

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-U-00-66-W
: (PERA-R-2311-W)
ALLEGHENY COUNTY :

FINAL ORDER

On August 2, 2001, the Allegheny Court Associated Professional Employees (ACAPE) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions and a supporting brief to a Proposed Order of Dismissal (POD) issued July 13, 2001. In the POD, the Hearing Examiner dismissed ACAPE's Petition for Unit Clarification and concluded that the Adult Family and Juvenile Court Hearing Officers (Hearing Officers) employed by Allegheny County (County) are management level employees that do not belong in the collective bargaining unit of court-appointed professionals represented by ACAPE.

In its exceptions, ACAPE asserts that the record evidence does not support the Hearing Examiner's conclusion that the County's Hearing Officers are management level employees. ACAPE further excepts to the Hearing Examiner's failure to make findings of fact regarding the meetings the Hearing Officers attend with the County's Judges. Specifically, ACAPE asserts that the Hearing Examiner failed to find that the "Administrative Judge's direction is paramount and controlling" and that "the agenda of the quarterly meetings . . . include discussions of dependency issues, the operation of the project, and procedural issues rather than policy-making." (ACAPE, Exceptions at 2)(emphasis omitted).

The Public Employee Relations Act (PERA) grants public employees the right to organize and engage in collective bargaining with their public employer over wages, hours and terms and conditions of employment. Section 301(2) of PERA specifically excludes management level employees from the definition of public employee, thereby denying management level employees collective bargaining rights. Section 301(16) defines management level employees as "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). In In the Matter of the Employees of Commonwealth of Pennsylvania (Attorney Examiners I), 12 PPER ¶ 12131 (Final Order, 1981), the Board set forth a three-part disjunctive test for the application of Section 301(16), wherein it held that a management level employee is: (1) any individual who is involved directly in the determination of policy; (2) any individual who directs the implementation of policy; or (3) employees above the first level of supervision. Id. This test has been consistently applied by the Board and its hearing examiners and was adopted by the Commonwealth Court in Pennsylvania Assoc. of State Mental Hosp. Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1985).

Relying on Attorney Examiners I, *supra*, the Hearing Examiner concluded that because the County's Hearing Officers hold hearings and issue recommended orders that become the final orders of the court in 90 percent of

the cases they hear, they are management level employees excluded from PERA's definition of public employee. (POD, 2-3.) In Attorney Examiners I, the Board carefully reviewed the job duties of the state's attorney examiners, which include conducting hearings; understanding and interpreting relevant constitutional provisions, statutes, administrative regulations and precedents; and applying this knowledge to the record to reach a determination of the issues before them. The Board found these employees to satisfy the first part of the Section 301(16) test because they are involved directly in the implementation of policy. Those job duties are virtually identical to the job duties of the County's Hearing Officers, who also hold hearings; apply the law to the facts as developed at the hearing; and direct that orders resolving the issues of the complaint be generated.

The Board has reached the same result in cases involving non-attorneys as well. For instance, in In the Matter of the Employees of City of Erie, 28 PPER ¶ 28228 (Final Order, 1997), the Board concluded that field supervisors and benefits coordinators were management level employees where they applied federal and state regulations when making recommendations and decisions involving environmental protection and workers' compensation. Id. (citing AFSCME, Council 13 AFL-CIO v. PLRB, 510 A.2d 150 (Pa. Cmwlth. 1986)(chemists who implement policies regarding compliance with environmental protection agency guidelines and regulations are management); Teamsters Local Union No. 205 v. Indiana Township, 28 PPER ¶ 28074 (Proposed Order of Dismissal)(employee who enforces codes and ordinances is management); In the Matter of the Employees of Penn Township, 15 PPER ¶ 15015 (Final Order, 1983)(zoning officer who interprets and enforces codes and ordinances responsibly directs the implementation of policy and is therefore management); In the Matter of the Employees of Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978)(employee who interprets, effectuates and enforces codes, ordinances and regulations and makes the initial and sometimes only rulings under same is management); In the Matter of the Employees of Millersville Borough, 9 PPER ¶ 9020 (Final Order, 1978)(employee who interprets codes and regulations to make rulings that are final and binding unless appealed is management)). The work that the Hearing Officers perform is virtually identical to the work performed by other public employees that the Board and the Commonwealth Court have repeatedly found to be management level employees.

In Attorney Examiners I, supra, the Board rejected the union's argument that the examiners "possessed mere discretion to make a decision" because the decisions issued by the examiners became final in 65-90 percent of their cases and "the definition of [a] management level employee . . . necessarily includes those employees who have been shown to have meaningful participation in the decisional process, as well as those with statutory authority to make the final determination." Id., p. 204 (citing Employees of Carlynton Area Sch. Dist. v. Carlynton Area Sch. Dist., 377 A.2d 1033 (Pa. Cmwlth. 1977)). The Board will likewise reject ACAPE's assertion that the Hearing Officers decisions are merely "a part of the routine discharge of professional duties without any impact on managerial policy" (ACAPE, Br. at 4)(emphasis omitted) because the record reveals that the Hearing Officer's decisions become final in 80-99 percent of their cases.

ACAPE next argues that reliance on Attorney Examiners I, supra, is misplaced without the acknowledgement and application of the requirement set forth in School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998) and State Mental Hospital Physicians, supra, that "the employee's decisions are not managerial if they were a part of the employee's routine

discharge of professional duties and had no impact on management policy formulated by a central administration." Sch. Dist. of Philadelphia, 719 A.2d at 838 (emphasis added). The Hearing Examiner cited this precise language and explained that the routine discharge of professional duties alone is an insufficient basis for finding an employe to be management level (POD, at 3). However, where an employe's duties extend beyond those of a professional employe, as they did in Attorney Examiners I and State Mental Hospital Physicians, supra, and become managerial in nature, that employe is excluded from PERA's definition of public employe. As the Board explained in Attorney Examiners I, the examiners' "meaningful input is illustrated by the high percentage of their recommendations that are adopted by the agencies . . . the [e]xaminers are directly involved in the determination of policy of the agency and therefore meet the standards set forth in the first part of §301(16) of the Act." Id., at 204. Likewise, the County's Hearing Officers' meaningful participation into the determination of policy is illustrated by the high percentage of their decisions that become the final decision of the Family Division of the Allegheny County Court of Common Pleas. The Board finds no reason to abandon its decision in Attorney Examiners, I and therefore dismisses this exception.

In its second exception, ACAPE asserts that because "the Administrative Judge's discretion is ultimately controlling" the Hearing Officers are not management level employes. (ACAPE, Exceptions at 2.) This argument has been repeatedly rejected by both the Board and the Commonwealth Court. In Millersville Borough, supra, the Board concluded that a code enforcement officer is a management level employe, despite the fact that "Borough Council . . . has . . . the sole authority to determine such policy." 9 PPER ¶ 9020, p. 42. Similarly, in Carlynton Area Sch. Dist., supra, the Commonwealth Court stated that employes "do not lose management level status simply because their actions are subject to review by other individuals superior to them in management." 377 A.2d at 1035. The fact that the Administrative Judge has the ultimate authority to determine policy, does not diminish the Hearing Officers' managerial status.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss ACAPE's exceptions and make the Proposed Order of Dismissal final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed in the above-captioned matter be and the same are hereby dismissed and the Proposed Order of Dismissal be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, and Member Edward G. Feehan, this eighteenth day of September, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.