

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-07-466-E
 :
 LOWER MACUNGIE TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On November 2, 2007, the Teamsters, Local Union 773 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employee Relations Act (PERA) alleging that thirty per cent or more of the non-professional, white collar employes of Lower Macungie Township (Township) wish to be exclusively represented by the Union. On November 9, 2007, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Thursday, November 29, 2007. The hearing examiner thereafter continued the hearing at the request of the Township and without objection from the Union and scheduled the hearing for Tuesday, December 4, 2007. The hearing was in fact held on December 4, 2007. Both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On December 27, 2007, the notes of testimony from the hearing were filed with the Board. Both the Township and the Union filed post-hearing briefs on January 15 and 16, 2008, respectively.

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 Township is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4).
3. The parties stipulated and agreed that Mary McKitrick, Acting Secretary, is not confidential and properly belongs in the bargaining unit. (N.T. 127).
4. The parties stipulated and agreed that Lee Lichtenwalner is a management level employe and is properly excluded from the bargaining unit. (N.T. 4).
5. George Caldarelli is the Township Building Inspector. Mr. Caldarelli enforces the Pennsylvania Uniform Construction Code and the International Residential Code (IRC 2006) and other adopted Township codes and ordinances relating to construction. Mr. Caldarelli reviews construction and building plans that have been submitted by applicants to the Township for review. He determines which code properly applies to the type of construction proposed in the plan. (N.T. 7-8, 15).
6. Mr. Caldarelli has the discretion and authority to determine whether an applicant has complied with the applicable code and/or ordinance provisions. When Mr. Caldarelli determines a code violation, he notifies the applicant of their responsibility to remedy the violation and thereafter he causes a written notification of non-compliance to be issued to the applicant. Compliance is determined by Mr. Caldarelli who is empowered to determine the intent of the code and to decide whether an applicant's proposal complies with that intent. (N.T. 7-9).
7. Mr. Caldarelli also enforces the Township's adopted policies and procedures regarding clarifications of the Uniform Construction Code. Mr. Caldarelli is responsible for issuing, denying or revoking a building permit on behalf of the Township. As a result of applying building codes and ordinances, he has the authority to close down unsafe construction activities. Mr. Caldarelli also has the authority to condemn residential structures that are unsafe for habitation and has done so. (N.T. 9-11, 15, 18; Township Exhibit 1).
8. Guy Bieber is the Township Plumbing Inspector and Sewage Enforcement Officer. His duties include reviewing site and construction plans and inspecting plumbing and

drainage systems for compliance with the IRC 2006 and other Township ordinances. Mr. Bieber also inspects sewer connections for code compliance. He has the authority to issue, deny or revoke building permits to enforce the Pennsylvania environmental protection laws. Mr. Bieber witnesses the taking of soil probes and percolation tests to determine soil drainage characteristics as part of the sewage enforcement duties. Mr. Bieber has rejected construction plans for non-compliance, and he has the authority to close down construction activities at a site and has done so. (N.T. 22-28, 31, 33; Township Exhibit 2).

9. Kathleen O'Brien works independently as the Township Earned Income Tax Officer. Ms. O'Brien keeps a general ledger in a spreadsheet that lists deposits, payments, refunds and distributions. Ms. O'Brien also performs the bank reconciliation for the earned income tax records. Ms. O'Brien determines and prints the list of earned income taxpayer delinquencies. As a result of those determinations, Ms. O'Brien contacts employers to collect residents' past due tax money. She initiates cases before the local magistrate where she appears as the Township witness. Ms. O'Brien is authorized to enter into pay-plan agreements with residents on behalf of the Township. (N.T. 37, 43-44; Township Exhibit 3).

10. Sharon Colson is the Township Permit Coordinator. As the Permit Coordinator, Ms. Colson accepts and reviews permit information submitted by building permit applicants. Ms. Colson's job duties involve directing permit information to the inspectors (Building, Plumbing & Sewer) for their review, and if in order, their signature. (N.T. 53-55, 70-71).

11. Once the inspectors return the approved, signed permits to the permit coordinator, Ms. Colson completes inspection cards, which are later displayed at the building location. Ms. Colson does not sign or approve building permits. Ms. Colson then contacts the applicant and informs him/her of the permit fee and schedules an inspection by the inspectors. Determining a fee for the permit involves locating the type of permit on a predetermined fee schedule approved by the Township Board of Supervisors at the beginning of each year. Ms. Colson does not contribute to determination of the fee schedule beyond compiling the recommendations of the inspectors.¹ Once the permit fee is received, Ms. Colson or her co-worker provides the permit to the applicant. (N.T. 71-73, 76).

12. Ms. Colson shares office space with Brenda Fiering. Ms. Colson assembles information from the inspectors regarding permit fees. She does not develop or recommend any of the fees. Ms. Colson does not have any discretion or authority to determine whether in-house inspectors or third-party contractor inspectors receive inspection work for particular construction sites. The third-party contractors are automatically given the commercial projects to inspect. Ms. Colson passes along data and billing information from the third-party inspectors. All plumbing inspections are performed by the in-house inspector unless he is on vacation. (N.T. 59-60, 76, 79, 131-132).

13. Ms. Colson has not attended a preconstruction meeting with zoning officers and contractors in the past "couple of years." The Township Zoning Officer performs all building plan and zoning reviews. Ms. Colson uses existing computer software to aid in performing her duties (i.e., coordinating the receipt of permit applications and their review by the inspectors and Zoning Officer). Ms. Colson has reviewed other townships' software programs for performing her duties, but she has not recommended that the Township replace its existing software. (N.T. 61-63, 130).

14. Denise Foulke has been the Township Recreation Director since the summer of 2006. When Ms. Foulke became the Township Recreation Director, the Township had no recreational programs. As Recreation Director, Ms. Foulke developed and created eighteen-plus Township recreational programs at the Township community center. Ms. Foulke develops and establishes these programs without interference or input from her Township superiors. Ms. Foulke

¹ There is a conflict between the testimony of Ms. Colson on page 76 of the Notes of Testimony and that of Ms. Horn, the Township Business Manager and Treasurer, on pages 131 and 136 of the Notes of Testimony, on the factual issue of whether Ms. Colson contributes substantive recommendations for the fee schedule. Based on the appearance, general bearing, conduct on the stand, demeanor, manner of testifying (e.g. candor, frankness, clearness of statements) and certainty of the witnesses and the fact that Ms. Colson testified from personal experience with these historical facts, I resolve this conflict in favor of Ms. Colson who testified that she does not contribute to the fee schedule or make substantive recommendations other than merely compiling the recommendations from the inspectors and passing along that compilation.

determines the number of participating people who must register for a given recreational program in order to financially break even after paying the instructor. Ms. Foulke will cancel programs due to insufficient participation. (N.T. 80, 82-86; Township Exhibit 5).

15. Ms. Foulke establishes a schedule for the use of the Township gym facilities for the Lower Macungie Youth Association (LMYA). She charges the LMYA members a user fee, does the billing for those fees and collects the money. She composes and designs most of the content of the Township newsletter. Ms. Foulke and her co-worker oversee the operation of the Township playground program, which includes special and entertainment programs. She orders the supplies needed to run these programs. Ms. Foulke also oversees the operation of the Township pool and snack bar. (N.T. 88-91, 95-96; Township Exhibit 5).

16. Donna Fowler is the Administrative Assistant to the Township's Director of Public Works (Director). She performs secretarial and clerical duties for the Director. She also receives and logs grievances filed by another union. At the direction of the Director, Ms. Fowler handles correspondence relating to grievances, but she is not involved with the grievance resolution or the substantive complaints in the grievances. Ms. Fowler compiles costs for snow removal for the Township's application for a state grant for snow removal. She also compiles the costs for planned road resurfacing projects in the Township. Ms. Fowler makes no determination or recommendation regarding the budget for these items. Ms. Fowler also receives citizen complaints and questions, which she directs to others unless she can adequately answer the questions or complaints herself. She does not have any authority to hire, discharge, promote or discipline. Although she has contact with some employes, she does not have the authority to make employment decisions or determinations regarding any employes. (N.T. 100-106, 114-116).

DISCUSSION

The Township has sought to exclude six positions from the bargaining unit. As the party seeking to exclude positions from the unit, the Township has the burden of proving the exclusions. In the Matter of the Employes of State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999).

1. George Caldarelli, Building Inspector

The Township seeks to exclude from the unit the Township Building Inspector position, currently held by George Caldarelli, as a management level employe. Under Section 301(16) of PERA, a management level employe is defined as follows:

[A]ny 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 has held that this provision establishes a disjunctive three-part test and that an employe who satisfies any of the following three criteria is a manager: (1) either the employe is directly involved in the determination of policy; (2) the employe directly implements policy; or (3) the employe is above the first level of supervision. In the Matter of the Employes of Lower Providence Township, 16 PPER 16117 (Final Order, 1985).

The Board has long held that township code enforcement officers are management employes under the second part of Section 301(16) of PERA (i.e., they directly implement policy). Lower Providence Township, supra (stating that "[t]he Board has consistently held that employes who are responsible for administering and interpreting township building codes and zoning ordinances satisfy part two of the test and accordingly are management level employes"). In In the Matter of the Employes of Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), the Board explained that the statutory phrase to "responsibly direct[] the implementation [of policy]" means as follows:

[T]hose persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, proved that such role is not of a routine or clerical nature and bears managerial responsibility to insure completion of the task.

9 PPER at 327. In Horsham, as here, the following job duties of the code enforcement officer were determinative: he could accept or reject applications based upon their conformance with the applicable code under consideration; he inspected an applicant's construction site to ensure the applicant's compliance with various codes and ordinances; he had the authority to demand that violations be corrected. Id. at 327-328. Based upon these factors, the Horsham Board concluded that the code officer is required to exercise independent judgment by interpreting and implementing the policies of the Township, as embodied in their adopted ordinances and codes. This implementation of policy satisfies the second element of the three-part disjunctive standard for a management level employe under Section 301(16) of PERA. Id. at 328; 43 P.S. ¶ 1101.301(16).

In this case, the record clearly establishes that Mr. Caldarelli, the Township's building inspector, is a management level employe. He enforces provisions of the Pennsylvania Uniform Construction Code and other adopted Township codes and ordinances. On his own, he reviews building plans submitted to the Township for construction permits. He determines which code properly applies to the type of construction proposed in the plan. Where an applicant's plan fails to comply with the applicable code, Mr. Caldarelli will provide the applicant with notice and an opportunity to remedy the violation. Mr. Caldarelli further has discretion to determine code compliance. He is one of the Township employes responsible for issuing or revoking building permits and has authority to close down unsafe construction sites and residential structures. As someone with expansive authority and discretion to interpret and administer the Township Building Code, Mr. Caldarelli is a management level employe within the meaning of Providence, Horsham and Section 301(16) of PERA.

2. Guy Bieber, Plumbing Inspector and Sewage Enforcement Officer

Applying the same law to similar facts, Guy Bieber, the plumbing inspector and sewer enforcement officer, is also a management level employe. His job duties include reviewing construction sites and plans for the issuance, denial or revocation of permits. He conducts inspections of the plumbing and drainage systems at construction sites to determine conformity with the International Plumbing Code and Township ordinances. Mr. Bieber has rejected construction plans and permits for non-compliance. He also has the authority to close down a construction site and has done so. Mr. Bieber inspects sewer connectors for code compliance, and he has the authority to issue, deny or revoke building permits to enforce the Pennsylvania environmental protection laws. Mr. Bieber also witnesses soil probe samples and percolation tests to determine soil drainage characteristics as part of his sewage enforcement duties. Mr. Bieber, therefore, possesses expansive authority to interpret and administer the building codes with regard to plumbing and drainage systems as well as sewer, soil and waste systems under the state environmental laws and regulations. Accordingly, Mr. Bieber is a management level employe within the meaning of Providence, Horsham and Section 301(16) of PERA.

3. Kathleen O'Brien, Earned Income Tax Officer

The Township also seeks the exclusion of the Earned Income Tax Officer position, currently held by Kathleen O'Brien, as a management level employe within the meaning of In the Matter of the Employes of Mt. Oliver Borough, 30 PPER ¶ 30053 (Proposed Decision and Order, 1999). (Township's Brief at 7). In Mt. Oliver Borough, the duties of the earned income tax officer satisfied the second prong of the management-level employe test (i.e., she responsibly directed the implementation of policy). In Mt. Oliver Borough, great weight was given to the fact that the tax officer was given responsibility to collect taxes, to require residents to appear and provide any information necessary to the collection of taxes, to utilize that information to determine the tax liability of residents, to place taxpayers on a payment plan if needed and to refer delinquent accounts to the solicitor for collection. Id. at 111.

In this case, Ms. O'Brien credibly testified that she performs the following duties as the Township Tax Officer. She works independently and keeps a general ledger that lists deposits, payments, refunds and distributions. She performs the bank reconciliation for the earned income tax records. She determines and prints the list of earned income taxpayer delinquencies and, as a result, she contacts employers to collect residents' past due tax money. She also initiates cases before the local magistrate and appears as

the Township witness at the magistrate hearing. Ms. O'Brien is authorized to enter into pay-plan agreements with residents on behalf of the Township.

Ms. O'Brien's duties are very similar to those found to support the determination of management status in Mt. Oliver Borough. As Examiner Wallace aptly stated in Mt. Oliver Borough, "[b]e that as it may, the fact remains that she is responsible for the collection of taxes which under Board case law amounts to responsibly directing the implementation of policy embodied in the managerial decision to levy them." Id. at 111. The Board has, in fact, held that a school district's wage tax collector was a management level employe because she implemented school district policy through the collection of taxes. In the Matter of the Employes of the Wattsburg Area Sch. Dist., 8 PPER 73 (Nisi Decision and Order, 1977). Ms. O'Brien has great authority and latitude in determining the manner in which tax collection in the Township is achieved. She has discretion to enter agreements for the payment of past due taxes when it benefits the Township to do so. She also has the authority and discretion to pursue court action to enforce the collection of past due taxes against residents when, in her discretion, it benefits the Township to do so. Therefore, Ms. O'Brien, the Township Earned Income Tax Officer, is a manager who must be excluded from the unit.

4. Sharon Colson, Township Construction Permit Coordinator

The Township also seeks the exclusion of the Township Construction Permit Coordinator, currently held by Sharon Colson, as a management level employe. As previously stated, "[t]he Board has consistently held that employes who are responsible for administering and interpreting township building codes and zoning ordinances satisfy part two of the test and accordingly are management level employes." Lower Providence, 16 PPER at 302 (emphasis added). Ms. Colson's job duties, however, are clerical in nature. Ms. Colson and her co-worker compile information from the permit applicants and forward the permits and attachments to the inspectors and the Zoning Officer for their review and signatures. Ms. Colson or her co-worker collects the appropriate fee, which is determined by looking at a pre-approved fee schedule. Upon receipt of the fee, Ms. Colson or her co-worker mail or hand the permit to the applicant.

Ms. Colson shares office space with a co-worker who she does not supervise. Ms. Colson assembles information from the inspectors regarding permit fees. She does not develop, recommend or determine any of the fees. Ms. Colson does not have discretion to determine whether in-house inspectors or third-party contractor inspectors receive the inspection work for particular construction sites. The third-party contractors are automatically given the commercial projects to inspect. All plumbing inspection is performed by the in-house inspector unless he is on vacation. Ms. Colson has not attended a preconstruction meeting with the Zoning Officer and contractors in the past "couple of years." The Township Zoning Officer performs all building plan reviews for zoning compliance determinations. Ms. Colson uses existing computer software to coordinate the receipt of permit applications and their review by the inspectors and Zoning Officer. Ms. Colson has reviewed other townships' software programs for performing her duties, but she has not recommended that the Township replace its existing software.

Thus, the record in this case demonstrates that, although Ms. Colson has extensive and thorough knowledge of the Township's zoning ordinance and building codes, she does not administer, enforce or interpret those policies on behalf of the Township. Rather, as her title suggests, she compiles building permit information in a form appropriate for review by the inspectors and schedules the inspections. She coordinates the permit approval by the inspectors and the Zoning Officer, collects the fee and sends out the permit. Without diminishing the dependable and significant job performed by Ms. Colson, her duties are routine and mechanical in nature. Horsham, supra. She compiles information from various sources and passes that information along to others. Therefore, she lacks the necessary discretion or authority to either develop or implement Township policy. Id. Accordingly, the position of Township Permit Coordinator must be included in the bargaining unit.

5. Denise Foulke, Township Recreation Director

The Township seeks to exclude from the unit the Township Recreation Director position, currently held by Denise Foulke, as a management level employe. Board hearing

examiners have consistently held that township recreation directors are management level employes.² In the Matter of the Employes of Bethlehem Township, 23 PPER ¶ 23196 (Order Directing Submission of Eligibility List, 1992)(holding that the parks and recreation director is a management employe where she was responsible for "creating, initiating and supervising the recreation programs of the township and making sure that the parks are properly maintained"); In the Matter of the Employes of Swatara Township, 14 PPER ¶ 14145 (Order Directing Submission of Eligibility List, 1983) (holding that the recreation director was a management employe because he planned, developed, directed and organized the township recreation programs without material supervision); In the Matter of the Employes of I.U.P Student Cooperative Assoc., 13 PPER ¶ 13225 (Proposed Order of Dismissal, 1982)(holding that the director of campus recreation was a management employe because he was responsible for running recreational activities within the budget and was involved with recreational program development).

In this case, Ms. Foulke developed eighteen-plus Township recreation programs since the summer of 2006, when the Township had no recreational programs. Ms. Foulke develops and establishes these programs without interference from her Township superiors. Ms. Foulke determines the number of participating people who must register for a given recreational program in order to financially break even after paying the instructor. Ms. Foulke will cancel programs due to insufficient participation. Ms. Foulke establishes a schedule for the use of the Township gym facilities for the Lower Macungie Youth Association (LMYA). She charges the LMYA members a user fee, does the billing for those fees and collects the money. She composes and designs most of the content of the Township newsletter. Ms. Foulke and her co-worker oversee the operation of the Township playground program, which includes special and entertainment programs. She orders the supplies needed to run these programs. Ms. Foulke also oversees the operation of the Township pool and snack bar. On this record, therefore, Ms. Foulke clearly is responsible for "creating, initiating and supervising the recreation programs of the township" Bethlehem, supra. She also ensures that the programs are adequately staffed and funded. The record clearly establishes that Ms. Foulke is a management level employe because she has the authority and responsibility to implement the Township's policies to provide a diversified and sophisticated recreation program and special services to its residents and youth groups. Accordingly, within the meaning of Swatara, supra, Bethlehem, supra, and I.U.P., supra, Ms. Foulke must be excluded from the bargaining unit as a management level employe.

6. Donna Fowler, Administrative Assistant to the Public Works Director

The Township seeks to exclude from the unit the Township Administrative Assistant to the Public Works Director, currently held by Donna Fowler, as both a management level and a confidential employe. (Township Brief at 13). The evidence of record establishes that Ms. Fowler does not meet the necessary criteria to be considered either a management level employe or a confidential employe. The Township has not demonstrated that Ms. Fowler is directly involved in the development or determination of policy, that she directly implements policy or that she is above the first level of supervision, as required by Lower Providence Township, supra. As the Board noted in Horsham, supra, an employe who researches and collects data necessary for developing policy, without materially participating in the policy decision, is not management. Ms. Fowler performs clerical and secretarial duties at the direction of the Director of Public Works. She exercises no discretion in compiling data for policy decisions by others.

The Township did not establish that Ms. Fowler is a confidential employe.

Section 301(13) of PERA provides the statutory requirements for removing a confidential employe from the bargaining unit as follows:

"Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

² A consistent line of examiner decisions left undisturbed by the Board has the weight of Board approval and precedent. FOP, Star Lodge No. 20 v. PLRB, 522 A.2d 697, 700 (Pa. Cmwlth. 1987).

43 P.S. § 1101.301(13). Under Clause (i) the information to which the employe has access must be used as part of the employer's bargaining strategy. In this regard the Board has stated the following:

[A]n employe does not have access to confidential collective bargaining information when she simply takes basic data and compiles reports which may eventually be used in negotiations as the position of the employer when the person who compiles the basic data has no information which would be considered confidential as a result of that compilation. It is only when an employe is privy to relevant determinations of the employer's policy that that person may be found to be confidential. The collective bargaining information must be of such definite nature that the union would know of the employer's plans if the information is revealed.

Bangor Area Sch. Dist., 9 PPER at 533. In Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB, 383 A.2d 546 (Pa. Cmwlth. 1978), the proposed confidential employe arguably had access to and knowledge of budgets, allocations of funds, salaries and memoranda concerning proposed salary increases before being made known to the union. The Commonwealth Court agreed with the Board that the employe was not confidential. The Columbia/Snyder Court placed paramount importance on the fact that, even in the employe's new position in the fiscal department, "she would have access to no information relevant to collective bargaining which could be considered outside the 'public record.'" Id. at 551. Similarly, in In the Matter of the Employes of Tunkhannock Area Sch. Dist., 29 PPER ¶ 29023 (Final Order, 1997), the Board held that an accounting supervisor who priced fringe benefit proposals was not privy to bargaining strategies of a definite nature so as to seriously impair the employer's bargaining position if such information was revealed to the union, within the narrows construction of Section 301(13) mandated by the Supreme Court in Altoona, supra. Also, in Western Beaver County Sch. Dist., supra, the examiner held that the payroll clerk was not confidential, even though the clerk had access to payroll, grievances, and personal information and had provided information for collective bargaining and budget preparation, because the payroll clerk was not privy to the employer's bargaining strategy.

Although Ms. Fowler may receive, review, log and issue correspondence regarding grievances and may compile costs for road projects for presentation to the Director of Public Works, the Township did not establish that she is privy to collective bargaining strategies or information utilized in such a capacity. Mere access to grievances, payroll, finances, benefits and other costs to the Township are insufficient to deprive an employe of the rights under PERA. Columbia/ Snyder, supra, Tunkhannock, supra, Western Beaver, supra. Moreover, the Township did not present any evidence in support of the second clause of Section 301(13) (i.e., that Ms. Fowler worked in a close continuing relationship with someone associated with collective bargaining). Accordingly, the position of Township Administrative Assistant to the Public Works Director, currently held by Donna Fowler, is properly included in the bargaining unit.

CONCLUSIONS

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

1. The Township 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 Township Building Inspector, currently held by George Caldarelli, is a management level position and is thereby properly excluded from the bargaining unit.
5. The position of Township Plumbing Inspector and Sewage Enforcement Officer, currently held by Guy Bieber, is a management level position and is thereby properly excluded from the bargaining unit.

6. The position of Township Earned Income Tax Officer, currently held by Kathleen O'Brien, is a management level position and is thereby properly excluded from the bargaining unit.

7. The position of Township Construction Permit Coordinator, currently held by Sharon Colson, is not a management level position and is thereby properly included in the bargaining unit.

8. The position of Township Recreation Director, currently held by Denise Foulke, is a management level position and is thereby properly excluded from the bargaining unit.

9. The position of Township Administrative Assistant to the Public Works Director, currently held by Donna Fowler, is neither a management level nor a confidential position, and is thereby properly included in the bargaining unit.

10. The position of Township Secretary, currently held by Mary McKittrick, is not confidential and is thereby properly included in the bargaining unit.

11. The position held by Lee Lichtenwalner is a management level position and is thereby properly excluded from the bargaining unit.

12. 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 white collar non-professional employees including but not limited to secretaries, clerks, typists, Administrative Assistant to the Public Works Director, Construction Permit Coordinator and excluding irregular part-time employees, management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township 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 employees 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 seventh day of February, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner