

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PERA-R-06-111-E  
WEST PENN TOWNSHIP :

**FINAL ORDER**

On August 4, 2006, West Penn Township (Township) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a Nisi Order of Certification issued on July 20, 2006, in which the Board Representative adopted the Findings of Fact and Conclusions of Law from an Order Directing Submission of Eligibility List issued by a duly designated hearing examiner of the Board on June 5, 2006, in which the hearing examiner concluded that the Township's Roadmaster position was not a management level position within the meaning of the Public Employee Relations Act (PERA). The Roadmaster position was included in the bargaining unit of the Township's blue-collar, nonprofessional employees for purposes of an election that was conducted on July 11, 2006. In that election, Teamsters Local Union 773 (Union) received a majority of the valid ballots cast by bargaining unit employees and was accordingly certified as the exclusive bargaining representative of the Township's blue-collar, nonprofessional employees. On September 11, 2006, after having been granted an extension of time in which to file, the Union filed its brief in response to the Township's exceptions.

In its exceptions, the Township alleges that the hearing examiner erred in 1) Finding of Fact 8 in which the hearing examiner found that the Roadmaster's work is generally routine and that any unusual work must receive the approval of the Township Supervisors; 2) Finding of Fact 9 in which the hearing examiner found that the Roadmaster's role in township Supervisors' meetings is limited to reporting on past activities and making suggestions for future work; 3) Finding of Fact 10, in which the hearing examiner found that the Roadmaster does not set the Township's road repair policy; and 4) concluding that the Roadmaster is not a management level employee within the meaning of PERA.

The Township's contentions that the hearing examiner erred in Findings of Fact 8, 9 and 10 are without merit. We have examined the record as a whole and are satisfied that the hearing examiner's findings accurately reflect the job duties of the Roadmaster. In Finding of Fact 8, the hearing examiner found that the Roadmaster is responsible for maintaining and repairing the Township roads and when necessary, the Township equipment and buildings. The hearing examiner found that, generally, this work is routine and can be done without the approval of the Township Supervisors. However, the hearing examiner found that more important work must get the approval of the Township Supervisors. The hearing examiner's annotations to Finding of Fact of 8 reveal that that finding is based upon the testimony of the Township's own witness, David Zeigler, who is a Township Supervisor. Additionally, Finding of Fact 8 is corroborated by the testimony of the Roadmaster himself, and is accordingly supported by substantial evidence on the record.

Finding of Fact 9, in which the hearing examiner found that the Roadmaster attends the monthly township Supervisors' meetings and reports on the roadwork that had been done in the prior month, and offers suggestions regarding the next month's work, is also based upon the testimony of Mr. Zeigler and corroborated by the testimony of the Roadmaster. The Township relies upon general language in the Roadmaster's job description to argue that the Roadmaster's responsibilities are far more extensive. However, the broad language in the job description does not support the Township's view of the Roadmaster's alleged management level status. The Township refers to Responsibility #25 in the job description which states that the Roadmaster "[i]nvestigates [citizen] complaints and determine[s] the appropriate course of action." However, this language, absent specific examples of the Roadmaster's range of authority in resolving citizen complaints, does not provide sufficient factual support for the exclusion of the Roadmaster. Finally, Finding of Fact 10, that the Roadmaster does not set Township road repair policy, is again based

upon Mr. Zeigler's testimony and the Township failed to adduce any evidence to the contrary. Accordingly, the hearing examiner's findings will not be altered.

Section 301(16) of PERA 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 policy; or (3) employes above the first level of supervision.

12 PPER at 203. In this case the Township argues that the Roadmaster meets both the first and second parts of the test in that he is involved directly in the determination of policy and also responsibly directs the implementation of policy.

In Horsham Township, 9 PPER ¶ 157 (Final Order, 1978), the Board interpreted the policy formulation part of the test of management level status as follows:

An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the Statute does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal.

9 PPER at 327.

The Board went on in Horsham Township to discuss the second part of the test for management level status, i.e.: policy implementation, to include the following:

...[T]hose 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 ensure completion of the task. The administration of 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 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.

Id. Accordingly, in order to be excluded from a unit as a management level employe under PERA, the employe must either engage in meaningful participation in development of the employer's policy, or must ensure fulfillment of that policy by concrete measures.

The burden of proving the management level exclusion is on the party seeking the exclusion, here, the Township. School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998). With respect to the formulation of policy, the Township simply failed to substantiate that the Roadmaster had any meaningful participation in the establishment of policy. The record is devoid of a single policy initiative in which the Roadmaster had any meaningful involvement. In Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1989), the Commonwealth Court affirmed the Board's determination that the physicians at issue in that case were management level

employees where their policy recommendations were followed 90-95% of the time. The record here only contains evidence that the Roadmaster made suggestions at the township Supervisors' meetings regarding future road repair work, but there is no indication that those suggestions involved the policy of the Township with respect to road construction or repairs. Even assuming that the suggestions made by the Roadmaster at the township Supervisors' meetings involved policy considerations, absent evidence that the Roadmaster's suggestions were followed by the township Supervisors, it cannot be said that the Roadmaster has an effective role in policy formulation. The Township also relies upon the Roadmaster's preparation of specifications for the purchase of equipment and performance of road projects by outside contractors, but, even assuming these job duties amount to policy formulation, the Township again failed to show that the Roadmaster's recommendations in these regards were followed on a regular basis.

With respect to policy implementation, the Township has similarly failed to substantiate that the Roadmaster engages in anything more than the mere observance of the Township's existing road repair policy. There was simply no evidence that the Roadmaster engaged in the type of responsible implementation that would "necessitate a change in procedure or methods of operation." Horsham Township, 9 PPER at 327. The Township failed to present any evidence that the Roadmaster does anything more than merely follow the Township's policies regarding road repair. Accordingly, the Township has failed to carry its burden to prove that the Roadmaster position should be excluded from the bargaining unit as a management level position.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Township and affirm the Nisi Order of Certification issued by the Board Representative.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case be and the same are hereby dismissed and the Nisi Order of Certification is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this nineteenth day of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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L. DENNIS MARTIRE, CHAIRMAN

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ANNE E. COVEY, MEMBER

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JAMES M. DARBY, MEMBER