

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-14-112-E
 :
 WEST MANHEIM TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On September 29, 2014, the Pennsylvania Professional Firefighters Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, seeking an investigation into a question of representation of all full-time and regular part-time firefighters and emergency medical technicians (Fire/EMT employes) employed by West Manheim Township and alleging that thirty per cent or more of those employes, excluding the Fire Chief and managerial employes, wish to be exclusively represented by the Union. On November 5, 2014, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Thursday, December 11, 2014. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both the Union and the Township presented oral arguments on the record after the record was closed, in lieu of submitting post-hearing briefs. On December 18, 2014, the notes of testimony from the hearing were filed with the Board.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a political subdivision and public employer within the meaning of Act 111, as read with the PLRA. (N.T. 5).¹
2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA, as read with Act 111. (N.T. 5).
3. The parties stipulated and agreed that the full-time and part-time employes in the proposed bargaining unit share an identifiable community of interest. (N.T. 5).
4. A part-timer is always paired with a full-timer. (N.T. 19)
5. Full-timers work twenty-four-hour shifts and part-timers work twelve-hour shifts. The full-timer and the part-timer double up for the day shift between 6 a.m. and 6 p.m. (N.T. 19-20)
6. If a full-timer is off on a vacation or Kelley day, a part-timer may fill in for the full-timer's twenty-four hour shift. (N.T. 20-21)
7. The duties of a part-timer are the same as those of a full-timer. Only the scheduling is different. (N.T. 11, 23)
8. Part-timers are required to make themselves available for a minimum of twenty-four hours per month, but they are not guaranteed as many hours. (N.T. 26; Association Exhibit 3)
9. A part-timer typically works two-to-three shifts per month and at least one shift per month every month. (N.T. 26-27).

¹ In reciting the stipulation on the record, I mistakenly referred to the Public Employee Relations Act instead of Act 111 and the PLRA. However, all parties were aware that this matter is governed by Act 111, as read with the PLRA, when they entered the stipulation.

10. There was never a time when a part-timer did not receive any hours in any month. (N.T. 27)
11. Part-timers receive their schedules one month in advance. (N.T. 11)
12. Part-timers have an expectation that they are going to receive hours of work every month. (N.T. 27).
13. The Township's personnel manual requires a minimum of twenty -four hours of availability for part-timers and at least one Saturday or Sunday Shift per month. (N.T. 28; Association Exhibit 3).

DISCUSSION

The Township contends that the part-timers are casual employes, and they are not regular part-time employes. (N.T. 30). The Township argues that there is no guarantee that the part-timers will work and no guarantee regarding scheduling. (N.T. 30). The part-timers submit hours requested based on their availability, but those hours are not always provided and the scheduling of those hours is not consistent. (N.T. 30-31). Because the part-timers' expectations are diminished, they are casual employes. (N.T. 31). I disagree.

As the party seeking the exclusion of part-time employes, the Township has the burden of demonstrating the exclusion. **In the Matter of the Employes of Elizabeth Township**, 37 PPER 90 (Final Order, 2006). Part-timers will be included in the unit as regular part timers if they have a reasonable expectation of continued employment as demonstrated by their being employed on a scheduled basis in advance of their day of work and by their being scheduled on a frequent or regular basis. **North Braddock Borough**, 14 PPER ¶ 14191 (Order Directing Submission of Eligibility List, 1983); **Ellport Borough**, 16 PPER ¶ 16065 (Order Directing Submission of Eligibility List, 1985); and **Bethlehem Township**, 10 PPER ¶ 10050 (Order and Notice of Election, 1979).

The record in this case clearly shows with substantial credible evidence that part-timers are essential to the Township's firefighting/EMT operation. They are utilized every day. Part-timers work weekends, they are paired with a full-timer for day shifts and fill in for full-timers who call off, take vacation or take Kelley days. Typically there is part-timer working every daylight 6 a.m. to 6 p.m. shift alongside a full-timer. The duties of the part-timers are the same as those of the full-timers. The part-timers are required to be available on weekends and for twenty-four hours per month.

The record also shows that the part-timers receive their schedules one month in advance and that every part-timer can expect to be on the schedule for at least one to three shifts every single month, without exception. Although the exact number of hours per month is not guaranteed, part-timers have a reasonable expectation that they will work every month. Contrary to the Township's argument, the Board only requires that part-timers reasonably expect to work at regular intervals, not that they receive a guarantee of a certain number of hours. Accordingly, on this record, the part-timers are regular part time and share an identifiable community of interest with the full-timers. Therefore, they are properly included in the proposed bargaining unit.

CONCLUSIONS

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

1. The Township is a political subdivision and public employer under Act 111, as read with the PLRA.
2. The Union is a labor organization under the PLRA, as read with Act 111.

3. The Board has jurisdiction over the parties.
4. The full-time and part-time Fire/EMT employes share an identifiable community of interest.
5. The part-time fire/EMT employes are regular part time employes who possess a reasonable expectation of employment at regular intervals and shall be included in the bargaining unit.
6. The unit deemed appropriate for the purpose of collective bargaining between the Township and the Union is a subdivision of the employer unit comprised of all full-time and regular part-time fire/EMT employes, exclusive of any managerial employes.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA, as read in *pari materia* with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the Fire/EMT employes eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this thirtieth day of December, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner