

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case Nos. PERA-U-16-334-E
: (PERA-R-2180-C)
: PERA-U-16-335-E
COMMONWEALTH OF PENNSYLVANIA : (PERA-R-3368-C)

FINAL ORDER

The Commonwealth of Pennsylvania (Commonwealth) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 30, 2017, from a Proposed Order of Unit Clarification (POUC) issued on November 13, 2017. In the POUC, the Hearing Examiner clarified the rank and file bargaining unit certified at PERA-R-2180-C to include Assistant Construction Project Managers employed by the Commonwealth's Department of General Services (DGS), and clarified the first level supervisory meet and discuss unit certified at PERA-R-3368-C to include Construction Project Managers employed by DGS. Following an extension of time to file a brief in support of the exceptions, the Commonwealth filed its brief on December 29, 2017. The American Federation of State, County, and Municipal Employees (AFSCME) filed a brief in response to the exceptions on January 22, 2018.

On November 22, 2016, AFSCME filed a Petition for Unit Clarification with the Board pursuant to the Public Employee Relations Act (PERA), seeking to include the Assistant Construction Project Managers in the rank and file bargaining unit. The petition was docketed at Case No. PERA-U-16-334-E. AFSCME also filed a second Petition for Unit Clarification, seeking to include the Construction Project Managers in the first level supervisory meet and discuss unit. That petition was docketed at Case No. PERA-U-16-335-E. The two cases were consolidated for hearing by the Hearing Examiner. A hearing was held on June 15, 2017, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Based on the evidence presented by the parties, the Hearing Examiner made necessary Findings of Fact which are adopted herein.

In July 2016, the Commonwealth implemented a modernization program with regard to its business model involving construction projects. In doing so, the Commonwealth moved from an inspection system to a project management system. (Finding of Fact 5). Prior to the change in July 2016, the Commonwealth employed inspectors within the Bureau of Construction, who were primarily responsible for observing work in the field and reporting their findings. The chain of command consisted of mechanical, electrical, and building inspectors, who worked under a construction inspector supervisor, who in turn reported to a construction inspector manager. The construction inspector manager worked under a regional director, who reported to the director of construction. (Finding of Fact 6).

After the change in July 2016, the Commonwealth changed the name of the Bureau of Construction to the Bureau of Capital Projects and

eliminated the inspector positions, along with the positions of construction inspector supervisor and construction inspector manager. (Finding of Fact 7). Since the change in July 2016, DGS employees are no longer performing inspections at construction sites. Instead, the inspection work is being performed by various third parties. (Finding of Fact 8). Following the change in July 2016, the Commonwealth created two new positions, Assistant Project Manager (APM) and Project Manager (PM). Generally the inspectors and construction inspector supervisors were moved into the APM position, while the construction inspector managers became PMs. (Finding of Fact 8).

Under the new system, the construction projects that are undertaken by DGS's Bureau of Capital Projects are governed by the contracts between the Commonwealth and the contractors, as well as by DGS's General Conditions of the Construction Contract (GCs) and Administrative Procedures for Construction Contracts (APs). The GCs and APs are a binding part of every contract. (Finding of Fact 9). The GCs contain the specific responsibilities of the contractor regarding the construction project. (Finding of Fact 10). The APs supplement the GCs for the contract and list the procedures that the contractors, professionals (*i.e.* architects or engineers), and DGS personnel must follow to meet the contract's requirements. (Finding of Fact 11). APMs and PMs monitor various aspects of the DGS construction projects, ensuring that all work conforms to the contract, including the GCs and APs, as well as any applicable laws, codes, and regulations. (Finding of Fact 12).

Within forty-five days of the contract's effective date, the contractor must submit a schedule of values (SOV) to DGS. The SOV details the work to be performed and the materials to be used, along with their value, and is used for approving invoices. (Finding of Fact 13). The PMs are responsible for reviewing and approving the contractor's SOV for their assigned projects. The APs provide that no invoice on a construction project can be approved until the SOV has been approved by the PM. (Finding of Fact 14).

As a project progresses, the contractor submits invoices for work completed and materials used. (Finding of Fact 15). The APMs are responsible for processing invoices for their assigned projects. The APMs have discretion to approve or reject an invoice and may direct the contractor to correct an invoice. In doing so, the APMs consider whether the work performed or the materials used are in accordance with the contract. There is no monetary limit to an APM's approval authority regarding invoices, and the APM's approval is not subject to internal review or oversight. (Finding of Fact 16).

The GCs and APs provide that job conferences are to be held at biweekly intervals once the project begins. The APMs conduct the job conferences, which are attended by all prime contractors, by the professionals, and by other individuals involved in the project. The purpose of the job conference is to identify and discuss issues related to the project. The APMs may seek resolution of any issues, and the job conferences sometimes result in a change order. (Finding of Fact 25).

Change orders are required to be processed under the GCs and APs any time there is a request to change the contract regarding the design, materials, costs or scheduling. A change order may be

commenced by the professional, by DGS personnel, or under limited circumstances, by the contractor. The professional is required to provide an opinion regarding the reason for the change order, along with a detailed explanation supporting his or her choice for the cause of the change. (Finding of Fact 17). The APMs are responsible for reviewing all change orders related to their assigned projects. The APMs have authority to approve or reject a change order with a value of up to \$5,000. The PMs are responsible for reviewing change orders related to their assigned projects ranging in value from \$5,000.01 to \$20,000. In reviewing change orders, the APMs and PMs must consider whether the proposed change is necessary, whether the materials are proper, whether the change will have an impact on the project's schedule, and whether the cost is valid. If an APM or PM determines that the proposed change will have a significant effect on the project's schedule, he or she may issue a directive to proceed, authorizing the start of the work before the change order receives final approval. The APM or PM may also negotiate a lower cost, or if the parties cannot reach an agreement, mandate that the contractor perform the work at a cost determined by the APM or PM, which is then subject to the GC's dispute resolution article. (Finding of Facts 18 and 19).

If a contractor is unable to complete work in accordance with the project schedule, the contractor may request an extension of time. (Finding of Fact 20). The PMs are responsible for reviewing requests for an extension of time, and the PM may approve or reject such a request. (Finding of Fact 21).

The GCs and APs provide that, if there is a dispute between the contractor and DGS regarding a construction project, the dispute must be submitted to a three-step dispute resolution process. (Finding of Fact 22). The field dispute review (FDR) meeting is the first step in the process. The FDR meetings are held at certain intervals when a percentage of the contract duration has elapsed. The PM is responsible for serving as the chair of the FDR meeting, which is an informal good faith discussion of the current status of the project and identification of potential and actual disputes. The PM facilitates the discussion and makes sure that all the parties involved are present and able to present their arguments. The objective of the FDR meeting is for the parties to reach a mutually agreeable resolution. (Finding of Fact 23). If the parties do not reach an agreement on an issue in dispute, the PM denies the claim and requires the contractor to continue with the work. The PM's decision stands unless the contractor timely moves the dispute to the second and third steps in the process, which include a Claim Settlement Conference with the Deputy Secretary and filing a claim with the Board of Claims, respectively. (Finding of Fact 24).

Focusing primarily on the processing of change orders under the GCs and APs, the Hearing Examiner concluded that the APMs' authority to approve or reject change orders up to \$5,000, and the PMs' authority to approve change orders up to \$20,000, did not render those positions to be management level under Section 301(16) of PERA. The Hearing Examiner therefore amended the certified bargaining unit in PERA-R-2180-C to include the APMs, and amended the certification of the first level supervisory meet and discuss unit at PERA-R-3368-C, to include the PMs.

Section 301(16) of PERA defines a "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). The policies of PERA seek to afford public employes the right to organize and collectively bargain and engage in other lawful concerted activities for mutual aid and protection. In the Matter of the Employes of Danville Area School District, 8 PPER 195 (Order and Notice of Election, 1977). Thus, the party seeking to exclude a position from a bargaining unit has the burden of proving by a preponderance of evidence that the statutory exclusion applies. In the Matter of the Employes of State System of Higher Education, 29 PPER ¶29234 (Final Order, 1998), *affirmed*, 737 A.2d 313 (Pa. Cmwlth. 1999); School District of Philadelphia v. Pennsylvania Labor Relations Board, 719 A.2d 835 (Pa. Cmwlth., 1998); Westmoreland County, 40 PPER 35 (Final Order, 2009), *affirmed*, 991 A.2d 876 (Pa. Cmwlth. 2010).¹

Consistent with PERA's policy of providing public employes with collective bargaining rights, the Board, in applying the statutory exclusion of management level employes under Section 301(16) of PERA, has held that an employe is management level if the employe is either (1) directly involved in the determination of policy; (2) responsible for directing implementation of policy; or (3) above the first level of supervision. Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978); In the Matter of the Employes of Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010). In determining whether an employe is to be excluded from collective bargaining under one of the three prongs for management level status, the Board is careful to distinguish between management level employes with authority to decide matters of employer policy, and employes who exercise professional or technical judgements in the performance of their duties that tangentially touch upon policy concerns. City of Lebanon, 4 PPER 24 (1974); Allegheny County, 47 PPER 4 (Proposed Order of Unit Clarification, 2015).

In furtherance of the policies of PERA, the Board, in Horsham Township, *supra.*, stated as follows regarding an employe who is "involved directly in the determination of policy," under the first prong of the statutory test under PERA:

An individual who is involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Our reading of the statute does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply

¹ It is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and to weigh the probative value of the evidence presented. The Board will not disturb the Hearing Examiner's credibility determinations absent the most compelling of circumstances. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004).

engaged in research or the collection of data necessary for the development of a policy proposal.

Horsham, 9 PPER at 327.²

The second prong of managerial status concerns an employee who responsibly directs the implementation of employer policy. In Horsham Township, supra., the Board stated as follows, regarding directing implementation of policy:

[P]ersons 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 ensure completion of the task. The administration of 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 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.

² Similarly, the New York Public Employee Relation Board's Director of Public Employment Practices and Representation noted in discussing when employes engage in policy formation:

Mere involvement in policy-making decisions or making recommendations concerning policy is not the primary involvement in policy formulation contemplated by the Act. Nor are technical determinations of the methods and means of operation within goals set by others sufficient to warrant managerial designation under the policy formulation standard. The mere exercise of discretion in determining the methods and means by which business is carried out is not sufficient to qualify as a policy maker under the Act. There must be a substantial, unfettered ability to effect policy apart from the requisite approval by higher authority.

State of New York-Unified Court System, 29 PERB ¶ 4033, at p. 4063, *affirmed*, 30 PERB ¶ 3067 (1997), *confirmed sub nom. Lippman v. New York State Public Employment Relations Board*, 263 A.D.2d 891, 32 PERB ¶ 7017 (Supreme Court, Appellate Division, Third Department, New York, 1999); *see also*, County of Nassau, 34 PERB ¶ 8001 (Recommendation of the Hearing Officer, 2001) (discussing numerous New York Public Employment Relations Board cases deciding managerial policy formation under Section 201.7 of the "Taylor Law", N.Y. Civ. Serv. Law § 201 (McKinney)).

Id.³

On exceptions, the Commonwealth argues that the Hearing Examiner erred in finding that the APMs and PMs do not direct the implementation of policy under the second prong of Section 301(16) of PERA and Horsham Township, supra. In this regard, the Commonwealth argues that the authority of the APMs and PMs to approve or reject a change order is akin to the authority to approve or reject building code applications exercised in Municipal Employees of the Borough of Slippery Rock v. PLRB, 14 A.3d 189 (Pa. Cmwlth. 2011), and is similar to the departmental budget authority exercised by the department chairs in In the Matter of the Employees of Temple University, 46 PPER 93 (Final Order, 2015). To support its argument regarding managerial status, the Commonwealth points to the breadth of the alleged budget authority of the APMs and PMs. The Commonwealth emphasizes that within the first five months of 2017, change orders on multiple projects cumulatively exceeded 2.2 million dollars. Even considering the Commonwealth's evidence in whole, upon a thorough review of the record, the Hearing Examiner did not err in finding that the Commonwealth failed to sustain its burden to establish that through their review of change orders, the APMs and PMs are management level employees under Section 301(16) of PERA.

In Horsham Township, supra, the Board explained that to direct the implementation of policy, a management level employee must have

³ Likewise, the New Jersey Supreme Court held that directing implementation of policy is sufficient for managerial status under the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-3(f), as follows:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331, 356, 696 A.2d 585, 598 (N.J. 1997); see State of New Jersey, 25 NJPER ¶ 30021 (N.J. PERC, 1998) (noting the New Jersey Supreme Court's recognition "that 'directing the effectuation' of policy connotes a higher level of authority"); see also City of Chicago, 25 PERI ¶ 2 (Ill. LRB, 2009) ("an employee directs the effectuation of management policy when he or she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved... Such individuals must be empowered with a substantial measure of discretion to determine how policies will be effected").

independent authority and cannot be constrained to follow a set of procedures for the means of implementation. Evidence of management level status requires proof that the employe has authority to operate within and *without* the procedures outlined in a policy, and must be able to change procedures or methods of operation in order to implement the policy. Horsham Township, supra.⁴ The record evidence here, as found by the Hearing Examiner, indicates that change orders must be processed in accordance with the GCs and APs. APMs and PMs lack the authority to address change orders outside of these procedures. As testified to by APM Barton Richwine, a change order cannot be processed during a job conference, but must be separately filed in accordance with the GCs and APs. (N.T. 145). Accordingly, the Commonwealth failed to establish that the APMs and PMs are able to effectuate change orders outside the procedures outlined in the GCs and APs.

Additionally, as explained in Horsham Township, when interpreting or observing the terms of the policy, the authority of a management level employe transcends mere technical expertise and is not of a routine or clerical nature. Horsham Township, supra.; City of Lebanon, supra. Based on the evidence of record, the Hearing Examiner found that in reviewing a change order, the APMs and PMs consider whether the proposed change is necessary, whether the materials are proper, whether the change will have an impact on the project's schedule, and whether the cost is valid. In doing so, the APMs and PMs are merely utilizing technical expertise, and are not independently enforcing, implementing, or interpreting managerial policy. The finding is supported by APM Richwine, who testified that change orders are reviewed to make sure the work is needed, that the scope of the work is correctly worded, and that the contractor performs the work as indicated. (N.T. 147). Consistent therewith, APM Edward Tycenski testified that the APMs' review of change orders is merely administrative in nature. (N.T. 135-136). Accordingly, the Hearing Examiner did not err in finding that review of change orders by PMs and APMs is the exercise of technical expertise and an administrative function.

Moreover, APMs and PMs do not enforce or implement the construction contract through their involvement with change orders. As held in Horsham Township, supra., management level employes "have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures." APM Tycenski testified that the APMs oversee the project administratively and clerically with respect to the contract terms. (N.T. 133). Indeed, the APMs or PMs are not enforcing the terms of the contract by denying a change order and directing the contractor to perform the work while the change order is processed. While APMs or PMs may deny a change order, if denied, they are not themselves imposing concrete enforcement measures. Instead, the contractor remains obligated to perform the work as agreed upon under the construction contract.

The inability to independently implement their own enforcement measures to rectify a failure to comply with the contract or policy, is exemplary of the distinction that the Board draws between the code enforcement line of cases and cases of employes who inspect property for purchase or use by their employer. In the Matter of the Employes of

⁴ See also, New Jersey Turnpike Authority, supra.; State of New Jersey, supra.; and City of Chicago, supra.

Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016). As the Board held in Plains Township Sewer Authority, 8 PPER 213 (Final Order, 1977), "the inspectors are not involved directly or even indirectly in the determination of policy, nor do they direct the implementation of policies and procedures... [T]he main duties of the inspector is to observe the proper installation of the sewers and ... they do not possess the authority to determine policies or ... responsibly direct the implementation thereof... Therefore, ... the position of sewer inspector is not a management level position." Plains Township Sewer Authority, 8 PPER at 214. Moreover, as the Board noted in Port Authority of Allegheny County, *supra.*, where an employe's duties involve monitoring contract compliance, the employe's allowance of discrepancies from the employer's inspection report or specifications does not transform the exercise of the employe's technical expertise into directing the implementation of a managerial policy. Here, the record does not support a finding that by denying change orders and directing that work continue in accordance with the contract pending further review of the change order, the PMs and APMs are ensuring the actual fulfillment of policy by imposing their own concrete enforcement measures, as required of management level employes. See e.g. Horsham Township, *supra.*; Slippery Rock Borough, *supra.*

To the extent that the APMs and PMs have authority to grant change orders, up to pre-determined dollar amounts, the record does not establish that they make independent policy determinations. Despite the authority of APMs to grant change orders up to \$5000, and PMs up to \$20,000, there is insufficient evidence to show that in doing so the APMs and PM have authority to effectuate a policy reallocation of DGS's departmental or general budget. As the Board explained in In the Matter of the Employes of East Mead Township, 47 PPER 46 (Order Directing Remand to the Examiner for Further Proceedings, 2015), and In the Matter of the Employes of Cumberland Township, PERA-R-16-333-E (Final Order, February 20, 2018), the fact that an employe has authority to expend budgeted funds does not render the employe management level under the second prong of Section 301(16) of PERA or Horsham Township, *supra.* The budgetary authority must extend to the ability to compel reallocation of funds or resources from other projects within the departmental or general budget evidencing a determination of, or change in, the employer's policy under prong one of the test for management level authority. See Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021 (Pa. Cmlth. 1989) (recognizing that budgetary preparation duties were not the usual tasks of the physicians and that their budget decisions had a direct impact on the programs, policies and direction of the hospital). Although the Commonwealth posits that change orders cumulatively amounted to 2.2 million dollars of the DGS budget, there was no evidence that the change orders on any given project exceeded DGS's budget for the project and required a reallocation of priorities or funds from other sources or projects in the DGS general or departmental budget. Accordingly, the evidence of record concerning the authority of the APMs and PMs to expend funds when approving change orders, is insufficient to support a finding of management level authority over the DGS budget policy.

Contrary to the Commonwealth's argument that the Hearing Examiner erred in distinguishing Temple University, *supra.*, the circumstances of the department chairs' budgets in Temple University is unique. First,

the department chairs at Temple University implemented programs to generate income for their departments. That income remained within the department and could be allocated and spent at the sole discretion of the department chair. Although departments were provided with an allocation from the university's general budget, the department chairs set the priorities on how funds would be allocated within the department based on their individual beliefs about the need for a particular project. Additionally, department chairs had authority to allocate the departments' funds to implement new department initiatives at their discretion. Unlike the department chairs in Temple University, there is no evidence of record to support a finding that here, in addressing change orders, the APMs or PMs implement programs to generate income for a project. Nor is there evidence to show that the APMs or PMs may refuse to implement a contracted project. Neither is there record evidence that either APMs or PMs may institute change orders to make their own discretionary changes to the construction or contract, as would indicate management level policy decision-making.

After a thorough review of the record with respect to the duties pertaining to change orders, the Hearing Examiner did not err in finding as follows:

The APMs and PMs simply utilize their knowledge of construction in performing these duties. They do not have authority over the DGS budget to establish the need and specifications for projects, nor do they exercise independent authority to expend the DGS budgeted funds to enter agreements with the contractors. This authority is akin to that of the Technical Trainers in Port Authority of Allegheny County to determine whether discrepancies in the employer's specifications would be permitted or rejected. Whether or not the APMs and PMs approve changes to the contract specifications via change orders does not transform the exercise of their technical expertise into the implementation of a managerial policy. *Id.*

(POUC at 7).⁵ Accordingly, the Commonwealth failed to establish that by virtue of the authority to grant or deny change orders, the APMs and PMs exercise policy decision-making rendering them to be management level employees under Section 301(16) of PERA.

As found by the Hearing Examiner, the remaining duties of the APMs are technical, administrative or clerical, and do not involve management level responsibilities. APMs exercise technical expertise in monitoring various aspects of the DGS construction projects, ensuring that all work conforms to the contract, including the GCs and APs, as well as any applicable laws, codes, and regulations. Indeed, as testified by APM Tycenski, the APMs' duties to monitor compliance with the contract are administrative. Similarly, the APMs' duties regarding processing of invoices is at best technical, but primarily clerical. As found by the Hearing Examiner, the APMs use technical expertise in determining whether the work performed or the materials used are in

⁵ See also, San Diego City Unified School District, 36 PERC ¶ 137 (PERB ALJ's Proposed Decision, 2012) (holding that Director of Project Management and Director of Construction Management were not management employees under the California Educational Employment Relations Act).

accordance with the contract, and clerically process invoices for their assigned projects. Finally, based on the record evidence, the APMs do not exercise managerial authority during biweekly job conferences. The APMs conduct the job conferences to identify and discuss issues related to the project. However, the record does not support a finding that the APMs may implement policy changes in seeking to resolve any issues.

Accordingly, upon review of the record, the Hearing Examiner did not err in concluding that the Commonwealth failed to sustain its burden of establishing that the APMs are management level employees within the meaning of Section 301(16) of PERA. Therefore, the Commonwealth's exceptions to the Hearing Examiner's decision to include the APMs in the bargaining unit certified at PERA-R-2180-C, must be dismissed.

The Commonwealth's evidence with respect to the additional duties of the PMs was found by the Hearing Examiner to be the exercise of technical expertise, and not managerial policy decision-making. As the Board recognized in Horsham Township, management level under PERA "does not include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal." Horsham Township, 9 PPER at 327.

Consistent therewith, in Port Authority of Allegheny County, the Board recognized that the Technical Trainers in that case who inspected buses purchased by the employer were not involved directly in the determination of policy regarding the decisions of whether to purchase the buses or how to allocate the funds to pay for the buses that were ordered. Thus, in Port Authority of Allegheny County, the Board recognized that the Technical Trainers in that case did not have any authority in the policy determinations regarding the design of the buses or the allocations to be included in the employer's general budget for the buses. Specifically, the Board noted that "managerial decisions of ordering a bus, establishing the specifications for the bus, and purchasing the bus are not made by the Technical Trainers." Port Authority of Allegheny County, 48 PPER at 190.

Similarly, the PMs use their technical expertise in construction to review the proposed material needs and costs and approve the Schedule of Values. As the project progresses, the PMs approve or reject a contractor's requests for an extension of time based on their knowledge of the construction and manpower required. The PMs are also responsible for serving as the chair of the field dispute resolution meeting, but the record evidence indicates that if the parties do not reach an agreement during the FDR meeting, the PMs deny the contractor's claim and may require the contractor to continue with the work while the contractor appeals. Thus, the Hearing Examiner found that like the job conferences, the PMs lack managerial decision-making through the FDR process.

Upon review of the evidence regarding the duties of the PMs, we agree with the Hearing Examiner's finding that the Commonwealth failed to establish that the duties of the PMs are anything more than the exercise of technical expertise in the design and construction of a project. As such, the Hearing Examiner did not err in concluding that

the Commonwealth failed to establish that the PMs are management level employees within the meaning of Section 301(16) of PERA. Accordingly, the Commonwealth's exceptions to the inclusion of the PMs in the unit certified at PERA-R-3368-C, are dismissed.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding in Case No. PERA-U-16-334-E that the Commonwealth failed to establish that the APMs are management level employees, and thus did not err clarifying the bargaining unit certified at PERA-R-2180-C, to include Assistant Project Managers. In addition, the Hearing Examiner did not err in concluding in Case No. PERA-U-16-335-E that the Commonwealth failed to establish that the PMs are management level employees, and thus did not err in clarifying the first-level supervisory meet and discuss unit certified at PERA-R-3368-C, to include Project Managers. Accordingly, the exceptions filed by the Commonwealth at Case Nos. PERA-U-16-334-E and PERA-U-16-335-E shall be dismissed, and the November 13, 2017 POUC shall be made absolute and final.

ORDER

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 Commonwealth in Case Nos. PERA-U-16-334-E and PERA-U-16-335-E are hereby dismissed, and the Proposed Order of Unit Clarification issued on November 13, 2017 is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this seventeenth day of April, 2018. 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.