

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
:
Case No. PERA-R-06-100-W
:
(PERA-R-91-571-W)
WESTMORELAND COUNTY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On March 06, 2006, the Westmoreland Court Association of Professional Employees (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation (Petition) pursuant to the Public Employee Relations Act (PERA) alleging that thirty percent or more of approximately fifty professional employees who are directly involved with, necessary to and appointed by the Court of Common Pleas of Westmoreland County (County) in Domestic Relations and Probation wish to be included in the existing certified unit of approximately fifty-eight court appointed professional employees exclusively represented by the Union. The Union also petitions for an election pursuant to the Board's decision in Westmoreland Intermediate Unit, 12 PPER 12347 (Order and Notice of Election, 1981).¹ The Petition specifically seeks to include Family Court Master and Hearing Officers; Title IV-D Attorneys in Domestic Relations; Domestic Relations Enforcement Lead and Conference Officers, the Family Court and Orphan's Court Administrators, Adult Probation Hearing Officer, Adult and Juvenile Probation Supervisors, Domestic Relations Intake Supervisor and the Domestic Relations PACSES Coordinator.²

On April 4, 2006, the Secretary of the Board (Secretary) issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Monday, May 8, 2006. On May 4, 2006, a different hearing examiner previously assigned to the case continued the matter indefinitely at the request of both parties to permit time for settlement. The first hearing examiner expressly informed the parties that the hearing would be rescheduled at the request of either party. By letter dated May 18, 2007, after lying dormant for one full year, the Secretary informed the parties that the matter would be dismissed unless the Union showed cause within twenty (20) days why further proceedings were warranted. By letter dated May 22, 2007, the attorney for the Union at that time, who no longer represents the Union, informed the Secretary that the matter was close to settling but that the Union intended to proceed before the Board if necessary. By letter dated June 4, 2007, the Secretary memorialized her receipt of the Union's letter of intent to proceed and granted the Union and additional ninety (90) days to hold the matter in abeyance.

On October 1, 2007, the Union's former attorney informed the Secretary that negotiations regarding the Petition were continuing and the issues were being narrowed. The Secretary responded by letter dated October 4, 2007, and therein granted the Union an additional ninety (90) days to hold the matter in abeyance. On January 30, 2008, the Secretary issued another show-cause letter requesting that the Union demonstrate within twenty (20) days why further proceedings were warranted and warning of the dismissal of the Petition. By letter dated February 5, 2008, the Union's former counsel requested that the matter not be dismissed and asked the Board to grant additional time for the Union to change legal counsel. On March 8, 2008, the Board received the entry of appearance of the Union's new legal counsel. Upon receipt of the entry of appearance, the matter was re-assigned to this hearing examiner. On March 19, 2008, I scheduled a hearing for Wednesday, April 16, 2008 in Pittsburgh. By letter dated April 15, 2008, I continued the hearing at the request of the County and rescheduled it for Tuesday, April 29, 2008 in Pittsburgh. A hearing was indeed held on that date during which both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. A second day of hearing was necessary and scheduled for

¹ In Westmoreland, the Board espoused the rule that when a party seeking to accrete a number of employees that amounts to fifteen percent or more of the existing bargaining unit, an election must be held.

² The acronym refers to the Pennsylvania Automated Child Support Enforcement System ordered by federal law and installed statewide by the Pennsylvania Department of Public Welfare.

Wednesday, May 21, 2008. The May 21, 2008 hearing was continued at the request of the County without objection from the Union. The second hearing was rescheduled for July 2, 2008 in Pittsburgh. A second hearing was indeed held on that date during which both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On July 31, 2008, the notes of testimony from the July 2, 2008, hearing were filed with the Board. The notes of testimony from both hearing dates are sequentially paginated. The Union and the County subsequently agreed to an August 8, 2008 submission date for post-hearing briefs. Both the County and the Union timely filed post-hearing briefs.

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 County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5).
3. Gary S. Miscovitch is above the probation-officer ones and twos, a probation-officer aide and a legal secretary in the field unit in Adult Probation. He and other court-appointed employes at his level do not and have not hired any employes. He is not directly involved in suspending or disciplining employes and has no authority to do so. Mr. Miscovitch was not involved in determining the manner in which layoffs were to be conducted or effectuated in 2004. Only the President Judge of Westmoreland County can hire or discharge employes. No employe in Adult Probation at Mr. Miscovitch's level can hire, transfer, suspend, layoff, recall, promote, or discharge employes. (N.T. 7-9, 23-25, 98-101, 107; County Exhibit 1).
4. The Director of Adult Probation is Andrew Urban. Although Mr. Miscovitch and other employes at his level report disciplinary matters to their Director, they do not initiate or impose discipline. (N.T. 84, 92, 98-101).
5. The Court's computer system assigns new cases in Adult Probation to adult probation officers based on the geographic territory of the case and the officer already assigned to that territory. Mr. Miscovitch does not verify the officers' work time. He cannot move or reassign any probation officer to a different unit. (N.T. 9, 37, 107).
6. Mr. Miscovitch does not possess the ability to reward or sanction employes. He and the other employes at his level in Adult Probation have no authority to resolve or adjust grievances even though they are the designated first step in the contractual grievance procedure for the existing unit. When one employe was terminated, Mr. Miscovitch was not involved in his termination. Although he did report that employe's errant behavior to Director Urban and recommended discipline, his recommendation was not followed for that incident. (N.T. 10, 12-13, 32, 39, 43, 107).
7. Mr. Miscovitch substitutes for absent probation officers at hearings. He is responsible for working with the Sheriff's Office to execute bench warrants. He distributes and documents the results of urine tests. (N.T. 13-14, 18).
8. Mr. Miscovitch verifies the expense vouchers submitted by the probation officers, i.e., he reviews the mileage calculations with a calculator and submits the calculator strip to Director Urban for final review and approval. The expense vouchers are approved for payment by the Director, not Mr. Miscovitch or other supervisors. He also reviews the probation officers' telephone records. (N.T. 16, 17, 22, 32, 100).
9. Mr. Miscovitch ensures that probation officers requesting vacation leave have the time being requested, but he does not provide final approval. Final approval for leave comes from Director Urban. Mr. Miscovitch ensures that the sub-office is adequately

staffed and that any court hearings are covered. He also may arrange for substitutions of the vacationing officers. (N.T. 17, 22).

10. Mr. Miscovitch reviews violation files. He then forwards the violation file to the assigned probation officer who, after review, forwards it to the judge. Mr. Miscovitch's review seeks to ensure that the proper amount of money has been received by the offender and/or that the offender's drug or alcohol treatment program information is correct. (N.T. 20-21).

11. Mr. Miscovitch ensures that the work of the field officers is correctly and timely completed. He meets with probation-officer ones and twos and completes their performance evaluations. He then submits those evaluations to Director Urban. Performance evaluations are not used to promote or demote or to give wage increases or decreases. The purpose of performance evaluations is to fulfill the requirements of a state grant. (N.T. 24-27, 36, 97, 112).

12. Mr. Miscovitch is made aware of probation officers in Adult Probation who call off sick so he can arrange to cover those officers' responsibilities, such as court appearances.

13. Norman Mueller is above the probation-officer ones and twos in Juvenile Probation. He has not hired, transferred or suspended any employes within Juvenile Probation and has no authority to do so. He has not been involved with layoffs. Mr. Mueller is unable to promote or reward probation officers and has not done so. He is unable to demote or sanction probation officers and has not done so. Although there have been disciplinary problems within Juvenile Probation, Mr. Mueller was not involved with those matters. Only the judges have the authority to hire or discharge employes in Juvenile Probation. The judges have not followed the recommendations for discipline of other employes at his level. Employes at Mr. Mueller's level do not initiate discipline. (N.T. 45-48, 53, 55-56, 62, 72, 76, 130-132, 145-147; County Exhibit 2).

14. Mr. Mueller does not assign cases to probation officers. The cases are automatically assigned to the officer previously assigned to cover the geographic territory of the probationer. Mr. Mueller does not have the ability to assign or transfer an officer to a particular unit or position. (N.T. 47, 79, 146).

15. Mr. Mueller has not completed performance evaluations in three years. When he did complete evaluations, they were not used to promote or demote employes. The evaluations were only used to meet state requirements through the Juvenile Court Judges' Commission. (N.T. 49, 59-61, 71, 76, 145).

16. Mr. Mueller reports directly to the Director of Juvenile Probation, Adeline Beighley. Only Director Beighley can approve expense vouchers for employes in Juvenile Probation. Mr. Mueller reviews expense vouchers for mathematical accuracy before they are approved by the Director. Mr. Mueller pre-approves vacation requests for probation-officer ones and twos and probation-officer aides. The final approval for vacation is given by the Director. Mr. Mueller ensures that the requesting employe has earned and banked the time he or she is requesting and that the time off will not conflict with office functions. Mr. Mueller does not have discretion or authority to pre-approve vacation leave if the requesting employe does not have the vacation time that he or she is requesting. (N.T. 49, 50, 52-54, 58, 124; County Exhibit 2).

17. Mr. Mueller reviews the case files of the probation-officer ones and twos on the computer. He ensures that cases are processed properly. He and other employes at his level would notify Director Beighley of any problems and provide corrective counseling to the assigned officer to remedy any mishandling or problems. (N.T. 63-64, 75-76, 127-128).

18. Probation officers in Juvenile Probation do not call off sick to Mr. Mueller. They call off to a County central computer. They do call Mr. Mueller directly if they need to arrange for hearing coverage when they call off. Probation officers in Juvenile Probation also notify Mr. Mueller if they leave early. (N.T. 65, 67, 102, 134; County Exhibit 4).

19. Willis Dean Zimmerman is a Technical Hearing Officer in Adult Probation. Mr. Zimmerman does not hold a law degree and is not required to do so. As Technical Hearing Officer, Mr. Zimmerman holds several different types of hearings for the Court. These hearings involve minor matters involving technical violations of probation or parole, bench warrant matters, ARD supervision fees and preliminary revocation. (N.T. 85-86, 211, 215, 217).

20. During these hearings, Mr. Zimmerman takes evidence and issues orders or recommendations to the judges. These orders or recommendations are generally adopted by the judges. He decides whether, after an alleged technical violation, the violator deserves more time to complete their conditions or whether they should be subject to revocation proceedings before a judge. He does not preside over revocation hearings. He exercises judgment as to whether or not probationers complied with a court order which was generated under the probation and parole laws. (N.T. 89-90, 218, 220-221, 225).

21. The Technical Hearing Officer position in the Westmoreland County Court of Common Pleas was created to take some work load away from the judges for minor technical parole violations. Hearing Officer Zimmerman performs duties that the judges formerly performed. (N.T. 221).

22. Nicole Angelo is the Establishment/Case Initiation Supervisor in the Domestic Relations Office. She has been in the position since January of 2007, which post-dates the filing date of the Petition. (N.T. 157-159, 172, 175, 177; County Exhibit 9).

23. John Graham is the Director of the Domestic Relations Office. Tim Cowoski is the Deputy Director of Establishment within the Domestic Relations Office. Ms. Angelo reports directly to Mr. Cowoski. (N.T. 162, 164, 169, 195).

24. Ms. Angelo's predecessor, Janey Weaver, investigated employes suspected of errant behavior and summarized any findings in written reports that she submitted to Director Graham. Ms. Weaver dispensed discipline, reassigned and transferred employes in Domestic Relations. Ms. Weaver also interviewed employes for positions in the Domestic Relations Office and made hiring recommendations to the judges. When Ms. Weaver held the position, there was no Deputy Director of Establishment, currently held by Mr. Cowoski. (N.T. 176, 196-200, 208-209).

DISCUSSION

Prior to the initial hearing on April 29, 2008, the parties agreed that the Family Court Masters and Hearing Officers along with the Domestic Relations PACSES Coordinator would not be included in the bargaining unit. Also, the parties agreed that the Title IV-D Attorneys, Domestic Relations Enforcement and Conference Officers, Family Court and Orphan's Court Administrators, and Domestic Relations Lead Officers would be included in the bargaining unit. However, the County also seeks to exclude the following positions from the proposed bargaining unit: Adult and Juvenile Supervisors, Domestic Relations Establishment/ Case Initiation or Intake Supervisor and the Adult Probation Technical Hearing Officer. The Union disagrees with the County's latter proposed exclusions.

As the party seeking the exclusion, the County has the burden of proving the necessary factual elements to support the exclusion. In the Matter of the Employes of State System of Higher Educ., 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999). The Board will only consider actual job duties performed and will only consider written job descriptions to corroborate testimony of actual job duties. In the Matter of the Employes of Elizabeth Township, 33 PPER ¶ 33053 (Final Order, 2002). Written descriptions alone do not constitute substantial, competent evidence of job duties. Id. Furthermore, "[a] mere job title or appellation, such as, supervisor or manager is not sufficient to overcome the actual duties performed as evidence of being a supervisor under Section 301(6) of PERA." West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), appeal den'd, 568 Pa. 675, 795 A.2d 984 (2000). Moreover, the Board will only consider the job duties that were performed prior to the filing of the petition. Post-petition job duties are not relevant to supporting the petition as a matter of law. "This policy is designed to deter an employer from assigning activities to an employe after a petition is filed simply to create the appearance that the employe should be excluded from the unit." Elizabeth Township, 33 PPER at 112.

As an initial matter, the Petition in this case was filed on March 6, 2006. Ms. Angelo began her duties as the Establishment/ Case Initiation Supervisor in January, 2007, which post-dates the filing of the Petition. Therefore, I will not consider Ms. Angelo's testimony regarding her actual job duties since January, 2007 because, as a matter of law, such post-Petition conduct does not support the Petition. Elizabeth Township, supra.

The County contends that the Adult Probation Supervisors, the Juvenile Probation Supervisors and the Establishment/ Case Initiation Supervisor are supervisory and management-level employees within the meaning of PERA. Section 301(6) of PERA provides as follows:

(6) "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 employees 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.

43 P.S. §1101.301(6). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5); West Perry Sch. Dist., supra. In determining whether an employe or employes should be deprived of the rights, benefits and privileges provided by PERA, the Board may "consider such factors as frequency, duration and importance of the various supervisory duties performed." West Perry Sch. Dist., 752 A.2d at 465. As Hearing Examiner Wallace aptly noted:

The Board will find an employe to be a supervisor if the employe actually exercises authority set forth in Section 301(6) of the Act and if the employe's exercise of such authority carries with it the power to reward or sanction employees. Belle Vernon Area School District, 21 PPER ¶ 21165 (Final Order, 1990). The Board will not find an employe to be a supervisor if the employe only exercises supervisory authority sporadically. Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1989). Nor will the Board find an employe to be a supervisor if the employe's exercise of supervisory authority is as a substitute for his or her own supervisor. Monroe County, 18 PPER ¶ 18002 (Final Order, 1986). Nor will the Board find an employee to be a supervisor if the employe's recommendations are not given controlling weight. Cf. City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988).

In The Matter of the Employees of Philadelphia Housing Authority, 22 PPER ¶ 22082 (Order Directing Submission of Eligibility List, 1991).

Management level employees are specifically excluded from the definition of public employe under Section 301(2) of PERA and, therefore, must not be included in any meet and discuss unit or bargaining unit. 43 P.S. § 1101.301(2); Employes of Carlynton Sch. Dist. v. Carlynton Sch. Dist., 377 A.2d 1033, 1035 (Pa. Cmwlth. 1976). Section 301 of PERA sets forth the definition of a management level employe as follows:

(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). Under this provision, a position is at the management level if the employe holding that position (1) is involved directly in the determination of policy; (2) directs the implementation of policy; or (3) is above the first level of supervision. Pennsylvania Association of State Mental Hosp. Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmwlth. 1988); Commonwealth of Pennsylvania (Attorneys Examiner I), 12 PPER ¶ 12131 (Final Order, 1981). When determining whether a position is accorded managerial status, the Commonwealth Court has held that "employees are properly classified as 'management level' employees where some, but not all, of their employment functions place them within the statutory definition of management level employees as set forth in § 301(16) of the Act." Carlynton, 377 A.2d at 1035.

ADULT PROBATION SUPERVISORS

The Adult Probation Supervisors are above the probation-officer ones and twos in Adult Probation. Gary Miscovitch is one of these supervisors for the field unit. The record shows that, although Mr. Miscovitch and the other Adult Probation Supervisors clearly perform administrative duties, the County has not met its burden of proving that those duties satisfy the criteria for supervisor in Section 301(6) of PERA. He and other court-appointed employees at his level do not and have not hired any employees. He is not directly involved in suspending or disciplining employees and has no authority to do so. Mr. Miscovitch was not involved in determining the manner in which layoffs were to be conducted or effectuated in 2004. Only the President Judge of Westmoreland County can hire or discharge employees. Although Mr. Miscovitch and other employees at his level report discipline to their Director, they do not initiate or impose discipline, and there is no evidence that they have actually recommended discipline or that any such recommendation was followed. No employee in Adult Probation at Mr. Miscovitch's level can hire, transfer, suspend, layoff, recall, promote, or discharge employees.

The Court's computer system assigns new cases in Adult Probation to adult probation officers based on the geographic territory of the case and the officer already assigned to that territory. Mr. Miscovitch does not verify the officers' work time. He cannot move or reassign any probation officer to a different unit. Mr. Miscovitch does not possess the ability to reward or sanction employees. He and the other employees at his level in Adult Probation have no authority to resolve or adjust grievances even though they are the designated first step in the contractual grievance procedure for the existing unit. When one employee was terminated, Mr. Miscovitch was not involved in his termination. Although he did report that employee's errant behavior to Director Urban and recommended discipline, his recommendation was not followed. The Board will not find an employee to be a supervisor if his recommendations are not given controlling weight. City of Bethlehem, supra.

Mr. Miscovitch substitutes for absent probation officers at hearings. He is responsible for working with the Sheriff's Office to execute bench warrants. He distributes and documents the results of urine tests. Mr. Miscovitch verifies the expense vouchers submitted by the probation officers, i.e., he reviews the mileage calculations with a calculator and submits the calculator strip to Director Urban for final review and approval. The expense vouchers are approved for payment by the Director, not Mr. Miscovitch or other supervisors. He also reviews the probation officers' telephone records. Mr. Miscovitch ensures that probation officers requesting vacation leave have the time being requested, but he does not provide final approval. Final approval for leave comes from Director Urban. Mr. Miscovitch ensures that the sub-office is adequately staffed and that any court hearings are covered. He also may arrange for substitutions for the vacationing officers. Mr. Miscovitch reviews violation files for accuracy. He then forwards the violation file to the assigned probation officer who, after review, forwards it to the judge. Mr. Miscovitch's review seeks to ensure that the proper amount of money has been received by the offender and/or that the offender's drug or alcohol treatment program information is present and correct. Mr. Miscovitch ensures that the work of the field officers is correctly and timely completed.

He meets with probation-officer ones and twos and completes their performance evaluations, which he then submits to Director Urban. Performance evaluations are not used to promote or demote or to give wage increases or decreases. The purpose of performance evaluations is to fulfill the requirements of a state grant. Mr. Miscovitch is made aware of probation officers in Adult Probation who call off sick so he can cover those officers' responsibilities, such as court appearances. Although Mr. Miscovitch and other Adult Probation Supervisors have many important responsibilities and administrative duties, these duties fail to satisfy the requirements of Section 301(6), and they are properly included in the bargaining unit.

The County also contends that "[t]heir overwhelming management responsibilities . . . and their implementation of department policy precludes them from being represented by a labor organization." (County post-hearing brief at 1-2). However, the County has not identified any specific policy that the Adult Probation Supervisors developed or implemented on behalf of the Court in order to be considered managerial employees. The fact that they may be invited to meetings characterized as management meetings or that their positions are given the appellation of supervisor does not make these employees either management level employees or supervisors within the meaning of PERA.

Also, the County's expectations of the Adult Probation Supervisors do not determine the status of these employees. As previously stated herein, the Board will only consider actual job duties already performed by an employee holding the position in question when determining the bargaining unit status of that position. Testimony or written job descriptions relating an employer's expectations of a position or the intended authority given to a position do not constitute substantial, competent evidence of job duties actually and historically performed. The County has not produced evidence establishing that the Adult Probation Supervisors actually implement specific Court policies. Therefore, the position of Adult Probation Supervisor is not a management-level position and is properly included in the bargaining unit.

JUVENILE PROBATION SUPERVISORS

Norman Mueller is one of the supervisors above the probation-officer ones and twos in Juvenile Probation. He has not hired, transferred or suspended any employees within Juvenile Probation and has no authority to do so. He has not been involved with layoffs. Mr. Mueller is unable to promote or reward probation officers and has not done so. He is unable to demote or sanction probation officers and has not done so. Although there have been disciplinary problems within Juvenile Probation, Mr. Mueller was not involved with those matters. Only the judges have the authority to hire or discharge employees in Juvenile Probation. The judges have not followed the recommendations for discipline of other employees at his level. Employees at Mr. Mueller's level do not initiate discipline. Mr. Mueller does not assign cases to probation officers. The cases are automatically assigned to the officer previously assigned to cover the geographic territory of the probationer. Mr. Mueller does not have the ability to assign or transfer an officer to a particular unit or position. Mr. Mueller has not completed performance evaluations in three years. When evaluations were completed, they were not used to promote or demote employees. The evaluations were only used to meet state requirements through the Juvenile Court Judges' Commission, and not to reward or sanction employees.

Mr. Mueller reports directly to the Director of Juvenile Probation, Adeline Beighley. Only Director Beighley can approve expense vouchers for employees in Juvenile Probation. Mr. Mueller reviews expense vouchers for mathematical accuracy before they are approved by the Director. Mr. Mueller pre-approves vacation requests for probation-officer ones and twos and probation-officer aides. The final approval for vacation is given by the Director. Mr. Mueller ensures that the requesting employee has earned and banked the time he or she is requesting and that the time off will not conflict with office functions. Mr. Mueller does not have discretion or authority to pre-approve vacation leave if the requesting employee does not have the vacation time that he or she is requesting; he does not exercise independent judgment.

Mr. Mueller reviews the case files of the probation-officer ones and twos on the computer. He ensures that cases are processed properly. He and other employees at his level notify Director Beighley of any problems and provide corrective counseling to the assigned officer to remedy any mishandling or potential problems. Probation Officers in Juvenile Probation do not call off sick to Mr. Mueller. They call off to a County central computer. They do call Mr. Mueller directly if they need to arrange for hearing coverage when they call off. Probation Officers in Juvenile probation also notify Mr. Mueller if they leave early. Although Mr. Mueller and other Juvenile Probation Supervisors have many important responsibilities and administrative duties, these duties fail to satisfy the requirements of Section 301(6), and they are properly included in the bargaining unit.

For the same reasons articulated above for the Adult Probation Supervisors, the County failed to satisfy the necessary criteria for establishing that the Juvenile Probation Supervisors are management level employees. The County has not produced evidence establishing that the Juvenile Probation Supervisors actually develop or implement specific Court policies.³ Therefore, the position of Juvenile Probation Supervisor is not a management-level position and is properly included in the bargaining unit.

³ There is no issue as to whether either the Adult or Juvenile Probation Supervisors are above the first level of supervision in relation to the third alternative criteria established in Section 301(16) of PERA.

TECHNICAL HEARING OFFICER IN ADULT PROBATION

Willis Dean Zimmerman is the Technical Hearing Officer in Adult Probation. Mr. Zimmerman does not hold a law degree and is not required to do so. As Technical Hearing Officer, Mr. Zimmerman holds several different types of hearings for the Court. These hearings involve minor matters involving technical violations of probation or parole, bench warrant matters, ARD supervision fees and preliminary revocation. During these hearings, Mr. Zimmerman takes evidence and issues orders or recommendations to the judges. These orders or recommendations are generally adopted by the judges. He decides whether, after an alleged technical violation, the violator deserves more time to complete their conditions or whether they should be subject to revocation proceedings before a judge. He does not preside over revocation hearings. He exercises judgment as to whether or not probationers complied with a court order which was generated under the probation and parole laws. The Hearing Officer position in the Westmoreland County Court of Common Pleas was created to take some work load away from the judges for minor technical parole violations. In this regard, Hearing Officer Zimmerman performs duties that the judges formerly performed.

The facts of the Board's decision in the case of In the Matter of Employees of Allegheny County, 32 PPER ¶ 32176 (Final Order, 2001), are on all fours with the matter sub judice. In Allegheny, the Board held that adult family and juvenile court hearing officers were management level employees where they held hearings and issued recommended orders that were adopted by the court in 80 percent or more of the cases. The Board noted that the mere fact that a manager's decisions are subject to review does not negate one's managerial status. The Board also noted the wide variety of non-lawyer managers who apply various types of rules, statutes, policies, ordinances, codes and guidelines and make recommendations within their discretion. Mr. Zimmerman holds hearings and exercises discretion in determining whether probationers or parolees have violated the terms of their court-ordered probation or parole. He thereby implements the Court's, i.e., his employer's, probation and parole policies within the meaning of Allegheny, supra. The County, therefore, has met its burden of proving that the position of Technical Hearing Officer is a managerial-level position and is properly excluded from the bargaining unit.

DOMESTIC RELATIONS ESTABLISHMENT/CASE INITIATION SUPERVISOR

John Graham is the Director of the Domestic Relations Office. Tim Cowoski is the Deputy Director of Establishment within the Domestic Relations Office. Nicole Angelo is the Establishment/Case Initiation Supervisor in the Domestic Relations Office. Ms. Angelo reports directly to Mr. Cowoski. She has been in the position since January of 2007, which post-dates the filing date of the Petition. Therefore, her testimony regarding her post-petition job duties is excluded as irrelevant to the support of the Petition, and I am constrained to rely on observations of the conduct and duties performed by Ms. Angelo's predecessor. These constraints make for a difficult decision because it appears from the record that the job responsibilities for the position of Establishment Supervisor may have changed since the Domestic Relations Department was restructured to include the position of Deputy Director, who may now exercise the supervisory authority formerly exercised by Ms. Angelo's predecessor. When Ms. Weaver held the position, there was no Deputy Director of Establishment, i.e., Mr. Cowoski. However, I am unable to examine the actual job duties of the Establishment Supervisor since the creation of the Deputy Director position, which is indeed unfortunate.

Ms. Angelo's predecessor, Janey Weaver, investigated employees suspected of misbehavior and summarized any findings in written reports that she submitted to Director Graham. Ms. Weaver also dispensed discipline, reassigned and transferred employees. Ms. Weaver also interviewed employees for positions in the Domestic Relations Office and made hiring recommendations to the judges. The record is unclear regarding the weight given to Ms. Weaver's recommendations for hiring employees by the judges. The record is also unclear whether the judges also interviewed candidates for employment in Domestic Relations or whether Ms. Weaver was the only person to conduct said interviews. Therefore, Ms. Weaver's involvement in the hiring process is inconclusive as it relates to Section 301(6) because the record does not reveal the weight the judges gave to her hiring recommendations. Also, the record does not reveal whether Ms. Weaver's pre-Petition involvement with disciplining and transferring

employees in Domestic Relations was accomplished with or without approval from the Director or the judges; whether she initiated and recommended such action; whether her recommendations were adopted by the Director and/or the judges; or whether the Director and/or the judges imposed the discipline and effectuated the transfers through Ms. Weaver who was simply following orders as a lead worker. Accordingly, Ms. Weaver's involvement in the pre-Petition disciplining and transferring process is also inconclusive. Therefore, the County has not satisfied its burden of proving that the position of Establishment/Case Initiation Supervisor in Domestic Relations, currently held by Nicole Angelo, is supervisory under Section 301(6).

Although management may identify Ms. Angelo as a member of the management team and one who attends management meetings, the record does not establish that either Ms. Weaver or Ms. Angelo have developed or implemented particular policies on behalf of Domestic Relations or the Court in general.⁴ Therefore, the County has not met its burden of proving that the position of Establishment/Case Initiation Supervisor in Domestic Relations is a management-level position.

CONCLUSIONS

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

1. The County is a public employer within the meaning of section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of Adult Probation Supervisor is properly included in the bargaining unit.
5. The position of Juvenile Probation Supervisor is properly included in the bargaining unit.
6. The position of Establishment/Case Initiation Supervisor in Domestic Relations is properly included in the bargaining unit.
7. The position of Technical hearing Officer in Domestic Relations is a management-level position and is properly excluded from the unit.
8. 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 professional employes who are directly involved with and necessary to the functioning of the courts and who are hired, fired and directed by the courts including but not limited to employes in the following offices: Title IV-D Attorneys, Domestic Relations Enforcement and Conference Officers, Family Court and Orphan's Court Administrators, Domestic Relations Lead Officers, Adult Probation employes and Adult Probation Supervisors; Juvenile Probation employes and Juvenile Probation Supervisors; Domestic Relations employes and the Domestic Relations Establishment/Case Initiation Supervisor and excluding the Adult Probation Technical Hearing Officer, Family Court Masters and Hearing Officers along with the Domestic Relations PACSES Coordinator and all other employes, management level employes, supervisors above the first-level of supervision, confidential employes and guards as defined in the Public Employe Relations Act.

ORDER

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

⁴ See, supra, footnote 3.

HEREBY ORDERS AND DIRECTS

that the County shall within ten days of the date hereof submit to the Board and the other parties 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 twenty-third day of September, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner