

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PERA-U-23-242-W  
: (PERA-R-626-C)  
GLENDALE AREA SCHOOL DISTRICT :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On October 30, 2023, the Glendale Education Association, PSEA/NEA (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification under the Public Employee Relations Act (PERA or Act) seeking to include the position of School Psychologist (Psychologist) and the position of Student and Family Relations Specialist (Specialist) in the bargaining unit of professional employes of the Glendale Area School District (District). On December 5, 2023, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Monday, February 26, 2024, in Harrisburg. During the hearing on that date, both parties in interest had a full and fair opportunity to present testimony, introduce exhibits, and to cross-examine witnesses. On April 29, 2024, the Union and the District filed separate post-hearing briefs. On May 10, 2024, the Union filed a supplemental letter brief, without objection from the District.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all the matters and documents 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. 8-9, JX-2)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA, and it is the certified exclusive collective bargaining representative of the District's professional employes, as affiliated with PSEA. The unit was originally certified as including classroom teachers, librarian, guidance counselor, and nurse; and excluding supervisors and confidential employes as defined in the Act. (N.T. 8-9; JX-1, JX-2)
3. Sean Gildea became the District's Superintendent on July 1, 2022, amidst the threat of potential lawsuits against the District for alleged acts and omissions in the Special Education Department. At the time of Mr. Gildea's arrival, the District did not have a Psychologist on staff. (N.T. 35-41, 57)
4. Mr. Gildea demoted the Supervisor of Special Education, who was not evaluating staff properly, to a teacher. In consultation with Dr. Gina McFalls from the Central Intermediate Unit, the District outsourced psychological evaluations until it could fill the vacant School Psychologist position. (N.T. 40-41, 50-52, 57)

5. The Psychologist must hold a Pennsylvania Department of Education (PDE) School Psychologist Certification. The Psychologist Certification allows the District's Psychologist to conduct psychological, academic, and behavioral assessments of students. The District requires the Psychologist to hold a Master's Degree, at a minimum, with training in psychology. The parties stipulated and agreed that the Psychologist is a professional employe within the meaning of Section 301(7) of PERA. (N.T. 9-12, 23-25; AX-4; DX-2, DX-5)

6. The District's Psychologist job description provides that the Psychologist reports to elementary and secondary school principals, the Supervisor of Special Education, and the Superintendent. (N.T. AX-4; DX-5)

7. Jackie Runk was the previous School Psychologist from 1997 until her retirement in the spring of 2022, before Superintendent Gildea's arrival at the District. After Ms. Runk's retirement, the District partnered with the Intermediate Unit and Penn State to perform the School Psychologist functions and duties. Ms. Runk was never included in the professional bargaining unit. The District had treated Ms. Runk as an Act 93 administrator from her hiring in 1997 until her retirement in the spring of 2022. (N.T. 56-58, 65; DX-6 through DX-12)

8. The Act 93 plans for Ms. Runk admitted into the record provided that she worked 123 days per school year from 2004 until her retirement in 2022. The District has an Act 93 Administrative Compensation Plan (ACP) for July 1, 2022, through June 30, 2026. The ACP was amended on October 18, 2022, to add the Psychologist for 205 workdays per year. The ACP was amended again on October 17, 2023, to add the Specialist for 220 workdays per year. (N.T. 68; DX-12)

9. Kelley Goss became the District's Psychologist in November of 2022. There was approximately a 6-to-8-month lapse between Ms. Runk's retirement and the beginning of Ms. Goss's employment at the District. Ms. Goss has a Master's Degree and a Level-2 School Psychologist Certificate from PDE. She has also completed her coursework for a Doctorate in School Psychology with a concentration in the neuropsychology of learning disorders. Upon being hired by the District, Ms. Goss understood that she would be overseeing student mental health issues and providing behavior strategies to paraprofessionals in classrooms. (N.T. 40-41, 58, 100, 163-167, 184; DX-14)

10. Psychologist Goss conducts psychoeducational evaluations of students to determine whether a student needs special education programming. This involves, among other duties, cognitive ability testing, academic achievement testing, social-emotional behavioral assessments, functional behavioral assessments, classroom observations of students, assessments for gifted students, threat and suicide assessments, as well as crisis intervention. She spends 80% of her time completing student evaluations and reports. (N.T. 149, 167-168, 185-186)

11. Haley Strong became the Supervisor of Special Education in June 2023. Supervisor Strong oversees the entire Special Education Department. She holds a Certificate of Supervision from PDE. Supervisor Strong oversees Ms. Goss's student evaluation reports and the timeliness of those submissions. (N.T. 99-100, 117-118, 126-127, 130, 148-149, 174; AX-5)

12. Terri Moore is the PSEA UniServ representative assigned to the District. In September 2023, Ms. Moore became aware that the District had

hired a Psychologist. She also became aware of the District's intention to hire a Specialist. (N.T. 225-226)

13. On September 25, 2023, Ms. Moore emailed Superintendent Gildea stating that it was her understanding that the District hired a Psychologist as an Act 93 employe. She also sought his agreement to file a joint petition for unit clarification with the Board to include the Psychologist position in the professional bargaining unit. Mr. Gildea forwarded the email to District Counsel who responded on September 29, 2023, in relevant part, as follows: "The School Psychologist at Glendale has never (to the best of my knowledge) been part of the bargaining unit and has always been included in the Act 93. Further, the position requires supervisory responsibilities related to the paraprofessionals." (UX-2)

14. Also on September 29, 2023, Ms. Moore responded that the Union's position remained that the Psychologist position should be in the bargaining unit and that the Union would file a unit clarification petition. (UX-2)

15. Before Superintendent Gildea arrived, the Specialist position did not exist at the District. Superintendent Gildea was seeking a K-12 emotional support teacher to fill that position. The District hired Curtis Henry into the Specialist position on November 13, 2023. He formerly worked at the District in a similar capacity, but he was employed by Cenclear, not the District. The Specialist is required to hold a Bachelor's degree and certifications related to behavioral health. Mr. Henry also travels to homes to work with families and students in their homes, after school hours. Mr. Henry is a 220-day employe. He also observes and trains paraprofessionals. The parties stipulated and agreed that the Specialist is a professional employe within the meaning of Section 301(7) of PERA. (N.T. 9-12, 51-53, 100, 130, 188-192, 196; DX-4, DX-12; AX-3)

16. Upon being hired by the District, Mr. Henry understood that he would be observing paraprofessionals when he is checking in on them or called in to attend to a particular student behavior situation. Mr. Henry has 3 regularly scheduled appointments with students. Otherwise, he can be called anywhere over a portable radio to address a concern that can be 1 of 3 levels of intervention. He can also check in on rooms at any time. (N.T. 196-197)

17. Once Mr. Henry enters a room, his role is to de-escalate the student behavior and transfer skills to the teacher and paraprofessional through demonstration and modeling. He engages in crisis intervention for approximately 7 hours of his 8-hour workday. In February 2024, Mr. Henry, on average, interacted with 4.5 paraprofessionals per day, 6.3 teachers per day, and 9.3 students per day. Sometimes he takes over a crisis situation, and other times he talks the teacher or paraprofessional through de-escalation techniques. When Mr. Henry worked for Cenclear at the District, he performed much of the same training and modeling of paraprofessionals as he does now as the District's Specialist. (N.T. 197-201, 211-214)

18. The current ACP provides that the Psychologist, in conjunction with the Supervisor of Special Education, will supervise paraprofessionals regarding positive behavior and mental health practices in the classroom. Supervision in this context relates to observation, evaluation, and training. (N.T. 111; DX-12)

19. PDE requires a Supervisory Certificate to supervise professional employees. PDE does not require supervisory certification to supervise paraprofessionals or aides in a school district. (N.T. 27-34; DX-3)

20. The Psychologist and the Specialist report to the Supervisor of Special Education and the Superintendent. Historically, the paraprofessionals also reported to the Supervisor of Special Education. (N.T. 96, 236)

21. The Supervisor of Special Education approves leave for the paraprofessionals, not the Psychologist or the Specialist. The Psychologist is not involved in discipline of paraprofessionals. The Superintendent and the Supervisor of Special Education handle discipline for the paraprofessionals. (N.T. 87, 106, 152, 214-215)

22. Debra Gregg is a paraprofessional at the District. Ms. Gregg must submit her leave requests to Supervisor Strong who is responsible for approving or denying her leave. Supervisor Strong also develops the schedule for the paraprofessionals. Paraprofessionals report directly to Supervisor Strong with any issues or problems with teachers. Paraprofessionals do not report to Psychologist Goss or Specialist Henry with those employment related issues. (N.T. 243-248, 266)

23. Heather Anderson is a paraprofessional at the District. She submits her leave requests through the "Frontline" computer software application to Supervisor Strong, who approves her leave request. If Ms. Anderson has an issue with a coworker, she reports it to Supervisor Strong. The District has not informed Ms. Anderson that Psychologist Goss and Specialist Henry are her supervisors. (N.T. 268-271, 273)

24. The paraprofessionals do not report any employment related issues to Psychologist Goss or Specialist Henry, including requesting leave, voicing complaints, or discussing discipline. Mr. Henry refers employment issues with the paraprofessionals to Supervisor Strong. If a paraprofessional approached Mr. Henry with a discipline issue, a complaint about a teacher, or a request for leave, he would refer those matters to Supervisor Strong, and he has not made any employment decisions when approached in the past. (N.T. 185, 214-215)

25. Superintendent Gildea, along with the prior Supervisor of Special Education, disciplined a paraprofessional for smacking a student in the head sometime during the prior year and placed her on a safety plan. Sometime during the 2023-2024 school year, Supervisor Strong issued a letter of warning to the same paraprofessional after she called a sick student's mother and told her to pick up her child, instead of taking the student to the School Nurse. (N.T. 160-162, 183)

26. Brenda Matish is the President of the Glendale Support Professionals Association which represents the bargaining unit of nonprofessional staff at the District that includes the paraprofessionals. Ms. Matish attends disciplinary meetings involving paraprofessionals. Ms. Matish attended a recent disciplinary meeting where the other attendees were the paraprofessional, Supervisor Strong, Superintendent Gildea, and school Principal Jenny Williams. Ms. Matish has not attended any disciplinary meetings involving a paraprofessional where either the School Psychologist or the Specialist was present. (N.T. 236-238, 249, 267)

27. Supervisor Strong and Psychologist Goss together developed a paraprofessional training manual. The manual addresses various topics such as: student accommodations and disabilities, confidentiality and FERPA, instructional supports, teacher assistance, and student behavior management. Ms. Strong and Ms. Goss met with paraprofessionals at the elementary and high schools to review the manual with them. The manual also provides that observations will be completed by Ms. Strong and Ms. Goss. (N.T. 122-124, 130, 169)

28. Mr. Henry participated in providing life skills training to the Life Skills teacher and the paraprofessional in the Life Skills classroom regarding the difference between bribes and positive reinforcement. (N.T. 206-207)

29. The Intermediate Unit issued a report assessing the Special Education Department at the District. In the report, the Intermediate Unit recommended that the District conduct evaluations of the paraprofessionals, which had not been done for some time, at least not for the year prior to Ms. Strong's employment as the Supervisor of Special Education. Ms. Strong created an evaluation tool or rubric for evaluating paraprofessionals based on the "Danielson" model, which was a pre-existing document. Ms. Strong, Ms. Goss, and Mr. Henry jointly reviewed and modified the model for evaluating District paraprofessionals and finalized it by December 2023, after Mr. Henry began employment at the District in November 2023. (N.T. 125-129, 130, 168-169, 173, 203-204; AX-5; DX-13)

30. On January 10, 2024, Supervisor Strong emailed the evaluation rubric to the paraprofessionals and notified them that she, Ms. Goss, and Mr. Henry would soon be conducting paraprofessional observations as a team. (N.T. 173-174; Ax-5)

31. In January and February of 2024, Psychologist Goss used the tool to observe 4 paraprofessionals. During the same time period, Supervisor Strong observed and evaluated 1 paraprofessional, and Specialist Henry observed 3 paraprofessionals.<sup>1</sup> (N.T. 80, 99-101, 126-130-132, 175, 204-205; DX-15; DX-17)

32. Ms. Goss and Mr. Henry observed these paraprofessionals in the classroom and filled out the evaluation form. Thereafter, Supervisor Strong met with each paraprofessional observed. Ms. Goss attended 1 of those meetings. (N.T. 175-176, 186)

33. Mr. Henry also met with Supervisor Strong to review 1 of his observations during which time they shared thoughts and contributed to the evaluation, which was not final until this meeting. If Supervisor Strong does not agree with something in an evaluation, they discuss changing it. (N.T. 151, 168, 175-176, 204-205, 218)

34. Supervisor Strong, along with Ms. Goss and Mr. Henry, collectively developed training for paraprofessionals for Act 80 days based on what they saw the needs were in the classroom. The training included material on challenging behaviors, trauma, de-escalation, and positive

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<sup>1</sup> Although Specialist Henry was employed by the District for a little over a month when he began observing and evaluating paraprofessionals, he had been at the District as a contractor working for Cenclear for 16 years. (N.T. 189)

communication. Ms. Goss and Mr. Henry provide modeling for paraprofessionals. Modeling is demonstrating positive behavior intervention, applied behavior analysis, and management of specific students' behaviors in the presence of the paraprofessional. (N.T. 90-92, 133-134, 150-151, 168, 186, 218)

35. The Life Skills teacher and Emotional Support teachers have portable radios to call for help when a student is acting out. Either Ms. Strong, Mr. Henry or Ms. Goss will respond. The one who takes the call will model for the teacher and/or the paraprofessional by making suggestions about handling the situation and demonstrating de-escalation techniques. Paraprofessionals report behavioral issues to Ms. Goss to obtain student driven strategies. (N.T. 136-138, 168, 170, 184-185)

36. Ms. Goss and Mr. Henry are not scheduled to be in certain classrooms on a daily basis. Mr. Henry patrols the elementary and high schools, and he checks in on students and paraprofessionals who have had needs in the past. Ms. Goss and Mr. Henry interact with paraprofessionals when they are called into a room to handle a student situation. (N.T. 157-158)

37. At times, Supervisor Strong and Ms. Goss have met in a classroom with elementary and high school paraprofessionals and teachers to review observation reports from the Pennsylvania Training and Assistance Network (PaTTAN).<sup>2</sup> Ms. Goss has never conducted one of these meetings with any of the paraprofessionals by herself. (N.T. 171-173, 186)

38. Psychologist Goss has met with paraprofessionals to give advice on how to modify student assignments or behavior in the classroom. She has worked with Special Education teachers to help them develop IEP goals or to understand the students' testing results. (N.T. 181-182)

39. Mandy McCready from Intermediate Unit 10 provides safety care training to paraprofessionals and teachers at the District. After completing the training, staff receive a certificate of completion. The training teaches paraprofessionals and teachers nonaggressive, de-escalation techniques and, as a last resort, physical restraint, which must be reported to the Commonwealth when used. Special Education staff must renew this training annually. (N.T. 141-146, 168)

40. Supervisor Strong and Psychologist Goss interviewed paraprofessionals for hire. Supervisor Strong and Psychologist Goss made hiring recommendations to Superintendent Gildea regarding new paraprofessional hires. (N.T. 154, 159, 168-169)

## **DISCUSSION**

The Union has the initial burden of establishing that the Psychologist and the Specialist share an identifiable community of interest with employes in the professional bargaining unit. The stipulated status of these two

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<sup>2</sup> The PaTTAN web page states that PaTTAN provides professional development and technical assistance to improve student results through summer institutes, webinars, ongoing professional development series, on-site assistance, and individual student or teacher supports.

employees as professional employees, as well as other factors, such as working for the same employer, in the same building environment, with similar benefits and conditions, while involved in various levels of student-centered duties, satisfies the Union's burden of proving that the Psychologist and the Specialist share an identifiable community of interest with the teachers in the professional bargaining unit. In the Matter of the Employees of Riverview Intermediate Unit No. 6, 37 PPER 106 (Final Order, 2006). However, the District, while agreeing that the two employees are professional, posits that the Psychologist and the Specialist lack an identifiable community of interest with the other professionals in the bargaining unit because they are supervisors and/or managers of paraprofessionals and should be statutorily excluded from the bargaining unit. As the party seeking to maintain the exclusion of these 2 positions, the District has the burden of establishing either of these 2 statutory exclusions. In the Matter of the Employees of State System of Higher Educ., 29 PPER 29234 (Final Order, 1998), *aff'd*, 737 A.2d 313 (Pa. Cmwlth. 1999); Dormont Borough, 41 PPER 66 (Proposed Order of Unit Clarification, 2010). City of Coatesville, 28 PPER 28053 (ODSEL, 1997); In the Matter of the Employees of Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977).

Preliminarily, I have admitted and evaluated post-petition evidence in this case, under the Board's standard in Westmoreland County, 40 PPER 35 (Final Order, 2009). In Westmoreland, the Board reversed the examiner's application of Elizabeth Township, 33 PPER 33053 (Final Order, 2002), which precludes post-petition evidence. The policy set forth in Elizabeth Township is designed to deter employers from assigning job duties to an employe after a petition is filed simply to justify the employe's inclusion or exclusion from the bargaining unit. However, the Westmoreland Board held that, where there is no reason to believe that the employer altered job duties for that purpose due to changes in and/or restructuring of the employer's operation, post-petition evidence is admissible to support the determination of whether the employe(s) in question belong in or out of the bargaining unit.

In this case, the District did not create or change job duties for the Psychologist or the Specialist post-petition simply to create the illusion that they were either supervisors or managers. The District had begun extensive changes in the Special Education Department when Superintendent Gildea began his employment at the District, in July 2022, to address deficiencies in the Department, manifested by threatened lawsuits and recommended changes from the Central Intermediate Unit. These changes began pre-petition and were rolled out over a period of time. The post-petition evidence in this case was the natural progression of pre-petition restructuring. Additionally, Specialist Henry did not begin District employment until November 2023, which was post-petition. Accordingly, the Specialist's actual job duties had to occur and develop after the petition was filed.

The statutory definition of a supervisor requires the employe in question to perform a set of specifically prescribed duties. Section 301(6) of PERA provides as follows:

(6) "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 employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is

not merely routine or clerical in nature but calls for the use of independent judgment.

43 P.S. § 1101.301(6). Section 301(19) provides that the "[f]irst level of supervision' and [a] 'first level supervisor' means the lowest level at which an employe functions as a supervisor." 43 P.S. § 1101.301(19). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), *appeal den'd*, 568 Pa. 675, 795 A.2d 984 (2000).

In applying these 3 statutory standards, the Board will only consider the actual job duties performed by the employe in question and will only consider written job descriptions to corroborate testimony of actual job duties. Elizabeth Township, supra. Written descriptions alone are not substantial, competent evidence of job duties. *Id.* Furthermore, "[a] mere job title or appellation, such as, supervisor or manager is not sufficient to overcome the actual duties performed as evidence of being a supervisor under Section 301(6) of PERA." West Perry, 752 A.2d at 465.

In determining whether an employe or employes should be deprived of the rights, benefits and privileges provided by PERA, the Board should "consider such factors as frequency, duration and importance of the various supervisory duties performed." West Perry Sch. Dist., 752 A.2d at 465; State System, 737 A.2d at 316. The Board will find an employe to be a supervisor if the employe actually exercises authority set forth in Section 301(6) of the Act and if the employe's exercise of such authority carries with it the power to reward or sanction employes. Belle Vernon Area School District, 21 PPER 21165 (Final Order, 1990). The Board will not find an employe to be a supervisor if the employe only exercises supervisory authority sporadically. Pennsylvania State University, 19 PPER 19156 (Final Order, 1989). The Board will not find an employe to be a supervisor if the employe's exercise of supervisory authority is as a substitute for his or her own supervisor. Monroe County, 18 PPER 18002 (Final Order, 1986). Also, the Board will not find an employe to be a supervisor if the employe's recommendations are not given controlling weight. In The Matter of the Employes of Philadelphia Housing Authority, 22 PPER 22082 (Order Directing Submission of Eligibility List, 1991); Keystone Central School District, 12 PPER 12044 (Nisi Order or Unit Clarification, 1981); Chester County Solid Waste Authority, 18 PPER 18021 (Order Directing Submission of Eligibility List, 1986).

In Danville Area School District, supra, the Board examined the meaning of the statutory term "responsibly to direct" employes. The Danville Board stated that the term "[D]irect'" infers 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." Danville, 8 PPER at 196. "The right to order the work force and the ability to effect reward or sanction are what distinguish a 'supervisor' from a 'task leader.'" *Id.*

The duties and responsibilities of the Psychologist do not satisfy the stringent statutory standard of supervisor. The record does not demonstrate that Psychologist Goss has the authority in the interest of the District to effectively recommend the transfer, suspension, layoff, promotion, discharge, or discipline of paraprofessionals. Also, the record does not show that she



directly assigns specific duties to individual paraprofessionals or assigns them to certain rooms, students, or teachers or that she approves leave for the paraprofessionals. The record does not show that Ms. Goss receives and handles grievances or complaints from paraprofessionals about employment matters or complaints against coworkers or teachers. More significantly, even had the record shown that Psychologist Goss performed some of these duties, the record does not show that statutorily prescribed duties were collectively performed for a substantial period of time or more than sporadically. Indeed, Ms. Goss credibly testified that she spends 80% of her time completing student evaluations, which would leave only 20% of her time for any supervisory functions.

Although Ms. Goss was involved in interviewing paraprofessionals along with Supervisor Strong, the hiring determinations were collaborative, and the record does not establish whose recommendation was being given controlling weight by the Superintendent and/or the school board. Supervisor Strong and Psychologist Goss together determined which paraprofessional candidates they would recommend for hire. But the Superintendent may have followed those recommendations and presented them to the school board because Supervisor Strong was supporting or making those recommendations. The record does not establish that the District was following or giving controlling weight to the hiring recommendations of Psychologist Goss. It is for this reason that the Board has long held that the mere participation on a panel that interviews and recommends a candidate for employment is insufficient to support a supervisory determination. Saucon Valley Education Association v. Saucon Valley School District, 32 PPER 32167 (Final Order, 2001). Accordingly, the District did not meet its burden of establishing that Psychologist Goss effectively recommends hiring paraprofessionals.

The record also establishes that Psychologist Goss provides instruction and training to paraprofessionals. However, training and instruction alone are not statutory elements demonstrating supervisory status. In Pennsylvania State University, Milton S. Hershey Medical Center (Hershey), 20 PPER 20126 (Final Order, 1989), the Board concluded that staff development instructors, who teach staff orientation, continuing education courses, in-service training, training assessment, and demonstrations of doing rounds, were not supervisors under the Act. The Board also concluded that the ability to recommend further orientation for some nurses, without the ability to discharge them, did not rise to the level of a supervisory function warranting exclusion from the bargaining unit under PERA.

Significantly, the Hershey Board emphasized that “[a]n employe who lacks the authority to effect reward or sanction simply cannot be excluded from a bargaining unit as a supervisor.” Hershey, 20 PPER at 344. Indeed, the Board, in Findlay Township Water Authority, 21 PPER 21130 (Final Order, 1990), strengthened the rule by pronouncing that the “hallmark of supervisory status under the Act in this regard is the ability to effect reward or sanction.” Id. at 324 (emphasis added). Absent the ability for Psychologist Goss to reward or sanction paraprofessionals, Goss’s training of paraprofessionals in relation to the care, custody, and control of Special Education students, constitutes the exercise of technical expertise rather than supervisory authority in the interest of the District. Id. The evidence in this case did not demonstrate that the training and modeling of intervention and de-escalation techniques for teachers and paraprofessionals came with the supervisory authority to reward or sanction paraprofessionals for a failure or inability to emulate the training or techniques.

Also, training and educating paraprofessionals in the District, through modeling or collaborating on a training manual, is the exercise of technical expertise and does not support a finding of supervisory authority as defined in Section 301(6). The Psychologist teaches and trains paraprofessionals by demonstrating technical knowledge and industry standards rather than supervisory authority in the interest of the District in employment related matters. A training manual is not an employe handbook that governs terms and conditions of employment.

Moreover, the record shows that both Supervisor Strong and Ms. Goss developed the training manual. The record is unclear which one ultimately decided which material would be included and excluded from the manual. The inference, however, is that Supervisor Strong's involvement was necessary to control the content and the process of developing the manual, which does not support the conclusion that the District has granted the authority to Ms. Goss to perform those functions alone. Notwithstanding, the training manual development does not involve the hallmark of supervisory status which is to reward or sanction employes. Additionally, the record shows that no evaluations are finalized until Supervisor Strong reviews them and makes a final determination. The evaluations are not entirely within the discretion of Psychologist Goss. Also, there is no evidence that the evaluations in any way operate to effect reward or sanction on the paraprofessional employes.

Similarly, Specialist Henry is a teacher with a unique set of skills, expertise, and experience. He demonstrates and teaches various intervention methods on a daily basis. He teaches both paraprofessionals and teachers his unique knowledge through instruction and demonstrations for the benefit of the students. Training, without the ability to reward or sanction the employes being trained, is not a supervisory function under Section 301(6). Hershey, supra.

As with the Psychologist, Specialist Henry's observations of paraprofessionals are reviewed and finalized by Supervisor Strong. The evidence shows that he is not the sole evaluator of the paraprofessionals who he observes. And again, there is no evidence establishing that these evaluations have the effect of rewarding or sanctioning the paraprofessionals in terms of assignments, transfers, promotions, or wages. There is also no evidence that the evaluations that are preliminarily prepared by Ms. Goss and Mr. Henry, for review by Ms. Strong, are given controlling weight resulting in reward or sanction. Accordingly, the mere fact that Ms. Goss and Mr. Henry have infrequently prepared performance evaluations does not, in itself, show that they are statutory supervisors.

Specialist Henry admitted that he does not handle any employment issues with the paraprofessionals, and he refers any such complaints, grievances, and problems, other than student centered interventions, to Supervisor Strong. He has not been involved in any disciplinary matters. He does not effectively recommend or responsibly direct the hiring, transferring, suspension, layoff, recall, promotion, discharge, assignment, reward, or discipline of paraprofessionals, nor does he approve leave. To the extent that Specialist Henry directs paraprofessionals to employ certain student intervention and de-escalation techniques throughout the workday, he is involved in providing technical instruction and not employment related assignments. He is, as his title suggests, the professional specialist needed for handling certain student issues that are beyond the expertise of the paraprofessional and the special education teacher.

Overseeing instruction and/or training is not a factor under Section 301(6) in determining whether an employe qualifies as a statutory first level supervisor where, as here, the record demonstrates that Specialist Henry does not have the authority to reward or sanction employes as part of the training. Hershey, supra. In addition, Specialist Henry does not adjust grievances or complaints from the paraprofessionals or responsibly direct them, such that he could reward or sanction paraprofessionals for the manner in which they comply, or fail to comply, with his technical directions.

The District also maintains that the Psychologist and the Specialist should be excluded from the professional bargaining unit as management level employes under the Act. Section 301(2) of PERA provides that the term "Public Employe" under the Act does not include management level employes. 43 P.S. § 1101.301(2). Management level employes, therefore, do not possess the rights described in Article IV of the Act. 43 P.S. §1101.401. Furthermore, Section 301(16) of the Act defines a management level employe as: "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). That is, a manager is an employe (1) who is directly involved in the determination of policy; (2) who directly implements policy; or (3) who is above the first level of supervision. Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016); Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010). The test is disjunctive. East Stroudsburg Area School District, 52 PPER 51 (Final Order, 2021).

The Board consistently relies on its decision in Horsham Township, 9 PPER 9157 (Order and Notice of Election, 1978) for determining the meaning of the first 2 prongs of the managerial test. With respect to the first prong, the Horsham Board explained as follows:

An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the statute does not include a person who simply drafts language for the statement of policy 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.

Horsham, 9 PPER at 327. The Board in Horsham also stated that, concerning the second prong of the managerial test, employes who responsibly direct the implementation of policy include:

[P]ersons 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.

Id.

The District argues that the duties of the Psychologist and the Specialist fit squarely into the Horsham test in the same way as the coordinator positions at issue in East Stroudsburg Area School District, 52 PPER 51 (Final Order, 2021). The Board has distinguished between exercising discretion to develop and/or implement managerial policies on the one hand, and the authority to exercise professional and technical expertise in a given field, on the other hand, to develop training to improve the skills of employees.

In Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016), the Board stated that “[i]n distinguishing between management level employees and employees who exercise professional or technical judgments 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.” In Port Authority, the Board held that a technical specialist “utilized his professional expertise and technical knowledge, and not any management level policy making authority, to develop a body of technical information and course work” for other employees. Id. The Board also held that technical trainers who developed standard operating procedures and protocols for maintaining bus systems were not involved in the development or implementation of managerial policies and instead utilized technical discretion and expertise within their professional responsibilities.

In this case, both the Psychologist and the Specialist directly deal with faculty, students, and families in providing professional expertise regarding mental health and behavioral issues, which is not a management role. The record shows that Supervisor Strong and Psychologist Goss developed a paraprofessional training manual that addresses student accommodations, student disabilities, student confidentiality, teacher assistance, instructional supports, and student behavior management. Ms. Strong and Ms. Goss met with paraprofessionals to review the manual, which also provides that Ms. Strong and Ms. Goss will conduct paraprofessional observations.

Although Ms. Goss and Mr. Henry may have participated “with regularity in the essential process which result[ed] in [the training manual] proposal and the decision to put such a proposal into effect,” Horsham, supra, the training manual is not a managerial proposal. The development of the training manual rather was the exercise of technical expertise for the purpose of relating best practices for providing proper care, custody, control, and educational development to special education students, akin to the standard operating procedures for bus maintenance at issue in Port Authority, supra. Also, although the training manual is not a managerial policy, the nature and extent of Ms. Goss’s and Mr. Henry’s contribution is unclear, and the facts of record yield the inference that Supervisor Strong controlled the substantive outcome of the final training manual.

Moreover, the record does not establish that, under the policy implementation prong of the management standard, Ms. Goss or Mr. Henry have the authority to ensure "the actual fulfillment of [the training manual] by concrete measures," Horsham, supra, that they have the authority to deviate from the manual, or the authority to effectuate changes without approval from Supervisor Strong. The same result obtains regarding the development and presentation of in-service training for Act 80 days and reviewing PaTTAN reports with paraprofessionals. Although Psychologist Goss has met with paraprofessionals to give advice on how to modify assignments or behavior in the classroom, she has also worked with teachers to help them develop IEP goals and understanding student testing results. These trainings are all part of applying her technical expertise to teaching District employees on student-centered protocols for helping special education students minimize behavioral and academic deficiencies. To the extent that such meetings with District teachers and paraprofessionals constitutes implementing provisions of the training manual, the manual is a technical guide and not a managerial policy.

Unlike the employees in the Coordinator positions in East Stroudsburg, supra, who possessed the independent authority to address non-compliance with district policies, the record in this case shows that neither the Specialist nor the Psychologist exercise independent judgment or authority in developing changes or choosing not to apply any managerial policies. The record does not show that there are circumstances when either Ms. Goss or Mr. Henry have the authority to deviate from applying certain provisions of the manual or that they have the authority to recommend employment action against an employee for non-compliance, within the meaning of Horsham, supra. Accordingly, Psychologist Goss and Specialist Henry, on this record, are not implementing managerial policies. The Board has not identified the development or implementation of training manuals, guides, or courses as the development or implementation of managerial policy.

The Central Intermediate Unit recommended that the District conduct evaluations of the paraprofessionals, which had not been done for some time, at least not for the year prior to Ms. Strong's employment as the Supervisor of Special Education. Supervisor Strong created the evaluation rubric for the paraprofessionals based on the Danielson model which was tailored to the District paraprofessionals with input from Ms. Goss and Mr. Henry and finalized in December 2023, after Mr. Henry began his employment with the District in November 2023. Supervisor Strong decided to reinstate evaluations at the recommendation of the Intermediate Unit. The District already had a policy to conduct evaluations which had been done in the past, but Ms. Strong re-implemented the existing policy at the behest of the Intermediate Unit, not Psychologist Goss or Supervisor Henry.

However, as with the training manual, Ms. Goss and Mr. Henry did not participate in the decision to put the evaluation program into effect as required by the conjunctive standard for the first prong of managerial status from Horsham, supra. As far as conducting observations and preliminary evaluations of paraprofessionals is concerned, Ms. Strong ultimately determines the final evaluation for every paraprofessional. Ms. Strong took responsibility for emailing the paraprofessionals about their evaluations and providing them with the rubric. The ultimate responsibility for "the actual fulfillment of the [evaluation program] by concrete measures," Horsham, supra, lies with Supervisor Strong. Indeed, Psychologist Goss and Supervisor Henry, on this record, do not have the authority to deviate from the

evaluation rubric or effectuate changes without approval from Supervisor Strong, who signs off on paraprofessional evaluations and who has the authority to change the evaluations submitted by Ms. Goss and Mr. Henry. Moreover, observing paraprofessionals and conducting their preliminary evaluations is a process of measuring and assessing how well the paraprofessionals' performance complies with the goals and policies of the District. The process of completing the evaluations does not itself constitute the implementation of specific managerial policies.

Also, the record does not show that Psychologist Goss and Supervisor Henry are above the first level of supervision, within the meaning of the third prong of the management test under Section 301(16) of the Act. There are no first-level supervisors who report to either of them for any employment related matters. To the extent that paraprofessionals are required to defer to the professional expertise, guidance, training, and modeling of the Psychologist and the Specialist, the paraprofessionals are not first-level supervisors, and the professional guidance is not a supervisory or managerial function.

Accordingly, the School Psychologist and the Student and Family Relations Specialist are professional employees within the meaning of Section 301(7) of the Act. Moreover, the position of Psychologist and the position of Specialist are not supervisory positions within the meaning of Section 301(6) and (19), and Section 604(5) of the Act or management level positions under Section 301(16) of the Act. Therefore, the Psychologist and the Specialist share an identifiable community of interest with the other employees in the professional bargaining unit at the District, and those positions are thereby properly included in the professional bargaining unit represented by the Glendale Education Association.

#### **CONCLUSION**

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The School Psychologist and the Student and Family Relations Specialist are professional employees under Section 301(7) of PERA, and they share an identifiable community of interest with the other employees in the professional bargaining unit.
5. The School Psychologist and the Student and Family Relations Specialist are not first-level supervisors as defined in Sections 301(6), 604(5), and 301(19) of the Act.
6. The School Psychologist and the Student and Family Relations Specialist are not management level employees as defined in Section 301(16) of the Act.

7. The School Psychologist and the Student and Family Relations Specialist are properly included in the professional bargaining unit certified by the Board at PERA-R-626-C with the Glendale Education Association as the certified exclusive collective bargaining representative.

**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 granted, and the bargaining unit description is hereby amended to include the positions of School Psychologist and Student and Family Relations Specialist in the professional bargaining unit certified by the Board at Case Number PERA-R-626-C.

**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 sixteenth day of May 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Jack E. Marino

JACK E. MARINO, Hearing Examiner