

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
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Case No. PERA-U-00-130-W  
:  
(PERA-R-6541-W)  
:  
PUNXSUTAWNEY BOROUGH :  
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**FINAL ORDER**

On May 22, 2000, Punxsutawney Borough (Employer) filed exceptions with the Pennsylvania Labor Relations Board (Board) to a Nisi Order of Unit Clarification issued on May 4, 2000. The Nisi Order of Unit Clarification was issued pursuant to a Petition for Unit Clarification jointly filed by the Employer and the American Federation of State, County and Municipal Employees, District Council 85 (Union) requesting that the Board include the position of working foreman in a bargaining unit represented by the Union as certified by the Board on March 27, 1975 at Case No. PERA-R-6541-W.

By letter dated May 24, 2000, the Board Secretary notified the Employer that the exceptions must be served on each party to the proceeding pursuant to Section 95.98(a)(4) of the Board's Rules and Regulations and requested that the Employer provide the Board with the appropriate proof of service. The Employer failed to provide the requested proof of service.

On December 12, 2000, the Board Secretary again notified the Employer, by certified mail, that in order to process the Employer's exceptions, the Employer must serve a copy of the exceptions on the Union and provide the Board with appropriate proof of service. The certified return receipt from the U. S. Postal Service indicates receipt of the December 12, 2000 letter at the office of the Employer's counsel on December 14, 2000 at 11:06 a.m. To date, the Employer has not provided the Board with the appropriate proof of service of the exceptions.

The Employer has attempted to file exceptions to a Nisi Order of Unit Clarification that was issued pursuant to a Petition for Unit Clarification jointly filed by the Employer and the Union. The Petition for Unit Clarification was signed by the Borough Manager Susan J. Maczko on behalf of the Employer. In its exceptions, the Employer contends that Maczko was not authorized to execute the Petition for Unit Clarification on behalf of the Employer. However, the Employer has failed to perfect its filing of the exceptions by serving a copy of the exceptions on the Union. Section 95.98(a)(4) of the Board's Rules and Regulations provides that "[t]he party shall, concurrent with its filing of the statement of exceptions and supporting brief, serve a copy of the same upon each party to the proceeding. Proof of service shall be filed with the Board." 34 Pa. Code § 95.98(a)(4). Accordingly, the exceptions must be dismissed.<sup>1</sup>

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<sup>1</sup>The inclusion of the working foreman in the bargaining unit by stipulation of the parties is binding on the Employer and the Union for a period of one year. Penncrest School District, 16 PPER ¶ 16113 (Final Order, 1985). Because the status of the position of working foreman was not litigated in this case, the Employer may file a petition for unit clarification to exclude that position from the bargaining unit after one year from the date of this Final Order.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Employer for failure to comply with the requirements of the Board's Rules and Regulations.

**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 by Punxsutawney Borough are hereby dismissed and the Nisi Order of Unit Clarification is made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this thirteenth day of February, 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.