

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-14-318-E
 :
 WEST MANHEIM TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On September 24, 2014, the American Federation of State, County and Municipal Employees, District Council 89, AFL-CIO (AFSCME or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent a unit of all full-time and regular part-time nonprofessional, blue and white collar employes of West Manheim Township (Township or Employer). On October 23, 2014, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating November 7, 2014, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed timely post-hearing briefs in support of their respective positions on or about January 12, 2015.

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

FINDINGS OF FACT

1. The Township is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA or Act). (N.T. 6)
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. The parties stipulated that the unit deemed appropriate for the purposes of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time nonprofessional employes, and excluding all management level employes, supervisors, confidential employes, and guards as defined by the Act. (N.T. 7)
4. The Township stipulated to a community of interest between the three positions at issue; namely, the Utilities Supervisor, Roadmaster, and Treasurer, and the rest of the employes in the proposed unit. (N.T. 7)
5. Kevin Null has been employed as the Township Manager since February 2010. He is responsible for management of the Township's operations. (N.T. 12)
6. During Null's employment with the Township, the Township has never been involved in contract negotiations for any bargaining unit employes. (N.T. 15)
7. Null maintains all personnel files in his office, and only he and the acting Township Secretary have access to those files. Null types his own correspondence and does his own filing. One of the roles of the previous Township Secretary, Laura Gately, was to serve as administrative assistant to Null. She left employment with the Township in September 2014, and since that time, Null has been without an administrative assistant. (N.T. 70, 73-74, 81, 85-86, 95, 106)

8. Null's office is next door to the Township Secretary's office. The Treasurer's office is across the hall from the Township Secretary's office. The Code Enforcement Officer and Assistant Treasurer are directly across from Null's office. (N.T. 70-73)

9. Beverly Frey has been employed as the Township Treasurer since November 2005. (N.T. 21, 83-84)

10. Frey is responsible for accounts receivable and accounts payable for the Township, making deposits, processing bills for payment after they are approved by Null, entering them into the general ledger, and reconciling bank statements for the Township's various bank accounts. Since the Township Secretary left, Frey has assisted in processing new employee benefit enrollment and setting up any related payroll deductions for employee benefit contributions. (N.T. 14-16, 74-75, 86, 88-89, 92, 94)

11. Frey has very little interaction with the Board of Supervisors. She never sits in on their executive session meetings. (N.T. 19, 67, 94, 98-99)

12. Frey has never had any involvement in collective bargaining with Township employees. She has never been privy to the Township's proposals in advance or provided financial data to the Board of Supervisors or the Township Manager for use in negotiations. (N.T. 70, 94, 99-100)

13. Frey does not serve as administrative assistant or secretary to Null or anyone else. (N.T. 94-95)

14. The current Roadmaster is Jeffrey Rummel, who has been employed with the Township for 27 years and has served as Roadmaster for three years. (N.T. 35-36, 110)

15. Rummel is responsible for scheduling routine road maintenance, snow and leaf removal, and purchasing materials and equipment from approved vendors. He works alongside a crew of public works employees in carrying out such work as a team. In addition to Rummel, the crew includes three full-time regular employees and two on-call employees. Rummel spends about 90 percent of his time working alongside his crew. (N.T. 36, 38-40, 47-49, 111-112, 114-115, 118-119, 126)

16. Rummel is authorized to schedule routine projects such as leaf removal, patching potholes, snow removal, brush and tree trimming, mowing, and repairing inlet drains without prior approval. He must discuss any major road project with Null, and on occasion, the Township Engineer. Major projects are outsourced to private contractors through a bidding process. (N.T. 40-41, 47-48, 112, 114-115)

17. Rummel has to solicit employees to work overtime on occasion. In doing so, he follows the Township's practice of calling full-time employees first before resorting to part-time employees. (N.T. 119-120)

18. Rummel has been involved in the hiring process for public works employees in his position of Roadmaster. Both he and Null reviewed applications. Rummel sat in on interviews of candidates with Null, although Null interviewed some candidates on his own. Null conducts the interviews, and when he is finished asking questions of the candidate, asks Rummel if he has any additional questions. At the conclusion of the interview process, Null discusses the candidates with Rummel. Null makes calls to any references. Null then makes a recommendation to the Board of Supervisors, who have the ultimate authority to hire. There have been three people hired in the public works department in Rummel's time as Roadmaster. (N.T. 36-37, 44-45, 116-117, 130, 138-139, 145)

19. Rummel has reported to Null issues relating to the performance or conduct of public works employees. Rummel has recommended disciplinary action against employees to Null. However, Null makes his own recommendation to the Board of Supervisors, who have the ultimate decision making authority. Rummel has made recommendations, but they are not

necessarily followed. In his time with the Township as Roadmaster, one employe on his crew has been disciplined. (N.T. 37-38, 46, 117, 130, 140, 144-145)

20. Rummel signs off on employe timesheets after checking them against the time cards. He turns them in to Null, who then makes his own independent review of the timesheets, and on occasion, makes changes to those timesheets before submitting them to payroll. Rummel approves employe requests for leave. Rummel also submits daily and monthly reports to Null stating the amount of material used, how many loads of leaves picked up, equipment used, and hours worked by the entire crew on each project. (N.T. 53-55, 120-122, 126-128, 139-140, 143-144)

21. With regard to budgetary matters, Rummel's involvement is limited to reporting to Null on projects that he believes need to be completed. (N.T. 50-51, 120)

22. Rummel inspects projects being performed by contractors, and if there is a problem, he reports the problem to Null for action. (N.T. 122-125, 132-133, 137-138)

23. Timothy Pfaff has been employed by the Township as the Utilities Supervisor for approximately five years. Prior to that, he was the Utilities Manager. (N.T. 147)

24. Pfaff is responsible for maintenance of the sanitary sewer system and pump stations. He inspects on-lot septic systems and connections to the sanitary sewer. (N.T. 25)

25. With regard to on-lot inspections, Pfaff inspects the septic system to ensure that it is functioning properly. The functions that he tests are State established criteria from which he has no discretion to deviate. If the system does not satisfy these criteria, Pfaff refers the matter to the Township's contracted Sewer Enforcement Officer. (N.T. 29-30, 148-151, 168-169)

26. With regard to connections to the public sanitary sewer system, Pfaff checks to see whether the connection is installed in accordance with the International Plumbing Code. Again, he has no discretion to make exceptions to those requirements. If the connection is not in keeping with that Code, he asks the home owner to fix it. If they do not, he would report it to the Township's Code Enforcement Officer. Pfaff has no authority to enforce the Code's requirements. (N.T. 151-153)

27. With regard to the pump stations, Pfaff is responsible for monitoring them on a daily basis, tracking the flow to ensure that effluent is being pumped, and that there is no problem, such as a spill. Pfaff performs preventative maintenance on the stations, making any necessary repairs to ensure proper flow. If the needed repair is beyond the abilities or available tools of Pfaff and the Utilities Assistant, he has one of the Township's approved contractors perform the repair. He reports information related to the operation of the pumps to the Township Engineer, who prepares annual reports to the State. He also prepares monthly reports to the Board of Supervisors, who use the information to develop Township policy. (N.T. 30-31, 32-33, 58-59, 61, 156-157, 164, 173)

28. Pfaff is also involved with the Township's storm water management program. He inspects new home construction by checking to see whether the system has been installed consistent with the plan, which has been approved by the Township Engineer. He has no authority to make exceptions to the approved plan. If the system is not installed as stated in the approved plan, he asks the home owner to correct it or submit a new plan for approval by the Township Engineer. Pfaff has also inspected existing storm water basins to ensure that the originally approved system is still in place and functioning as intended. Although he has not had occasions to report any problems, if the need ever arose, he would report the issue to the Code Enforcement Officer for handling. (N.T. 31, 61-62, 153-156, 169)

29. Pfaff has no authority to issue citations in connection with his inspections. The Township's Code Enforcement Officer or contracted Sewer Enforcement Officer handles enforcement. (N.T. 55-57, 61)

30. Pfaff keeps track of routine preventative maintenance performed on the Township's building systems and pumping stations based upon his expertise in building maintenance and as a certified wastewater operator. (N.T. 60-61, 164)

31. Pfaff assigns routine work to the Utilities Assistant, Maurice Strasbaugh, such as performing sewer pump station checks and maintenance at the Township building. Strasbaugh also works for the police department, at the direction of the police department, not Pfaff. (N.T. 26, 64-65, 157-158, 170-171)

32. Pfaff checks Strasbaugh's timesheet, initials it, and submits it to Null for his review. (N.T. 164-166)

33. The Township converted Strasbaugh's position from part-time to full-time at Pfaff's request because Pfaff needed help accomplishing the work within his areas of responsibility. Pfaff provided Null with information to justify the expansion of the position. The Board of Supervisors decided to convert the position to full-time based on Null's recommendation. (N.T. 26-27, 63-64, 161-162)

34. Pfaff has brought to the attention of Null some performance issues regarding Strasbaugh. However, Null made the decision not to impose discipline. (N.T. 28, 62-63, 163)

35. Pfaff has no involvement in developing the Township budget. (N.T. 166)

36. The Board of Supervisors makes decisions about employe annual pay increases after consultation with Null. Typically, the Board of Supervisors determines an overall amount to be divided up among the employes. Null obtains input from the Roadmaster and Utilities Supervisor regarding individual employe performance, and then makes his own, independent decision regarding the pay increase to be awarded to each employe. Rummel has made recommendations with regard to pay increases that were not followed. (N.T. 41-44, 46, 117-118, 130-131, 163)

DISCUSSION

AFSCME has petitioned to represent a bargaining unit comprised of all full-time and regular part-time nonprofessional, blue and white collar employes of the Township. However, the Township contends that the position of Treasurer should be excluded from the unit as a confidential employe, while the Roadmaster and Utilities Supervisor should be excluded as supervisory and/or managerial under the Act. As the party seeking to exclude the Treasurer, Roadmaster, and Utilities Supervisor from the unit, the Township has the burden of proving by substantial evidence the asserted statutory exclusions apply. **Westmoreland County v. PLRB**, 991 A.2d 976 (Pa. Cmwlth. 2010) *alloc. denied* 17 A.3d 1256 (Pa. 2011). The Board reviews actual job duties and will only consider written job descriptions to corroborate testimony of actual duties. *Id.* at 980.

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).

The Township has not sustained its burden of proving the Treasurer should be excluded as a confidential employe pursuant to Section 301(13)(i) of the Act. The record shows that the Treasurer, Beverly Frey, does not work in the Township's personnel offices, nor does she have access to information subject to use by the Township in collective bargaining. Indeed, the record shows that the Township Manager, Kevin Null,

maintains all personnel files in his office, and only he and the acting Township Secretary have access to those files. Null's office is next door to the Township Secretary's office. However, the Treasurer's office is across the hall from the Township Secretary's office, while the Code Enforcement Officer and Assistant Treasurer are directly across from Null's office. This arrangement does not satisfy the first prong of the test for confidential employees under Section 301(13)(i). The Board has long perceived "personnel office(s)" as those offices of the public employer in which the central personnel record keeping functions are performed. **Bangor Area School District**, 9 PPER ¶ 9295 (Nisi Decision and Order, 1978). See also **PLRB v. Altoona Area School District**, 389 A.2d 553, 558 (Pa. 1978) (holding that a school district's personnel offices were the school's Central Administration Office, and not the various principals' offices, because that is where the district's personnel records were kept). In this case, the Township's central personnel records are clearly housed in the Township Manager's office, and not in the Treasurer's office. Nor can it be said that the Treasurer's office is part of the central personnel record keeping functions of the Township.

In any event, the Township has not demonstrated that the Treasurer has access to information subject to use by the Township in collective bargaining in order to satisfy the second prong of the test for confidential employees under Section 301(13)(i). In **Bangor Area School District**, the Board explained as follows:

The second criteria of sub-part (i) is 'an employee who has access to information subject to use by the public employer in collective bargaining.' Our Commonwealth Court recently determined in **Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB**, 383 A.2d 546 (1978), that an employee who had access to personnel records and fiscal information such as budgets, proposed allocations of funds toward the employer's programs, salaries, and memoranda concerning proposed salary increments to specific employees was not a 'confidential employee' under the first test of Section 301(13) of the Act since the employee enjoyed no access to information subject to use by the employer which could be considered outside the 'public record.' The Board has similarly held that an employee does not have access to confidential collective bargaining information when (s)he simply takes basic data and compiles reports which may eventually be used in negotiations as the position of the employer when the person who compiles the basic data has no information which would be considered confidential as a result of that compilation. It is only when an employee is privy to the relevant determinations of the employer's policy that that person may be found to be confidential. The collective bargaining information must be of such a definite nature that the union would know of the employer's plans if said information is revealed. See **West Jefferson Hills School District**, 5 PPER 65 (1978); and **Northgate School District**, 9 PPER ¶ 9121 (1978).

The record here does not show that the Treasurer is privy to the relevant determinations of the Township's labor policy, nor does she have access to collective bargaining information of such a definite nature that the Union would know of the Township's plans if said information is revealed. The Township has simply not presented any evidence to satisfy the second prong of the test for confidential employees under Section 301(13)(i). Frey is responsible for accounts receivable and accounts payable for the Township, making deposits, processing bills for payment after they are approved by Null, entering them into the general ledger, and reconciling bank statements for the Township's various bank accounts. Since the Township Secretary left, Frey has assisted in processing new employee benefit enrollment and setting up any related payroll deductions for employee benefit contributions. However, Frey has very little interaction with the Board of Supervisors. She never sits in on their executive session meetings. Likewise, Frey has never had any involvement in collective bargaining with Township employees. She has never been privy to the Township's proposals in advance or provided financial data to the Board of Supervisors or the Township Manager for use in negotiations. As a result, she cannot be excluded from the bargaining unit pursuant to Section 301(13)(i) of the Act.

Similarly, the Township has not sustained its burden of proving that the Treasurer is a confidential employe under Section 301(13)(ii) of the Act. As the Board further explained in **Bangor Area School District**:

Sub-part (ii) of Section 301(13) concerns an employe who works in a 'close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.' We interpret this phrase to embrace only those employes who assist or act in a confidential capacity to persons who formulate, determine and effectuate management's policies in the field of labor relations. See **West Shore School District**, 3 PPER 1 (1973); and **Northgate School District**, *supra*.

Significantly, the Pennsylvania Supreme Court has held that the exclusion under Section 301(13)(ii) is specifically limited to those employes who work in a close continual relationship with managerial employes who actually formulate, determine or effectuate the employer's labor policy. **PLRB v. Altoona Area School District**, 389 A.2d 553, 557 (Pa. 1978).

In this case, the Township has not demonstrated that the Treasurer works in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the Township. Although the Township avers that the Treasurer works in a close continuing relationship with the Board of Supervisors, who would be officers or representatives associated with collective bargaining, the record shows that this is simply not the case. Instead, Frey has very little interaction with the Board of Supervisors and never sits in on their executive session meetings. She has never even provided financial data to the Board of Supervisors for use in negotiations. Nor can it be said that she works in a close continuing relationship with the Township Manager. The record shows that Frey does not serve as administrative assistant or secretary to Null or anyone else. In fact, Null types his own correspondence and does his own filing. One of the roles of the previous Township Secretary, Laura Gately, was to serve as administrative assistant to Null. She left employment with the Township in September 2014, and since that time, Null has been without an administrative assistant. What is more, Null has never even been involved in contract negotiations for any bargaining unit employes.

As AFSCME points out, the Commonwealth Court has found individuals to work in a close continuing relationship with a management official where the employes are part of the management official's personal staff and have access to his or her office files, or where the employes 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). This type of relationship is lacking here. The Treasurer is not part of any management official's personal staff, nor does she work directly for members of the Township's bargaining team. As such, she cannot be excluded from the bargaining unit under Section 301(13)(ii) of the Act.¹

Next, the Township contends that the Roadmaster and Utilities Supervisor positions should be excluded from the bargaining unit as supervisory employes under Section 301(6) of PERA. However, the Township has not sustained its burden of proving the exclusion for supervisory status for the Roadmaster or Utilities Supervisor.

Section 301(6) of PERA provides as follows:

¹ The Township also suggests that the Treasurer should be excluded as a confidential employe based on the Township's expectation that Null will be involved in negotiations with the police bargaining unit in the near future. However, as AFSCME correctly notes, it is well settled that employes will not be excluded from bargaining units based on job duties which have not yet been performed. **In the Matter of the Employes of Pottstown Borough**, 33 PPER ¶ 33192 (Final Order, 2002). Accordingly, the Township's argument in this regard is rejected.

"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).

In **Abington Heights School District**, 42 PPER 18 (Final Order, 2011), the Board quoted **Luzerne County Community College**, 37 PPER 47 (Final Order, 2006) and opined as follows:

Employees 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. **McKeesport Area School District**, 14 PPER ¶ 14165 (Final Order, 1983). It must also be noted that Section 604(5) of PERA provides that the Board, in making supervisory determinations, "may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5). The Board, with appellate court approval, has looked to the extent to which supervisory duties are performed and concluded that employees who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are not supervisors within the meaning of PERA. **West Perry School District v. PLRB**, 752 A.2d 462 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 795 A.2d 984 (2000); **State System of Higher Education v. PLRB**, 737 A.2d 313 (Pa. Cmwlth. 1999); **Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB**, 409 A.2d 532 (Pa. Cmwlth. 1980). Conversely, where the employee performs predominantly supervisory duties, that employee is excluded from the rank and file unit as supervisory. **AFSCME v. PLRB**, 342 A.2d 155 (Pa. Cmwlth. 1975).

As a result, the Board in **Abington Heights School District**, *supra*, went on to hold that, absent evidence an employee spends a majority of his or her time performing supervisory duties, this is not sufficient evidence to show that the position in question should be excluded as supervisory under Section 301(6) of PERA.

Here, the Township maintains that the Roadmaster is supervisory under the Act because he is involved with the hiring process, recommends discipline for employees, schedules employees and reviews their timesheets, and assigns overtime. However, even assuming these alleged job duties support a supervisory exclusion pursuant to Section 301(6) of the Act, the Township has not been able to establish that the Roadmaster spends a majority of his time performing supervisory duties. To the contrary, the Roadmaster testified credibly and persuasively that he spends 90 percent of his time working alongside his crew. Accordingly, the Roadmaster will not be excluded from the bargaining unit as a supervisory employee pursuant to Section 301(6) of PERA.

In the same vein, the Township has not sustained its burden of proving the supervisory exclusion for the Utilities Supervisor. The Township asserts that the Utilities Supervisor, Timothy Pfaff, should be excluded as a supervisor under PERA because he is responsible for assigning, hiring, and promotion of utility laborers. However, as is the case with the Roadmaster, the record does not support a finding that Pfaff spends a majority of his time performing supervisory duties. Instead, Pfaff testified credibly that on Tuesdays, Wednesdays, and Thursdays, he performs the on-lot septic inspections for the entire day. (N.T. 148-149). Likewise, Pfaff testified credibly that, on Mondays and Fridays, he fills in whatever other inspections are required or which need to be accomplished. (N.T. 149). The Township has presented no credible or persuasive evidence to contradict this testimony or to show that Pfaff spends a majority of his time performing the alleged supervisory duties.

Nor do the alleged supervisory duties of Pfaff support an exclusion under Section 301(6). Pfaff only assigns routine work to the Utilities Assistant, Maurice Strasbaugh, such as performing sewer pump station checks and maintenance at the Township building. Although the Township converted Strasbaugh's position from part-time to full-time at Pfaff's request, Pfaff simply provided information to justify the expansion of the position. It was the Board of Supervisors, who decided to convert the position to full-time based on the Township Manager's recommendation. Pfaff has reported performance issues regarding Strasbaugh to the Township Manager, but the Township Manager made the decision not to impose discipline. Further, while Pfaff also provides input regarding individual employe performance in connection with annual pay increases, the Township Manager makes his own, independent decision regarding the pay increases to be awarded. Therefore, it cannot be seriously contended that Pfaff's recommendations are given controlling weight and result in either reward or sanction. See **Westmoreland County v. PLRB**, 991 A.2d at 982 (in order for evaluation of employe performance to support a supervisory exclusion, the evaluation must be given controlling weight and result in either an award or sanction). And, while Pfaff checks Strasbaugh's timesheet, initials it, and submits it to the Township Manager for his review, the Board has not found keeping track of daily hours worked to be convincing evidence of supervisory status under PERA where the employe lacks the ability to reward or sanction employes. **In the Matter of the Employes of Winfield Township**, 29 PPER ¶ 29124 (Order Directing Submission of Eligibility List, 1998), *aff'd* 30 PPER ¶ 30022 (Final Order, 1998). As such, the Utilities Supervisor will not be excluded from the bargaining unit as a supervisory employe under Section 301(6) of the Act.

Finally, the Township argues that the Roadmaster and Utilities Supervisor positions should be excluded from the bargaining unit as managerial employes under Section 301(16) of PERA. Once again, however, the Township has not proven the managerial exclusion for these positions.

Section 301(16) of PERA provides that:

"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).

The Board has held that if employes meet only one part of the three-part test set forth in Section 301(16), then those employes are managerial. **Pennsylvania Ass'n of State Mental Hospital Physicians v. PLRB**, 554 A.2d 1021 (Pa. Cmwlth. 1990). In **Horsham Township**, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), the Board stated:

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

The remaining criteria for designating an employe as managerial concerns one "who responsibly directs the implementation (of policy)" and shall include "all employes above the first level of supervision." We interpret these criterion to include 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. The administration of a 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 and 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. Furthermore, the interpretation of policy would constitute responsible implementation of policy as a continuation of the managerial decision making process.

* * *

In **City of Lebanon**, 4 PPER 24 (1974), we stated that policy formulation and implementation must be distinguished from technical expertise. To define the problem and directly implement the proposed solution to a problem is not the same as performing a function within a known discipline with competence. The former has to do with policy and the latter deals with technical expertise.

The Commonwealth Court has opined that an employee's decisions are not managerial if they are part of the employee's routine discharge of professional duties. **Municipal Employees of the Borough of Slippery Rock v. PLRB**, 14 A.3d 189 (Pa. Cmwlth. 2011). Rather, in order to be considered a managerial level employee, the employee must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found. *Id.* at 192. The exercise of authority to take remedial action in the event of noncompliance with governmental regulations is the hallmark of a management level employee. In **the Matter of the Employes of Jefferson Morgan School District**, 31 PPER ¶ 31115 (Proposed Order of Unit Clarification, 2000) *citing School District of Philadelphia v. PLRB*, 719 A.2d 835 (Pa. Cmwlth. 1998).

Turning to the instant dispute, the record shows that the Roadmaster and Utilities Supervisor are not managerial employees pursuant to Section 301(16) of the Act. First of all, the record is devoid of any evidence that the Roadmaster or Utilities Supervisor is involved directly in the determination of policy. There is simply no evidence whatsoever that Rummel or Pfaff has the authority to select among options and to put a proposed policy into effect. Nor does the record show that Rummel or Pfaff participate with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. Indeed, the Township has offered no evidence that Rummel or Pfaff have the authority to create, adopt, or otherwise put any policy into place, or that they even participate in any process that results in policy proposals and decisions to effectuate those proposals. Therefore, the Township has not shown that the Roadmaster or Utilities Supervisor satisfy the first part of the test for managerial employees under Section 301(16).

Likewise, the Township has not established that the Roadmaster or Utilities Supervisor satisfy the second part of the managerial test set forth in Section 301(16). The Township asserts that the Roadmaster is responsible for scheduling work, determining which jobs need to be done, and overseeing those jobs. However, the record shows that Rummel is authorized to schedule only routine projects such as leaf removal, patching potholes, snow removal, brush and tree trimming, mowing, and repairing inlet drains without prior approval. He must discuss any major road project with Null, the Township Manager, and on occasion, the Township Engineer. Major projects are outsourced to private contractors through a bidding process. This does not support an exclusion for managerial status under PERA.

Similarly, the Township posits that the Roadmaster should be excluded as a managerial employee because he has the authority to evaluate projects and the ability to shut them down if they are not satisfactory. However, the record does not support this contention. Instead, the credible evidence shows that Rummel inspects projects being performed by contractors, and if there is a problem, he reports the problem to Null for action. Once again, this does not support an exclusion for managerial status under PERA, as the mere reporting of noncompliance with a policy does not amount to responsibly

directing the implementation thereof. Further, the Township submits that the exclusion should apply because Rummel has authority to purchase supplies and materials in connection with his duties to schedule the work. The record shows, however, that Rummel is only able to purchase materials and equipment from approved vendors, and his involvement with budgetary matters is limited to reporting to Null on projects he believes need to be completed. This evidence falls short of the mark necessary to establish managerial status relative to the second part of the test under Section 301(16) of PERA. See **In the Matter of the Employees of Jefferson Morgan School District**, 31 PPER ¶ 31115 (Proposed Order of Unit Clarification, 2000) *citing Philadelphia Housing Authority*, 23 PPER ¶ 23062 (Final Order, 1992), *aff'd*, 23 PPER ¶ 23218 (Court of Common Pleas of Philadelphia County, 1992) (An employe whose involvement in budgetary matters is limited to providing the facts upon which budgetary decisions are made at a higher level of authority is not a management level employe).

With regard to Pfaff, the Utilities Supervisor, the Township contends that he responsibly directs the implementation of policy because he regularly and consistently performs inspections on the sanitary sewer system, pump stations, and the storm water ordinances of the Township. In addition, the Township points to Pfaff's monthly reports to the Board of Supervisors, which are used to make adjustments to policies and procedures, as further evidence of his managerial status. However, the Township's arguments are without merit.

As AFSCME points out, code related inspection duties like those performed by Pfaff render an employe managerial only where they are combined with the authority to enforce the codes in question. **Horsham Township**, *supra*; **Tredyffrin Township**, 21 PPER ¶ 21118 (Order Directing Submission of Eligibility List, 1990). Where the employe in question merely follows governmental regulations, without any latitude in following them, his role does not amount to directing the implementation of policy. **York Housing Authority**, 44 PPER 56 (Order Directing Submission of Eligibility List, 2012); **Allegheny County Housing Authority**, 29 PPER 29077 (Proposed Decision and Order, 1998); **Wyoming Valley Sanitary Authority**, 20 PPER ¶ 20121 (Order Directing Submission of Eligibility List, 1989).

The record shows that Pfaff performs inspections of on-lot septic systems, the public sanitary sewer system, and the Township's storm water management program. However, the record also shows that he has no discretion to deviate from the State established criteria for on-lot septic systems or to make exceptions to the International Plumbing Code for the public sanitary sewer system. Nor does he have authority to make exceptions to the Township Engineer's approved plan for the storm water management program. Instead, Pfaff must report his findings to somebody else who does have the authority to enforce the various codes or plans. As a result, Pfaff does not responsibly direct the implementation of policy.

Further, although Pfaff prepares monthly reports to the Board of Supervisors, who use the information to develop Township policy, it is well settled that an employe who simply engages in research or the collection of data necessary for the development of a policy proposal is not managerial under Section 301(16) of PERA. **Horsham Township**, *supra*.

On this record, the Township has not demonstrated that the Roadmaster or Utilities Supervisor are managerial employes under Section 301(16) of the Act.²

CONCLUSIONS

The 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 Township has not argued or presented any evidence to show that the Roadmaster or Utilities Supervisor are above the first level of supervision in accordance with the third part of the test under Section 301(16) 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.

4. The Treasurer is not a confidential employe within the meaning of Section 301(13) of PERA.

5. The Roadmaster is not a supervisor or management level employe within the meaning of PERA.

6. The Utilities Supervisor is not a supervisor or management level employe within the meaning of PERA.

7. The Treasurer, Roadmaster, and Utilities Supervisor share an identifiable community of interest with the rest of the employes in the proposed unit.

8. The unit deemed appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time nonprofessional employes, and excluding all management level employes, supervisors, confidential employes, and guards as defined by the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township shall within ten (10) days from the date hereof submit to the Board a current 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 decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this twenty-fourth day of February, 2015.

PENNSYLVANIA LABOR RELATION BOARD

John Pozniak, Hearing Examiner