

Position Title: Mental Health Therapist

Salary: \$77,000 per year

. . .

Minimum Requirements:

- A Master's degree in Counseling, Social Work, Psychology, or a related field AND one (1) year of prior experience in a health or human services agency that includes one (1) year of experience with group and individual counseling.
- Licensure with the State Board of Social Workers, Marriage and Family Therapists, and Professional Counselors.

Must show proof of a current CPR/BLS certification prior to appointment. . . ,

Position Summary:

Reporting directly to the Clinical Behavioral Supervisor, the Mental Health Therapist works collaboratively with other sub-departments within the Health Services division at the Allegheny County Jail. The Incumbent provides direct psychological services to the incarcerated population, including, but not limited to, psychological assessments, screening, individual therapy, group therapy, treatment planning, case management, and referral.

Duties:

- Establishes positive, trusting rapport with the client base while asserting ethical boundaries.
- Diagnoses and treats mental health disorders through individual and group therapy.

- Creates individualized treatment plans collaboratively with other treatment providers and the participating client.
- Meets with patients regularly to provide counseling services.
- Conducts initial and ongoing assessments to evaluate progress.
- Involves other criminal justice agencies as clinically appropriate.
- Refers patients for additional services, if indicated.
- Maintains thorough documentation of services.
- Follows all procedures to maintain the safe provision of services within the institution.
- Participates in treatment team meetings with other members of the Mental Health Department.
- Maintains client confidentiality in accordance with state and Federal regulations.
- Recognizes trends and identifies needs within the incarcerated population that could be served by increased mental health services.
- Performs other duties as assigned.

Knowledge, Skills, Abilities

Knowledge of:

- Diagnostic criteria.
- Psychological evaluation and assessment.
- Techniques and best practices of mental health treatment and services.
- Incarcerated populations, recidivism, and service engagement.
- Trauma-informed therapeutic approaches, motivational interviewing, cognitive behavior therapy, and other research-based efficacious treatment processes and the laws and regulations that govern correction care and treatment.

Ability to:

- Function independently and make informed decisions using sound professional judgment and ethics.
- Interact with the incarcerated population in a professional manner.
- Seek creative solutions to enhance, develop, or augment services/programs within the institution.

- Communicate effectively with healthcare providers and colleagues.
- Establish and maintain effective working relationships with all levels of staff.
- Adapt to changing priorities and manage multiple tasks in a stressful environment.
- Facilitate group counseling and individual therapy sessions and assessments.
- Solve complex problems efficiently.
- Utilize strong research skills.
- Document clinical information.
- Execute tasks with a strong attention to detail. . . .

(N.T. 17-21, 25-26; Union Exhibit 1).

9. In the Jail, mental health therapists are also referred to as therapists. There are no other County employees at the Jail with the job title therapist. There are contracted third-party physical therapists who provide physical therapy. These physical therapists are not County employees. (N.T. 21-23, 61-62).

10. Carla Irvin is a Mental Health Registered Nurse who works for the County at the Jail. She has worked at the Jail since 1999 and has been a County employee since 2015. Prior to 2015, she worked for private company contractors in the Jail. She works in the acute psychiatric unit in the Jail and is a member of inmates' mental health treatment teams. (N.T. 13-14).

11. The petitioned-for job classifications work exclusively at the Jail. (Union Exhibit 1).

DISCUSSION

The Union petitioned to accrete the classifications of discharge planner, mental health registered nurse, mental health specialist, registered nurse, substance abuse counselor and therapist into a county-wide residual unit of professional employees of Allegheny County. At the hearing it was made clear that these positions all work exclusively at the Jail. It was also established that the therapist position is referred to as mental health therapist.

The County agreed at the hearing that all of the positions except mental health therapist share an identifiable community of interest with members of the Union's bargaining unit. The Union thus has the remaining burden of showing that the mental health therapists have an identifiable community of interest with other members of the bargaining unit. Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

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

43 P.S. § 1101.604.

When determining whether employees share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employees, grievance procedures, bargaining history, and employees' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. Id.

Section 301(7) of PERA provides as follows:

"Professional employee" means any employee 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 employee to be deemed professional under PERA. In the Matter of the Employees of Luzerne County Community College, 37 PPER 47 (Final Order, 2006). The same factors (such as work performed, educational and skill requirements) that support professional status also support the conclusion that the employees in a proposed professional bargaining unit share an identifiable community of interest with the existing professional employees in the unit. In the Matter of the Employees of Temple University, 47 PPER ¶ 54 (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); In the Matter of the Employees of Riverview Intermediate Unit, 37 PPER 106 (Final Order, 2006).

With respect to the mental health therapists, the record is clear that they are professional employees. The record shows that the job of mental health therapist is predominantly intellectual and varied in character. The mental health therapists perform a variety of high-level job functions throughout the Jail and do not have a routine set of duties. The mental health therapists must also use professional discretion and judgment in a variety of challenging circumstances such as counseling incarcerated clients and dealing with confidentiality and ethical issues in a challenging venue. The mental health therapist position requires a master's degree and professional certification. Finally, there is no question on this record that mental health therapists' duties cannot be standardized in relation to a given period of time. The mental health therapists are professional employees.

As the mental health therapists are professional employees, they share an identifiable community of interest with the other professional employees in the Union's unit.

Other factors also show that the mental health therapists share an identifiable community of interest. The Union astutely writes in its Brief:

. . . [I]n Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010), the Hearing Examiner noted that community of interest is satisfied where "employees with similar skills, education, core benefits and comparable wages are involved in the common goal of providing patient care in the same facility, either directly or indirectly, those employees share an identifiable community of interest, even though their specific job duties vary." Id., citing Pennsylvania State University (Hershey Medical Center), 23 PPER ¶ 23209 (Final Order, 1992) (holding that an identifiable community of interest exists between a group of coordinators and nurses where both groups are responsible for patient care and have similar compensation).

(Union's Brief at 11). Here, in this case, the record shows the mental health therapists are jointly responsible for inmate care with other professionals at the Jail and in this way share an identifiable community of interest.

The County argues in its Brief at 12-14 that the Union did not meet its burden of showing an identifiable community of interest. However, the determination that there is an identifiable community of interest above is based, in part, on the testimony of the Union's witness, Carla Irvin, who is a mental health registered nurse who works in the Jail's acute psychiatric unit. I find Irvin had sufficient knowledge of the actual job duties of the mental health therapists to credibly testify about their actual job duties and to confirm that the job description of the mental health therapists provided at Union Exhibit 1 was an accurate description of the actual job duties performed by the mental health therapists. This determination is made on the record as a whole including testimony from Irvin on direct such as:

Q. And Carla, how do you know that? How do you know what [the mental health therapists are] doing?

A. I work with them. I talk with them. One of therapists I talk with more often than not and I see one of therapists a few times a day for - where he's at he works in the clinic.

(N.T. 17). The record as a whole, including specifically the quoted testimony above, is adequate to show the witness had knowledge of the mental health therapists' duties sufficient for the Union to meet its evidentiary burden.

The County argues that the mental health therapists should be excluded because mental health therapist is a management level position. Section 301(16) of PERA defines "management level employee" as:

[A]ny individual who is involved directly in the determination of policy or who responsibly directs the

implementation thereof and shall include all employees above the first level of supervision.

43 P.S. § 1101.301(16). The Board has interpreted Section 301(16) of PERA as follows:

The statute may be read to state a three-part test in determining whether an employee will be considered managerial. Those three parts are (1) any individual who is involved directly in the determination of policy; (2) any individual who responsibly directs the implementation of the policy; or (3) employees above the first level of supervision.

Commonwealth of Pennsylvania (Attorney Examiners I), 12 PPER ¶ 12131 at 203 (Final Order, 1981).

Moving to this matter, the County has not met its burden of showing that a mental health therapist is a management level employee. There is no record to establish that mental health therapists are above the first level of supervision. The County also did not show that the mental health therapists determine or responsibly implement any policy at the Jail.

The County argues in its Brief at 8-10 that mental health therapists are managerial because they have autonomy "with respect to clinical decisions". The evidence here pointed to by the County is Respondent's Exhibit 1 which is the July 30, 2024 consent decree in the federal Eastern District case Howard, et al. v. Williams, et al., Case no. 20-CV-1389. The County attached this consent decree to its Brief. I take judicial notice of this consent decree and I can infer from the record that the Jail and mental health therapists were complying with the consent decree to some extent with respect to the job duties of the mental health therapists. With that in mind, reviewing the consent decree, the duties required by it are within the mental health therapists' professional expertise. 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). In Penn State, the Board held that a nurse practitioner's formulation of medical protocols was the result of professional expertise and not indicative of managerial authority. The Board relied on General Dynamics Corp., 1013 NLRB 851 (1974) and opined as follows:

Judgments of professional employees 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.

Moving back to this matter, I have reviewed the consent decree offered by the County and it is insufficient evidence to show managerial status.

Specifically, the duties described at pages 14-15¹ of the consent decree are job functions which are the natural and normal clinical duties of mental health therapists. I infer from the record that the goal of the consent decree was to allow the mental health therapists the freedom to perform their professional duties without interference from the management of the Jail. These protected duties do not transcend the mental health therapists' professional duties. Thus, while the decisions of the mental health therapists on issues such as, for example, whether an inmate is a danger to self or others, suicide watch, treatment modalities, and access to items may arguably have some impact on operation and managerial policy at the Jail, these decisions are well within their professional expertise. The fact that the mental health therapists' discharge of professional duties towards inmate clients was in part protected from interference by a consent decree does not make them managerial under PERA.

The County has not met its burden of showing the mental health therapists are management level employees.

Finally, the County argues that the Union did not comply with Board rules because the petition asks for "therapists" and not "mental health therapists". The County cites 34 Pa.Code § 95.23 which states in relevant part: "A petition for unit clarification shall contain . . . [t]he job classifications of employees as to whom the issue is raised and the number of employees in each classification. . . ." The County argues:

The Union opted to identify a specific position - mental health therapist - and include a multitude of positions that fall under a generic "Therapist" title. The

¹ The consent decree states at page 15:

VI. Clinical Autonomy

- a. Qualified Health Care Professionals ("QHCP") shall have autonomy with respect to clinical decisions. Clinical decisions shall be made without interference from other personnel.
- b. Non-clinical staff (non-QHCPs) shall have no input or decision making authority in the following:
 1. Decisions regarding medication, including distribution of medication;
 2. Whether any patient should be admitted or discharged from an acute pod;
 3. Whether patient is a danger to self or others (once a clinician is able to be present and make that determination);
 4. Whether a patient should be on suicide watch, and when any such watch should cease;
 5. Decisions regarding treatment modalities and frequency of those modalities, including individual counseling, group counseling, eligibility for programming, encounters with a QHCP, etc.;
 6. Patient's access to blankets, paper, writing instruments, books and hygiene items (except when such access is being denied for security reasons).

(Respondent's Exhibit 1).

Union's petition failed to provide the information explicitly required by Pennsylvania Code requirements. Moreover, the failure resulted in the [County] having insufficient information to adequately prepare for the hearing - specifically the Howard Award. The Union's inadequate petition violated the [County]'s fundamental due process rights as well as the specific mandates set forth within the Pennsylvania Code, as such the petition must be denied in its entirety.

(County's Brief at 12). Summarizing the County's arguments, the County is complaining that because the Union wrote "therapist" on the petition instead of "mental health therapist" and did not give the discrete number of therapists on the petition, the petition was invalid and the County was not on proper notice at the hearing that mental health therapists were at issue. This latter argument is a claim the County's due process rights were violated by having to participate in a hearing over an allegedly deficient petition.

Initially, the information provided in the petition was sufficiently proper for the Secretary to order a hearing on it. The fact that the order and notice of hearing was issued is evidence that the petition was proper. Further, the Board does not generally require that in a unit clarification petition which requests multiple classifications that the petitioner specifically define the number of employees in each particular discrete job classification. The Board instead requires that the petitioner list in the petition the total number of employees it is attempting to accrete across all requested job classifications so the Board may make any determinations required by the Board's policy in Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981) (a representation election must be conducted among the employees if the additional positions would increase the existing unit by more than fifteen (15) percent).

With respect to the County's due process argument, the Board has a liberal pleading requirement. Youngwood Borough Police Department, 17 PPER 17039 (Order Directing Remand, 1986). The Board is an administrative agency and this is an administrative proceeding. Administrative agency proceedings have never been held to the high standards of the lawsuit filed in a court of law. Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels., 4 Pa. Cmwlth. 448 (1972), aff'd, 413 U.S. 376 (1973). While a pleading (such as a petition) may not be exact in the required particulars, they may still be adequate to put a respondent on notice of the issues. On this topic, the United States Supreme Court has held:

It is sufficient if the language used is capable of an interpretation which reveals such essentials. Lack of precision is not itself offensive to the requirement of due process. The Constitution does not require impossible standards; all that is required is that the language conveys sufficient definite warning as to the prescribed conduct when measured by common understanding and practices.

Roth v. United States, 354 U.S. 476 (1957). Generally, I note that it is often the case in representation petitions and unit clarification petitions that the job titles listed by a union are not exactly the same as what the employer considers the job titles to be. This is the case for various reasons such as the union not having access to internal employer

documentation at the time the petition is filed or the fact that job classifications often are commonly known by shorter and more informal titles than compared to what titles are on any formal job description or in any human resources database. One of the functions of the post-petition administrative process before the Board is the identification and standardization of the most proper job classification titles for the purposes of collective bargaining so that any future certifications are as useful as possible for the parties to understand who is in or out of a unit.

In this matter, I find that the job title "therapist" is manifestly and objectively so similar to "mental health therapist" that the County was adequately on notice that the Union was referring to the mental health therapists in its petition. Furthermore, the record shows that the mental health therapists were the only county employees at the Jail with the word "therapist" in their job title when the petition was filed. There was also credible testimony that the mental health therapists are referred to and known as "therapists" in the Jail. While "therapist" is not the most complete title for the job classification, it was enough for the matter to move to a hearing on the issue. Therefore, considering the above, there was adequate notice to the County that the Union was referring to the mental health therapists and the County's due process rights were not infringed during the proceedings on this matter.

At the end of the first day of hearing, the County asked for a continuance and a second day of hearing. I made the determination to not grant the County's request for a continuance for a second day of hearing based on the fact that the County had adequate notice and time to prepare for the hearing and the fact that the record of the first day of hearing did not show any evidence which strongly supported the County's claim that the mental health therapists were management level employees. Thus, I made the determination that allowing a second day of hearing would not have likely led to the discovery of any information about the mental health therapists which would have modified the outcome of the petition and merely would have delayed the proceedings.

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. The Union is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The discharge planners, mental health registered nurses, mental health specialists, registered nurses, substance abuse counselors and mental health therapists at the County Jail share an identifiable community of interest with the members of the bargaining unit.
5. The mental health therapists at the Jail are not management level employees.
6. The classifications of discharge planner, mental health registered nurse, mental health specialist, registered nurse, substance abuse counselor

and mental health therapist at the Jail are properly included in the bargaining unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the bargaining unit is amended to include the classifications of discharge planner, mental health registered nurse, mental health specialist, registered nurse, substance abuse counselor and mental health therapist at the Jail.

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 seventeenth day of June, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

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