

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On March 10, 2006 the Teamsters Local Union 773 (Petitioner or Union) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) seeking to represent all road crew employes of West Penn Township (Respondent or Township).

On March 31, 2006, the Secretary of the Board issued an order and notice of hearing directing that a pre-hearing conference be held on April 17 to resolve the matters in dispute by mutual agreement of the parties, and April 21, 2006 in Harrisburg as the time and place of hearing, if necessary. The hearing was necessary and was held as scheduled before Thomas P. Leonard, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the parties stipulated and agreed that West Penn Township is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (Act). (N.T. 3)
2. That the parties stipulated and agreed that Teamsters Local Union 773 is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 3)
3. That the Township is organized according to the Pennsylvania Second Class Township Code. (N.T. 40)
4. That the Township is governed by a three member Board of Supervisors, comprised of Chairman Randy Troxell and members David Ziegler and Timothy Houser. (N.T. 4).
5. That the Township employs five blue collar employes, all on the road crew. The employes are Dale Faust, Larry Faust, Jeremy Frable, Joseph Fritz and John Garber. The Township agrees with the union that the first four employes should be eligible to vote for the exclusive representative. The Township contends that Garber, the roadmaster, is not eligible to vote because he is a management level employe. (N.T. 6-7)
6. That Garber has held the position of roadmaster since December 1, 2001. (N.T. 11, 28)
7. That on March 6, 2006, Garber delivered to the Board of Supervisors a draft job description of the roadmaster position that he prepared. The Supervisors have not yet formally approved the job description. The description listed the responsibilities of the position. (N.T. 12, 19 Township Exhibit 2)
8. That Garber is responsible for maintaining and repairing the township roads and, when necessary, the township equipment and buildings. Usually, the work is routine and can be done without the approval of the Supervisors. However, more important work must get the approval of the Supervisors. (N.T. 24, 29, Township Exhibit 2)

9. That Garber attends the monthly Board of Supervisors meetings and delivers a written report of the road work that has been done in the prior month. Occasionally at these monthly meetings he brings up suggestions of what he wants to accomplish in the next month. (N.T. 22-24, 26)

10. That Garber does not set Township road repair policy. (N.T. 22)

DISCUSSION

The Union has petitioned the Board to represent a bargaining unit comprised of the road crew employes. They are the only blue-collar employes. The one issue that must be resolved at this stage of the process is the Township's contention that the position of roadmaster, held by John Garber, is a management level employe under Section 301(16) of the Act. That section states:

(16)'Management level employe' means 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).

The Board and the courts have interpreted Section 301(16) on various occasions. In Pennsylvania Ass'n of State Mental Hosp. Physicians v. PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989) the Commonwealth Court adopted the Board's test for determining whether an employe is a management level employe under Section 301(16). This test provides that an employe will be managerial if any one of the following three factors are established: (1) the employe is involved directly in the determination of policy; (2) the employe directs the implementation of policy; or (3) the employe is above the first level of supervision. id at 1023. See also Lackawanna Career Technology Center, 33 PPER ¶ 33201 (Final Order, 2002).

The inquiry in this case does not involve the third factor, an employe who "is above the first level of supervision," because Garber acts as a lead worker. He is the only person between the elected Township Supervisors and the other road crew employes.

Accordingly, this examination will look for evidence of Garber's role in the first two factors, determination of policy and directing the implementation of policy. In Commonwealth of Pennsylvania (Attorney Examiners 1), 12 PPER ¶ 12131 (Final Order, 1981), the Board stated:

Section 301(16)...speaks in terms of 'any individual who is involved directly in the determination of policy.' This definition necessarily includes those employes who have been shown to have meaningful participation in the decisional process as well as those with statutory authority to make the final determination.

11 PPER at 316 (emphasis in original) (citing Employees of Carlynton School District v. Carlynton School District, 377 A.2d 1033 (Pa. Cmwlth. 1977)).

However, in order to demonstrate that a person at a given position is management level, the Board further stated that a person directly involved in the determination of policy "should have some control of or responsibility for authorship in the employer's policy making process." 11 PPER at 317. (Citation omitted). As stated in Carlynton, "the Act does not require that, in order to be classified as a 'management level employe' an individual be involved 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 (emphasis in original). Indeed, employes will be considered management level "if some of their functions are management functions." AFSCME, Council 13 v. PLRB, 510 A.2d 150 (Pa. Cmwlth. 1986).

In In Re: Matter of the Employees of State System of Higher Education, 34 PPER ¶ 167 (Final Order, 2003), the Board found that grant and special fund analysts who did not formulate policy nevertheless may be management level if they responsibly direct the

implementation of policy. See also AFSCME, Council 13, supra; Pennsylvania Association of State Mental Hospital Physicians v. Commonwealth of Pennsylvania, PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989), petition for allowance of appeal den'd, 525 Pa. 590, 575 A.2d 119 (1990).

In Horsham Township, 9 PPER 9157 (1978) the Board was asked to determine whether an employe who served as Building Inspector, Assistant Zoning Officer, Plumbing Inspector, Sewage Enforcement Officer and Sanitation Officer was a management level employe. The Board concluded that the employe was management level and stated:

[A]n 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 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 is simply engaged in research or the collection of data necessary for the development of a policy proposal.

9 PPER at 327.

As for the second part of the test, the Board went on to state that individuals who responsibly direct the implementation of policy are "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 ensure completion of the task."

The Board also stated in Horsham Township, supra, that:

the administration of a policy involves basically two functions: (1) observance of the term of the policy and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the term 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. A person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing implementation of policy. Furthermore, interpretation of policy would constitute responsible implementation of policy as a continuation of the managerial decision making process.

9 PPER at 327.

The burden of proving the management level employe exclusion is on the Township, because it is the party seeking to exclude the position. In Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977), the Board held,

Because the Public Employe Relations Act encourages and protects the right of public employes to organize and; collectively, to bargain with their public employer over wages, hours, and other conditions of employment, the coverage of the Act is inclusive rather than exclusive. The burden is upon the employer to establish by a preponderance of the evidence that a particular employe or groups of employes should be excluded from an otherwise appropriate unit.

8 PPER 195, at 196.

The Township has not met its burden of proving that the roadmaster is a management level employe. As stated above, the inquiry will focus on the first two factors of the Section 301(16) test because Garber is not above the first level of supervision. He acts as a lead worker and is the only person between the road crew and the elected Supervisors.

As for the first two factors of the test, the Township has shown no examples of Garber's meaningful involvement in the determination of policy or directing the implementation of policy. Garber does perform administrative tasks that are interwoven with his principal responsibility of seeing that the Township's roads are repaired and maintained. He also acts as the liaison between the Supervisors and the road crew, as evidenced by his attendance at the Supervisors' monthly meetings to report on what the crew has done in the past month and major projects that they would like to do in the next month. However, there is no evidence of any significant indicia of policy determination or directing the implementation of policy. Township Supervisor Ziegler admitted that Garber does not set road repair policy. Absent from this case is evidence that Garber has the authority or responsibility to select among options and to put proposed policy into effect, or is 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." Horsham Township, supra.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Township is a public employer within the meaning of Section 301(1) of the Act.
2. That Teamsters Local Union 773 is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties.
4. That the roadmaster is not a management level employe within the meaning of Section 301(16) of the Act.
5. That the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time blue-collar employes, including but not limited to road crew employes, and excluding supervisors, management level employes, confidential employes and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall within ten (10) days of the date hereof submit to the Board an alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this fifth day of June, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner