

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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CITY OF PHILADELPHIA :

Case No. PERA-U-09-286-E
(PERA-R-1063-E)

ORDER

On June 18, 2012, the City of Philadelphia (City) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to an Amended Proposed Order of Unit Clarification (POUC) issued on May 25, 2012. In the POUC, the Board's Hearing Examiner granted the Petition for Unit Clarification filed by the American Federation of State, County and Municipal Employees, District Council 47, Local 2186 (AFSCME) and concluded that the position of Water Conveyance Supervisor is a first level supervisor under Section 301(6) of the Public Employe Relations Act (PERA) and therefore is properly included in the nonprofessional, first level supervisory unit represented by AFSCME. AFSCME filed a response to the City's exceptions on July 6, 2012.

This matter arose on July 24, 2009, when AFSCME filed a Petition for Unit Clarification with the Board, seeking to include the position of Water Conveyance Supervisor in the meet and discuss unit comprised of all nonprofessional, first level supervisory employes of the City that the Board certified at Case No. PERA-R-1063-E.¹ After numerous continuance requests were made by both parties, hearings were held on June 18, 2010 and November 16, 2011, 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 post-hearing briefs.

On May 25, 2012, the Hearing Examiner issued the POUC concluding that the position of Water Conveyance Supervisor was a first level supervisor within the meaning of Section 301(6) of PERA. Therefore, the Hearing Examiner ordered that the certification issued at Case No. PERA-R-1063-E be amended to include the position of Water Conveyance Supervisor in the nonprofessional, first level supervisory unit represented by AFSCME.

Although the City excepts to the Hearing Examiner's decision regarding the Water Conveyance Supervisor, the City's exceptions are untimely. Section 95.98(a)(1) of the Board's duly promulgated and published Rules and Regulations provides in pertinent part as follows:

A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under § 95.91(k)(1)(relating to hearings) or a nisi order issued under § 95.96(b)(relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

¹ On July 24, 2009, AFSCME filed a second Petition for Unit Clarification with the Board, seeking to include the position of Sewer Maintenance Crew Chief II in the meet and discuss unit comprised of all nonprofessional first level supervisory employes of the City that the Board certified at Case No. PERA-R-1063-E. AFSCME's Petition was docketed at Case No. PERA-U-09-285-E. The parties stipulated that the duties of the Sewer Maintenance Crew Chief II position were combined with the duties of the Water Conveyance Supervisor position. Therefore, the parties stipulated that the record created at the June 18, 2010 hearing for Case No. PERA-U-09-285-E would be incorporated into the record for Case No. PERA-U-09-286-E. (N.T. November 16, 2011 at 8-9). On January 26, 2012, AFSCME withdrew its Petition for Unit Clarification at Case No. PERA-U-09-285-E.

34 Pa. Code § 95.98(a)(1). When determining the timeliness of exceptions, the Board accepts substantial compliance with Section 95.98(a)(1) if there is independent, third-party evidence of timely deposit provided by either the United States Postal Service or a private courier appearing on the face of the mailing. **AFSCME Council 13 v. Commonwealth of Pennsylvania, Department of Transportation**, 33 PPER ¶ 33027 (Final Order, 2001), **aff'd**, No. 138 C.D. 2002 (Pa. Cmwlth. 2002)(opinion not reported). Therefore, the Board will accept as substantial compliance with Section 95.98(a)(1) a United States Postal Service postmark or postmark cancellation, **In the Matter of the Employees of Bethlehem Area School District**, 39 PPER 124 (Order of the Board, 2008), or a private courier's shipping documentation indicating that the exceptions were mailed within twenty days of issuance of the proposed decision. **Department of Transportation, supra**.

The City's exceptions were due on or before June 15, 2012.² Although the City did not include a United States Postal Form 3817 Certificate of Mailing with its exceptions, the envelope contained a United States Postal Service postmark indicating that the City's exceptions were deposited in the mail on June 18, 2012. Based on that date, the City's exceptions are untimely because they were filed more than twenty days after the issuance of the POUC on May 25, 2012. Accordingly, the Hearing Examiner's POUC became final and binding on June 15, 2012, and the City has waived all issues on appeal. **Id.**

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the City's exceptions as untimely filed.

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Order of Unit Clarification be and the same are hereby dismissed as untimely filed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this twenty-eighth day of August, 2012. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

² The twentieth day following issuance of the Hearing Examiner's proposed decision was June 14, 2012. However, June 14 (Flag Day) is a legal holiday under the laws of the Commonwealth, 44 P.S. § 11, and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b); **AFSCME District Council 90 v. Dauphin County**, 32 PPER ¶ 32007 (Final Order, 2000).