

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-16-343-W
 :
 ELIZABETH TOWNSHIP :
 (Allegheny County) :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On November 22, 2016, Teamsters Local Union No. 205 (Local 205 or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board,) alleging a thirty percent showing of interest among certain nonprofessional employes and seeking to represent a unit of all full-time and regular part-time white collar nonprofessional employes of Elizabeth Township, Pennsylvania, (Township or Employer) including but not limited to clerical employes; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Public Employee Relations Act (PERA or Act). On December 12, 2016, 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 February 17, 2017, in Pittsburgh, as the time and place of hearing, if necessary

The hearing was not necessary as the parties submitted joint stipulations of fact not in dispute in lieu of a hearing on February 21, 2017. The Union and Employer both filed briefs in support of their respective positions by March 17, 2017.

The Hearing Examiner, on the basis of the joint stipulations of fact, 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 PERA. (J.S. ¶ 2).¹
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (J.S. ¶ 4).
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 white collar nonprofessional employes of Elizabeth Township, Pennsylvania, including but not limited to clerical employes; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act. (J.S. ¶ 5).
4. The Township employs Laura Zang, who serves as the Financial Specialist/Office Manager. (J.S. ¶ 6).
5. The Financial Specialist/Officer Manager has a printed job description. The job description for the Financial Specialist/Office Manager states in relevant part:

Job Title: Financial Specialist/Office Manager
Department: Administration

General Description

¹ "J.S." refers to the Joint Stipulations submitted by the parties. The Joint Stipulation has an Exhibit "A".

The Financial Specialist/Office Manager is designated as the Chief Operations Officer and the Chief Administrative Officer of Elizabeth Township. The Financial Specialist/Officer Manager is responsible to the Board of Commissioners for the proper administration of the affairs of the Township, the enforcement of the ordinances and regulations and other duties as delegated by the Board of Commissioners.

Essential Functions/Responsibilities

- Supervises the administration of all departments, officers and agencies of the Township and may hold such other Township office as the Board of Commissioners from time to time may direct; enforces the ordinances and regulations of the Township and other duties as delegated by the Board of Commissioners.
- Provides information to the Board of Commissioners as to the Township's affairs, submits reports of Township finances and other reports of Township departments, offices or agencies subject to his/her discretion and as may be requested by the Commissioners.
- Participates in the interview process and shall have significant input regarding the appointment, suspension, demotion, or termination of all Township employees subject to the approval of the Board of Commissioners.
- Provides a report on a monthly basis to the Board of Commissioners.
- Prepares and submits to the Board of Commissioners annual operating, capital and other budgets that may exist with an explanatory budget message; prepares estimates of revenues and expenditures with consultation and input from the heads of each department; develops in conjunction with the annual budget, long range proposals for the Township to be presented to the Board of Commissioners on an annual basis.
- Manage Human Resource Matters including payroll processing, applicable tax payments and returns, direct deposits, benefits including medical, dental, vision and life insurance and Worker's Compensation, vacation and sick time tracking, FMLA.
- Reconcile monthly bank statements and oversee income and expenses of the township.
- Recommends actions to the Board of Commissioners that are appropriate and necessary for administration of Township affairs and is authorized to execute documents on behalf of the Township, including but limited to papers, contract, obligations and documents and secures bids for letting contracts in the form prescribed by law.
- Manages the day-to-day financial affairs of the Township, including but not limited to the placement of Township funds in lawful investments; ensures that Township funds are not dispersed except with express authorization from the Board of Commissioners; review, examines and settles all of the Township accounts and reports to the Board of Commissioners facts relating to the Township's finances.
- Authority to assign routine financial duties such as account payables, receivables and various record keeping tasks to subordinate office staff. The reassigned duties will be reviewed as deemed necessary.
- Attests to the execution of all instruments and records all ordinances, maintains custody of the Township's corporate seal and all official Township records.

- Attends all Board of Commissioner's meetings and participates in discussions; prepares the agenda of each meeting.
- Maintains a professional appearance and demeanor.
- Hold Weekly Staff Meetings in regards to Township Affairs and be made aware of all Township Matters by each Department Head.

(J.S. ¶ 8; Exhibit "A").

6. The parties stipulated that the duties described in Exhibit "A" reflect Zhang's job duties. (J.S. ¶ 7).

7. Zhang, as the Financial Specialist/Officer Manager, has access to confidential Township employe files and records which are kept in a file cabinet in her Township office. (J.S. ¶ 7).

8. The parties stipulate that all full-time and regular part-time white collar nonprofessional employes share an identifiable community of interest. (J.S. ¶ 5).

DISCUSSION

The Union has petitioned to represent a unit including all full-time and regular part-time clerical, non-professional employes of the Township, excluding management level employes, supervisors, first level supervisors, and guards as defined by the Act. The Township argues that Laura Zhang, the Financial Specialist/Office Manager, should be excluded from the unit as a confidential, supervisor or management level employe. The Union does not agree that the Financial Specialist/Office Manager should be excluded from the unit.

As the party asserting the exclusion, the Township has the burden of proving that the position should be excluded from the bargaining unit. **State System of Higher Education**, 29 PPER ¶ 29234 (Final Order, 1998), **aff'd**, 737 A.2d 313 (Pa. Cmwlth. 1999); **Danville Area School District**, 8 PPER 195 (Order and Notice of Election, 1977).

Confidential Employe

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 record shows that Zhang does not meet the requirements of this section. For an employe to be deemed confidential, Section 301(13)(i) requires that the employe works in the personnel offices of the employer **and** has access to information subject to use by the employer in collective bargaining. Zhang satisfies the first prong as employment files are kept in her office and also attends to human resources matters as part of her duties. However, the record shows that Zhang does not satisfy the second prong of Section 301(13)(i) which requires proof that the information to which the employe 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). The record in this matter does not support a conclusion that Zhang has access to any information sufficient to meet the **Bangor Area School District** standard. The Township argues "[Zhang] would provide all financial information that would be used in collective bargaining." (Township's Brief). However, there is no evidence of record that Zhang became privy to the Township's bargaining proposals or strategy or any confidential information used by the Township in collective

bargaining when she prepared financial information. **Mid-West School District**, 47 PPER ¶ 61 (Final Order, 2015). Therefore, the record does not support excluding Zhang as a confidential employe under Section 301(13)(i).

Turning to Section 301(13)(ii), the Township has also not met its burden of proof. 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). The Commonwealth Court has found individuals to be working 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. **Plum Borough School District**, 48 PPER ¶4 (Final Order, 2016); **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).

The Township argues the following with regard to Zhang's inclusion under Section 301(13)(ii):

Additionally, the position's participation in the administration of Township affairs includes participation in collective bargaining matters. . . Also, the position would work directly with members of the Board of Commissioners to negotiate all collective bargaining agreements.

...

The position provides advice on labor relations, staffing and job duties;

...

The position is directly involved in the process of collective bargaining on behalf of the employer. . . .

(Township's Brief). Addressing the Township's arguments: first, nothing in this record indicates that Zhang would participate in collective bargaining matters, provide advice on labor relations, or be directly involved in the process of collective bargaining on behalf of the employer. Second, the record in this matter does not support a conclusion that Zhang "would work directly with members of the Board of Commissioners to negotiate all collective bargaining agreements." Most importantly, there is no evidence in this record that Zhang performs work related to collective bargaining at all. Thus, the record does not support excluding Zhang as a confidential employe under Section 301(13)(ii).

Supervisor

Section 301(6) of PERA defines a supervisor as follows:

"...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). Employes 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). The distinguishing characteristic of an alleged supervisor is that the person holds authority that calls for the use of independent judgment and carries with it the power to reward or sanction employes. **Mifflin County**, 14 PPER ¶ 14012 (Proposed Decision and Order, 1982), 14 PPER ¶ 14051 (Final Order, 1983).

With regard to Zhang's alleged supervisor status, the Township argues the following:

According to the stipulated job description, the position "Supervises the administration of all departments, officer and agencies of the Township." Additionally, the position has "significant input regarding the appointment, suspension, demotion or termination of all Township employees" subject only to the approval of the Board of Commissioners. The position is also responsible to manage all "Human Resource Matters" of the Township. These items clearly show that the position is supervisory and should be excluded from the bargaining unit.

(Township's Brief). Addressing the Township's arguments: first, the mere title of 'supervisor' or use of the verb 'supervise' in a description of job duties is not sufficient to prove whether an employee actually meets the statutory test for supervisors under PERA. **Employes of Lehigh Carbon Community College**, 40 PPER 58 (Proposed Decision and Order, 2009). Second, nothing in this record supports the conclusion that Zhang uses her independent judgment when performing her duties relating to appointment, suspension, demotion or termination of any Township employees or to a substantial degree effectively recommends the appointment, suspension, demotion or termination of any Township employees. The only conclusion that is supported by the record is that Zhang is somehow involved in the appointment, suspension, demotion or termination of Township employees and that the Board of Commissioners has overall authority. This is not enough to satisfy the statutory definition.

The record indicates that Zhang has: "Authority to assign routine financial duties such as account payables, receivables and various record keeping tasks to subordinate office staff. The reassigned duties will be reviewed as deemed necessary." This job duty may support a finding of supervisor job duties, however, the inclusion of the sentence "The reassigned duties will be reviewed as deemed necessary" indicates that Zhang's judgement and authority to assign duties is not independent and, moreover, nothing in this record establishes that Zhang has assigned any duties to other employees.

Additionally, nothing in this record supports a determination as to the extent Zhang performs her alleged supervisory duties in relation to her other job functions. Section 604(5) of PERA provides that "[i]n determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 Pa. C.S. § 1101.604(5); **West Perry School District v. PLRB**, 752 A.2d 461 (Pa. Cmwlth. 2000), **petition for allowance of appeal denied**, 568 Pa. 675 (2000). Indeed, the Board has consistently held that employees who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are lead workers and not supervisors within the meaning of PERA. **Westmoreland County**, 40 PPER 35 (Final Order, 2009), **aff'd**, 991 A.2d 976 (Cmwlth. Ct. 2010). As I can make no determination as to the balance of Zhang's alleged supervisory and nonsupervisory duties on this record, and the employer has not shown that Zhang performs supervisory duties for a majority of her time, the record does not support her exclusion as a supervisor.

Management Level

Section 301(16) of PERA states:

"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). Under this provision, 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 ¶ 12131 (Final Order, 1981). Moreover, the Board has long adhered to a policy of evaluating the actual job duties of the position in question to make unit determinations. **Elizabeth**

Township, 33 PPER ¶ 33053 (Final Order, 2002); **Washington Township Municipal Auth. v. PLRB**, 569 A.2d 402 (Pa. Cmwlth. 1989).

The record in this matter is not sufficient to support the conclusion that Zhang is a management level employe under the first prong of Section 301(16). In **Pennsylvania Association of State Medical Hospital Physicians v. Commonwealth**, PLRB, 554 A. 2d 1021 (Pa. Cmwlth. 1989), the Commonwealth Court adopted the Board' s definition of the first part of Section 301(16) of PERA as set forth in **Horsham Township**, 9 PPER 9157 (Final Order, 1978):

An individual who is involved directly in the determination of policy would include not only a person who has authority or responsibility to select among options and to put proposed policies into effect, but also a person who participates with regularity in the central process which results in a policy proposal and a decision to put such proposals into effect. Our reading of the statute does not include a person who simply drafts language for the statement 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, Id. In its brief, the Township argues that Zhang fits the statutory level of management employe because:

[T]he position "Recommends actions to the Board of Commissioners that are appropriate and necessary for administration of Township affairs..." This means that the Financial Specialist/Office Manager has the power to develop policies and would also be the person in charge on enforcing the implementation of the policies on behalf of the Township. According to the explicit terms of the job description, the position also prepares the annual budget for the Township All of the above-stated items would be managerial and should exclude the position from the bargaining unit.

(Township's Brief). On this record, there is not enough evidence to make a determination that Zhang (1) has the authority or responsibility to select among options and to put proposed policies into effect, and (2) participates with *regularity* in the central process which results in policy proposals *and* the decision to put such proposals into effect. The record is meaningfully silent as to Zhang's independent authority and discretion to select among policy options, put proposed policies into effect, and regular participation in the policy decision-making process. While the record does state that Zhang regularly attends Commissioner meetings, it does not state that her recommendations or statements at such meetings are, more often than not, effective at determining policy for the Township. Therefore, Zhang is not a management level employe pursuant to the first prong of Section 301(16).

The record in this matter is also insufficient to support a conclusion that Zhang is a management level employe pursuant to the second prong of Section 301(16). The Board' s policy is that the use of independent judgment and discretion by the employe when implementing the employer' s policies is necessary to satisfy the second prong of the statutory test for management level employe under Section 301 (16) of PERA. **Horsham Township, supra.; Municipal Employees of Borough of Slippery Rock v. PLRB**, 40 PPER 64 (Proposed Order of Unit Clarification, 2009), 40 PPER 122, (Final Order, 2009), **aff'd** 14 A3d 189 (Pa. Cmwlth. 2011). In order to be considered a management level employe, the employe must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found. **Slippery Rock**, 14 A.3d 189, at 192. (Pa. Cmwlth. 2011). Nothing in this record supports a determination that Zhang has used independent judgement and discretion when enforcing or implementing the Township's policies or ordinances. Additionally, nothing in this record demonstrates that Zhang has used independent authority to monitor compliance of the Township's policies and ordinances and took action where noncompliance was found. Therefore, Zhang is not a management level employe pursuant to the second prong of Section 301(16).

Lastly, the record in this matter does not support a conclusion that Zhang is above the first level of supervision. The record is silent as to the existence of employees at supervisory status in the Township and Zhang's alleged relationship to them, if they exist. Therefore, Zhang is not a management level employe pursuant to the third prong of Section 301(16).

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 Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The Financial Specialist/Officer Manager is not a confidential, supervisor, or management level employe within the meaning of PERA.
5. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time white collar nonprofessional employes of Elizabeth Township, Pennsylvania, including but not limited to clerical employes and financial specialist/office managers; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in 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 seventh day of April, 2016.

PENNSYLVANIA LABOR RELATION BOARD

Stephen A. Helmerich, Hearing Examiner