

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case Nos. PERA-U-09-286-E  
: (PERA-R-1063-E)  
:  
CITY OF PHILADLEPHIA :

**AMENDED PROPOSED ORDER OF UNIT CLARIFICATION**

On July 24, 2009, AFSCME, District Council 47, Local 2186 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employe Relations Act (PERA). In the petition, the Union requested that the Board amend its certification of the meet-and-discuss unit of first-level supervisors, employed by the City of Philadelphia (City), to include the position of water conveyance supervisor. The certification is dated December 30, 1971, at Case No. PERA-R-1063-E.

On July 31, 2009, the Secretary of the Board issued an order and notice of hearing and directed that a hearing be held on September 8, 2009, in Philadelphia, before hearing examiner Timothy Tietze. Mr. Tietze granted multiple continuances at the request of the parties. The first day of hearing was held before Mr. Tietze on June 18, 2010, in Philadelphia.<sup>1</sup> A second day of hearing was scheduled for August 2, 2010, in Philadelphia. The second day of hearing was then held in abeyance pending the decision of AFSCME District Council 33 to intervene. On November 22, 2010, the attorney for District Council 33 informed the parties that it was not intervening.

On November 30, 2010, I informed the parties that the matter had been reassigned to me and scheduled a hearing date of April 4, 2011. After several more continuances, the second day of hearing was rescheduled for and held on November 16, 2011.<sup>2</sup> At the hearings on June 18, 2010, and November 16, 2011, the parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Although not designated on the petition, the parties stipulated and agreed that the petition seeks to include the water conveyance supervisors in the nonprofessional first-level supervisory meet-and-discuss unit. (N.T.B. 23). Both parties filed post-hearing briefs.

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. The City is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-1063-E).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-1063-E).
3. The position of water conveyance supervisor is currently classified by the City as a management level position. (N.T.A. 7).
4. The Union represents first-level civil service supervisors employed throughout the City in approximately 55 City departments and agencies. (N.T.B 13-14).
5. The Union meets with City management and enters memoranda-of-agreement (MOA) for both the professional and nonprofessional first-level supervisors together even

<sup>1</sup> The notes of testimony from the first day of hearing on June 18, 2010, will be herein cited as "N.T.A."

<sup>2</sup> The notes of testimony from the second day of hearing on November 16, 2011, will be herein cited as "N.T.B." At the second hearing, the parties stipulated and agreed to incorporate the record generated at the first hearing into the record generated by the second hearing. (N.T.B. 9).

though they are certified as separate meet-and-discuss units. There have never been separate MOA for the professional unit and nonprofessional unit. The City has never differentiated between professional and nonprofessional first-level supervisors regarding benefits or terms and conditions of employment. (N.T.B. 22-23, 30, 33; Union Exhibits 17 & 19).

6. The Union represents seventeen different supervisory classifications in City government that do not require college degrees. These classifications exist throughout various City departments. For example, the position of departmental procurement specialist is a position that exists in fifteen different departments throughout the City. (N.T.B. 18-19; Union Exhibit 18).

7. The bargaining unit of nonprofessional supervisors already includes the City's six chemical technician supervisors in the water department where the water conveyance supervisors work. (N.T.B. 19).

8. There are three Citywide classifications that require an associate's degree and twenty two that require a bachelor's degree. The degree requirements for those positions can be replaced by specific experience and training. (N.T.B. 19-21; Union Exhibit 18).

9. The job description for the water conveyance supervisor position provides that a qualified candidate will have a high school diploma and, in distribution, the following general experience: six years experience in the installation, repair, operations, restoration or maintenance of water distribution mains and equipment and three years at the crew chief level. In collection, the City requires general experience of six years as a member of a crew engaged in the construction, repair, operations, restoration or maintenance of sewers or storm water collector systems; the City also requires specific experience of three years at the crew chief level, six years of experience performing utility field investigations and three years experience supervising staff engaged in the inspection of lateral connections. The candidate may also have any equivalent combination of education and experience determined to be acceptable by the Office of Human Resources. (Union Exhibit 15).

10. The water conveyance supervisor determines the priority of work at the beginning of the workday and reports to an assistant superintendent. There are approximately 10-13 water conveyance supervisors at the 29<sup>th</sup> and Cambria Street Station. (N.T.A. 7-10, 39-41).

11. The water conveyance supervisors determine the work that needs to be done in their district and place work assignments on job sheets for the crew chiefs. The water conveyance supervisor usually meets his crew chief and crew at designated locations in the City where he assigns the work for the day to the crew chief, directs the crew to the job site and reviews the materials necessary to perform the job. The water conveyance supervisor dispatches the crew to the job site and issues "tickets" for each job. If there are multiple jobs to be completed within one day, the supervisor issues a ticket for each job. The crew chiefs take their men to the site designated by the water conveyance supervisor. Crewmembers work under the direction of the water conveyance supervisor. The work usually involves water main repairs, valve replacements and water service suspensions. (N.T.A. 10-11, 13, 42, 61; N.T.B. 54-56, 73-74, 90).

12. Water conveyance supervisor Reginald Lloyd is responsible for two crews, each of which consists of the following: two lead repairmen, four semi-skilled workers, two truck operators, two backhoe operators, one dump truck operator and one crew chief per crew. There are no crew chief I's or crew chief II's in the water department; just crew chiefs. (N.T.A. 11, 13, 28-29, 34, 52, 72).

13. Crew chiefs oversee the jobsite work of the crewmembers. (N.T.B. 43, 62-63, 76, 104).

14. Water conveyance supervisors are on a rotating on-call schedule for emergencies. When an emergency assignment is given to the on-call water conveyance supervisor from the emergency desk, that supervisor determines whether he has adequate personnel to perform repairs and which personnel would be best suited to respond to the emergency. (N.T.A. 13, 26).

15. If the water conveyance supervisor does not have sufficient personnel to repair an emergency water main break, he assembles additional personnel and decides how many people he needs to conduct repairs. The on-call supervisor communicates with other supervisors to recruit their crewmembers to help with the emergency. (N.T.A. 13-14, 26-27, 45-46, 58).

16. At least once or twice per day, the water conveyance supervisor goes to the job site of his crew chiefs to inspect and monitor job progress. The water conveyance supervisor determines whether a job is complete. (N.T.A. 15, 30; N.T.B. 43, 74).

17. Only the water conveyance supervisor approves leave time and overtime for crewmembers. Water conveyance supervisor Lloyd has denied leave requests. Crew chiefs have no authority to grant or deny leave or approve time sheets. (N.T.A. 17, 44, 56-57; N.T.B. 88-90).

18. Crew chiefs are onsite and observe crewmember attendance. Crew chiefs complete time sheets for each employe. Employes do not report to a water department facility with a time clock and time cards. Water Conveyance supervisors review and approve time sheets and input proper coding for vacation or sick leave on the time sheets for the appropriate period. Water conveyance supervisors then submit the time sheets to the time keeper and payroll. Crew chiefs may not sign time sheets. (N.T.A. 17-18, N.T.B. 79, 86-88).

19. Questions from payroll regarding an employe's time sheet are directed to the water conveyance supervisor who then determines whether the employe should be paid for the time in question. (N.T.A. 18-19).

20. Crew chiefs are able to observe employe attitude and performance. Crew chiefs have an obligation to record and report employe incidents, such as tardiness or delinquent performance, to the water conveyance supervisors. Water conveyance supervisors initiate discipline when a crew chief reports a problem with an employe and, in the supervisor's discretion, discipline is warranted. A water conveyance supervisor may also decline to pursue discipline at his level for a reported incident if in his discretion it is unwarranted. The supervisor's disciplinary recommendations are followed. Water conveyance supervisor Lloyd regularly meets with Union stewards regarding disciplinary matters with crewmembers. (N.T.A. 19-21, 23, 43-44; N.T.B. 43-45, 60-61, 80, 92-95).

21. The water conveyance supervisors and the assistant superintendent jointly determine the appropriate penalty for discipline, not the crew chiefs. Discipline is not official until the Water Commissioner or Human Resources signs off on the discipline. (N.T.B. 60, 96-97).

22. Crew chiefs who work with employes complete initial job performance evaluations of crewmembers. The water conveyance supervisor is required to review and sign crewmember evaluations. The supervisors have the final approval of the evaluations and often change inaccuracies and other information with which the supervisor does not agree. Water conveyance supervisors regularly return employe ratings to crew chiefs for adjustments and corrections. Crew chiefs have no involvement with the rewards or sanctions that may result from employe ratings. (N.T.A. 21, 31, 45, 49; N.T.B. 63, 77-78, 92-94; City Exhibits 2 & 5).

23. Crewmembers are rated either satisfactory or unsatisfactory in nine areas on the performance report.<sup>3</sup> These areas include the following: quality of work, quantity of work, dependability, meets departmental attendance standards, initiative, work relationships, safety, work habits and factors not listed. (City Exhibits 2 & 5).

24. Water Conveyance Supervisor Lloyd has participated in the hiring process and has made recommendations to hire certain candidates. Water Conveyance Supervisor Millard has conducted many job interviews and effectively recommends the hiring of individuals. His recommendations are usually followed. Crew Chiefs do not participate in the hiring process. (N.T.A. 35-36, 47; N.T.B. 67).

25. Crew chiefs do not have discretion to leave one job for another without approval from their water conveyance supervisor. The supervisor assigns all work and the scheduling of that work. The crew chief cannot leave a location without approval from the supervisor if there is an unexpected problem with the site such as a street closure or a blocked manhole cover. (N.T.A. 37, 56-57, 62, 90-91).

26. Crew chiefs contact water conveyance supervisors for decisions regarding non-routine matters. (N.T.A. 46-47, 76).

27. When water conveyance supervisors are not at job sites, they are typically performing the following duties: planning and scheduling work; tracking trends in maintenance, repair and completion of work; examining training needs; collecting data from job sheets; conducting disciplinary hearings; meeting with superiors regarding discipline; and reviewing time sheets and evaluations. (N.T.B. 63, 77-79, 86-88, 92-94, 96-97, 105). N.T.A. 17-18, N.T.B. 79, 86-88).

## **DISCUSSION**

The Union contends that the position of water conveyance supervisor should be placed in the nonprofessional meet-and-discuss unit of first-level supervisors. The Board has held that in representation and unit clarification proceedings, a petitioner has the burden of persuasion to establish the averments in the petition. In the Matter of the Employes of Riverview Intermediate Unit No. 6, 37 PPER 106 (Final Order, 2006). Accordingly, the Union has the burden of establishing that the job duties of the employes performing the work of water conveyance supervisor satisfy the statutory requirements of a first-level supervisor under PERA and, if so, whether they share an identifiable community of interest with the employes in the meet-and-discuss unit of first-level supervisors.

Currently, the position of water conveyance supervisor is classified as a management level position. The City argues that water conveyance supervisors are managers because they supervise the crew chiefs who, the City maintains, are the first level supervisors. Accordingly, the City must demonstrate that the crew chiefs are supervisors.

### **1. Supervisory status of water conveyance supervisors and crew chiefs**

Section 301(6) of PERA defines a supervisor 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.

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<sup>3</sup> The tenth category on the form pertains to lead workers only.

43 P.S. § 1101.301(6). PERA requires the Board to "take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5)(emphasis added); In the Matter of the Employees of the Luzerne County Community College, 37 PPER ¶ 47 at 148 (Final Order, 2006).

The record in this case shows that the water conveyance supervisors direct crew operations in a manner that requires independent judgment in those areas designated by the statute to be supervisory, whereas the crew chiefs are lead workers whose crew directions are routine and clerical in nature. The water conveyance supervisors determine job priority and select the daily job assignments based on their independent discretion about the nature and extent of water main and valve damage and the resulting effect on consumers. The crew chief does not know where his next job is going to be until the water conveyance supervisor dispatches the crew to a particular job site with set criteria for successfully completing the job. The water conveyance supervisor makes discretionary job assignment decisions regarding scheduling and job priorities affecting water service that the crew chief is without authority to make. In fact, the crew chief is without authority to leave a job site without approval from the water conveyance supervisor, even if there are unexpected obstacles affecting the crew's ability to work.

Although crew chiefs direct crewmembers on the job site, these directions are routine in nature. Any non-routine decisions require the crew chief to contact his water conveyance supervisor. The water conveyance supervisor, and not the crew chief, determines whether a job is complete. Although the crew chief records crewmembers' hours on time sheets, this is merely a clerical act necessitated by the fact that there is no time clock in the field, where the crew members report to work every shift. The crew chief is merely replacing the time clock. The water conveyance supervisor, and not the crew chief, approves and denies leave requests based on work load and complement. Determining whether to approve leave requires that the water conveyance supervisors exercise independent judgment in the interest of the City, after examining maintenance trends, repair plans and possible emergencies, to determine whether the crew could effectively function with a diminished complement within the requested time period. Ultimately, the water conveyance supervisor is responsible for the effectiveness of job operations and completions and for attesting to a crewmember's time. The supervisor, and not the crew chief, is answerable for any questions from payroll or human resources regarding time sheets and, specifically, leave authorization and pay issues.

As the lead worker on site, the crew chief has an obligation to report tardiness, poor attitude or delinquent job performance to the water conveyance supervisor. The crew chief is not deciding to initiate or pursue discipline, rather he is fulfilling an obligation to report, which is a routine and nondiscretionary act. Although the crew chief may recommend discipline to correct a problem that he has been unable to correct through counseling, such as chronic tardiness or chronic conflict with coworkers, only the water conveyance supervisor has the discretion and authority to pursue the imposition of a disciplinary penalty for the crewmember. Once a supervisor determines that discipline is necessary, the supervisor's recommendations are often followed and imposed by the assistant superintendent and approved by the Water Commissioner and Human Resources. Also, it is the water conveyance supervisor and not the crew chief, who meets with Union stewards to adjust grievances and disputes over disciplinary matters because the supervisor has control over pursuing and imposing the discipline.

Crew chiefs work with and observe crewmembers' job performance on a daily basis. As a result, the crew chiefs are in a better position to rate crewmembers in the areas included on the evaluation forms such as quality and quantity of work, safety, work relationships, etc. However, the crew chief has no authority to reward or sanction crew members based on his ratings. Moreover, water conveyance supervisors regularly change the ratings based on information in their possession. In other words, supervisors who know of an employe's attendance history may change a satisfactory rating to an unsatisfactory rating for the category of dependability. In this regard, both the supervisor and the crew chief jointly rate the crewmembers, with the supervisor having authority over determining the final rating. Accordingly, the water conveyance supervisors do not simply rubber stamp the recommendations of their crew chiefs. Rather, they are actively involved

in the evaluation process enabling them to place their imprimatur on the final evaluation, which the department may rely on to grant or deny promotions or impose progressive discipline.

Water conveyance supervisors, and not crew chiefs, are directly involved in the hiring process. Water Conveyance Supervisor Millard has conducted many job interviews and effectively recommends the hiring of crewmembers. Additionally, the record shows that supervisors, while not monitoring or inspecting job sites, engage in multiple tasks to effectively organize the operation of their crews, in the interest of the City, to repair and maintain water conveyance systems in a cost effective and timely fashion, with the least interruption in service. The water conveyance supervisors, in this regard, are involved in planning and scheduling work, tracking trends in maintenance, repair and completion of work, examining training needs, collecting data from job sheets and conducting disciplinary hearings, meeting with superiors regarding discipline and reviewing time sheets and evaluations. Accordingly, the record shows that, on balance, the water conveyance supervisors spend the majority of their work time performing supervisory functions on behalf of the City.

Conversely, none of the crew chiefs is able to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees. None of the crew chiefs directs or assigns non-routine work to employees, exercises independent judgment in emergency or non-routine situations or schedules or prioritizes the work to be performed by the crew. Their completion of time sheets constitutes a clerical and routine recording of data and their performance evaluations are done jointly with water conveyance supervisors who regularly change the rating opinions of the crew chiefs. Although crew chiefs direct the crew members in their specific job tasks during the work shift, those duties are indicative of a lead worker and not a statutory supervisor under PERA. Accordingly, crew chiefs are not first-level supervisors, and water conveyance supervisors are first-level supervisors within the meaning of Section 301(6) of PERA.

## 2. Community of Interest

The City argues in its post-hearing brief that the Union failed to meet its burden of establishing a community of interest between the water conveyance supervisors and the other employees in the first-level supervisory unit. The City contends that "[t]he Union did not present any evidence related to these other non-professional first-level supervisors within the bargaining [i.e., meet-and-discuss] unit." (City's Post-hearing Brief at 3). The City also argues that "the Union did not present any evidence related to the type of work done, skill requirements, pay scales, hours and benefits, working conditions, interchange of employees or grievance procedures." (City's Post-hearing Brief at 3). As aptly noted in the case, In the Matter of the Employees of Spring Grove Area School District, 38 PPER 54 (Proposed Decision and Order, 2007):

To determine 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, areas of work, working conditions, interchange of employees, supervision, grievance procedures, bargaining history, and employee desires. Fraternal Order of Police v. PLRB, 557 Pa. 586, 735 A.2d 96 (1999); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. May 26, 2000), affirming, 29 PPER ¶ 29110 (Final Order, 1998); Allegheny General Hospital v. PLRB, 322 A.2d 793 (Pa. Cmwlth. 1974). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours and working conditions or other factors. Id. As the Commonwealth Court stated in Western Psychiatric Institute and Clinic v. PLRB, 330 A.2d 257 (Pa. Cmwlth. 1974):

"We do not read Section 604 [of PERA] to mean . . . that an identifiable community of interest cannot exist without

some differences in requirements of experience, skills and education . . . To accept [that] proposition would lead to . . . over-fragmentization . . . [T]he Board's determinations may not ignore the effects of over-fragmentization and . . . the units must be as few as practicably can be . . . ."

Id. at 260.

In the Matter of the Employes of Spring Grove Area School District, 38 PPER 54 at 143 (Proposed Decision and Order, 2007).

Contrary to the City's argument, the Union presented sufficient evidence to demonstrate that the water conveyance supervisors share an identifiable community of interest with the nonprofessional supervisors in the meet-and-discuss unit. Although the specific job duties and the physical work environment of the water conveyance supervisors may differ from other nonprofessional supervisors already included in the meet-and-discuss unit, the law and the nature of the unit as it stands contemplate and permit those differences without interfering with the community of interest among those employes.

The unit includes, and the Union represents, first-level civil service supervisors employed throughout the City in approximately fifty-five departments and agencies. For example, the position of departmental procurement specialist is a position that exists in fifteen different departments throughout the City. The specific job requirements for positions like the procurement specialist will vary depending on the demands and needs of the specific City agency or department. However, the essential functions of the position remain the same thereby providing a strong thread connecting the interests of scattered supervisors. Moreover, the meet-and-discuss unit of nonprofessional supervisors already includes the City's six chemical technician supervisors in the water department where the water conveyance supervisors work. The chemical supervisors work in the same department and the same environment as the water conveyance supervisors.

These first-level supervisors Citywide all exercise supervisory authority and satisfy their obligations to properly identify, organize, delegate and execute necessary tasks in the interest of the City, while sharing similar benefits, pay and terms of employment. (F.F. 5). These shared duties, obligations and conditions provide the gravitational core that binds the nonprofessional supervisors in the Citywide unit. Accordingly, the water conveyance supervisors in the water department share an identifiable community of interest with the other first-level supervisors in the unit and the water department's chemical technician supervisors already in the unit.

#### CONCLUSIONS

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

1. The City 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 employes in the classification of water conveyance supervisor share an identifiable community of interest with the nonprofessional supervisors in the meet-and-discuss unit represented by AFSCME, District Council 47, Local 2186 and certified by the Board at PERA-R-1063-E.

5. The position of water conveyance supervisor is supervisory and is properly included in the nonprofessional meet-and-discuss unit of first-level supervisors represented by AFSCME District Council 47, Local 2186 and certified by the Board at PERA-R-1063-E.

6. The position of crew chief is not supervisory and is properly included in the bargaining unit represented by AFSCME District Council 33.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

**HEREBY ORDERS AND DIRECTS**

that the petition at Case No. PERA-U-09-286-E is hereby granted and sustained and the meet-and-discuss unit of nonprofessional supervisors of the City of Philadelphia, Pennsylvania, certified by the Board at Case Number PERA-R-1063-E, and exclusively represented by AFSCME, District Council 47, Local 2186, is hereby amended to include the position of water conveyance supervisor;

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of May, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner