

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
:
:
Case No. PERA-U-04-430-W
:
(PERA-R-87-196-W)
:
DERRY TOWNSHIP :

FINAL ORDER

On September 28, 2005, Teamsters Local Union No. 30 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a Proposed Order of Unit Clarification (POUC) issued by a Board Hearing Examiner on September 9, 2005. In the POUC, the Hearing Examiner concluded that the Code Enforcement Officer employed by Derry Township (Employer) was a management level employe within the meaning of the Public Employers Relations Act (Act) and excluded that position from a bargaining unit of nonprofessional employes represented by the Union and certified by the Board at Case No. PERA-R-87-196-W.

In its exceptions, the Union argues that the Code Enforcement Officer no longer exercises the discretion that was present in the previous Board cases relied upon by the hearing examiner to reach the conclusion that a code enforcement official is a management level employe within the meaning of the Act. The Union also argues in its exceptions that the Code Enforcement Officer's authority in purchasing and in administering the townships summer recreation program and its telephone system do not amount to management level duties.

Section 301(16) of the Act defines management level employe as "any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision." 43 P.S. § 1101.301(16). In Commonwealth of Pennsylvania (Attorney Examiners), 12 PPER ¶ 12131 (Final Order, 1981), the Board interpreted Section 301(16) of PERA in the following fashion:

The statute may be read to state a three-part test in determining whether an employe will be considered managerial. Those three parts are (1) any individual who is involved directly in the determination of policy; (2) any individual who directs the implementation of policy; or (3) employes above the first-level of supervision.

12 PPER at 203. In this case, the hearing examiner determined that the Township Code Enforcement Officer met the second part of the test in that he directs the implementation of policy. In Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), the Board explained the implementation of policy as follows:

We interpret [the implementation of policy] to include those persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, provided that such role is not of a routine or clerical nature and bears managerial responsibility to insure completion of the task. The administration of a policy involves basically two functions: (1) observance of the terms of the policy and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine and ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy. Furthermore, the interpretation of policy would constitute responsible implementation of policy as a continuation of the managerial decision making process.

In Horsham Township, the Board concluded that a code enforcement official met the policy implementation portion of the test for management level status. Further, in Employes of Carlynton School District, 377 A. 2d 1033 (Pa. Cmwith. 1977), the Commonwealth Court noted that "the definition in the Act does not require that, in order to be classified as a 'management level employe' an individual be involved directly in the determination of policy or responsibly direct the implementation of policy at all times or in every aspect of his job." 377 A.2d at 1035.

In the POUC, the hearing examiner found that Terry Giannini is employed as the Township's Code Enforcement Officer and that he is responsible for enforcing the Township's health and safety ordinances and codes, one example of which would be the ordinances regarding nuisance properties. The Hearing Examiner found that Mr. Giannini has the authority to investigate complaints of code violations and makes the determination of whether there is a violation of the code or ordinance. If he finds that there is a violation, he informs the alleged violator what has to be done to rectify the

problem. Mr. Giannini has the discretion whether to issue a letter or merely an oral warning to the individual and he uses his own discretion to decide how much time to allow to correct the problem. Mr. Giannini then returns to the site to determine whether the alleged violation has been rectified. If he finds that the violation has not been rectified, he obtains the approval of the Township Supervisor responsible for that particular area of the Township prior to filing for a citation from a District Justice. The Hearing Examiner found that most cases do not require resort to a District Justice and are resolved at Mr. Giannini's level. For the twelve years of Mr. Giannini's tenure prior to 2005, there had not been a difference of opinion between Mr. Giannini and the Township Supervisors on whether to proceed to the District Justice level and resort to a District Justice was required in only three cases. In 2005 the number of cases that proceeded to the District Justice level increased due to a new Township Supervisor who has taken an interest in more aggressive code enforcement in his geographic area of responsibility.

In its exceptions, the Union notes that the Code Enforcement Officer is no longer responsible for the enforcement of the Township's building codes because the Township has hired an outside company to enforce the statewide Uniform Construction Code that the Township has adopted. However, the hearing examiner's conclusion that the Code Enforcement Officer is a management level employe is based upon his enforcement of the Township's health and safety codes and ordinances that regulate such matters as nuisance properties. While a portion of the enforcement of the Township codes regarding such things as the height of the weeds on a property or whether or not a junk vehicle is present on the property appear to require only the routine observance of the Township's ordinances regarding such issues, the record reveals that the Code Enforcement Officer also issues written and oral warnings regarding unhealthy conditions or dangerous properties. For example, the Township's ordinance regarding unsafe buildings gives the Code Enforcement Officer the sole authority to initially investigate and determine whether any structure in the Township is in a dangerous or unsafe condition. (See Joint Exhibit 14) The discretion to determine the existence of an unsafe structure is the kind of discretion that is not routine or ministerial in nature and amounts to the responsible implementation of policy as outlined in Horsham Township, supra. The record also reveals that the Code Enforcement Officer has obtained District Justice citations regarding excessive rubbish on various properties in the Township. The discretion to initially determine that the accumulation of rubbish on a particular property has risen to the level of a health danger in the Township is also not merely routine or ministerial in nature and would support the exclusion of the Code Enforcement Officer as a management level employe. The Board has consistently held that code enforcement officials exercising the level of discretion evident in this case meet the second part of the test for management level employe in that they are responsibly implementing the employer's policies. See Horsham Township, supra; Millersville Borough, 9 PPER ¶ 9020 (Final Order, 1978); Indiana Township, 28 PPER ¶ 28074 (Proposed Order of Dismissal, 1997); Penn Township, 15 PPER ¶ 15015 (Final Order, 1983).

Although the Union points to the fact that the Code Enforcement Officer discusses how to handle various code enforcement issues with the Township Supervisors before he resorts to a District Justice, we agree with the hearing examiner that prior to the stage of the process in which a complaint is filed with the District Justice, the Code Enforcement Officer exercises sufficient discretion and independent judgment in enforcing the various health and safety codes and ordinances that his duties amount to management level duties within the meaning of the Act. It should also be noted that the record reveals that the majority of code issues do not reach the District Justice level, but are resolved at Mr. Giannini's level.

The Union further argues that the Mr. Giannini's responsibilities with respect to making purchases and administering the Township's summer recreation program do not establish his management level status. However, the hearing examiner did not base his determination that the Code Enforcement Officer is a management level employe upon either of those areas of responsibility, but on the code Enforcement Officer's responsibilities regarding the Township's health and safety codes and ordinances.

After a thorough review of the exceptions and all matters of record, the Board will dismiss the exceptions and affirm the Proposed Order of Unit Clarification issued by the hearing examiner.

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 to the above case number be and the same, are hereby dismissed, and the Proposed Order of Unit Clarification 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, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member this thirteenth day of December, 2005. 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.