

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
 : Case No. PERA-R-10-288-E  
SUSQUEHANNA AREA REGIONAL :  
AIRPORT AUTHORITY :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On August 11, 2010, the International Association of Fire Fighters (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 fire fighters employed by the Susquehanna Area Regional Airport Authority (Authority) wish to be exclusively represented by the Union for the purpose of collective bargaining. On August 18, 2010, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on Thursday, September 2, 2010, in Harrisburg. At the hearing on that day, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On September 8, 2010, the notes of testimony from the hearing were filed with the Board. Both parties presented closing arguments at the hearing in lieu of filing post-hearing briefs.

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 Authority 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 Authority employs thirteen fire fighters, four of whom are captains, at the Harrisburg International Airport Fire Department (Department). (N.T. 6-7).
4. Fire fighters work twenty-four-hour shifts with seventy-two hours off between shifts. There are four platoons. One platoon works one shift at a time. (N.T. 7-8).
5. There is one captain assigned to work with each platoon on each shift. Fire fighters report directly to the shift captain. (N.T. 8-9, 61).
6. When the Fire Chief is on duty, he is in command and control of all personnel and responses to emergencies at the Harrisburg International Airport (Airport). In the Chief's absence, the captain on duty is in control of the emergency response. In directing personnel during emergencies, captains follow the Standard Operating Procedures (SOPs), which were developed by the Chief. (N.T. 8-9, 84, 89).
7. The Chief and the captains provide training to the fire fighters. The captains participate in fire fighter training as well. (N.T. 9, 88-89).
8. The SOPs dictate what the fire fighters' tasks are during each shift. The non-emergency duties are routine and the fire fighters know what tasks to perform without specific direction. Fire fighters volunteer for certain duties throughout the shift. During emergencies, captains delegate tasks to fire fighters on shift and ensure the completion of those assignments. In Captain Wentz's platoon, the delegation of duties is a coordinated effort between Captain Wentz and his fire fighters. (N.T. 10, 61-62, 69, 71-72, 89; Authority Exhibit 1).
9. Captains work side by side with fire fighters in performing daily duties such as communications checks and vehicle inspections. In responding to emergencies, the captains follow the directives in the SOPs unless circumstances require a deviation. Captains are not

present giving direction during all emergencies. A captain may not be present during a medical emergency because all fire fighters are equally trained in emergency medical techniques and there is no need for a captain to be present. (N.T. 70-71, 80-81).

10. When a vacancy in a shift occurs, the captains notify the Chief for permission to fill the vacancy. Sometimes the Chief will cover the shift. When there was a fire in Airport Building 208 that produced smoke in a second floor conference room, Captain Wentz first contacted the Chief who instructed Captain Wentz to call in another fire fighter. Captain Wentz needed the Chief's approval for contacting an additional fire fighter. (N.T. 11, 51, 93-94).

11. Captains write draft evaluations for fire fighters once annually. The draft is forwarded to the Chief. All fire fighters work approximately 1200 hours annually. Captain Stahl spends approximately five hours per year completing evaluations. The Chief gives weight to the draft evaluations, but he has changed evaluations. (N.T. 16, 32, 62, 72, 103).

12. Lead fire fighters are below the rank of captain. Lead fire fighters are in command and control of a shift in the absence of the shift captain. (N.T. 14, 45, 75).

13. The selection of a lead fire fighter for a shift involves several determinations: fifty percent of the selection is determined by a written test score; twenty-five percent is determined by the shift captain's previous evaluations; and between zero and twenty-five percent is based on the shift captain's recommendation. (N.T. 14, 45).

14. The captains are not authorized to give written reprimands, suspensions or terminations. Captains may give verbal warnings. No captain has recommended any disciplinary action against a particular fire fighter. (N.T. 16-17, 19, 27-28, 31).

15. A fire fighter at the Department—referred to herein as "Mr. B" was disciplined. The discipline progressed from verbal to written and then to two plans of improvement. Eventually Mr. B resigned. Throughout these troubles, Mr. B had "a couple" of shift captains. None of the captains recommended discipline for Mr. B. (N.T. 29-30).

16. When conflicts between fire fighters on Captain Stahl's platoon arose, he notified the Chief. In Captain Stahl's platoon, two fire fighters were not getting along, and he told them that they should "get along." Stahl did not document this as a verbal warning. (N.T. 63-64, 76-78).

17. Captains apply the minimum staffing requirements contained in the SOPs in approving leave for fire fighters. The captains have no discretion in approving or refusing leave. No fire fighters are refused leave when staffing levels are met. If a fire fighter is already scheduled to be off when another fire fighter requests leave, the shift captain must seek approval from the Chief. (N.T. 51-52, 65-66, 73).

18. Captain Wentz spends approximately five to ten percent of his time performing administrative captain duties as distinguished from his fire fighting duties. Captain Wentz spends approximately three hours per week in the captains' office; he works a forty-two-hour week. (N.T. 83, 101).<sup>1</sup>

19. Captain Wentz was twice involved in the interview process for new hires. During that process, Captain Wentz recorded some notations and gave them to the Chief about a candidate. Captain Wentz has recommended the hiring of a fire fighter candidate and that candidate was ultimately hired. Captain Wentz once verbally warned a fire fighter for poor performance back in 2001 or 2002. (N.T. 86-87, 90, 96, 102-103).

20. The parties stipulated and agreed that the employees in the proposed bargaining unit share an identifiable community of interest. (N.T. 4).

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<sup>1</sup> The Chief testified that the captains spend approximately fifty percent of their time performing non-fire fighting duties unique to the position of captain. However, I credit the testimony of Captain Wentz over that of the Chief on this point of fact.

## DISCUSSION

The Union seeks to represent a bargaining unit of fire fighters employed by the Authority at the Airport Fire Department. The Authority contends that the position of captain should be excluded as a statutory supervisor. As the party seeking to exclude the captain positions from the unit, the Authority has the burden of proving the exclusion. In the Matter of the Employees 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 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 stated that, when applying Section 301(6), "[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). However, the Board has also recognized that PERA requires the Board to "take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5) (emphasis added); Luzerne, 37 PPER at 148. The exclusion does not authorize excluding a position filled by an employee who 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). The purpose of PERA is to include, not exclude, public employees in bargaining units, thereby offering them the protection afforded by organizing and bargaining collectively. In the Matter of the Employees of Danville Area School Dist., 8 PPER 195 (Order and Notice of Election, 1977). The Board has held that, in order to exclude a position from a 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.

In determining the difference between a lead worker and a statutory supervisor, the Board has examined the requirement that the employee "responsibly" "direct" other employees. The Board explained the meaning as follows:

"Direct" infer[s] authority to order employees 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. Since Danville, the Board has repeatedly and consistently emphasized that "an employee who lacks the authority to effect reward or sanction simply cannot be excluded from a bargaining unit as a supervisor." In the Matter of the Employees of Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER 20126 (Final Order, 1989); Findlay Township Water Authority, 21 PPER ¶ 21130 (Final Order, 1990) (reiterating that "[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction").

The captains in this case do not perform the duties and functions necessary for exclusion from the bargaining unit under the Section 301(6) as interpreted by the Board. The captains sporadically perform administrative duties involving inventory and training that the lead workers do not, but these duties are not indicative of supervisory status. Captains are responsible for approving leave, but they have no discretion in performing that function. The captains must apply the minimum staffing criteria contained in the

Department's SOPs. Indeed, the record shows that, when deviation from the SOPs and the exercise of discretion are required, the shift captain must seek approval from the Chief. Also, shift captains must obtain permission from the Chief to fill a shift vacancy. When a fire erupted in Building 208 at the Airport, Captain Wentz contacted the Chief for permission to call in another fire fighter to help combat the fire.

The record demonstrates that the fire fighters consistently volunteer for routine duties. These duties are already known to the fire fighters to be completed during their shift in accordance with the SOPs and experience. In general, there is little need for shift captains to delegate and assign duties to the fire fighters. Captains work side-by-side with the fire fighters in completing daily or routine tasks. Captains are not always present when the Department responds to medical emergencies because all fire fighters are equally trained and experienced in responding to medical emergencies. In such cases, the shift captain is not present to direct fire fighter personnel. In this regard, there is very little direction within the meaning of Danville, supra.

During other emergencies, when the shift captain is also present, the shift captain assigns specific tasks in accordance with the SOPs. However, following the SOPs does not require discretion or independent judgment. Therefore, the captain is acting more as a lead worker than a statutory supervisor. Although the captains direct work assignment details and exercise discretion during some emergencies, they lack the ability to reward employees for good work. Also, a captain's ability to sanction employees is limited to a verbal warning or counseling. On this record, captains collectively have only utilized the verbal warning once (perhaps twice) in the past eight years. Captain Stahl testified that he told two fire fighters to "get along." To the extent that this constituted a verbal warning or reprimand, it was not documented. Captain Wentz once verbally warned a fire fighter for poor performance in 2001 or 2002, and the record does not reflect whether this was documented.

In fact, no captain has ever recommended any discipline to be taken against any fire fighter, and the record demonstrates that there has been occasion for serious discipline.<sup>2</sup> When discipline was imposed on Mr. B, none of the shift captains to whom Mr. B reported recommended any discipline against him. In practice, therefore, the captains have not recommended any discipline and essentially have not utilized their authority to verbally warn their fire fighters. The one verbal warning that occurred did not, on this record, have any impact on the fire fighter's employment record.

The Department utilizes lead fire fighters. Lead fire fighters are in control of the shift in the absence of the shift captain. During emergencies, lead fire fighters delegate duties in the same manner as the captains, and also lack the ability to reward or sanction. Absent substantial evidence that the captains have rewarded or sanctioned fire fighters for delegated work assignments, the captains are no different than the lead fire fighters with respect to Section 301(6) and do not "responsibly" direct fire fighters within the meaning of Danville, supra.

Although the captains perform evaluations on each of the fire fighters in their platoon annually, the record shows that those evaluations are subject to change by the Chief. In selecting lead fire fighters, fifty percent of the determination is based on a written test score, twenty-five percent is based on the shift captain's previous evaluations and between zero and twenty-five percent is based on the shift captain's recommendation. In this regard, only twenty-five percent of the determination is based on the shift captain's evaluations of the candidate and that evaluation may have been previously changed by the Chief. In other words, the evaluation relied on may not be the shift captain's evaluation at all. Also, the captain's recommendation could be given no weight or, at most, would be only twenty-five percent of the determination. Under this system of promoting fire fighters to lead workers, the Chief, therefore, could completely eliminate the input of the shift captain.

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<sup>2</sup> The record is clear that the fire fighting personnel in this case are absolutely consummate in the performance of their duties, in the commitment to their skills and training and in the commitment to their Department and each other. The isolated incident here does not in any way reflect on the Department, its personnel or its leadership.

The record does not contain evidence of historical fact concerning the promotion process of any particular fire fighters to the position of lead fire fighter. Such evidence is necessary to demonstrate the weight given to a captain's evaluations and recommendations or the manner in which they were utilized in that particular case. Based on this record, I am unable to determine what weight has in fact in the past been given to the captains' evaluations and recommendations. The formula provided by the Authority for selecting lead fire fighters does not, by itself, constitute substantial, competent evidence that the shift captains have in fact effectively recommended the promotion of fire fighters to lead workers.

Captain Wentz was twice involved in the interview process for new hires. During that process, Captain Wentz recorded some notations and gave them to the Chief about a candidate. Captain Wentz has recommended the hiring of a fire fighter candidate and that candidate was subsequently hired. However, "[l]imited actions in the hiring process alone may not be sufficient to establish supervisory status, because the Board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." Penns Manor Educ. Ass'n v. Penns Manor Area Sch. Dist., 30 PPER 30198 at 430 (Final Order, 1999).

Although the captains direct fire fighters and assign them work, their ability to reward employes for good job performances is unclear. Their evaluations are often altered by the Chief and their involvement in promoting fire fighters to lead fire fighters is indeterminable. "It has been the Board's consistent position since the inception of PERA that to 'effectively recommend' pursuant to Section 301(6), the recommendation must be given controlling weight and cannot be subject to independent investigation by higher authority." Id. There is no evidence that the captains effectively recommend candidates for hire or promotion. Additionally, the time spent on hiring, promoting and evaluating fire fighters as well as performing other administrative duties is insignificant. The Board considers "such factors as frequency, duration and importance of the various supervisory duties performed." Penns Manor, 30 PPER at 430 (quoting State System of Higher Educ. V. PLRB, 737 A.2d 313 at 316 (Pa. Cmwlth. 1999)). Moreover, the captains' administrative and fire fighting duties are substantially routine in following the SOPs and/or clerical in nature, not requiring independent judgment. Also, the captains' ability to issue verbal warnings has not been utilized to impact any fire fighter's record of employment and, therefore, the captains have not, in fact, sanctioned any fire fighters. Accordingly, the Authority has not met its burden of proving that the captains perform the necessary criteria contained in Section 301(6) for a substantial portion of work time and that the captains should therefore be deprived of the rights and protections afforded by PERA.

#### CONCLUSIONS

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

1. The Authority 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 employes in the proposed bargaining unit of Authority employes at the Harrisburg International Airport Fire Department share an identifiable community of interest.
5. The position of Captain is not supervisory and is properly included in the bargaining unit of Authority employes at the Harrisburg International Airport Fire Department.
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 fire fighters, including Captains, at the Harrisburg International Airport Fire Department; and excluding management level employes, 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 Authority 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 fourth day of October, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner