

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: PERA-U-12-59-E
: (PERA-R-84-31-E)
POTTSTOWN BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 27, 2012, Pottstown Borough (Employer or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) requesting that the Board exclude the positions of Code Enforcement Officer I, Code Enforcement Officer II and Code Enforcement Officer III from a unit certified by the Board at PERA-R-84-31-E and represented by AFSCME District Council 88, Local 2784 (Union or Respondent).

On March 21, 2012, the Secretary of the Board issued an Order and Notice of Hearing in which April 18, 2012, was assigned as the time of a telephone pre-hearing conference and August 22, 2012 in Harrisburg was assigned as the time and place of hearing, if necessary

The pre-hearing conference did not resolve the dispute. However, in lieu of a hearing, the parties chose to submit the matter to the hearing examiner on a joint stipulation of facts. The Examiner, on the basis of the joint stipulation of facts and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Borough of Pottstown (hereinafter referred to as "Employer") is a municipal corporation organized and existing under the State Borough Code with a population of approximately twenty-two thousand (22,000) residents.
(Stipulation)
2. On May 24, 1984, at Case No. PERA-R-84-31-E, the Board certified the American Federation of State County and Municipal Employes, District Council 88, AFL-CIO, as the exclusive representative of a unit of employes described as

"all full-time and regular part-time nonprofessional employes of Pottstown Borough, including but not limited to Secretaries, Janitors, PBX Operators, Executive Secretaries, Engineering Aides, Code Enforcement Officers, Laborers, Electrician I's, Clerks, Utility Clerks, Water Meter Readers, Mechanics, Truck Drivers, Equipment Operators, Sub-Foremen, Refuse Collectors, Water Plant Operators, Sewer Plant Operators, Parkettes, and Civilian Radio Operators; and excluding management level employes, supervisors, first level supervisors, confidential employes, and guards, as defined in the Act."

(Case No. PERA-R-84-31-E, Board Exhibit 1)

3. Employer has instituted a Council-Manager form of government and has a strong Borough Manager Ordinance which vests in the Borough Manager the ability to hire, fire, discipline, direct and oversee Borough employees. (Stipulation)
4. Since 2009, Jason Bobst has served in the capacity as Pottstown Borough Manager. (Stipulation)
5. Employer currently has a Code Enforcement Department (hereinafter referred to as "Department") consisting of ten (10) employees. (Stipulation)

6. The Department includes a Department Supervisor, two (2) administrative/clerical staff, four (4) Code Enforcement Officers, one (1) Property Maintenance Inspector and two (2) Property Maintenance Workers. (Stipulation)
7. There has been a change in circumstances within the Borough since the Code Enforcement Officers were originally certified as members of the collective bargaining unit. Specifically, the Borough Code Enforcement Office has grown to its present size and the scope of responsibilities and duties of Code Enforcement Officers have been expanded and enhanced with the enactment of various residential rental inspection and licensing ordinances in response to the Borough's need to address an aging municipal infrastructure. (Stipulation)
8. On February 27, 2012, Employer submitted a Petition for Unit Clarification to the Board seeking to exclude positions of Code Enforcement Officer I, Code Enforcement Officer II, and Code Enforcement Officer III (hereinafter referred to as "Employees"). (Stipulation)
9. There are presently four (4) employees that are impacted by the petition, with three (3) employees being classified as Code Enforcement Officer I, and one (1) employee being classified as Code Enforcement Officer III. (Stipulation)
10. The employees routinely issue and deny Building Permits and Use and Occupancy Permits. (Stipulation)
11. The Employees conduct inspections, issue citations, issue enforcement notices and testify before a local District Justice Magistrates. (Stipulation)
12. The Employees enforce the Pottstown Borough Code of Ordinances relating to building codes and zoning codes. (Stipulation)
13. The Employees enforce specific codes and ordinances, which include the Grass and Weed Ordinance, Snow Removal Ordinance, International Property maintenance Code, Rental Inspection and Registration Ordinance, Zoning Ordinance, and other various standard building codes. (Stipulation)
14. It is the independent judgment of the Code Enforcement Officers that determine whether the Employer settles or prosecutes violations of certain Borough ordinances in District Court, where the code Enforcement Officers are primarily responsible for prosecuting the case before a Magisterial District Judge. (Stipulation)
15. As noted in the job description, Code Enforcement Officer I uses considerable independent judgment and initiates and enforces municipal codes associated with building construction, plumbing and property maintenance, mechanical, fire safety, electrical and zoning. (Stipulation)
16. Also, as noted in the job description, the position of Code Enforcement Officer I involves considerable communication, interaction with the general public, landlords, renters, real estate agents, homeowners and other private businesses. (Stipulation)
17. Finally, as noted in the job description, the position of Code Enforcement Officer I requires an individual to obtain state certification as a commercial building inspector within one (1) year of the date of hire. (Stipulation)
18. The job description of Code Enforcement Officer II contains similar requirements and purposes of the position as Code Enforcement Officer I, except that the individual is required to be certified as a residential building inspector, as opposed to a commercial building inspector. (Stipulation)

19. The position of Code Enforcement Officer III is an entry level position which requires use of considerable independent judgment and initiative to enforce municipal codes associated with building construction, plumbing, property maintenance, mechanical, fire safety, electrical and zoning. (Stipulation)
20. As noted in the job description, this position also involves minimal supervision and involves communication and interaction with the general public similar to those responsibilities of Code Enforcement Officer I and II. (Stipulation)
21. This position also requires an individual to obtain state certification as an accessibility inspector and plan examiner. (Stipulation)
22. The employees exercise judgment and use their discretion and take action as code Enforcement Officers that are not subject to review by any other official or other Employee. (Stipulation)
23. The action of these employees constitute their exercising of independent judgment and discretion in conjunction with implementing, interpreting, and enforcing Borough policies and ordinances. (Stipulation)
24. The employees represent the Borough to members of the public and have the authority to commit certain Borough resources. (Stipulation)
25. The decisions of the employees are part of these Employees' routine discharge of professional duties. (Stipulation)
26. The employees subject to this Petition are responsible, not only for monitoring compliance with Borough Codes, but also taking action in situations where non-compliance is found for enforcement purposes. (Stipulation)

DISCUSSION

The Borough's petition for unit clarification seeks to exclude the three positions of Code Enforcement Officer I, Code Enforcement Officer II and Code Enforcement Officer III from a bargaining unit of nonprofessional employees on the basis that the employees are management level employees under section 301 (16) of PERA.

Section 301(16) of PERA states:

(16) "Management level employee" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employees above the first level of supervision.

43 P.S. § 1101.301(16). Under this provision, a position is at the management level if the employee 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)

In several cases with facts similar to the present case, the Board has held that a code enforcement officer is a management level position due to the performance of duties that would fall under the second part of section 301(16) because they are responsibly implementing the employer's policies. **See, Horsham Township**, 9 PPER ¶ 9157 (Order and Notice of Election, 1978); **Employes of Lower Providence Township**, 16 PPER ¶ 16117 (Final Order, 1985); **Derry Township v. Pennsylvania Labor Relations Board**, 36 PPER 166 (Final Order, 2005); and **Municipal Employees of Borough of Slippery Rock v. Pennsylvania Labor Relations Board**, 40 PPER 64 (Proposed Order of Unit Clarification, 2009), 40 PPER 122, (Final Order, 2009), aff'd 14 A3d 189, (Pa. Cmwlth. 2011).

In lieu of a hearing, the parties submitted a joint stipulation of facts. The stipulation shows that the code enforcement officers implement the employer's policy in the legal use of property within the Borough. The code enforcement officers use independent judgment to determine whether property owners are in compliance with various municipal codes associated with building construction, plumbing, property maintenance, mechanical, fire safety, electrical and zoning. If they decide there is not compliance they then must decide how to force compliance. After citing a property owner for a code violation, they may decide to reach a settlement or they may go as far as prosecuting violations of Borough ordinances in District Court. In court, the Code Enforcement Officers are primarily responsible for prosecuting the case before a Magisterial District Judge. The Code Enforcement Officers perform these enforcement duties with minimal supervision and with the use of independent judgment.

Based on the joint stipulation of facts and the law, the three positions perform duties that meet the test of a management level employe as set forth in section 301(16) of PERA and should be excluded from the certified unit.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. Pottstown Borough is a public employer within the meaning of section 301(1) of PERA.
2. AFSCME District 88, Local 2784, is an employe organization within the meaning of section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The positions of Code Enforcement Officer I, Code Enforcement Officer II and Code Enforcement Officer III are management level employees under section 301(16) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the unit of employes certified by the Board at Case Number PERA-R-84-31-E is hereby amended to exclude the positions of Code Enforcement Officer I, Code Enforcement Officer II and Code Enforcement Officer III.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty fourth day of August, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner