

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
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: :
: CASE NO. PERA-U-14-267-W
: :
PORT AUTHORITY OF ALLEGHENY COUNTY :

FINAL ORDER

On July 25, 2016, a Hearing Examiner of the Pennsylvania Labor Relations Board (Board) issued a Proposed Order of Unit Clarification and Proposed Order of Dismissal (Proposed Order), in which the Hearing Examiner clarified the existing unit of all full-time and regular part-time nonprofessional first-level supervisory employes of the maintenance and transportation divisions of the Port Authority of Allegheny County (Authority) represented by the Amalgamated Transit Union, Local 85 (Union) to include the position of Maintenance Training Specialist (Training Specialist), and to exclude the position of Maintenance Technical Trainer (Technical Trainer). The Union filed timely exceptions to the Proposed Order and a supporting brief with the Board on August 12, 2016, and the Authority filed timely exceptions and a supporting brief with the Board on Monday, August 15, 2016.¹ The Union and the Authority filed responses to the exceptions in August 2016. Following an extension of time granted by the Secretary of the Board, the Union and the Authority filed briefs in response to the exceptions in September 2016.

An evidentiary hearing was held before the Hearing Examiner on March 23, 2016, during which both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. Based on the testimony and evidence presented at the hearing, the Hearing Examiner made necessary Findings of Fact, which are adopted herein and summarized for purposes of the exceptions as follows.

The Authority has a Maintenance Apprenticeship Program, known as "MAP." MAP is under the direction of an oversight committee that is comprised of Union representatives and an Authority manager. MAP trains employes, with no prior technical skills or training, for technical positions. MAP training consists of theory training and on-the-job practical training. There are currently eleven MAP positions at the Authority. Some examples of these positions are: Rail Tech A, Rail Tech B, Shop Mechanic, Machinist, Electronic Maintenance, Building Electrical, Signalmen, HVAC Tech, Wiremen, and Radio Repairmen.

Training Specialists are part of the MAP program and provide theory training in electronics, train signaling and Light Rail Vehicle (LRV) operations. Training Specialists develop courses, outlines, syllabi and testing used for training employes.² Training Specialists cannot make substantive or overall changes to courses, and are required to consult with a supervising manager before changing a lesson plan to ensure that any changes comply with the training expectations of the Authority. Training Specialists may only offer advice on topic coverage or substantive changes. Course materials have been determined by the MAP Oversight Committee, and substantive changes to course materials must be approved by division managers or the MAP Oversight Committee. Training Specialists cannot change minimum passing and grading requirements, which have been determined by the MAP Oversight Committee.³

¹ See Section 95.11 of the Board's Rules and Regulations (if the last day to file exceptions falls on a Saturday or Sunday those days are omitted from the computation of the twenty-day period for filing of exceptions).

² Signals training is governed by Federal regulations, was developed by an outside company, and cannot be modified by the Authority.

³ Training Specialists may change the beginning and ending dates of a MAP course, or the duration of the course depending on the number and aptitude of students in a given class and the concomitant speed of progress.

Matthew Homic, the Manager of Facility Systems and Non-Revenue Equipment, decided to bring the Basic Electronics Course and education in-house for MAP trainees. Training Specialist James Gensamer developed the Basic Electronics MAP training from a course provided at the Allegheny County Community College. Mr. Gensamer used text books predetermined by the Authority to develop the relevant daily course work for the Basic Electronics training. Mr. Gensamer also developed the LRV Technician Course from the information provided by the manufacturers' manuals and handbooks for the light rail vehicles. In 2014, Mr. Homic led a collaborative effort to create an outline for a six-week course to modify the training for Light Rail Vehicles (LRV). Training Specialist Gensamer was involved in modifying LRV training based on feedback from his supervising managers, Mr. Homic and Aaron Schmidt, who received information from the field indicating that employees were not meeting expectations. Mr. Gensamer recommended modifications to the training, daily lesson plans and testing. Managers Homic and Schmidt determined the changes that the Training Specialists were to make to the LRV course.

There are four Technical Trainers whose work responsibilities include developing courses and standard operating procedures (SOPs) for bus maintenance at the Authority. The Technical Trainers develop SOPs for maintaining the different components on new buses and tailor those SOPs based on the equipment, work flow, experiences and geographic conditions at the Authority. There are at least a dozen preventative maintenance manuals for each bus fleet. The Technical Trainers are required to obtain approval for the SOP manual. If changes need to be made to any preventative maintenance or inspection manual, the Technical Trainers are required to seek approval from management before making any changes. Technical Trainers also develop training classes based on the SOPs, and train mechanics on the SOPs and proper maintenance protocols. Any training manuals and classes must be approved by their supervising managers.

Additional duties of the Technical Trainers include travel to the Gillig Bus Company in San Francisco, California to ensure that buses ordered by the Authority meet its specification requirements. The Technical Trainer provides his or her signature on the inspection form verifying that the Authority ordered bus has been built and meets the specifications of the Authority. A sample bus inspection report demonstrates that Technical Trainers have identified and permitted discrepancies on the buses prior to shipment to the Authority.

Section 301(16) of PERA defines a 'Management level employe' as "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). In applying this statutory definition, the Board has held "that an employe who satisfies any of the following three criteria is a manager: (1) either the employe is directly involved in the determination of policy; (2) the employe directly implements policy; or (3) the employe is above the first level of supervision." **In the Matter of the Employes of Allegheny-Clarion Valley School District**, 41 PPER 21 (Final Order, 2010). In **Horsham Township**, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), the Board stated as follows regarding an employe who is "involved directly in the determination of policy," under the first prong of the statutory test:

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.

Horsham, 9 PPER at 327. With regard to the second prong, concerning an employe who responsibly directs the implementation of policy, the Board stated the following:

[P]ersons 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 ensure completion of the task. The administration of

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 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.

Id.

In distinguishing between management level employees and employees who exercise professional or technical judgements in the performance of their duties, the Board has long recognized that a public employer's policy is not synonymous with the technical expertise of its employees. **City of Lebanon**, 4 PPER 24 (1974). "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." **Allegheny County**, 47 PPER 4 at 9 (Proposed Order of Unit Clarification, 2015).

On exceptions, the Authority argues that the Training Specialists and the Technical Trainers satisfy either of the first two prongs of the test for management level employees. The Authority argues that the Training Specialists and Technical Trainers are directly involved in the determination of policy, or directly implement Authority policy, through training provided to employees. The Authority contends that the Technical Specialists determine and implement Authority policy regarding the level and type of training that is provided to its maintenance employees in the MAP. The Authority also argues that the Technical Trainers similarly determine and implement policy through creation of the SOP manuals and training for bus maintenance.

Based on a review of the testimony and documentary evidence, the Hearing Examiner found that the managerial policy aspects of the MAP training are under the direction and control of the MAP Oversight Committee, not the Technical Specialists. Indeed, the managerial policy to provide in-house training in electronics and the selection of the course text book were Mr. Homic's decisions, and not those of the Training Specialists. Further, the Hearing Examiner found that the Training Specialists do not make the managerial decision of the required aptitude or qualifications for MAP candidates, and the MAP Oversight Committee, not the Training Specialists, determines the requirements for successful completion of MAP training courses. The Technical Specialists cannot make any substantive course changes without approval from the MAP Oversight Committee. Additionally, the Hearing Examiner found that modification in academic training is under the direction of managers, like Mr. Homic and Aaron Schmidt, who direct that the Training Specialists make modifications to course materials based on perceived deficiencies in training. Indeed, it was Manager Homic, and not the Training Specialists, who made the policy determination that the LRV training needed to be modified, and he led a collaborative effort to create an outline for a course on the LRVs.

As found by the Hearing Examiner, Training Specialist Gensamer utilized his professional expertise and technical knowledge, and not any management level policy making authority, to develop a body of technical information and course work for the Basic Electronics Course. Mr. Gensamer relied on his vast experience and education in the sciences, and copied relevant material from the community college course and from the text book chosen by the Authority. Mr. Gensamer utilized his technical abilities to perform a rewrite of the LRV training, which was undertaken at, and under the direction of, Mr. Homic.

As the record evidence indicates, Mr. Gensamer's development of the daily lesson plans and labs for academic courses that are required for the MAP technology training by the Authority does not constitute the requisite development or implementation of managerial policy. The Training Specialists rely on their technical discretion and expertise to perform their training functions under the policies that have been developed and implemented by management personnel. Accordingly, the Hearing Examiner did not err in

finding that the Training Specialists exercise technical expertise in teaching academic courses, and are not developing, compiling or implementing managerial policies for the Authority.

Similarly, the Technical Trainers, using technical expertise, develop SOPs for maintenance protocols for the buses and the various bus systems from information supplied by the manufacturers. However, all those SOPs and protocols must be approved by supervising managers. The technical discretion and expertise utilized by the Technical Trainers in drafting maintenance SOPs and manuals, defining technical and mechanical protocols, do not involve the development or implementation of the managerial policies of the Authority. As found by the Hearing Examiner, the Technical Trainers are not management level employees simply because they have input in the manner in which they perform, improve and modify the technical requirements of their job duties.

Board case law supports the Hearing Examiner's conclusion that the Training Specialists and Technical Trainers do not develop or implement management policy through teaching courses in the MAP program or by preparing manuals and training maintenance employees. Indeed, the teaching duties of the Training Specialists and Technical Trainers here are fundamentally no different than the duties of the training/development officer in **City of Philadelphia**, 16 PPER ¶16141 (Amended Proposed Order of Unit Clarification, 1985), *affirmed*, 16 PPER ¶16203 (Final Order, 1985), or the staff development instructors in **Pennsylvania State University (Hershey Medical Center)**, 19 PPER ¶19211 (Proposed Order of Unit Clarification, 1988), *affirmed in relevant part*, 20 PPER ¶20126 (Final Order, 1989).

In concluding that the training/development officer is not a managerial employee in **City of Philadelphia**, the Board hearing examiner found as follows:

The City employs a Training/Development Officer who is responsible for seeing that employees receive proper training to perform their various job duties. This individual is responsible for taking the tasks created by various management policies and formulating a training program to educate employees to perform the particular task that they are responsible for. In practice, management employees may come to the Training/Development Officer with various performance problems within their departments. The Training/Development Officer is then responsible for creating a training program, and training employees to resolve the problem.

The question to be answered is whether an individual charged with formulating training programs to resolve various performance problems is a "formulator" or "implementor" of policy. It is apparent in the record that policy formulation is performed above the level of Training/Development Officer. The Training/Development Officer is a teacher. His job is to develop a method of teaching the substance of a policy to those who are responsible for implementing it and he has no role in the actual formulation or implementation of policy that he teaches. As such, he does not fall within management level employee definition and is eligible for bargaining unit status and will be included in the rank and file bargaining unit.

City of Philadelphia, 16 PPER at 362. Likewise, in **Pennsylvania State University**, a Board hearing examiner held as follows:

The Employer contends that the staff development instructors develop, recommend and implement Medical Center policies pertaining to nurse orientees, thereby qualifying for management level status under [PERA].

* * *

[T]he Employer has enabled the staff development instructors to develop a method of teaching hospital and nursing policy to new nurses. The staff development instructors are not developing policy; they are merely imparting knowledge about the policy to the nurse orientees. They are vested with

discretion only in how they teach, not with discretion in changing the direction of hospital policy. Accordingly they are not management level employees.

Pennsylvania State University, 19 PPER at 525.

Upon review of the record, the Hearing Examiner's findings that the Training Specialists and Technical Trainers utilize technical expertise in performance of their duties to prepare training materials and instruction of employees, but do not have the managerial authority to develop or implement Authority policy regarding that training, are supported by substantial evidence. Thus, the Hearing Examiner did not err in concluding that the Training Specialists and Technical Trainers are not directly involved in the determination of policy, or directly implementing Authority policy through training materials and instruction provided to employees.

In its exceptions, the Union argues that the Hearing Examiner erred in concluding that the Technical Trainers are management level employees under the second prong of the statutory test because the Technical Trainers implement Authority policy through the inspection of buses. See **Municipal Employees of the Borough of Slippery Rock v. PLRB**, 14 A.3d 189 (Pa. Cmwlth. 2011). In **Horsham Township**, the Board first recognized that municipal code enforcement officers were managerial employees because they effectively implemented the Township policies through inspection of properties and enforcing the township zoning ordinances. Similarly, in **Slippery Rock**, the Commonwealth Court affirmed the Board's determination that a code enforcement officer was a management level employee under the second part of the test under Section 301(16) where the code enforcement officer independently exercised his managerial discretion in determining whether structures, properties and permit applicants complied with the health, safety and welfare policy of the borough's ordinances.

In applying the code enforcement line of cases to the facts here, the Hearing Examiner stated that it is a "managerial prerogative of the Authority to establish the requisite specifications for its buses deemed necessary, given its unique experience in providing safe public transportation in the greater Pittsburgh area and given the geographic and climatic challenges presented.. and [t]he Authority has established certain policies with respect to the performance capabilities of its equipment." (Proposed Order at 9-10). With respect to the inspection duties of the Technical Trainers, the Hearing Examiner found as follows:

[T]he Technical Trainers travel to the Gillig Bus Company in San Francisco, California to ensure that the bus manufacturer has built Authority ordered buses to the custom specifications of the Authority.... They inspect and ensure compliance with Authority specifications from the basic underlying structural, mechanical, electrical and HVAC components through to the trimming and painting details of the completely assembled bus.... A sample bus inspection record indicates that the Technical Trainers identify compliance, discrepancies and shortages in bus construction and assembly. They exercise managerial discretion in determining whether discrepancies in Authority specifications will be permitted or rejected. In this regard, the Technical Trainers, like the code enforcement officer in **Slippery Rock, supra**, exercise independent discretion without supervision or review to determine whether buses are built in compliance with the performance policies and specifications of the Authority.

Id. at 10.

Upon review of the relevant Board case law, we disagree that the duties of the Technical Trainers to inspect buses ordered for purchase by the Authority are similar to code enforcement officers who inspect properties for compliance with the laws and ordinances of a public employer. Generally, code enforcement duties are managerial because the zoning or code enforcement officer must make an independent judgment that implements the public policy of an ordinance or law in deciding whether or not a property violates the law or an ordinance, and must decide whether to enforce that public policy

against the property owner. *E.g. Slippery Rock, supra*. Thus, by way of example in **Rome Township**, 40 PPER 54 (Order Directing Submission of Eligibility List, 2009), a township roadmaster was found to be a management level employe because he was vested with authority to determine whether a proposed driveway on private property would comply with the township's water runoff ordinances and had authority to grant or deny the owner of the property a driveway permit.

However, the code enforcement cases are fundamentally different from cases such as this one where the employe is inspecting property for purchase or use by his or her employer. Indeed, the managerial decision making for equipment purchases is performed by those employes who have authority over the employer's budget, and actually establish the need and specifications and have the independent authority to expend the budgeted funds and purchase the equipment. By inspecting equipment or vehicles for purchase or use by the employer, the employe is merely utilizing technical expertise at the direction of his or her employer, and not independently enforcing, implementing or interpreting managerial policy.

Thus, in **Rome Township, supra**, the roadmaster's duties of inspecting a truck for purchase by the township, where the roadmaster did not have the authority to actually make the purchase, was found not to be managerial. Similarly, in **Plains Township Sewer Authority**, 8 PPER 213 (Final Order, 1977), the Board found that the job of observing the proper installation of sewer lines for the authority was not managerial. In **Plains Township**, the Board held that "the inspectors are not involved directly or even indirectly in the determination of policy, nor do they direct the implementation of policies and procedures... [T]he main duties of the inspector is to observe the proper installation of the sewers and ... they do not possess the authority to determine policies or ... responsibly direct the implementation thereof... Therefore, ... the position of sewer inspector is not a management level position." **Plains Township Sewer Authority**, 8 PPER at 214. We find the facts of this case to be similar to those of the roadmaster's inspection of the truck in **Rome Township**, and the duties of the sewer inspector in **Plains Township Sewer Authority**.

Here, as in those cases, the Technical Trainers are inspecting buses ordered for purchase and use by the Authority. As found by the Hearing Examiner and supported by the evidence of record, the decisions to order a bus, establish the specifications for the bus, and purchase the bus are not made by the Technical Trainers. The Technical Trainers are merely utilizing technical expertise to inspect the buses for compliance with the purchase orders of the Authority. Whether or not the Technical Trainers allow discrepancies from the inspection report does not transform the exercise of their technical expertise into implementation of a managerial policy. Thus, under Board law, the Authority has not met its burden of establishing that by inspecting buses that were ordered for purchase by the Authority, the Technical Trainers implement Authority policy under the second prong of the statutory test for management level employes.

After a thorough review of the exceptions and all matters of record, the Authority has failed to establish that under Board law the Training Specialists and Technical Trainers are management level employes under Section 301(16) of PERA. Accordingly, the exceptions filed by the Union shall be sustained, the exceptions filed by the Authority shall be dismissed, and the Proposed Order shall be set aside in part consistent with the above discussion.

CONCLUSIONS

Conclusions 1 through 4 inclusive in the Hearing Examiner's Proposed Order are affirmed and incorporated herein as if fully set forth. Conclusion 5 in the Proposed Order is vacated and the following additional conclusion is made:

6. The position of Maintenance Technical Trainer at the Authority is not a management level position and is thereby properly included in the first-level supervisory unit.

ORDER

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 by the Port Authority of Allegheny County are hereby dismissed, that the exceptions filed by the Amalgamated Transit Union, Local 85 are sustained, and the Proposed Order of July 25, 2016 is made final as modified herein.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the unit certified by the Board at PERA-R-93-456-W is hereby amended to include the positions of Maintenance Training Specialist and Maintenance Technical Trainer.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this fifteenth day of November, 2016. 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.