

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PERA-R-06-492-W  
 :  
 LIBERTY BOROUGH :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On October 3, 2006, Teamsters Local Union 205 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation alleging that thirty per cent or more of the street department employes of Liberty Borough (Borough) wish to be represented by the Union. On October 13, 2006, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on October 25, 2006. The hearing examiner thereafter continued the hearing three times, once at the request of both parties, once at the request of the Union without objection by the Borough and once at the request of the Borough without objection by the Union. On January 22, 2007, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On March 7, 2007, the notes of testimony from the hearing were filed with the Board. On April 18, 2007, the Borough filed a brief.

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

FINDINGS OF FACT

1. The Borough is a public employer with its principal place of business located at 2921 Liberty Way, Port Vue, PA 15133. (N.T. 4-5)
2. The Union is an employe organization with its principal place of business located at 1184 Long Run Road, White Oak, PA 15131. (N.T. 5)
3. The unit appropriate for collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time blue collar nonprofessional employes including but not limited to street department employes; and excluding management level employes, supervisors, first level employes, confidential employes and guards as defined in the Public Employe Relations Act (Act). (N.T. 5-6)
4. In 2000, the Borough hired Bruce Takaht to work as the street commissioner in its street department. Michael Matlos was working as a part-time skilled laborer in the street department at the time. (N.T. 8-10, 32)
5. On a daily basis, Mr. Takaht decides what public works projects need to be done. During the summer, those projects are cutting grass and weeds. During the winter, those projects include salting the streets when 911 lets Mr. Takaht know that the streets are icy. Once or twice a week a member of the Borough's council asks Mr. Takaht to check out a problem reported by a resident. When Mr. Takaht and Mr. Matlos are not able to handle a public works project themselves, Mr. Takaht so informs council, and council subcontracts the work. (N.T. 11-12, 16-18, 24-25, 32)
6. Mr. Takaht is responsible for making sure that equipment is fixed and ready to go, for purchasing supplies and for getting repair estimates. Vendors bill the Borough for the purchases he makes. (N.T. 12-13, 15, 20, 31)
7. Council purchased a new backhoe after Mr. Takaht recommended that a new one be purchased and obtained a price for one. Mr. Takaht played no role in deciding when or where to purchase the backhoe. (N.T. 19, 21, 37-39)
8. Council purchased a new dump truck after Mr. Takaht recommended that a new one be purchased. Mr. Takaht played no role in deciding when or where to purchase the dump truck. (N.T. 20-21, 39)

9. Mr. Takaht has never prepared a budget for the street department. (N.T. 35, 47, 58)

10. Every year or so the Borough's engineer conducts a survey of which roads need to be repaved. Mr. Takaht accompanies the engineer during the surveys and notifies council of his opinion as to which roads need to be surveyed. He "guesses" that council passes his opinion on to the engineer. (N.T. 27)

11. In 2005, the Borough hired Mr. Matlos on a full-time basis. Mr. Takaht had been asking for additional help for years. (N.T. 32-33, 49)

12. Mr. Takaht does not have to tell Mr. Matlos what to do. Mr. Takaht performs the same work that Mt. Matlos does. (N.T. 10, 46)

13. Mr. Takaht played no part in setting Mr. Matlos' hourly rate. (N.T. 36)

14. Mr. Takaht does not have the authority to discipline Mr. Matlos for reporting to work late. (N.T. 36-37)

15. Mr. Takaht does not evaluate Mr. Matlos. (N.T. 37)

16. Mr. Takaht played no part in deciding how much vacation time Mr. Matlos gets. (N.T. 40)

17. Mr. Takaht calls part-time employes to work as needed. The part-time employes are on a list that was approved by council. Mr. Takaht has no authority to add employes to or remove employes from the list. The part-time employes are paid a rate set by council. Mr. Takaht played no part in setting the rate. (N.T. 21-23, 45)

18. Mr. Takaht needs the approval of council to change his hours or to authorize overtime. (N.T. 34)

19. Mr. Matlos is eligible for inclusion in the unit. (N.T. 6)

20. The Union has demonstrated to the satisfaction of the Board the requisite showing of interest as set forth in the Act.

#### DISCUSSION

The question before the Board is whether or not the Borough's street commissioner (Mr. Takaht) is eligible for inclusion in the bargaining unit.

In its brief, the Borough contends that Mr. Takaht is not eligible for inclusion in the bargaining unit because he is involved directly in the determination of policy and therefore is a management level employe under section 301(16) of the Act, which provides as follows:

"'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."

As the party seeking to exclude Mr. Takaht from the bargaining unit, the Borough had the burden of proving by substantial evidence that he is a management level employe. See School District of Philadelphia v. Commonwealth of Pennsylvania, PLRB, 719 A.2d 835 at n. 5 (Pa. Cmwlth. 1998) ("the party seeking to exclude a position from a bargaining unit has the burden of proving by substantial evidence of record that the statutory exclusion applies").

In support of its contention that Mr. Takaht is a management level employe, the Borough points out that the Board wrote in West Penn Township, 37 PPER 120 (Final Order 2006), 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."

37 PPER at 397, quoting Horsham Township, 9 PPER ¶ 9157 at 327 (Final Order 1987). The Borough also points out that Mr. Takaht is responsible for deciding which public works projects are to be done on a daily basis, for recommending the subcontracting of major public works projects, for making sure that the Borough's equipment is in good repair and for purchasing supplies. The Borough further points out that Mr. Takaht recommended the purchase of two new pieces of equipment. In addition, the Borough submits that Mr. Takaht was responsible for hiring the other employe in the street department (Mr. Matlos) on a full time basis and for hiring its part-time employes and that he is responsible for supervising Mr. Matlos and its part-time employes.

In West Penn Township, supra, however, the Board further wrote as follows:

"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."

37 PPER at 397, quoting Horsham Township, supra, 9 PPER at 327. Thus, in West Penn Township, supra, the Board found that a roadmaster who was responsible for maintaining and repairing a township's roads and who recommended road repair work, the purchase of equipment and the subcontracting of major road projects was not a management level employe because the record showed that his work was routine in nature and that any major projects had to be approved by the township's board of supervisors. Similarly, in Borough of Ridley Park, 27 PPER ¶ 27227 (Final Order 1996), the Board found that a foreman who recommended the purchase of a number of items but played no role in the preparation of the employer's budget was not a management level employe.

Application of the law to the facts of record leads to the conclusion that Mr. Takaht is not a management level employe. As set forth in findings of fact 5-10, although the record shows that he is responsible for deciding which public works projects are to be done on a daily basis, for recommending the subcontracting of major public works projects, for making sure that the Borough's equipment is in good repair and for purchasing supplies and that the Borough purchased two new pieces of equipment he recommended, it also shows that his work is routine in nature, that any major project has to be approved by council, that he did not decide when or where to purchase the new equipment and that he has never prepared a budget. The same result as in West Penn Township, supra, and Borough of Ridley Park, supra, therefore obtains.

As set forth in findings of fact 11 and 17, the record does not show that Mr. Takaht effectively recommended the hiring of Mr. Matlos on a full time basis or the hiring of the part-time employes. Even if it did, Mr. Takaht at best would be a supervisor under section 301(6) of the Act, which provides as follows:

"`Supervisor' means any individual having authority in the interests 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."

The fact that Mr. Takaht supervises Mr. Matlos and the part-time employes would likewise make him at best a supervisor under section 301(6). There is, therefore, no basis for finding Mr. Takaht to be a management level employe under section 301(16).

Although the Borough does not argue the point, there is no basis for finding Mr. Takaht to be a supervisor under section 301(6) in any event. An employe must exercise independent judgment in order to be a supervisor under section 301(6). Moreover, under section 604(5) of the Act, "[i]n determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." Thus, in West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal den'd, 568 A.2d 675, 795 A.2d 984 (2000), the court held that cafeteria managers

who exercised supervisory authority for an insignificant part of their time, who worked alongside the employees they allegedly supervised and who did not have to tell the employees what to do were not supervisors. The court also held that the hallmark of supervisory status is the exercise of power to reward or sanction employees. As set forth in finding of fact 12, the record shows that Mr. Takaht does not have to tell Mr. Matlos what to do and that Mr. Takaht performs the same work as Mr. Matlos. The record does not show that Mr. Takaht ever rewarded or sanctioned Mr. Matlos. Accordingly, there is no basis for finding Mr. Takaht to be a supervisor. See Borough of Ridley Park, supra, where the Board on a substantially similar record found the foreman not to be a supervisor, and Trafford Borough, 29 PPER ¶ 29191 (Order Directing Submission of Eligibility List 1998), and Charleroi Borough, 17 PPER ¶ 17147 (Order Directing Submission of Eligibility List 1986), where the hearing examiner on substantially similar records found street commissioners not to be supervisors.

#### CONCLUSIONS

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

1. The Borough is a public employer under section 301 (1) of the Act.
2. The Union is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The street commissioner is not a supervisor under section 301(6) of the Act.
5. The street commissioner is not a management level employe under section 301(16) of the Act.
6. 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 non-professional employes including but not limited to street department employes; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.
7. Mr. Takaht and Mr. Matlos are eligible for inclusion in the bargaining unit.

#### 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 Borough shall within ten 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 twentieth day of April 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner

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April 20, 2007

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LIBERTY BOROUGH  
Case No. PERA-R-06-492-W

Enclosed is a copy of my order directing submission of eligibility list.

Sincerely,

DONALD A. WALLACE  
Hearing Examiner

Enclosure

cc: Alison Maksin  
Honorable Edward Slater