

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 : Case No. PERA-U-10-227-E
 : (PERA-R-1063-C)
CITY OF PHILADELPHIA :

PROPOSED ORDER OF UNIT CLARIFICATION

On April 12, 2010, AFSCME DC 47, Local 2186 (AFSCME) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Public Employee Relations Act (PERA) seeking to include the positions of park manager II, accounting transactions supervisor, accounting section supervisor I and II, into an existing meet and discuss unit, in the City of Philadelphia (City).¹

On September 7, 2010, the Secretary of the Board issued an order and notice of hearing establishing October 12, 2010 May 18, 2010 in Philadelphia, Pennsylvania as the place of hearing. A granted continuance resulted in the hearing being held on November 15, 2010. At that time, all parties in interest were afforded an opportunity to present testimony, introduce evidence and cross-examine witnesses. Neither party filed a brief.

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

FINDINGS OF FACT

1. The City is a public employer within the meaning of Section 301(1) of the Public Employee Relations Act (PERA).
2. AFSCME is an employee organization within the meaning of Section 301(3) of PERA.
3. Park manager trainees have one year of experience. Park manager I's have another year of training, but that is an intermediate/continuing trainee level of performance. Finally, the park manager II position is the full performance level of that class. (N.T. 56-57; Joint Exhibit 1, 2).
4. Park manager II's perform the following tasks: the oversight of City golf courses and driving ranges; preparing monthly reports about park activity; the representation of the Parks and recreation Department at the emergency operations center; the ordering of supplies through the city-wide procurement program; passing out state issued pesticide licenses to park qualified employees; the receipt and investigation of incoming claims for property damage and sending the investigation results to the City's risk management department; the oversight of vendors doing work on park property; the recommendation of changes to correct problems. (N.T. 13-19, 20-25, 32, 35, 36-41, 48).
5. Park manager II's do not supervise, rate, or discipline any other employees. They do not select any vendors. They have no role in establishing policy or regulations for the City. They have no input into any budget. (N.T. 13, 17, 21, 32, 36, 37, 40, 41, 60, 64).
6. The duties of park manager II's is essentially the same as the park manager I's, however, park manager II's work more independently than do park manager I's. Successful performance as a park manager I results in promotion to park manager II. (N.T. 34, 35, 57, 60-61).

¹ AFSCME moved to amend the petition insofar as the park manager II position was concerned. The amendment was to accrete that position into Local 2187, the rank and file unit. (N.T. 3-5). The parties asked to continue the hearing for the accounting transactions supervisor, and AFSCME withdrew the petition for the accounting section supervisor I and II (N.T. 4-5).

DISCUSSION

AFSCME seeks to accrete the position of park manager II into an existing, rank and file bargaining unit. The City asserts that the park manager II is, under the law, a manager, as defined in PERA. The City also stipulated that if it does not prove the position to be managerial, then the position shares a sufficient, identifiable community of interest to properly be in the bargaining unit.

Because the City has not shown that the park manager II is a manager as defined in PERA, the position is properly accreted into the bargaining unit. Looking at the definition of manager as set forth in PERA is a helpful place to start the analysis.

The criteria necessary to establish a management level position under PERA are set forth in Section 301(16), and provide as follows:

[A]ny 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 City argues that park manager II's are involved in both policy formulation and policy implementation. The record simply does not bear out those assertions. Albeit, the park manager II's have made some technical recommendations to the City, but that kind of technically specific expertise, which may be translated by the employer into policy, does not equate to policy making, under Board law. See In the Matter of the Employes of the City of Lebanon, 4 PPER 24 (Order and Notice of Election, 1074) (policy formulation and implementation must be distinguished from technical expertise); In the Matter of the Employes of Pennsylvania State University, 19 PPER ¶ 19001 ((Order Directing Submission of Eligibility List, 1987), 19 PPER ¶ 19156 ((Final Order, 1998) (nurse practitioners formulation of hospital policy is as a result of professional expertise and not indicative of managerial authority).

The park manager II's are mainly involved in the oversight of City golf courses and driving ranges, the representation of the Parks and Recreation Commission at the emergency operations center, the oversight of various contractors that perform work on park property, and the occasional rehabilitation of City ball fields on park property. They also investigate and report the results thereof, to the risk management department, for property damage claims against the City.

Park manager II's supervise no employes, cannot discipline anyone, do not direct any other City employes, have nothing to do with making policy, nothing to do with budgets, and do not promote or evaluate any other employes. In their role of oversight of golf courses, driving ranges and monitoring of third-party projects in the parks, they simply report problems to others, who decide what action to take.

The park manager II position is simply the full performance level of a series of bargaining unit positions that starts with the park manager trainee, progresses to park manager I, and finishes with park manager II.

Because the City has not shown the position of park manager II to be managerial under PERA, it is properly accreted in to the Local 2187 bargaining unit. It is so ordered.

CONCLUSIONS

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

1. The City is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The position of park manager II is not managerial as defined by PERA.

5. The position of park manager II shares a sufficient, identifiable community of interest to be included in the AFSCME Local 2187, rank and file bargaining unit for purposes of collective bargaining.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the unit certified at Case No. PERA-R-1063-C, is hereby amended to include the position of park manager II.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this nineteenth day of January, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner