

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-08-143-W
 :
 SHIPPINGPORT BOROUGH :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On April 28, 2008, the International Union of Operating Engineers Local #66, 66-A, B, C, D, O & R of the AFL-CIO (Union), filed with the Pennsylvania Labor Relations Board (Board) a petition for representation alleging that thirty per cent of more of the full-time and regular part-time employes of Shippingport Borough (Borough) wish to be represented by the Union and that the Union desires to be certified as their representative. On May 2, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on May 21, 2008. The hearing was held as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On June 10, 2008, the Union faxed a brief to the hearing examiner.

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 under the Public Employee Relations Act (PERA). (N.T. 6)
2. The Union is an employe organization under PERA. (N.T. 6)
3. An appropriate unit for the purpose of collective bargaining between the Borough and the Union would be comprised of all full-time and regular part-time nonprofessional employes including but not limited to road maintenance workers, maintenance supervisors, equipment operators, mechanics, laborers, secretaries other than the Borough's secretary, clerks and traffic control personnel; and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the PERA. (N.T. 7)
4. The Borough's secretary (William N. Green) is a management level employe not eligible for inclusion in the bargaining unit. (N.T. 7-8)
5. The Borough's treasurer (Denise A. Cuteri) is appointed by the Borough's council and is responsible for maintaining the Borough's financial records. (N.T. 8, 14-15)
6. The Union has demonstrated to the satisfaction of the Board the requisite showing of interest as defined in the PERA.

DISCUSSION

The Union has petitioned to represent a bargaining unit comprised of nonprofessional employes of the Borough. According to the Union, the treasurer is eligible for inclusion in the bargaining unit because she has an identifiable community of interest with other employes eligible for inclusion in the bargaining unit.

The Borough contends that the treasurer is not eligible for inclusion in the bargaining unit because she is an appointed officer and because she is a confidential employe.

The only question before the Board is whether or not the treasurer is eligible for inclusion in the bargaining unit.

The record shows that the Borough's treasurer is appointed by the Borough's council and is responsible for maintaining the Borough's financial records (finding of fact 5).

The law with respect to the eligibility of appointed municipal officials is set forth in West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1999). In that case, the court found that a township secretary was not eligible for inclusion in a bargaining unit as a matter of law. As the court explained,

"because the township secretary is an officer of the municipal body, the inclusion of such an appointed officer within the bargaining unit for the township workers would be just as inappropriate as the inclusion of the corporate secretary of a business corporation within a workers' bargaining unit."

Id. at 632. The court further explained as follows:

"The township secretary, as the official custodian of all files of the township, is obviously essential to performance of the bargaining function on behalf of the employer municipality. If the manager must exclude the township secretary, who is also his administrative assistant, from participation on his side of the bargaining table--as he would have to do if the township secretary is a member of the bargaining unit--the manager would be deprived of the assistance of the township officer most allied with him in the bargaining process.

Therefore, including the township secretary in the bargaining unit results in a definite conflict of interest, rather than a community of interest, with the employees who make up the larger component of the bargaining unit."

Id. at 633 (emphasis in original).

Given that the treasurer is an appointed officer of the Borough with the responsibility for maintaining its financial records, it is apparent that she, like the township secretary in West Hanover Township, "is obviously essential to performance of the bargaining function on behalf of the employer municipality." Id. Accordingly, the treasurer is not eligible for inclusion in the bargaining unit.

The Union contends that West Hanover Township is distinguishable on the facts because the record here does not show that the treasurer is a confidential employe as was the case with the township secretary in that case. In Borough of Ridley Park, 27 PPER ¶ 27227 (Final Order 1996), however, where the Board found that a secretary/treasurer who was responsible for maintaining financial records and personnel files for a borough was not eligible for inclusion in a bargaining unit, the Board explained that West Hanover Township "require[es] the exclusion of any appointed municipal Secretary whose duties include being the 'official custodian of all files' of the municipality." 27 PPER at 514. Contrary to the Union's contention, then, West Hanover Township is dispositive.

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 the PERA.
2. The Union is an employe organization under the PERA.
3. The Board has jurisdiction over the parties.

4. 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 nonprofessional employes including but not limited to road maintenance workers, maintenance supervisors, equipment operators, mechanics, laborers, secretaries other than the Borough's secretary, clerks and traffic control personnel; and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the PERA.

5. The Borough's secretary (Mr. Green) is a management level employe not eligible for inclusion in the bargaining unit.

6. The Borough's treasurer (Ms. Cuteri) is an appointed officer not eligible for inclusion in the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, 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 sixteenth day of June 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner