COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PERA-U-02-264-E
	:	(PERA-R-6-C)
COMMONWEALTH OF PENNSYLVANIA	:	
PENNSYLVANIA LIQUOR CONTROL BOARD	:	

FINAL ORDER

On July 16, 2003, the Independent State Store Union (Union) filed timely exceptions and a supporting brief to a Proposed Order of Dismissal issued on June 27, 2003, by a duly designated Hearing Examiner of the Pennsylvania Labor Relations Board (Board). In the Proposed Order of Dismissal, the Hearing Examiner concluded that the Union had failed to carry its burden of proof that the job duties of the position of General Manager IIB employed by the Commonwealth of Pennsylvania (Employer) at various liquor stores operated by the Pennsylvania Liquor Control Board, had materially changed since the position had previously been litigated to be a management level employe within the meaning of Section 301(16) of the Public Employe Relations Act (PERA). On August 4, 2003, the Employer filed its response to the Union's exceptions.

In its exceptions, the Union contends that the Hearing Examiner erred in concluding that the General Managers IIB are management level within the meaning of PERA, specifically challenging the Hearing Examiner's determination that there were no material changes in the job duties of the General Manager IIB classification with respect to (1) shift independence and (2) their overall operation of the liquor stores.

The Union represents a meet and discuss unit of first level supervisory employes employed at the Pennsylvania Liquor Control Board. The General Manager IIB classification was excluded from the unit for the first time in 1978. In the Matter of the Employes of the Commonwealth of Pennsylvania, PLCB, 9 PPER ¶ 9129 (Nisi Decision and Order, 1978), 9 PPER ¶ 9201 (Final Order, 1978), aff'd, Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, 409 A.2d 532 (Pa. Cmwlth. 1980). In that case, the Commonwealth Court affirmed the Board's exclusion of the General Manager IIB classification from the unit and stated as follows:

> "The shift independent General Managers were created as a result of the PLCB's reorganization of the management structure in the State Stores. The purported purpose of the reorganization at this level was to clearly delineate a line of authority whereby a single individual would be responsible for day to day store operations whereas, under the 'old system' a co-manager concept was in effect. The Board determined that only shift independent General Managers were management level employes.

> In the large volume stores that General Manager is not tied to a shift and the shift supervisor is a Liquor Store Manager or in some cases a Liquor Store Clerk II. Section 301(16) requires that all employes above first-level supervisor shall be management. All Liquor Store Managers are first-level supervisors. Liquor Store Clerk IIs as a unit are rank and file, but in stores where they act as shift supervisors, they sufficiently resemble first-level supervisors so as to put the shift independent Liquor Store General Manager in all instances above the first level of supervisor and thus a management-level employe."

409 A.2d at 534-535. In 1989, the Union again filed a petition seeking the inclusion of the General Managers IIB classification, among others, in the first level supervisory unit. In the Matter of the Employes of the Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board, 22 PPER ¶ 22195 (Proposed Order of Dismissal, 1991). In that case, the Hearing Examiner determined that the Union has the burden to show that the job duties of the General Manager IIB classification had changed since the 1978 decision excluding the General Manager IIB classification from the Union's meet and discuss unit. Gateway School District v. PLRB, 470 A.2d 185 (Pa. Cmwlth. 1984); Trinity Area School District, 22 PPER ¶ 22125 (Final Order, 1991). The Hearing Examiner found that the General Manager IIBs were still shift independent and responsible for the overall operation of their stores, the basis upon which the Board and the Commonwealth Court excluded the General Manager IIB classification from the meet and discuss unit in 1978. Accordingly, the Hearing Examiner concluded that the Union failed to carry the burden of showing that the job duties of the General Manager IIB classification had changed with respect to their shift independence and responsibility for the overall operation of their stores and dismissed the Union's unit clarification petition.

The Union has once again failed to carry its burden to prove that the job duties of the General Managers IIBs with respect to shift independence and overall responsibility for the operation of their stores has changed since the position was previously excluded from the unit in 1978 and 1991.

With regard to shift independence, the Hearing Examiner found as fact, based upon substantial and legally credible evidence on the record, that the General Managers IIB classification remains shift independent. General Manager IIB Ralph C. Naccarelli testified that he scheduled himself and his employes in the store. Mr. Naccarelli tries to be fair to his employes by not scheduling them for five late shifts or three Mondays in a row. Otherwise, he schedules himself to work whatever shift he chooses. (Proposed Order of Dismissal, Finding of Fact 6). General Manager IIB Stephen D. Nader testified that he scheduled himself and other employes and that he is required to take off Monday or Tuesday and to work two late shifts each week. Otherwise, he schedules himself to work whatever shift he chooses. (Proposed Order of Dismissal, Finding of Fact 7). These findings are similar to the findings in the 1991 proceeding that revealed that the General Manager IIB classification was shift independent at least one day out of five. (Finding of Fact 8, 22 PPER at 455).

With regard to overall operation of the stores, both of the General Manager IIBs testified that they were responsible for the overall management of their stores. This testimony is also similar to the testimony adduced in 1991 in which the Hearing Examiner found as fact that the General Manager IIB classification was accountable for the overall operation of the store. (Finding of Fact 9, 22 PPER at 455). Accordingly, the Union has failed to substantiate a change in the job duties of the General Manager IIB classification with respect to shift independence or overall management of the liquor store. Accordingly, the Union is bound by the previous determination that the General Managers IIBs are excluded from the bargaining unit as management level employes.[1]

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Union's exceptions and affirm the Hearing Examiner's Proposed Order of Dismissal.

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 dismissed and the Proposed Order of Dismissal is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this eighteenth day of November, 2003. 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.

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[1]In the Union's brief in support of its exceptions, the Union cites Fraternal Order of Police, Star Lodge No. 20 v. PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd, 522 Pa. 149, 560 A.2d 145 (1989) as the controlling case regarding management level employes. That case and the indicia set forth therein are in no way controlling in this case. Section 301(16) of the Act provides a specific definition for management level employe and includes "all employes above the first level of supervision". 43 P.S. §1101.301(16). The FOP, Star Lodge case sets forth the indicia of managerial employes for police and fire employes under Act 111 of 1968. The Star Lodge analysis in no way contains an exclusion for management level employes who are above the first level of supervision as is contained in Section 301(16) of PERA. Accordingly, FOP, Star Lodge provides no support for the Union's position that the General Manager IIB classification should be included in the unit represented by the Union.