

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-08-385-E
: :
ROME TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On October 3, 2008, Teamsters Local Union No. 529 (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 nonprofessional, blue-collar employes of Rome Township (Township) wish to be exclusively represented by the Union. On October 22, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on Thursday, November 20, 2008. The hearing examiner twice continued the hearing at the requests of the Union without objections from the Township. The hearing was held on Thursday, January 15, 2009. At the hearing, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On February 6, 2009, the notes of testimony from the hearing were filed with the Board. The parties agreed to delay the filing of post-hearing briefs. The Township filed its brief on March 30, 2009. The Union filed its brief on May 19, 2009.

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. 5).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 5).
3. The parties stipulated and agreed that the employes in the proposed bargaining unit of nonprofessional, blue-collar employes share an identifiable community of interest. (N.T. 5).
4. Gale Bowen has been the Roadmaster for the Township since July, 2002. Mr. Bowen is the only full-time Township employe. The Township does not employ a Township manager. The Township supervisors have full-time jobs outside of their elected Township positions. There is no position in the Township between the Roadmaster and the supervisors. (N.T. 14, 103-104, 114, 127-130, 136).
5. Highway Department employe Gordon Wilson averages 28-35 hours per week. When additional snow plowing is necessary, Mr. Wilson works overtime. (N.T. 139-140).
6. Highway Department employe Dick Labarre works an average of 38-40 hours per week during the summer months and his hours vary during the winter months. When additional snow plowing is necessary, all Highway Department employes, including Mr. Bowen, work overtime.
7. Mr. Bowen has no discretion in determining overtime for snow plowing. The entire road crew must continue working until all Township roads have been cleared of snow and treated. The amount of snowfall determines the amount of overtime. (N.T. 140-141).
8. Mr. Bowen has no discretion in determining overtime to respond to summertime storm emergencies. Storms that cause road obstructions require the entire road crew continue working until the trees and the roads involved have been cleared. Township supervisors have also been called upon to respond to storm emergencies. (N.T. 140-142).

9. The Highway Department employes' duties provide for the health, safety and welfare of the constituents. These employes have an obligation to remedy emergencies affecting safe passage on Township roads. The external events (i.e., severe weather and other emergencies) determine the amount, if any, of overtime. (N.T. 143, 186).

10. Mr. Bowen passes all decisions along to the supervisors. He passes vacation requests from Highway Department employes along to the board of supervisors. Mr. Bowen seeks prior approval from the board of supervisors for any requests for extended vacation time or other time off. The Highway Department employes work as a team. When a Highway Department employe wants one day off, the remaining employes jointly decide whether they can manage the work load for that day without the employe. Sick employes notify Mr. Bowen. (N.T. 143-144, 187).

11. Mr. Bowen always obtains approval from the board of supervisors for additional workers for a project. The Township belongs to a Council of Local Governments (COG). Through its membership in the COG, the Township supervisors have given prior approval to Mr. Bowen to work with other municipalities. (N.T. 145).

12. The board of supervisors, the Township secretary/treasurer and the Roadmaster all jointly develop the budget for the Township roads. Mr. Bowen provides an outline of a budget plan from the prior year's budget. The board of supervisors does not always approve his proposal. The supervisors modify and cut items from the proposals made by Mr. Bowen. (N.T. 147-148, 156).

13. After the board of supervisors advertises for and receives bids on road materials from vendors, both Mr. Bowen and Mr. Labarre order the materials. (N.T. 166).

14. Mr. Bowen spends money on specific items within the board-approved budget without repeated approval of those individual expenditures. Mr. Bowen does not spend more than the board approved amount for a line item. Any expenditure beyond the board approved budget requires board approval. (N.T. 148, 157, 188).

15. Mr. Labarre and Mr. Bowen jointly decide equipment maintenance matters. Mr. Labarre is Mr. Bowen's "right-hand man." Mr. Bowen confers with Mr. Labarre on everything. (N.T. 148, 184).

16. Mr. Bowen obtained prior approval from the supervisors at a Township meeting to spend \$1,800-\$2,000 on truck tires. Mr. Bowen was not authorized by the supervisors to purchase tire chains for the grader like he wanted. He did not purchase the tire chains. (N.T. 149-151, 179).

17. Mr. Bowen sought and obtained prior approval from the board of supervisors at a board meeting for the advertisement of a vacant position in the Highway Department. Five people applied for the position. Mr. Bowen and Mr. Labarre both interviewed the five candidates together. Mr. Labarre and Mr. Bowen together reached a consensus on which candidate to recommend for hire by the board. Mr. Labarre and Mr. Bowen work as a team in the hiring process, and jointly agreed to hire Mr. Wilson. (N.T. 151-152, 175, 184, 193).

18. Mr. Bowen obtained prior approval at a board meeting to utilize Larry Brown to substitute for Mr. Bowen while Mr. Bowen was on vacation. He also spoke to the supervisors individually about it. (N.T. 176).

19. Mr. Bowen and the other Highway Department employes together double check their time cards for accuracy. (N.T. 153).

20. The individual employes in the Highway Department know their daily job duties, which are routine. The Highway Department team together determines the priority of work. The employes individually volunteer for work that needs attention. Mr. Bowen is the lead worker of the Highway Department team. As lead worker, Mr. Bowen will ultimately decide job priority if there is disagreement. Major Township road work is scheduled by a plan outlined by the Highway Department employes in January or February of the year. That plan is submitted to the board for approval. (N.T. 155, 166).

21. The board of supervisors has authorized Mr. Bowen to communicate with PennDOT on behalf of the Township regarding PennDOT projects and materials affecting the Township. The first letter to PennDOT in Employer Exhibit 10 was superficial in nature and expressed gratitude for material delivered to the Township stockpile. The second letter contained grievances concerning PennDOT road detours and contractor use for road repairs while also suggesting a meeting to discuss the grievances. (N.T. 159; Exhibit 10).

22. By way of ordinance, the board of supervisors has authorized Mr. Bowen to issue driveway permits. The purpose of the driveway ordinance is to ensure that excessive water does not drain onto Township roads from driveway runoff and cause damage to connecting Township roads. There is no zoning ordinance in Rome Township. Code Inspections, Incorporated issues building permits and performs building inspections in the Township under state law. (N.T. 126-129, 160, 165).

23. Code Inspections, Inc. contacts either Mr. Bowen or one of the supervisors to determine whether a proposed building site is in a flood plain for purposes of issuing a building permit. The Township does not issue building permits. A supervisor or Mr. Bowen makes the flood plain determination on behalf of Code Inspections, not the Township. (N.T. 129, 165).

24. Township Supervisor Tracey Jewitt inspected a truck for Township purchase with Mr. Bowen. The purpose of inspecting the truck with Supervisor Jewitt was to obtain supervisor approval for the purchase of the truck. (N.T. 178).

25. At various times, the Township hired Kevin Morris, George Tucci, Bart Elliot, Walter Burrows and Jason Brown. Mr. Bowen sought prior approval from the supervisors to hire all of these individuals. Mr. Bowen always obtains prior approval from the board of supervisors for hiring Highway Department employes and other matters. Sometimes that approval is sought and obtained informally and not at a public meeting. Mr. Bowen would not hire anyone without prior board approval in fear of being fired himself. When Mr. Bowen consults with the supervisors, he is seeking their permission and approval and not informing them of a decision he has already made. (N.T. 183-184, 191-192).

26. Mr. Bowen has not disciplined or reprimanded Highway Department employes. (N.T. 193).

DISCUSSION

The Township contends that the Township Roadmaster position, currently held by Mr. Gale Bowen, is either a supervisory or managerial position that should be excluded from the proposed bargaining unit of Township employes. (N.T. 6; Township Brief 9-16). PERA is a statutory scheme that seeks to include, not exclude, public employes. In the Matter of the Employes of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). Accordingly, PERA encourages the inclusion of public employes in bargaining units and thereby seeks to protect employes by affording them the right to organize and bargain collectively. Id. Therefore, as the party seeking to exclude a position from the unit, the Township has the burden of proving 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).

I. SUPERVISORY STATUS

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 employes 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). The Board has opined that “[e]mployees must be excluded from the bargaining unit as supervisory if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise such authority and use independent judgment in exercising that authority.” In the Matter of the Employees of the Luzerne County Community College, 37 PPER ¶ 47 at 148 (Final Order, 2006). In evaluating whether a position is supervisory, the Board “may take into consideration the extent to which supervisory and nonsupervisory functions are performed.” 43 P.S. § 1101.604(5); Luzerne, 37 PPER at 148. The supervisory exclusion does not contemplate excluding an employee who, out of necessity, infrequently or sporadically exercises supervisory functions. In the Matter of the Employees of Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991), aff'd, 23 PPER ¶ 23029 (Court of Common Pleas of Philadelphia County, 1992). Indeed, the Board has held that in order to exclude a position from the bargaining unit and thereby deprive that employee of the rights and protections under PERA, it is insufficient if the employee in question sporadically performs only some supervisory duties and does not perform those duties for a substantial portion of their work time. Id.

As an initial matter, I reject most of the testimony of Jenna English, Secretary/Treasurer, which the Township presented to establish the job duties and responsibilities of Mr. Bowen. Although Ms. English was aware of Mr. Bowen’s involvement in many aspects of Township business, Ms. English lacked first-hand knowledge of Mr. Bowen’s relationship with the Township supervisors, both as a board and as individuals. The Union established that Ms. English was unaware of whether Mr. Bowen sought prior approval for his actions from the supervisors. Indeed, Ms. English testified that she contacts the supervisors to “double check” on matters that Mr. Bowen has presented to her as Secretary/Treasurer. (N.T. 79). The Union also established that Ms. English was unaware of whether Mr. Bowen was acting at the supervisors’ direction. The Pennsylvania Rules of Evidence provide as follows: “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Pa. R.E. 602; In the Matter of the Employees of the Commonwealth of Pennsylvania, 36 PPER 136 (Proposed Order of Unit Clarification, 2005). Ms. English admitted that she works in a separate building from Mr. Bowen and that she did not know whether Mr. Bowen received orders, direction or approval from the supervisors regarding the duties that he performed. (N.T. 79-80).

Also, Ms. English gave detailed testimony concerning Mr. Bowen’s discretion and authority before conceding on cross-examination that she had no way of knowing whether the board of supervisors delegated independence in discretion and decision making authority to Mr. Bowen, or whether Mr. Bowen acted at their direction. Furthermore, Mr. Bowen credibly testified that he consults with the Township supervisors on a regular basis at their homes and at their work and Ms. English is not present during or privy to those conversations. (N.T. 180-181). Under such circumstances, Ms. English was unaware of the directions or authorizations given to Mr. Bowen, or sought by Mr. Bowen, in the exercise of his duties, despite her testimony about such matters. Accordingly, Ms. English’s testimony concerning Mr. Bowen’s independent judgment, discretion, authority or motivation regarding purchases, hiring, street closures, equipment repairs, et cetera, does not constitute substantial, legally competent evidence to support the necessary criteria in evaluating the alleged independent discretionary authority role of the Township Roadmaster.

Additionally, I must reject Ms. English’s testimony as not credible because she was evasive and non-responsive to Union Counsel’s questions on cross-examination. I base this determination on Ms. English’s appearance, general bearing, conduct on the stand, demeanor, manner of testifying, candor and frankness on cross-examination. Mid Valley Education Association v. Mid Valley School District, 25 PPER ¶ 25138 (Final Order, 1994); Keystone Education Center Charter School Education Association v. Keystone Education Center, Inc., 30 PPER ¶ 30167 (Final Order, 1999) (opining that the hearing examiner is free to accept or reject the testimony of any witness, in whole or in part, based on the witness’s credibility). Ms. English’s responses appeared to this examiner to be the result of being either over coached or having her own agenda for the case. During the hearing I admonished Counsel for the Township and Ms. English that Ms. English was not answering the unobjected to questions asked by Counsel for the Union. (N.T. 81-82, 88). Ms. English became visibly agitated when instructed to answer the questions as asked and to cease providing non-responsive information. On several occasions, Ms. English gave

conflicting responses to prior testimony when pressed on cross-examination. For example, Ms. English testified that a supervisor did not accompany Mr. Bowen to examine a truck purchased by the Township and later conceded that she did not know whether the supervisor accompanied Mr. Bowen for that inspection. (N.T. 91). Additionally, the Township attorney consistently and repeatedly asked leading questions of Ms. English. These questions were repeatedly objected to by the Counsel for the Union. By leading Ms. English's testimony in this manner and thereby framing her responses on direct examination, the Township's Counsel has compromised my ability to credit or give any weight to the testimony of Ms. English. The responses to the excessive use of leading questions do not constitute testimony at all. Accordingly, I am constrained to disregard Ms. English's testimony due to her lack of first-hand knowledge about critical facts, her inconsistent testimony, her demeanor and evasiveness and her Counsel's numerous leading questions.

Moreover, by comparison, I find the testimony of Mr. Bowen to be more credible than the testimony of Supervisor Tod Horton. Mr. Bowen's fact-based testimony was not tainted by conclusory statements about authority and discretion as was the testimony of Supervisor Tod Horton. The testimony of Mr. Bowen on matters of hiring, scheduling, overtime, daily activities, proposed budgets and time off was more detailed. Mr. Bowen's testimony on those subjects was based on first-hand knowledge and actual historical facts. Mr. Bowen's recollection was precise and clear. Mr. Horton, however, became equivocal and his memory became selective when his testimony was tested on cross-examination. Accordingly, I have accepted Mr. Bowen's testimony and his version of the facts over that of Mr. Horton and Ms. English.

The Second Class Township Code, Act of May 1, 1933, P.L. 103, as reenacted and amended, 53 P.S. §§ 65101-68701, vests the power to hire, employ, discharge and compensate employes in the a township's elected board of supervisors. 53 P.S. § 65607(3). Statutes relating to other forms of municipal government similarly empower the elected civilian leadership to hire and discharge employes. Accordingly, the Board has held that the issue becomes whether the appointed employe in the position in question effectively recommends the hiring of other employes. In the Matter of the Employes of City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988). "Effective recommendation requires that the recommendation be uniformly followed by superiors." Id. at 504.

Currently, the Highway Department consists of part-time employes Gordon Wilson and Dick Labarre and full-time employe Gale Bowen. Mr. Bowen and Mr. Labarre confer and agree on the selection of individuals for hire. After seeking the agreement and input of Mr. Labarre, Mr. Bowen always gets final approval from the board of supervisors to hire a road crew employe, as required by the Second Class Township Code. The board of supervisors has approved the recommendations made by Mr. Bowen as a result of this consensus process. Therefore, Mr. Bowen is not solely responsible for the recommendation of hirees, nor does he exercise independent authority or discretion when the Highway Department recommends a candidate for hire because he confers with and relies on the judgment of Mr. Labarre.

At various times, the Township hired Kevin Morris, George Tucci, Bart Elliot, Walter Burrows and Jason Brown. Mr. Bowen sought prior approval from the supervisors to hire all of these individuals. Mr. Bowen always obtains prior approval from the board of supervisors for hiring Highway Department employes and other matters. Sometimes that approval is sought and obtained informally and not at a public meeting. Mr. Bowen would not hire anyone without prior board approval in fear of being fired himself. When Mr. Bowen consults with the supervisors, he is seeking their permission and approval; he is not informing them of a decision he has already made. Although it is unclear from the record whether, before Mr. Labarre, Mr. Bowen always conferred with his Highway Department employes as a team and reached consensus on hiring candidates, it is clear that, for a reasonable time prior to the filing of the petition in this case, Mr. Bowen has not been solely responsible for hiring recommendations.

Additionally, in Danville, supra, the Board explained the meaning of the statutory requirement that a supervisor responsibly direct his subordinate employes and opined as follows:

"[D]irect" infer[es] authority to order employes as to the nature, quality and quantity of their work. "Responsibly" infers authority to grant reward or sanction should such orders not be followed, or, to a substantial degree, to be able to effectively recommend such reward or sanction. The right to order the work force and the ability to effect reward or sanction are what distinguish a "supervisor" from a "task leader."

Danville, 8 PPER at 196. In Findlay Township Water Authority, 21 PPER ¶ 21130 (Final Order, 1990), the Board emphasized that "[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction." Id. at 324. This record is clear that Mr. Bowen has not rewarded, disciplined, or reprimanded any Highway Department employes.

The record shows that Mr. Bowen, Mr. Wilson and Mr. Labarre work together as a team and make decisions on a consensus basis. They agree on the work priorities and the taking of time off. The record does not show that Mr. Bowen actually directs work assignments nor does it show that Mr. Bowen has ever rewarded or sanctioned any of the Highway Department employes. When one employe wants to take a day off, the remainder of employes confers on whether they can spare the manpower given the workload. The decisions regarding short-term leave are all consensus-based decisions, and Mr. Bowen does not exercise independent judgment. In fact, longer leaves are submitted for approval to and cleared by the board of supervisors.

The Highway Department employes are responsible for the safe conditions of the Township roads. The record shows that Mr. Bowen calls Mr. Wilson and Mr. Labarre to clear the roads as a result of winter storms, which may result in overtime. However, there is no discretion in fulfilling those obligations and responsibilities. It is part of the road crew's routine duties to ensure that the Township's roads are clear for vehicular traffic. When it snows, all employes know that they must work until the roads are clear. They know what, when, where and how to perform those routine duties on a daily basis and in case of an emergency. Even if Mr. Bowen was solely responsible for approving leave and/or overtime, those factors alone are insufficient to confer supervisory status. Luzerne, supra.

The fact that Mr. Bowen is the only full-time employe or may act as the lead worker does not make him the supervisor, In the Matter of the Employes of Winfield Township, 30 PPER ¶ 30022 at 46 (Final Order, 1998), absent the necessary showing that he performs the duties articulated in Section 301(6). Mr. Bowen's involvement with reviewing the time cards is routine and clerical and he shares this duty equally with his Highway Department team. Also, the fact that Mr. Bowen earns a higher hourly wage alone is not indicative of supervisory or management level status. Old Lycoming Township 17 PPER 17217 (ODSEL, 1986), aff'd, 18 PPER 18059 (Final Order, 1987). Mr. Bowen has been employed by the Township for seven years, and he is full time.

The board of supervisors has made the Township a member of a COG whereby they have agreed to cooperate with other local municipalities for certain types of projects. However, the record does not contain facts demonstrating the nature or extent of that involvement. For example, the record does not show whether Mr. Bowen, Mr. Wilson or Mr. Labarre have ever worked with employes from another township through the COG on a particular project or who decided that a cooperative effort among employes from one or more townships in such instance was necessary, prudent or beneficial. Accordingly, the membership in the COG alone is not useful in determining whether Mr. Bowen has independent discretionary authority in directing personnel as a supervisor on the one hand or whether Mr. Bowen has committed Township resources or implemented policy as a manager on the other.

Although Mr. Bowen is the lead worker on the Highway Department team who makes decisions where the team disagrees, the record in this case shows that Mr. Bowen has not ever effectively recommended any reward or sanction of any employes at any time as Roadmaster. The record indicates that Mr. Bowen has not transferred, suspended, laid off, promoted, discharged or disciplined any road crew employes or to a substantial degree recommended such action as required by Section 301(6) of PERA. Any discretionary tasks (relating to the statutory criteria for a supervisor) that Mr. Bowen may have performed are too infrequent and sporadic to conclude that he should be denied statutory rights or that he spends a substantial amount of time supervising employes. His duties are mostly

routine and clerical. Mr. Bowen obtains permission and approval from the supervisors before any non-routine or discretionary decision is made or act performed. Accordingly, the Township has not met its burden of establishing the statutory criteria under Section 301(6) to conclude that the position of Roadmaster in Rome Township, currently occupied by Mr. Bowen, is a supervisor.

II. MANAGEMENT LEVEL STATUS

Section 301(16) of PERA defines a management level employe in the following manner:

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). The Board has held that this provision establishes a three-part disjunctive standard and that an employe whose duties 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 will not find employes to be managerial unless and until they actually perform management functions. Washington Township Municipal Auth. v. PLRB, 20 PPER ¶ 20031 (Court of Common Pleas of Franklin County, 1988), aff'd, 569 A.2d 402 (Pa. Cmwlth. 1990); North Hills v. PLRB, 762 A.2d 1153 (Pa. Cmwlth, 2000).

The first prong is not at issue in this case. The record is devoid of evidence that Mr. Bowen was directly involved with developing policy, that he regularly participated in the policy selection process or that he participated in a single policy initiative. In the Matter of the Employes of West Penn Township, 37 PPER 120 (Final Order, 2006). Also, the third prong is not at issue in this case because it is undisputed that there are no supervisory positions in the hierarchy of Township employment below the Roadmaster.

In its post-hearing brief, the Township relied on FOP, Star Lodge No. 20, v. PLRB (Star Lodge), 522 A.2d 697 (Pa. Cmwlth. 1987). Star Lodge, however, is inapplicable here because it is limited to determining the managerial status of employes covered by Act 111, not PERA. Luzerne, 37 PPER at 151. Unlike Act 111, PERA contains an overriding statutory definition of a management level employe. Id. In Star Lodge, however, the Court generated its own standard, based on Board case law, for determining whether an employe is a manager in Act 111 cases. Consequently, some of the evidence offered by the Township is not relevant to determining managerial status in this case.

In the case, 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]" refers to the following individuals:

[T]hose 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.

Horsham, 9 PPER at 327.

Although Mr. Bowen participates in the Township's budget preparation process, the record shows that his participation was routine and clerical. He copied prior budgets and his proposals were routinely modified and cut. He had no authority in the decision making process. The Township Secretary and the board of supervisors all participated in the development and approval of the road budget. The board routinely modified and cut the proposals offered by Mr. Bowen.

In terms of monetary policy regarding road maintenance and repair, the board and the Secretary/Treasurer have not allowed Mr. Bowen to exercise any independent authority. Mr. Bowen is not authorized to spend more than the board approved amount for a line item.

Any expenditure beyond the board approved budget requires board approval. Mr. Bowen has no discretion to move beyond the express terms of the budget. Indeed, Mr. Bowen obtained prior approval from the supervisors to spend \$1,800-\$2,000 on truck tires at a Township meeting. Also, Mr. Bowen was not authorized by the supervisors to purchase tire chains for the grader like he wanted. He did not purchase the tire chains.

Mr. Bowen does not exercise any independent authority to make capital expenditures. By way of example, Mr. Bowen was accompanied by Township Supervisor Tracey Jewitt to inspect a truck for Township purchase. The purpose of inspecting the truck with Supervisor Jewitt was to obtain supervisor approval and permission for the purchase of the truck. Mr. Bowen does not have authority to make purchasing decisions.

Also, his communications with PennDOT are routine and clerical in that he is a liaison. The Township has not revealed the nature of the Township policy that would be implemented or fulfilled by the letters contained in Township Exhibit 10. Mr. Bowen's communications with PennDot, without the authority to make decisions on behalf of the Township to commit resources, employes or equipment, demonstrate that Mr. Bowen merely acts as a conduit to the board of supervisors. The first letter to PennDOT in Employer Exhibit 10 was superficial in nature and expressed gratitude for material delivered to the Township stockpile. The second letter contained grievances concerning PennDOT road detours and contractor use for road repairs, while also suggesting a meeting to discuss the grievances. The third letter contained in Employer Exhibit 10 was not admitted into the record. These letters do not demonstrate that Mr. Bowen was fulfilling or establishing policy on behalf of the Township or even committing the Township to a position on the grievances.

There is no zoning ordinance in Rome Township. Code Inspections, Inc., issues building permits and performs building inspections in the Township under state law. Code Inspections, Inc., contacts either Mr. Bowen or one of the supervisors to determine whether a proposed building site is in a flood plain for purposes of issuing a building permit. The Township does not issue building permits. A Township supervisor or Mr. Bowen makes the flood plain determinations on behalf of Code Inspections, not the Township. Accordingly, even if flood plain determinations were deemed the implementation of policy, they are not a matter of Township policy in this case.

In West Penn Township, supra, the Board held that a roadmaster, who maintained and repaired a township's roads and recommended road repair work, the purchase of equipment and the subcontracting of major road projects, was not a management level employe because the record showed that his work was routine in nature and that any major projects had to be approved by the township's board of supervisors. Although the duties of Mr. Bowen are similar to the duties of the roadmaster in West Penn Township, there is a notable distinction in his job duties that satisfies the second prong of the standard for managerial status.

By way of ordinance, the board of supervisors has authorized Mr. Bowen to issue driveway permits. The purpose of the driveway ordinance is to ensure that excessive water does not drain onto Township roads from driveway runoff and cause damage to connecting Township roads. The Board has long held that township ordinance and code enforcement employes are management employes under the second part of Section 301(6) of PERA in that they are directly involved with implementing policy. Lower Providence, supra. In Horsham, a code enforcement employe was determined to be managerial because he could accept or reject permit applications based upon the applicant's conformance with the applicable code under consideration. The employe also inspected an applicant's construction site to ensure compliance with the applicable codes and ordinances. Horsham, supra. 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.

The Horsham line of cases excluding employes from bargaining units as managers because they enforce building and zoning ordinances through the permit process are analogous to Mr. Bowen's duties as the Township employe authorized to issue or refuse to issue driveway permits. In Employes of Carlynton School District v. Carlynton Sch. Dist., 377 A.2d 1033 (Pa. Cmwlth. 1977), the Commonwealth Court held that an employe is management level under PERA when that employe implements the policies of others, even if

such duties are performed only part of the time and even if the employe's decisions are subject to review by a superior manager. Mr. Bowen physically inspects the proposed site and determines whether the drainage and runoff from the proposed driveway would violate the purpose and policy of the ordinance to protect Township roads from damage caused by driveway drainage. Therefore, I am constrained to apply the Horsham line of cases and conclude that Mr. Bowen is a manager because of his driveway inspection and permit duties.

Accordingly, the position of Roadmaster, currently held by Gale Bowen, is a management level position and shall be excluded from the bargaining unit of nonprofessional, blue collar Township employes.

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 Roadmaster, currently held by Mr. Gale Bowen, is not a supervisory position within the meaning of Section 301(6) of PERA.
5. The position of Township Roadmaster, currently held by Mr. Gale Bowen, is a management level position within the meaning of Section 301(16) of PERA, and it is thereby properly excluded from the bargaining unit.

6. 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, blue-collar employes including but not limited to road workers and equipment operators and excluding irregular part-time employes, the Roadmaster, management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe 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 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 second day of June, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner