

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-12-125-E
 :
YORK HOUSING AUTHORITY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 9, 2012, the American Federation of State County and Municipal Employes Council 89, (Petitioner or Union) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) alleging that thirty per cent or more of the full-time and regular part-time nonprofessional white collar employes of the York Housing Authority (Authority or Respondent) wished to be represented by the Union and that the Union desired to be certified as their representative.

On May 31, 2012, the Secretary of the Board issued an Order and Notice of Hearing directing that a pre-hearing conference be held on June 28, 2012 and, if necessary, a hearing be held on July 10, 2012, in Harrisburg, Pennsylvania.

The pre-hearing conference did not resolve the issues in dispute and a hearing was required. The hearing was rescheduled to September 24, 2012 on the motion of the Petitioner over the objection of the Respondent. The hearing was held on the rescheduled date, at which time the hearing examiner afforded all parties a full opportunity to present evidence and cross-examine witnesses. The parties submitted post-hearing briefs on October 19, 2012 and October 31, 2012.

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

FINDINGS OF FACT

1. York Housing Authority is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA). (N.T. 8-90)
2. The American Federation of State, County and Municipal Employes Council 89 (AFSCME) is an employe organization under Section 301(3) of PERA. (N.T. 8)
3. The Authority operates a program known as the Section 8 rental assistance program. Under that program, eligible clients in York City and York County receive a subsidy to cover rent and other housing costs to the extent that they exceed 30-40 percent of their monthly income. (N.T. 10-11)
4. The Section 8 program covers approximately 1633 rental units. (N.T. 11)
5. Assistant Coordinators are responsible for interviewing clients, calculating their income to verify eligibility and generally facilitating their entry into and continued participation in the Section 8 program. (N.T. 11-12, 24-25)
6. The Authority employs six Assistant Coordinators. Four of the coordinators have caseloads of 350 to 400 people. The other two coordinators have small caseloads of approximately 20 people each and are responsible for bringing people off the waiting lists and putting them under contract allowing the rental assistance to start. (N.T. 12)
7. The Assistant Coordinators report to the Section 8 Program Coordinator, Kathleen W. Wolf. (N.T. 10, 42)

8. The Assistant Coordinators follow a methodology for calculating the income of participants in the Section 8 program that permits no discretion in determining eligibility (N.T. 47-53)
9. The Assistant Coordinators respond to complaints are alleged about rule violations that affect the participant's eligibility. They have no discretion to decline to investigate when such an allegation is reported. The investigation consists of gathering information to determine whether the allegation is true. If the evidence reveals that a violation has occurred, the Assistant Coordinator has no discretion to do anything but terminate participation in the program. (N.T. 33-34, 77)
10. The Assistant Coordinators serve as witnesses when the Authority has a hearing that terminates a participant from the Section 8 program. (N.T. 28-29, 39, Authority Exhibit 1)
11. The Assistant Coordinators determine the reasonable rent by finding three "comparables," taking into account several enumerated factors. If the Assistant Coordinator cannot justify the proposed rent by finding three comparables, they can attempt to negotiate a lower rent with the landlord. However, there is no evidence that the Assistant Coordinator has any discretion to make an exception to the policy requiring three comparables. (N.T. 19-23, 41-42, 55-56, Authority Exhibit 1)
12. The Assistant Coordinators can extend the Authority's internal five day deadline for a participant to provide certain information as income information or birth records, but they do so within the confines of the Authority's own guidelines that grant the participant 30 days to provide the information. (N.T. 48-49, 58-59, 88)

DISCUSSION

The Authority contends that the six employees in the position of Assistant Section 8 Coordinator are management level employees under section 301(16) of PERA and therefore should be excluded from the list of employees that the Union seeks to represent.

Section 301(16) of PERA defines a management level employee as:

(16) "Management level employee" means any 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).

Under this provision, a position is management level if the employee holding that position (1) is involved directly in the determination of policy; (2) directs the implementation of policy; or (3) is above the first level of supervision. **Pennsylvania Association of State Mental Hosp. Physicians v. PLRB**, 554 A.2d 1021 (Pa. Cmwlth. 1988); **Commonwealth of Pennsylvania (Attorneys Examiner I)**, 12 PPER ¶ 12131 (Final Order, 1981

As the party seeking to exclude the position, the Authority has the burden of proving the exclusion. **Westmoreland County v. PLRB**, 991 A. 2d 976, at 980 (Pa. Cmwlth. 2010), alloc denied. 610 Pa. 581, 17 A. 3rd 1256 (2011); **School District of Phila. v. PLRB**, 719 A.2d 835 n. 5 (Pa. Cmwlth. 1998).

The Authority contends that the Assistant Section 8 Coordinator meets the second part of section 301(16), that the employee in the position "responsibly directs the implementation of policy." The Authority called as a witness their supervisor, the Section 8 Coordinator, Kathleen Wolf. The Authority also introduced into evidence the Authority's Administrative Plan, which includes the regulations for the Section 8 program. The Authority contends that the way the Coordinators follow the manual shows that meet the statutory language of Section 301(16) of PERA.

In **Horsham Township**, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), the Board found that a township employe who served as the Building Inspector, Assistant Zoning Officer, Plumbing Inspector, Sewage Enforcement Officer and Sanitation Officer was a management level employe under the second part of the statute. The Board held that in order to prove that an employe is a management level employe who "responsibly directs the implementation of policy," the employer must show more than that the employe merely observe the terms of the policy. The evidence must also establish that they interpret the policy "both within and without the procedures outlined in the policy." Id at 327.

The Authority cites several areas of responsibility in which it alleges the Assistant Coordinators exercise discretion in implementing policy. However, none of the areas rise to the level of interpretation set forth in **Horsham Township, Id.**

First is the Authority contends that the Assistant Coordinators exercise discretion in determining the fairest method for calculating participant income. However, Brye Coles, their supervisor, testified that they are required to use a particular methodology. Then once the eligible size housing unit is determined, based on family size and composition, the assistant coordinator's job is simply a mathematical calculation of eligibility.

The facts of this case are similar to **Allegheny County Housing Authority**, 29 PPER ¶ 29077 (Proposed Order of Unit Clarification, 1998) in which I found that the employer had not met its burden of proving that a tenant selection officer was management level. The employe processed tenant applications, making sure all of the necessary information was present, made unit offers to tenants and calculated the first month's rent due. Specifically, I found that the tenant selection officer did not direct the implementation of policy but rather was an employe whose role amounted to only the observance of applicable rules, and did not include the interpretation required to render the position management level. 29 PPER ¶ 29077 at 179.

Second, the Authority cites to the Assistant Coordinators' responsibility to investigate allegations of alleged rule violations that affect the participant's eligibility to continue in the program. The Assistant Coordinators have no discretion to decline to investigate when such an allegation is reported. The Board has held that the responsibility to conduct investigations, and to make determinations based upon that investigation is not a basis for a finding of managerial status. **Berks County**, 35 PPER ¶ 25 (Final Order, 2004) at 82.

Third, the Authority cites to the Assistant Coordinators' role in determining whether the rent charged for a particular unit is "reasonable." Again, the employes follow Authority policy in this process. They must find three comparables, taking into account several enumerated factors. If they cannot justify the rate by finding three comparables, then they can attempt to negotiate a lower rent with the landlord. If the landlord does not agree to lower the rent to a justifiable rate, there is no evidence that the Assistant Coordinator has any discretion to make an exception to the policy requiring three comparables. This sort of determination amounts to nothing more than observance of employer policy or governing regulations, not interpretation. See, **Allegheny County Housing Authority, supra.**

Fourth, the Authority notes that the Assistant Coordinators have the authority to extend the deadline for a participant to provide certain information, such as income information or birth records. The general policy is that participants are given five days to provide such information. The coordinator may extend the deadline for a few days. But if they did not provide the extension, the participant would effectively receive a 30-day extension in any event. On these facts, it is difficult to conclude that providing the employe a few days more than the five required by the policy makes them a management level employe.

Fifth, the Authority notes that the Assistant Coordinators serve as witnesses in internal appeal hearings, in order to give testimony, or to defend their actions in a particular case. The Assistant Coordinator's role is to answer questions about the basis for a determination to terminate assistance. The Authority argues that this function is

analogous to the role played by the zoning and building code enforcement officers in **Horsham Township, supra**. In that case, the employ had the authority to actually prosecute those violations, as a representative of the employer. 9 PPER ¶ 9157 at 327. Here, on the other hand, there is no evidence to suggest that the Assistant Coordinators prosecute alleged violations in the hearing process. Rather, as Ms. Coles testified, the function of the Assistant Coordinator is to answer questions, in order to explain the basis for the decision being appealed.

The Authority has not met its burden of proving that the Assistant Section 8 Coordinators possess the degree of authority to interpret the Authority's own guidelines and procedures so that they can be found to "direct the implementation of policy" as Section 301(16) requires. They will be included in the list of employes eligible to vote for a representative.

CONCLUSIONS

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

1. That the York Housing Authority is a public employer under Section 301 (1) of PERA.
2. That the American Federation of State County and Municipal Employes Council 89, is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. That the position of Assistant Section 8 Coordinator is not a management level employe within the meaning of section 301(16) of PERA.
5. That the unit appropriate for the purposes of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time nonprofessional white collar employes excluding supervisors, first level supervisors, confidential employes, management level employes and prison guards as defined in the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Authority shall submit to the Board within ten days of the date hereof an alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this eighth day of November, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner