COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	Case No. PERA-U-08-446-W
	:	(PERA-R-89-462-W)
SLIPPERY ROCK BOROUGH	:	

FINAL ORDER

The Municipal Employees of Slippery Rock (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 20, 2009, challenging a Proposed Order of Unit Clarification (POUC) issued on July 6, 2009. In the POUC, the Board's Hearing Examiner granted the Petition for Unit Clarification filed by Slippery Rock Borough (Borough) and determined that a Code Enforcement Officer should be excluded from the bargaining unit as a management level employe within the meaning of Section 301(16) of the Public Employe Relations Act (PERA). The Borough filed a response to the Union's exceptions and a supporting brief on August 7, 2009.

The Hearing Examiner's findings of fact are summarized as follows. The position of Code Enforcement Officer in the Borough is currently held by Jesse Hines, who is certified as a residential building code inspector. Mr. Hines applies and enforces the following Borough ordinances: Snow Removal Ordinance, ordinance adopting the International Building Code and the State Mandated Building Codes, Zoning and Land Development Ordinance, ordinance adopting the International Property Maintenance Code (IPMC), Parking Enforcement Ordinance, Plumbing and Fire Protection Ordinance, Grass Ordinance, Rental Licensing Ordinance and Garbage Ordinance. Mr. Hines has no direct supervisor approving or reviewing his enforcement of Borough ordinances or his resulting determinations. He exercises discretion to determine whether to issue building and occupancy permits. Mr. Hines makes independent decisions under all the codes and ordinances that he applies and decides whether to issue citations and/or warning letters or to pursue prosecution at the local magisterial district court. He independently determines whether to issue permits. His determinations are not subject to review or approval by any other Borough employe or official.

As part of his routine duties to issue permits, Mr. Hines ensures compliance with the zoning ordinance and building codes. Mr. Hines inspects individual lots within subdivisions. He reviews residential building plans before he issues permits for residential construction. Mr. Hines has required individuals to make changes to those plans to comply with Borough ordinances. He requires alterations to be made before he will issue the permit. Mr. Hines has conducted building site inspections during which he has discovered non-conforming conditions with respect to proposed building plans, and he has ordered builders to conform to the approved plans, to the building code and to the zoning ordinance. Mr. Hines has denied occupancy permits because property owners have failed to properly install certain required elements of the structure such as HVAC systems, handrails or decks.

Mr. Hines enforces the garbage ordinance as part of his regular duties, without guidance from or approval by any other Borough employe or official. Mr. Hines is solely responsible for determining whether to prosecute garbage ordinance violations before a local magisterial court. He independently determines whether property owners within the Borough have violated the International Property Maintenance Code. Mr. Hines issues parking enforcement notices to residents who park vehicles on grass or dirt, which is prohibited by a Borough ordinance. He issues these notices as part of his regular duties without review or approval by any other Borough employe or official.

In the POUC, the Hearing Examiner, relying on the Board's prior precedent, determined that the Code Enforcement Officer is a management level employe under PERA because he exercises independent discretion in implementing the Borough's policy. See e.g. In the Matter of the Employes of Derry Township, 36 PPER 166 (Final Order, 2005); In the Matter of the Employes of Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978). Thus, the Hearing Examiner granted the Borough's Petition for Unit Clarification and excluded the Code Enforcement Officer from the nonprofessional bargaining unit represented by the Union.

In its exceptions, the Union argues that the Hearing Examiner erred in failing to make certain findings of fact and by concluding that the Code Enforcement Officer is a management level position. Section 301(16) of PERA defines management level employe as "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). As the Hearing Examiner noted in the POUC, "[t]he 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)." See also Commonwealth of Pennsylvania (Attorney Examiners), 12 PPER ¶ 12131 (Final Order, 1981).[1]

In this case, the Hearing Examiner determined that the Township Code Enforcement Officer met the second part of the test for management level status under PERA in that he directs the implementation of policy. In Horsham Township, supra, which also involved the issue of whether a code enforcement officer is a management level employe, the Board explained implementation of policy as follows:

> We interpret [the implementation of policy] to include those persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, provided that such role is not of a routine or clerical nature and bears managerial responsibility to insure completion of the task. The administration of a policy involves basically two functions: (1) observance of the terms of the policy and (2) interpretation of the policy both within and without the procedures outlined in the policy. The observance of the terms of the policy is largely a routine and ministerial function. There will be occasion where the implementation of policy will necessitate a change in procedure or methods of operation. The person who effects such implementation and change exercises that managerial responsibility and would be responsibly directing the implementation of policy. Furthermore, the interpretation of policy would constitute responsible implementation of policy as a continuation of the managerial decision making process.

9 PPER at 327. In Horsham Township, the Board concluded that a code enforcement officer met the policy implementation portion of the test for management level status because he was required to interpret the various codes and regulations in accepting or rejecting applications under the township's building, housing and zoning codes, and demanding that corrections be made after inspecting construction sites. Similarly, in Derry Township, the Board relied on Horsham Township and other Board precedent in holding that a code enforcement officer was a management level employe:

> The discretion to determine the existence of an unsafe structure is the kind of discretion that is not routine or ministerial in nature and amounts to the responsible implementation of policy as outlined in Horsham Township, supra. ... The discretion to initially determine that the accumulation of rubbish on a particular property has risen to the level of a health danger in the Township is also not merely routine or ministerial in nature and would support the exclusion of the Code Enforcement Officer as a management level employe. The Board has consistently held that code enforcement officials exercising the level of discretion evident in this case meet the second part of the test for management level employe in that they are responsibly implementing the employer's policies. See Horsham Township, supra.; Millersville Borough, 9 PPER ¶ 9020 (Final Order, 1978); Indiana Township, 28 PPER ¶ 28074 (Proposed Order of Dismissal, 1997); Penn Township, 15 PPER ¶ 15015 (Final Order, 1983).

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[1] The Union relies in part on cases under Act 111 of 1968, which grants collective bargaining rights to police officers and firefighters. However, Act 111 does not define a management level employe or expressly exclude such employes from collective bargaining units. Instead, the managerial exclusion under Act 111 was established by Board and appellate court caselaw. Moreover, the tests for managerial status under PERA and Act 111 developed independently, such that the Union's reliance on Act 111 caselaw is misplaced. See City of Pittsburgh v. PLRB, 536 A.2d 928 (1989), appeal denied, 522 Pa. 626, 564 A.2d 917 (1989).

Id., 36 PPER at 485.

Here, the record similarly indicates that the Code Enforcement Officer exercises the same type of discretion exercised by the code enforcement officers in Horsham Township and Derry Township and cases cited therein in interpreting the Borough's various ordinances and codes. In exercising that discretion, the Code Enforcement Officer responsibly implements the Borough's policy. Therefore, the Hearing Examiner did not err in concluding that the Code Enforcement Officer is a management level employe within the meaning of Section 310(16) of the Act.

The Union also argues that the Hearing Examiner erred by failing to find that: 1) the Borough contracts with an inspection services company to inspect commercial property in the Borough and that the contract states that the company will provide inspection services in the absence of the Code Enforcement Officer; 2) a Parking Enforcement Officer is a bargaining unit employe and issues citations similar to those issued by the Code Enforcement Officer, 3) the Code Enforcement Officer was ordered not to attend monthly Borough Council meetings, 4) the Code Enforcement Officer does not supervise any employes, 5) the Code Enforcement Officer has no role in the development of the Borough's budget, 6) the Code Enforcement Officer has no authority to waive any provisions of the zoning ordinances and 7) the Code Enforcement Officer does not regard himself as a managerial employe. However, as the Board stated in Colonial Intermediate Unit 20 Education Association v. Colonial Intermediate Unit, 36 PPER 36113 (Final Order, 2005), a hearing examiner is only required to set forth those facts that are necessary to support his decision and is not required to summarize all of the evidence presented, or to make findings that are unnecessary or irrelevant, even if there is substantial evidence to support such findings. See also Page's Department Store v. Velardi, 464 Pa. 276, 287, 346 A.2d 556, 561 (1975)("When the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision."); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988).

Here, none of the findings proposed by the Union are necessary or relevant to the Hearing Examiner's decision. Indeed, even if the record supported the findings proposed by the Union, they would not alter the result in this case. For example, under the three-part disjunctive test for management level status under PERA, there is no requirement that an employe supervise other employes or develop a budget to qualify as a management level employe. Evidence that an employe supervises other employes or develops policy through preparation of a budget would be relevant to a determination of whether the employe meets the first or third parts of the test for managerial status, but is not relevant to determining whether the employe meets the second part of the test, which is the basis for the Hearing Examiner's conclusion that the Code Enforcement Officer is a management level employe. The other findings proposed by the Union would also not affect the outcome of this case. Therefore, the Hearing Examiner did not err by failing to make these findings.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Union's exceptions and make the Proposed Order of Unit Clarification final.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Union are hereby dismissed, and the July 6, 2009 Proposed Order of Unit Clarification be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this seventeenth day of November, 2009. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.