

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-15-6-W
 :
 EAST MEAD TOWNSHIP :

PROPOSED ORDER OF DISMISSAL

On January 22, 2015, the International Union of Operating Engineers Local No. 66 (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 blue-collar nonprofessional employees of East Mead Township (Township) wish to be exclusively represented by the Union. On February 12, 2015, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Thursday, March 12, 2015, in Harrisburg. I continued the hearing to March 18, 2015, in Pittsburgh, to accommodate the Township's request to relocate the hearing. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On May 4, 2015, the Union filed its post-hearing brief. On May 6, 2015, the Township filed its post-hearing brief.

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 Road Master is responsible for maintaining the safety and integrity of the roads in the Township. His duties primarily include heavy equipment operation related to removing debris, plowing, paving and repairing roads. He evaluates the road conditions during the different seasons and determines the methods and procedures for improving and maintaining the safe conditions of the roads. (N.T. 97-99, 137, 199)
4. The Township's annual budget is approximately \$400,000. The Township Board of Supervisors followed the Road Master's recommendation to purchase a new grader which cost \$200,000. The Supervisors deferred to the Road Master's recommendations for options, controls, specs and details for the particular grader purchased. The grader was purchased with a five-year loan. The annual cost for the loan was approximately one-tenth of the Township's annual budget. (N.T. 41-43)
5. The Township deferred to the Road Master's recommendations for the purchase of a new dump truck in 2010, at a cost of \$110,000. The Township adopted the Road Master's recommendations for the truck's specifications such as the tires, engine, lights, radios and truck bed. The Supervisors adopted the Road Master's recommendation that the truck have four-wheel drive, at an extra cost of \$25,000. Based upon the Road Master's research and recommendations, the Supervisors purchased the truck in the color and with the specifications that the Road Master wanted. (N.T. 43-44, 112-113, 118)
6. The Supervisors adopted the Road Master's recommendation to purchase a new brine pump to apply salt water to the roads, at a cost of \$800.00, to replace an unreliable pump. (N.T. 51-52, 97-98, 126, 194-195; Respondent Exhibit 2C)
7. The Road Master recommended the purchase of a new wing blade plow. He worked with the plow vendor to determine the specifications necessary for the new truck. The Supervisors adopted the Road Master's recommendation for the wing plow and voted to

purchase it as specified by the Road Master, at a cost of \$25,000. (N.T. 53, 118, 120-121, 125)

8. After a major storm, the Road Master purchased gravel to repair Township roads, without Supervisor approval, at a cost of approximately \$2500. The Road Master determined the amount to be purchased. (N.T. 58-61; Respondent Exhibit 3A)

9. The storm caused culvert damage. The Road Master determined that the culvert needed to be replaced. The Road Master purchased a new culvert pipe at a cost of approximately \$1100, without Supervisor approval. (N.T. 64-65; Respondent Exhibit 3C)

10. The Road Master purchased asphalt to repair the same culvert in the amount of \$600 without Supervisor approval. (N.T. 66-69; Respondent Exhibit 3D)

11. The Road Master rented equipment to complete the asphalt repair in the amount of \$106, without Supervisor approval. He chose to rent a compactor and other equipment for the road work without supervisor approval. (N.T. 70-75; Respondent Exhibits 3E, 3F, 3G, 3H)

12. The Road Master ordered a six-foot pipe, in the amount of approximately \$4,300, for a culvert across a main Township road. The Road Master determined the specifications for the pipe. (N.T. 75-76; Respondent Exhibit 3I)

DISCUSSION

The Township contends that the Township Road Master position is either a supervisory or managerial position that should be excluded from the proposed bargaining unit of Township employes. (Township Post-hearing Brief at 1). 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).

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. **In the Matter of the Employes of Lower Providence Township**, 16 PPER ¶ 16117 (Final Order, 1985).

The record does not establish that the Road Master has been directly involved with developing policy, that he regularly participated in the policy selection process or that he participated in a single policy initiative. Also, the record does not establish that the Road Master is above the first level of supervision because there are no supervisory positions below the Road Master.

The Board has identified employes who "responsibly direct[] the implementation [of policy]" as "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." **In the Matter of the Employes of Horsham Township**, 9 PPER ¶ 9157 at 327 (Order and Notice of Election, 1978). The Township has met its burden of establishing the second prong for determining managerial status of the Road Master position and has proven that the Road Master is responsible for giving practical effect to the fulfillment of Township policies for maintaining the integrity and safety of Township roads, within the meaning of **Horsham, supra**.

The Supervisors followed the Road Master's recommendation to purchase a \$200,000 grader and a \$110,000 truck. In both instances, the Supervisors deferred

to the Road Master's determinations for the specifications and options for both pieces of equipment. Both the truck and the grader were large capital expenditures, especially given that the Township's annual budget is approximately \$400,000. Indeed, the Supervisors also deferred to the Road Master's request to incur the additional expense of \$25,000 for four-wheel drive on the truck.

The Road Master exercised managerial discretion in determining the methods for properly maintaining the integrity and safety of Township roads by requesting the capital expenditures for both pieces of heavy machinery for that purpose. Moreover, the Supervisors relied upon the Road Master's discretion and followed his recommendations at a significant financial burden to the Township. The Road Master's recommendations to purchase the truck, the grader and the wing plow were not routine or clerical in nature. The Road Master conducted significant investigations into the proper specifications of each piece of equipment to suit the needs and desires of the Township given the weather, terrain and circumstances confronting the Township and the challenges it faces in ensuring road safety and integrity throughout the year.

When roads were damaged by storms, the Road Master acted without delay and without Supervisor approval to spend large sums of money to purchase materials and rent equipment for immediate road repair to renew the integrity and safety of the road. The Road Master purchased gravel, asphalt and pipe for the road repair. For one culvert repair, the Road Master ordered, and determined the requisite specifications for, a six-foot diameter pipe to span and repair a Township Road in the amount of roughly \$4,300. Accordingly, the Township Supervisors have given broad discretion in implementing the Township's policies, to protect and ensure the safety and integrity of Township roads, to the Road Master, which authority he has exercised. The Supervisors have relied on the Road Master's discretion when approving large recommended capital expenditures. The Supervisors deferred to the Road Master's decisions to purchase and determine the appropriate amounts of and specifications for road materials. The Supervisors have deferred to the Road Master's methods for making certain road repairs and to rent certain equipment for those purposes. The Township Road Master, therefore, is properly excluded from the proposed bargaining unit of blue-collar employees as a management level position.¹ The exclusion of the Road Master leaves only one employee in the proposed bargaining unit. The Board will not certify a bargaining unit, under PERA, containing only one employee. Accordingly, the petition for representation in this matter must be dismissed without an election.

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 employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The position of Township Road Master is a management level position within the meaning of Section 301(16) of PERA, and it is thereby properly **excluded** from the proposed bargaining unit.
5. One laborer remains in the proposed bargaining unit of blue collar nonprofessional Township employees requiring the dismissal of the petition.

¹ Given the conclusion that the Road Master is excluded as a management employee, I need not address the Township's position that he is a statutory supervisor.

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 Petition for Representation filed by the Union is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed 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 this first day of July, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner