

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : PERA-U-14-119-W  
 : (PERA-R-3255-W)  
THE CITY OF TITUSVILLE :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On April 21, 2014, the City of Titusville (City or Employer) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the positions of payroll clerk and building inspector/zoning officer from a unit of nonprofessional employees, certified by the Board at Case No. PERA-R-3255-W, as confidential and management level employees pursuant to Section 301(13) and (16) of the Public Employee Relations Act (PERA or Act).

On May 19, 2014, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and designating September 26, 2014, in State College, as the time and place of hearing, if necessary.

The hearing was necessary. The parties mutually requested two continuances and to move the hearing to Pittsburgh. A hearing was ultimately held on May 20, 2015, before Hearing Examiner John Pozniak, Esq., at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The City filed a post-hearing brief in support of its position on July 13, 2015. This matter was reassigned to the undersigned Hearing Examiner on August 7, 2015. The American Federation of State, County and Municipal Employees, AFL-CIO, District Council 85 (AFSCME or Union) filed a post-hearing brief in opposition to the Petition on August 13, 2015.

The Examiner, on the basis of the evidence 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 PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7).
4. The Union is the exclusive bargaining agent for "all non-professional, non-uniformed employes, and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act." (Nisi Order of Certification, PERA-R-3255-W).
5. Larry Manross (Manross) has been the city manager for the City since June, 2011. (N.T. 10).
6. The City building inspector/zoning officer is in the AFSCME bargaining unit. (N.T. 11).
7. The City payroll accounting clerk position also is in the AFSCME bargaining unit. (N.T. 12).
8. The building inspector/zoning officer position and payroll accounting clerk position both ultimately report to Manross. (N.T. 12).
9. The City building inspector/zoning officer is Tim Lorenz (Lorenz). (N.T. 13).

10. Generally, Lorenz is responsible for enforcing violations of City ordinances. Lorenz is responsible for notifying citizens of infractions via letter. Lorenz is also responsible for filing summary charges with the District Magistrate. Lorenz has full discretion with regard to filing summary charges and does not need the city manager's approval. (N.T. 15).
11. Specifically, as zoning officer, Lorenz is also responsible for, among other duties, administering and enforcing the provisions of all zoning ordinances and issuing zoning certificates. (N.T. 17; City exhibit 3).
12. As zoning officer, Lorenz is responsible for notifying citizens of zoning infractions via letter. Lorenz is also responsible for filing summary charges of violations of the zoning ordinance with the District Magistrate. Alternatively, a dispute could go before the Zoning Hearing Board. Lorenz has full discretion with regard to filing summary charges and does not need Manross's approval. (N.T. 18, 51).
13. Lorenz is responsible for monitoring and enforcing the City's housing code. Lorenz may, in his discretion, file charges with the District Magistrate to enforce the City's housing code. (N.T. 19; City Exhibit 4).
14. Additionally, Lorenz is responsible for enforcing City ordinances regarding lawns, sidewalks, and rodent infestations. (N.T. 19-20).
15. Lorenz also is responsible, as the City's building official, for determining if a building in the City is a nuisance, and he has the authority to order a nuisance structure to be vacated. (N.T. 20-22; City Exhibit 5).
16. Lorenz, as the City's building official, is responsible for holding hearings if a citizen appeals his decision to order a building to be vacated. (N.T. 23; City Exhibit 6).
17. Lorenz has the authority to issue building permits without the approval of the city manager. (N.T. 24; City Exhibit 7).
18. Lorenz has the responsibility of enforcing the City's storm water compliance ordinance. Lorenz has the authority to enforce the storm water compliance ordinance by filing summary charges with the District Magistrate without the approval of the city manager. (N.T. 25-26; City Exhibit 8).
19. Lorenz monitors compliance with the City's flood plain ordinance and it is his duty to enforce compliance. He has the authority to file summary charges with the District Magistrate over violations of the flood plain ordinance. (N.T. 27-28; City Exhibit 9).
20. Heather Wilson (Wilson) holds the position of accounting clerk and is an employe the City.
21. Generally, Wilson's duties entail taking care of the accounts receivable, the accounts payable, payroll, and deals with medical insurance including Workers' Compensation. (N.T. 31; City Exhibit 10).
22. Wilson reports to the finance director and the city manager. (N.T. 32).
23. Wilson has a separate office which she occupies alone. (N.T. 66).
24. In her office, Wilson only has access to payroll related records. Wilson does not have access to an employe's full personnel record in her office. Personnel records are kept in the city manager's office. (N.T. 33, 60-61).

25. The city manager negotiates on behalf of the City with bargaining units representing the City's employees. (N.T. 34).
26. Wilson does not have access to strategic information used by the City during negotiations with the bargaining units. (N.T. 62).
27. When the city manager prepares bargaining strategies, he consults with Wilson for information limited to payroll and wage information. (N.T. 35, 62).
28. Wilson is not involved in discussions regarding collective bargaining with the finance director or the city manager. (N.T. 62).
29. The finance director reports directly to the city manager and is a confidential employe. The finance director is also the city manager's personal assistant. The finance director prepares all of the city manager's correspondence. The finance director, or the city manager, type the bargaining proposals during negotiations with the bargaining units. (N.T. 43, 45).

#### DISCUSSION

As a preliminary matter, at hearing and in its Brief, the Union argues that since the building inspector/zoning officer position has always been included in the bargaining unit and the general duties of the position have not changed, the City should be barred from seeking to exclude the position from the bargaining unit. Generally, a lack of asserted change in job duties will bar subsequent unit clarification proceedings where the status of employes was previously litigated and there was a factual resolution of the dispute on the record. **Northeastern Educational Intermediate Unit 19**, 11 PPER ¶ 11232 (Nisi Order of Unit Clarification, 1980). However, in this matter, there has been no previous litigation regarding the status of employes included in the bargaining unit. Specifically, there has been no previous litigation with regard to the building inspector/zoning officer position. Thus, the City's petition to exclude the building inspector/zoning officer is not barred.

Addressing the position of building inspector/zoning officer, Section 301(16) of PERA states:

(16) "Management level employe" means 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).

This section of PERA has been interpreted by the Board and our Courts. A position is at the management level if the employe holding that position (1) is involved directly in the determination of policy; (2) directs the implementation of policy; or (3) is above the first level of supervision. **Pennsylvania Association of State Mental Hosp. Physicians v. PLRB**, 554 A.2d 1021 (Pa. Cmwlth. 1988); **Commonwealth of Pennsylvania (Attorneys Examiner I)**, 12 PPER P 12131 (Final Order, 1981). With regard to the "implementation of policy" section of the definition of management level employe, the definition includes those persons who have a responsible role in giving practical effect to and ensuring the actual fulfillment of policy by concrete measures, provided that such role is not of a routine or clerical nature and bears managerial responsibility to insure completion of the task. **Horsham Township**, 9 PPER ¶ 9157 (Order and Notice of Election, 1978).

In several cases with facts similar to the present case, the Board has held that a code enforcement officer is a management level employe due to the performance of duties that would fall under the second part of section 301(16) because they are responsibly implementing the employer's policies. See, **Horsham Township, supra**; **Employes of Lower Providence Township**, 16 PPER ¶ 16117 (Final Order, 1985); **Derry Township v. Pennsylvania Labor Relations Board**, 36 PPER 166 (Final Order, 2005); and **Municipal Employees of**

**Borough of Slippery Rock v. Pennsylvania Labor Relations Board**, 40 PPER 64 (Proposed Order of Unit Clarification, 2009), 40 PPER 122, (Final Order, 2009), *aff'd* 14 A3d 189, (Pa. Cmwlth. 2011). Thus the Board has consistently held that employees who are responsible for administering and interpreting municipal building codes and zoning ordinances satisfy part two of the test and accordingly are management level employees. **Lower Providence Township**, *supra*.

In this matter, the facts are clear and support a finding that the building inspector/zoning officer position is a management level employee. Lorenz, the only building inspector/zoning officer, has the duty to give practical effect to, and ensuring the actual fulfillment of, the City's ordinances and codes by concrete measures. Lorenz uses independent judgment to determine whether citizens are in compliance with various municipal ordinances and codes covering the subjects of zoning, buildings, housing, lawns, sidewalks, rodent infestations, flood plains, and storm water. If Lorenz finds noncompliance with the City's ordinances, he must independently interpret the City's laws and then decide to enforce the City's laws. After citing a property owner for a violation, he may decide to prosecute violations of Borough ordinances in District Court if noncompliance continues after notice. In court, Lorenz is primarily responsible for prosecuting cases before a Magisterial District Judge. Lorenz performs these enforcement duties with minimal supervision from the city manager. The building inspector/zoning officer is a management level employee and should be excluded from the bargaining unit.

Moving to the payroll accounting clerk position, Section 301(13) of PERA provides as follows:

"Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

43 P.S. § 1101.301(13).

Addressing the first section of the "confidential employe" definition, the City in this case did not prove that Wilson meets the criteria. Wilson does not work in the personnel offices of the City. She has some payroll information located in her office. However, the personnel records for City employees are kept in the city manager's office. Wilson does not work in the personnel offices of the City.

In any case, the City has not proven that Wilson has access to information subject to use by the employer in collective bargaining. Section 301(13)(i) of the PERA requires proof that the information to which the employee is privy "must be of such a definite nature that the union would know of the employer's plans if said information is revealed." **Bangor Area School District**, 9 PPER at 533 (Nisi Decision and Order, 1978). Wilson does not have access to the strategic information used by the Employer during collective bargaining negotiations. Wilson's role is limited to preparing payroll and wage information when requested to do so by the city manager. Wilson is not involved in discussion regarding collective bargaining with the finance director or the city manager. Thus, the evidence does not support a conclusion that Wilson has had access to information of such a definite nature that the Union would know the City's plans if Wilson revealed the information to the Union. On this record, the accounting clerk is not a confidential employe under Section 301(13)(i) of PERA.

Turning to Section 301(13)(ii), the City has also not met its burden of proof. The Board has held that Section 301(13)(ii) embraces only those employees who assist or act in a confidential capacity to persons who formulate, determine and effectuate management's policies in the field of labor relations. **Bangor Area School District**, *supra*. The exclusion under Section 301(13)(ii) is specifically limited to those employees who work in a close continual relationship with managerial employees who actually formulate, determine or effectuate the employer's labor policy. **PLRB v. Altoona Area School District**, 389 A.2d

553, 557 (Pa. 1978). The Commonwealth Court has found individuals to be working in a close continuing relationship with a management official where the employees are part of the management official's personal staff and have access to his or her office files, or where the employees work directly for members of the employer's bargaining team and/or perform work related to collective bargaining on a regular basis. **Neshannock Educational Support Professionals Ass'n v. PLRB**, 22 A.3d 1103 (Pa. Cmwlth. 2011) *citing* **Altoona Area School District, supra**; **North Hills School District v. PLRB**, 762 A.2d 1153 (Pa. Cmwlth. 2000); **Commonwealth ex rel. Gallas v. PLRB**, 636 A.2d 253 (Pa. Cmwlth. 1993) *aff'd*, 665 A.2d 1185 (1995). In **North Hills**, the Court stated that "[w]here an employee has a close relationship with such involved management personnel, the PERA appears to assume that the employee would have access to confidential information, so that their 'inclusion in the bargaining unit would seriously impair the public employer's ability to bargain on a fair and equal footing with the union.'" *Id.* at 1159 *citing* **PLRB v. Altoona Area School District, supra**.

In this case, the record shows that while Wilson does report to the city manager, she also reports to the finance director. The record also shows that Wilson is not the city manager's personal assistant nor does she assist him during collective bargaining negotiations. The finance director, not Wilson, is the city manager's assistant and it is the finance director who prepares all of the city manager's correspondence. Additionally, the finance director, or the city manager, types the bargaining proposals during negotiations with the City's bargaining units. Wilson is not involved in preparing these bargaining proposals. On this record, the accounting clerk is not a confidential employe under Section 301(13)(ii) of PERA.

**CONCLUSION**

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

1. The Borough 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 building inspector/zoning officer position is a management level employe and therefore is properly excluded from the bargaining unit.
5. The payroll accounting clerk position is not a confidential employe and therefore is properly included bargaining unit.

**ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the bargaining unit of employes certified by the Board at PERA-R-3255-W is amended to exclude the building inspector/zoning officer position as a management level employe. The Petition for Unit Clarification is dismissed to the extent it seeks to exclude the payroll accounting clerk position as a confidential employe.

**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 order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this 18th day of August,  
2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner