

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 : Case No. PERA-U-10-367-W
 : (PERA-R-2160-W)
ALLEGHENY COUNTY :

PROPOSED ORDER OF DISMISSAL

On October 7, 2010, SEIU Local 668, PSSU, CTW (SEIU Local 668), filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to include in a previously certified meet and discuss unit of first level supervisors employed by Allegheny County (County) "(12) first level supervisors who are currently classified as management level employees." On October 12, 2010, SEIU Local 668 amended the petition to identify the twelve employees as D. Allison, D. Casserly, P. Chiorazzo, G. Coda, L. Coyner, R. Daniels, A. Mangretta, W. Price, H. Rizzo, J. Roach, J. Shrott and W. Siebert and their classifications as regional maintenance supervisors or regional park maintenance supervisors. On October 26, 2010, the secretary of the Board issued an order and notice of hearing directing that a hearing be held on February 2, 2011. In anticipation of inclement weather on February 2, 2011, the hearing examiner continued the hearing to March 7, 2011. On March 1, 2011, the hearing examiner continued the hearing for cause upon the request of the County. On May 20, 2011, the hearing examiner held the hearing and afforded the parties a full opportunity to present evidence and to cross-examine witnesses. On July 29, 2011, the County filed a brief by deposit in the U.S. Mail. On August 12, 2011, SEIU Local 668 filed a brief by deposit in the U.S. Mail.

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

FINDINGS OF FACT

1. On November 28, 1972, the Board certified SEIU Local 668 as the exclusive representative of a meet and discuss unit of first level supervisors employed by the County. The Board excluded management level employees from the unit. (Case No. PERA-R-2160-W)
2. The County has established a public works department whose responsibilities include maintaining roads, bridges and parks and whose director (Joseph Olczak) is responsible for its overall operation. Within the maintenance division of the department, the County employs seven regional maintenance supervisors (Dan Casserly, Louis Coyner, Anthony Mangretta, William Price, James Roach, James Schrott and William Siebert) and four regional park maintenance supervisors (David Allison, Philip Chiorazza, Gilbert Coda and Richard Daniels), all of whom report directly to Director Olczak. The County also employs a paving supervisor (Henry Rizzo), who reports directly to the department's field manager (George Thompson). (N.T. 35-43, 49-52, 83, 89-90; County Exhibits 1-2)
3. The regional maintenance supervisors are responsible for day-to-day operations within an assigned district. They make sure that roads and bridges within their district are taken care of and kept in good repair, prioritize the processing of work orders within their district, determine the number of employees and types of equipment to be used on a particular project within their district and coordinate with other regional maintenance supervisors for assistance with manpower and equipment as needed. They also make sure that directives from Director Olczak are carried out. (N.T. 6-8, 17, 19-24, 31, 43-47, 52-57, 64-72, 77-80, 128-129; Petitioner Exhibit 1, County Exhibits 4-5)
4. The regional park maintenance supervisors are responsible for day-to-day operations within a particular park. At North Park, Mr. Coda is responsible for making sure that grass is cut, shelters are cleaned, swimming pools, a golf course and a skating rink are maintained, parking lots are paved or repaired and buildings are rented. He also coordinates events with the public and decides the priority to be given to a particular task. At Boyce Park, Mr. Chiorazzo is responsible for making sure that a bikes, blades and boards park, a nature center, shelters, groves, a ski lift and ball fields are maintained.

At South Park, Mr. Daniels is responsible for making sure that shelters and rental buildings are cleaned and repaired and that a wave pool and a game preserve are maintained. At Hartwood Acres, Mr. Allison is responsible for the maintenance of a mansion, making preparations for free summer concerts and coordinating a festival of lights show in the winter. (N.T. 40, 91-110, 115-117; Petitioner Exhibit 2, County Exhibits 6-7)

5. The paving supervisor is in charge of in-house paving and resurfacing of roads and bridges throughout the County during the summer. He sets the priorities for different paving projects. (N.T. 83-86, 88-89, 118-119; County Exhibits 2 and 8)

DISCUSSION

SEIU Local 668 has petitioned to include regional maintenance supervisors and regional park maintenance supervisors in a meet and discuss unit of first level supervisors. As noted in the procedural history, SEIU Local 668 named H. Rizzo as an employe covered by the petition, but the record shows that his job title is paving supervisor (finding of fact 2). Thus, the petition apparently covers paving supervisors, too, although SEIU Local 668 does not so argue in its brief.

The County would have the Board dismiss the petition to the extent that it covers the regional maintenance supervisors and the regional park maintenance supervisors because they are management level employes. The County also would have the Board dismiss the petition to the extent that it covers the paving supervisor because the paving supervisor is a management level employe as well.

The Board has excluded management level employes from the meet and discuss unit (finding of fact 1), so if the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor are management level employes, the petition must be dismissed.

Recently, in Abington Heights School District, 42 PPER 18 (Final Order 2011), the Board explained the applicable law as follows:

"Section 301(16) of PERA defines 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). The burden of proving the management level exclusion is on the party seeking the exclusion. School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998). In West Penn Township, 37 PPER ¶ 120 (Final Order, 2006), the Board stated that:

In Commonwealth of Pennsylvania (Attorney Examiners), 12 PPER ¶ 12131 (Final Order, 1981), the Board interpreted Section 301(16) of PERA in the following fashion:

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

12 PPER at 203.

In Horsham Township, 9 PPER ¶ 157 (Final Order, 1978), the Board interpreted the policy formulation part of the test of management level status 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.

9 PPER at 327.

The Board went on in Horsham Township to discuss the second part of the test for management level status, i.e.: policy implementation, to include the following:

...[T]hose persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures provided that such role is not of a routine or clerical nature and bears managerial responsibility to ensure completion of the task. The administration of policy involves basically two functions: (1) observance of the terms of the policy, and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy.

Id. Accordingly, in order to be excluded from a unit as a management level employe under PERA, the employe must either engage in meaningful participation in development of the employer's policy, or must ensure fulfillment of that policy by concrete measures.

37 PPER at 397."

Id. at 54.

An employe who meets any of the three parts of the test must be found to be management level. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010), appeal denied, 2011 Pa. Lexis 526 (March 8, 2011).

Application of the law to the facts of record leads to the conclusion that the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor are management level employes because they meet the second part of the test.

A close review of the record shows that the County has established a public works department whose responsibilities include maintaining roads, bridges and parks and whose director (Mr. Olczak) is responsible for its overall operation (finding of fact 2). A close review of the record also shows that the regional maintenance supervisors are responsible for day-to-day operations within an assigned district, while the regional park maintenance supervisors are responsible for day-to-day operations within a particular park and the paving supervisor is in charge of in-house paving and resurfacing of roads and bridges throughout the County during the summer (findings of fact 3-5).

On a substantially similar record in AFSCME v. PLRB, 330 A.2d 300 (Pa. Cmwlth. 1975), the court held that automotive equipment foremen who worked under a county superintendent were management level employes under the second part of the test. In that case, the record showed that the automotive equipment foremen were responsible for directing automotive equipment programs in the various counties of the Commonwealth and that their responsibilities included "making sure that equipment and operators are available in the field, to meet requirements, and to get the work done in the field." 2 PPER at 201. On that record, the court concluded that the automotive equipment foremen "responsibly direct the implementation of the policies of the district superintendent with respect to road construction and maintenance." 330 A.2d at 301.

Given that the responsibilities of the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor are substantially similar to those of the automotive equipment operators held to be management level employees in AFSCME, the same result obtains here.¹

SEIU Local 668 contends that the regional maintenance supervisors and the regional park maintenance supervisors are not management employees because

"[t]estimony was not provided to show that the Regional Maintenance Supervisors and the Regional Park Maintenance Supervisors changed procedures or methods to ensure th[e] actual fulfillment of policy by concrete measures but rather, they simply follow the methods and procedures of their superiors."

Brief at 6. SEIU Local 668 also points out that a regional maintenance supervisor (Mr. Roach) testified that he does not implement policy (N.T. 14).

Mr. Roach's testimony that he does not implement policy as a regional maintenance supervisor was conclusory, however, and as such does not support SEIU Local 668's contention. Moreover, as noted above, the record shows that the regional maintenance supervisors are responsible for day-to-day operations within an assigned district, while the regional park maintenance supervisors are responsible for day-to-day operations within a particular park and the paving supervisor is in charge of in-house paving and resurfacing of roads and bridges throughout the County during the summer. Thus, contrary to SEIU Local 668's contention, the record shows that the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor do not "simply follow the methods and procedures of their superiors" but rather bear managerial responsibility to ensure the actual fulfillment of policy by concrete measures, which as the Board explained in Abington Heights School District, supra, is the hallmark of management level employe status under the second part of the test.²

CONCLUSIONS

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 under section 301(1) of the PERA.
2. SEIU Local 668 is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. Regional maintenance supervisors, regional park maintenance supervisors and paving supervisors are management level employes under section 301(16) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

¹ The County also contends that the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor are management level employes because they are involved directly in the determination of policy and therefore meet the first part of the test. Given that the regional maintenance supervisors, the regional park maintenance supervisors and the paving supervisor are management level employes under the second part of the test, however, there is no need to address whether or not they also are management level employes under the first part of the test. See Westmoreland County, supra (an employe is management level if they meet any of the three parts of the test).

² SEIU Local 668 also contends that the regional maintenance supervisors and the regional park maintenance supervisors are not management level employes because they do not meet the third part of the test. According to SEIU Local 668, working foremen under the regional maintenance supervisors and the regional park maintenance supervisors are not first level supervisors, so the regional maintenance supervisors and the regional park maintenance supervisors cannot be above the first level of supervision as a matter of law. The County does not contend that the regional maintenance supervisors and the regional park maintenance supervisors are management level employes because they are above the first level of supervision, however, so whether or not they meet the third part of the test is not before the Board and need not be addressed.

HEREBY ORDERS AND DIRECTS

that the petition is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order will be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this seventeenth day of August 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner