

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: :
: Case No. PERA-R-99-418-E
: :
: :
SUSQUEHANNA COUNTY :

FINAL ORDER

On June 26, 2000, Teamsters Local Union 229 (Union) filed timely exceptions and a brief in support to a Nisi Order of Certification issued by the Board Representative on June 7, 2000. The Nisi Order of Certification certified the Union as the exclusive representative of bargaining units of professional and nonprofessional employes of Susquehanna County (Employer) pursuant to a representation election conducted on May 26, 2000. The Nisi Order of Certification also incorporated findings of facts and conclusions of law from an Order Directing Submission of Eligibility List issued by a duly-designated hearing examiner of the Board on March 31, 2000. In that Order, the hearing examiner concluded, inter alia, that the position of Maintenance Foreman, currently held by Ronald Millard, is supervisory within the meaning of Section 301(6) of the Public Employe Relations Act (PERA). On July 13, 2000, the Employer filed its response to the Union's exceptions.¹

In its exceptions, the Union contends that the hearing examiner erred in his findings of fact and conclusions of law with regard to the determination that the Maintenance Foreman position is supervisory within the meaning of Section 301(6) of PERA. After a thorough review of the exceptions and all matters of record, the Board hereby affirms findings of fact 1 through 38, 40 through 43 and 45 through 55 and incorporates them herein by reference and makes the following:

AMENDED FINDINGS OF FACT

39. Mr. Millard works along with the other maintenance department employes in maintenance of the grounds and buildings, gathering the recycling, doing minor electrical repairs, plumbing repairs, painting and other small office repairs. Mr. Millard spends approximately ninety-five (95) percent of his time performing these nonsupervisory tasks. (N.T. 98-100)

¹ In its response, the Employer initially argues that the Union's exceptions are untimely in that they should have been filed within twenty days of the hearing examiner's Order Directing Submission of Eligibility List. The Employer's argument in this regard is without merit. The Order Directing Submission of Eligibility List clearly states that any exceptions to that order should be filed to the Board Representative's order certifying the results of the election issued pursuant to 34 Pa. Code § 95.96(b). Accordingly, any exceptions filed within twenty days of the Order Directing Submission of Eligibility List would have been premature.

44. Mr. Millard participated on a panel with Chief Clerk Kamansky and County Commissioner Smith in the interviewing three of the four candidates for the newly created custodial position. Ms. Kamansky asked Mr. Millard who he thought should be hired for the position and Mr. Millard responded that he thought Erica Johnson should be hired. The Chief Clerk responded, "That's fortunate, we both like the same one." (N.T. 19-20, 114-115, 120)

DISCUSSION

The only issue before the Board is the supervisory status of the Employer's Maintenance Foreman, Robert Millard. The hearing examiner concluded that Millard is a supervisory employe based upon the hearing examiner's view that Millard (1) effectively evaluates certain custodial employes; (2) effectively recommended the hiring of a custodial employe; and (3) responsibly directs the workforce and assigns them tasks. However, the Union contends that the record reveals that Millard's performance of these allegedly supervisory duties amounts to only a small portion of his job duties. Accordingly, the Union contends that even if the duties performed by Millard are supervisory in nature, PERA requires the conclusion that the position is not supervisory.

Section 301(6) of PERA, defines a supervisor as follows:

"Supervisor" means any individual having authority in the interest 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.

43 P.S. § 301(6). Section 604(5) of PERA provides that "in determining supervisory status the Board may take into consideration the extent to which supervisory and nonsupervisory functions are performed..." 43 P.S. § 1101.604(5). In two very recent cases, the Commonwealth Court has addressed Section 604(5) of PERA and affirmed the Board's consideration of the extent to which supervisory and nonsupervisory duties are performed when determining supervisory status. In State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999), the Commonwealth Court affirmed the Board's examination of the frequency, duration and importance of the performance of various supervisory duties in concluding that, although the head coaches employed by the State System of Higher Education at times performed supervisory duties, the frequency with which those duties were performed was not demonstrated to a significant degree to warrant a supervisory exclusion. Similarly, in West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), pet. for allowance of appeal pending on other grounds, 435 M.D. Allocatur Docket 2000, the Commonwealth Court affirmed the Board's determination that cafeteria managers employed by West Perry School District were not supervisory employes where they spend the majority of their time doing nonsupervisory, rank and file cafeteria work. Similarly, in Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, supra., the Commonwealth Court examined the Board's application of Section 604(5) of PERA and stated:

"The Board clearly considered the extent to which nonsupervisory functions are performed by liquor store clerks

II and concluded that on balance their responsibilities are in conformity with rank and file employees. This appropriate 'balancing test' is provided for by Section 604(5) of the Act, 43 P.S. § 1101.604(5)."

409 A.2d at 535. See also AFSCME v. PLRB, 342 A.2d 155 (Pa. Cmwlth. 1975)(employee classification determined to be supervisory where the class performed predominantly supervisory duties).

So too here, the Union is correct that the record reveals that Millard spends the vast majority of his time performing nonsupervisory, rank and file duties alongside the other custodial employees who have been included in the bargaining unit. Millard testified that he spends approximately 95 percent of his time performing the same nonsupervisory tasks as the other rank and file employees. (N.T. 100) Accordingly, finding of fact 39 has been amended above to accurately reflect the record. Section 604(5) of PERA and cases cited above dictate the conclusion that Millard must be included in the bargaining unit as a nonsupervisory employee.

Even though Millard's limited performance of supervisory duties is totally dispositive of his supervisory status, the Board would also note that in its exceptions the Union correctly notes that the record does not support the hearing examiner's conclusion that Millard has an effective role in the hiring process. The record reveals that Millard was part of a committee that interviewed candidates for a custodial position. At the conclusion of the interviews, Joan Kamansky, the Employer's Chief Clerk who also participated in the interviews, asked Millard which candidate he preferred. Millard responded that his choice would be Erica Johnson. Kamansky testified that she responded that it was "fortunate" that she and Millard agreed on the same candidate. Johnson was recommended to the County Commissioners and subsequently hired for the position. Although, the hearing examiner found as fact that Millard made a recommendation regarding the hiring of Johnson, a fair reading of the record fails to reveal that his recommendation was effective. The record is unclear which candidate would have been recommended for hiring to the County Commissioners had Kamansky and Millard disagreed on the best candidate. Further, Millard's mere participation on a panel that interviews and recommends a candidate for employment is insufficient to support a supervisory determination. State System of Higher Education v. PLRB, supra. Accordingly, the Maintenance Foreman position is included in the nonprofessional bargaining unit.²

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions filed by the Union and amend the Nisi Order of Certification to reflect the nonsupervisory status of the Maintenance Foreman.

² In the May 26, 2000 representation election, the nonprofessional employees voted in favor of representation by the Union by a margin of 33-17, with four (4) challenged ballots. Millard's inclusion in the nonprofessional bargaining unit could have no material effect on the election result. Accordingly, a new election will not be directed and the certification of the Union will be affirmed.

CONCLUSIONS

That Conclusions numbers 1 through 21 and 23 through 30 are hereby affirmed and incorporated by reference herein and Conclusion number 22 is hereby vacated. The Board makes the following additional conclusion:

31. That the position of Maintenance Foreman held by Robert Millard is not supervisory within the meaning of Section 301(6) OF PERA.

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 the Union are hereby sustained and the Nisi Order of Certification issued by the Board Representative is hereby made absolute and final as modified herein.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this fifteenth day of August, 2000. 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.