

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 : Case No. PERA-R-08-254-E
PERKIOMEN TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On July 10, 2008, Teamsters Local 384 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation alleging that thirty per cent or more of the full-time and regular part-time employees of Perkiomen Township (Township) wish to be represented by the Union and that the Union desires to be certified as their representative. On July 21, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on July 31, 2008, in Collegeville, Pennsylvania. The hearing was re-scheduled for, and held on, September 17, 2008, at which time the hearing examiner afforded all parties a full opportunity to present evidence and to cross-examine witnesses. Both parties submitted post-hearing briefs.

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

FINDINGS OF FACT

1. The Township is a public employer.
2. The Union an employe organization under PERA.
3. The Union petitioned for a unit comprised of all full-time and regular part-time blue-collar, non-professional employes; and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in PERA. (Petition for Representation).
4. John Moran is the Township's Road Master. Moran has been peripherally involved in the hiring process for three new employes. His recommendations for new hires have not been followed by the Township. Moran is the lead worker in the road crew. Moran has no authority to hire employes, grant raises to employes, discipline employes, or conduct performance evaluations of employes. (N.T. 40, 45, 59, 60-62, 79, 89, 90, 95).

DISCUSSION

The Union has petitioned for a unit of "all full-time and regular part-time blue collar, non-professional employees[,],as defined in [PERA]."

According to the Union, the position of Road Master should be excluded from the unit because it is supervisory under PERA, while the Township contends that the Road Master properly belongs in the unit. This is the sole issue in contention.¹ A review of who has the burden of production, and what that party must prove to exclude the Road Master, is a good place to start.

As the party seeking to exclude the position, the Union has the burden of production to prove the exclusion. 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).

Section 301 (6) of PERA defines a supervisor 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

¹The parties have stipulated and agreed that if not supervisory, the Road Master position is properly in the unit. (N.T. 8).

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).

Employees must be excluded from a bargaining unit as supervisors if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise any such authority they have, and use independent judgment in exercising that authority. PLRB v. McKeesport Area School District, 14 PPER ¶ 14165 (1983).

It is axiomatic that employees cannot be found to be supervisors unless they actually exercise supervisory authority over other employees. Columbia-Snyder-Montour-Union Mental Health-Mental Retardation Program v. PLRB, 383 A.2d 546 (Pa. Cmwlth. 1978), Cumberland County, 12 PPER ¶ 12198 (Proposed Decision and Order, 1981), *aff'd* 13 PPER ¶ 13035 (Final Order, 1982).

Employees with the authority to grant overtime or time-off requests without consulting a higher authority are supervisors. Gateway School District, 12 PPER ¶ 12008 (Nisi Decision and Order, 1981), *aff'd* 13 PPER ¶ 13022 (Final Order, 1982). Employees are supervisors if they make effective recommendations regarding the items listed in Section 301(6) of PERA; "effective" meaning that their recommendations are not subject to independent investigation but rather are given "controlling weight" by the decision maker. Lancaster County Commissioners, 3 PPER ¶ 208 (Court of Common Pleas of Lancaster County, 1973); Keystone Central School District, 12 PPER ¶ 12044 (Nisi Order of Unit Clarification, 1981); South Western School District, 9 PPER ¶ 9124 (Order and Notice of Election, 1978).

It is also important to note that Section 604(5) of PERA, requiring the Board to evaluate the extent to which supervisory and non-supervisory duties are performed, is a material factor in determining supervisory status. See, State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999).

The executing of performance evaluations may lead to a finding of supervisory status, so long as the evaluations are given controlling weight, and normally result in either reward or discipline. State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), *aff'd*, State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999).

Essentially, the Board has held that the power to reward and/or sanction distinguishes a supervisor from a lead worker. An employee who uses his authority to direct the workforce, but does not affect reward or sanction, is not a supervisor, as defined by PERA. In the Matter of the Employees of Berks County, 34 PPER 111 at 348 (Proposed Order of Unit Clarification, 2003).

An examination of the Union's evidence shows why the Road Master position is not supervisory, and is properly included in the unit. The Road Master regularly works along side those he supervises, and merely directs the workforce². The Union's arguments put forth to support the Road Master's supervisory status are frankly, makeweight.

The Union alleges that the Road Master "has been involved in the hiring and interviewing of employees." The record shows that the Road Master was once, tangentially involved in the hiring of another employe twenty years ago, and in the last twenty years has sat in on approximately three hiring interviews.

The Union also alleges that "it would appear the [the Road Master] is the Department Head of the Road Department." The import of that allegation is a Township ordinance that vests department heads with the ability to evaluate and recommend discipline, suspension or discharge of employes to the Township Manager, who may then, using "merit system principals" act upon those recommendations.

Nevertheless, the Township presented credible testimony that this ordinance was passed in anticipation of a future increase in the number of Township employes, rather than for implementation now. Consequently, there are no current department heads at all in the Township: rather, the Township Manager acts as the department head of the road

² My use of the word "supervises" refers to the common usage, and not to the term of art as referenced in PERA.

crew. Moreover, there is no evidence that the Township has adopted or created any "merit system principals," a necessary element of the ordinance's implementation.

The Union next points out two letters introduced at the hearing, which it alleges are further evidence of the Road Master's supervisory status. In fact, they are not.

The first of these is a 2003, letter of hire to a new road crew employe. In that letter, the Township Manager refers to the Road Master as the new hire's "immediate supervisor." The Township Manager testified that she was not using those as words of art, but rather as synonymous with foreman or lead worker.

The second letter is written to the same employe as was the first. It simply informs that employe that he has satisfactorily completed his probationary period and, therefore, gets a raise. The letter is signed by those who participated in that employe's interview: the Township Manager, the Chairman of the Board of Supervisors, and the Road Master.

The Union has not shown that the Road Master has, on any occasion, rewarded or sanctioned employes; nor has the Union shown the Road Master has any authority to reward or sanction any employes. Absent adequate proofs to keep the position of Road Master out, it is properly included in the unit. It is so ordered.

CONCLUSIONS

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

1. The Township is a public employer under PERA.
2. The Union is an employe organization under 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 blue-collar non-professional employes, including the Road Master; and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in PERA.
5. The position of Road Master is non-supervisory, and is properly included in the above described bargaining unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Employer shall immediately 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 twenty-eighth day of May 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner