

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
: :
: Case No. PERA-R-16-151-E
: :
: :
EAST ALLEN TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 31, 2016, the International Brotherhood of Teamsters, Local 773 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation, pursuant to the Public Employee Relations Act (PERA), alleging that thirty percent or more of the nonprofessional Administrative Assistants and Public Works employees of East Allen Township (Township) wish to be exclusively represented by the Union. On July 5, 2016, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Thursday, August 4, 2016. During the hearing on that date, both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. At the close of the hearing, the parties elected to present oral arguments in lieu of filing post-hearing briefs. The Board received the notes of testimony from the hearing on September 1, 2016.

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 public employer within the meaning of Section 301(1) of PERA. (N.T. 3)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3)
3. The Township is a Second Class Township. (N.T. 124)
4. Deborah Seiple has been the Township Manager and Human Resources Director since 2005. (N.T. 7-8, 136-137)
5. Gary Mathesz has been the Coordinator of the Township's Public Works Department since 2007. (N.T. 4-5)
6. Rose Wedde has been the Township's Secretary/Treasurer since 2007. She is also the Deputy Tax Collector. (N.T. 123-124, 128, 150)
7. Tom Gehringer is the Crew Leader of the Township's Public Works Department. (N.T. 6)

8. The Township Public Works Department has seven employees including Mr. Mathesz and Mr. Gehringer. (N.T. 6-7)

9. The road crew employees report to work at the Township garage, which is a different building than the Municipal Building where the Township Manager and the Secretary/Treasurer report to work. (32-35, 129)

10. Mr. Mathesz reports to Ms. Seiple. Mr. Mathesz has the same benefits and health insurance as the other Township employees. He receives the same employee contribution retirement account benefits as other employees. He and the other employees accrue paid vacation time. (N.T. 8-10)

11. Mr. Mathesz plans annual schedules for road projects, lawn maintenance, equipment maintenance, winter preparation, tree and bush trimming, drain repairs and patching potholes. He plans and directs equipment changeovers to prepare for season changes. Road projects finish by August, and Mr. Mathesz plans for and directs different projects like painting the roads. The work schedule based on seasonal changes is loosely the same from year to year. (N.T. 110-112, 156-157)

12. Some equipment maintenance schedules are dictated by equipment manufacturers based on usage, such as oil changes. Other maintenance and repairs are performed as needed. Maintenance records are maintained on an Excel spreadsheet by one of the road crew employees. (N.T. 68-69)

13. Mr. Mathesz spoke to Ms. Seiple about the existing eighteen-year-old backhoe that is costing money in frequent repairs. Ms. Seiple gave Mr. Mathesz permission to collect information from dealers on a new back hoe. Mr. Mathesz and Ms. Seiple both reviewed the budget for future years to determine which year's budget could absorb the backhoe expenditure. Mr. Mathesz does not prepare a budget for the Public Works Department. During budget preparation season in some years, Ms. Seiple sends an email requesting information about the needs of the Public Works Department. He does make suggestions which are often not followed. In other years, Mr. Mathesz is informed that there will be no changes to the budget so there will not be any meetings on budgetary matters. Mr. Mathesz has requested more funds for a line item, which requests have been both rejected and approved by Ms. Seiple. (N.T. 14-15, 48-50, 53, 71, 113-114, 139, 147)

14. Mr. Mathesz communicates with salesman from different equipment companies, like CAT and John Deere, to review specifications, options and pricing on equipment, like the new backhoe. The Township Board of Supervisors decides whether to purchase equipment. The Township Manager determined that the new backhoe would not fit into the budget until 2018 or 2020. (N.T. 12-16)

15. In response to Ms. Seiple's solicitations for product and equipment needs at Public Works, Mr. Mathesz identifies those needs and submits them to Ms. Seiple. (N.T. 16)

16. Mr. Mathesz has no authority or discretion to purchase equipment without approval from the Township Manager. The Township Manager generally accepts Mr. Mathesz's recommendation if financially

feasible. The Township Manger will deny any recommendation for which she refuses to allocate funds. (N.T. 16, 42)

17. The Township maintains accounts with several vendors. When smaller items need to be replaced or replenished, any employe can go to a supplier and purchase new items on the Township's account. These are items like shovels, brooms, fasteners and other hardware items. Any purchase over \$500 requires the approval of the Township Manager. Emergency purchases exceeding \$500 are sometimes permitted. For example, if a tire on the loader blows out, the road crew can replace the tire without approval from the Township Manager even though the cost exceeds \$500 because they need the loader. Mr. Mathesz monitors expenditures throughout the fiscal year to monitor budgetary compliance and financial savings. (N.T. 16-17, 68-69)

18. The Township Manager determines the amount of road salt to purchase annually, based on standard year-to-year usage, which is 1000 tons. (N.T. 72-73)

19. The Township is under a Commonwealth contract for purchasing salt, gasoline and diesel fuel. Mr. Mathesz does not prepare bids for goods or services. The amounts of fuel and salt are pre-determined by the prior year's usage and the standard amounts purchased every year. If a new residential development is constructed in the Township, Mr. Mathesz can recommend to the Township Manager that she purchase more salt, budget permitting, but he cannot decide how much salt to purchase. (N.T. 75-77, 115-117)

20. In the winter, Mr. Mathesz monitors the roads. He contacts the road crew employes for plowing when necessary, and he text messages the Township Manager that he is doing it. Mr. Mathesz personally plows and salts roads. The Township Manager approves the overtime pay resulting from after-hours snow plowing or salting. (N.T. 18, 102-107)

21. Mr. Mathesz oversees the maintenance of Township roads, parks and buildings. Mr. Mathesz performs road crew work with other road crew employes. In addition to plowing roads, he clears stones from roadway pipes; he operates the backhoe, the loader, the mower and the bucket truck. There is no division of labor in the Road Works Department. (N.T. 18-20, 64-65, 102-103)

22. Mr. Mathesz performs administrative duties as well as road crew duties. Administrative duties include phone calls, emails and paperwork. He performs administrative duties approximately 50 percent of the time during the summer. During winter months, Mr. Mathesz performs more road work than administrative work. He interacts with the public works departments from other local municipalities to coordinate work and borrow equipment. Mr. Mathesz attends most meetings of the board of supervisors. He issues a written report regarding the Public Works Department to the Township Manager approximately one week prior to the supervisors' meeting. (N.T. 20-21, 51-52, 75, 88-90, 96-97 154)

23. The Township Manager selects contractors for road projects. Mr. Mathesz plays no role in the jobs that are bid upon. Mr. Mathesz interacts with the contractors. (N.T. 91-94)

24. Mr. Mathesz has suggested to the Township Manager training for employes based on a consensus among the road crew employes. The Township Manager must approve the training, not Mr. Mathesz. (N.T. 98-99)

25. Mr. Mathesz has never suspended any employes nor does he have the power to suspend. He has no authority to layoff, recall, promote or discharge employes. Mr. Mathesz assigns work to employes and schedules them to be on certain projects. (N.T. 22-24)

26. Mr. Mathesz does not reward employes or provide additional compensation. He does not and cannot discipline employes. He coaches employes who may need improvement. He and other road crew employes bring any serious disciplinary matters to the Township Manager. (N.T. 24-25, 161-164)

27. During one period of time, there was a road crew employe who did not fit in with the rest of the road crew team. He did not possess a CDL and he had no equipment experience. He did possess a pesticide license, so he was assigned to the park duties. After Mr. Mathesz sought the approval of the Township Manager, the employe was reassigned to road crew duties so he could be monitored and coached. This approach worked intermittently for approximately five years until the team became frustrated. (N.T. 25-25)

28. All road crew employes made a recommendation to the Township Manager to terminate the employe. Mr. Mathesz and Mr. Gehringer wrote a letter to the Township Manager and explained the work habits of the employe. Based on Mr. Mathesz's and Mr. Gehringer's letters, the Township Manager recommended to the board that the employe be terminated. The Board voted to terminate his employment based on the Township Manager's recommendation and the recommendations of the entire road crew. Mr. Mathesz was responsible for informing that employe of the board's actions. (N.T. 26-28, 43)

29. The Public Works Department performs building maintenance on township buildings, but there is no set policy regarding building maintenance. Mr. Mathesz must obtain approval from the Township Manager for maintenance on Township buildings unless the repair presents a safety or emergency issue. All road crew perform maintenance on Township equipment. (N.T. 28, 66-67)

30. All Public Works Department employes, including Mr. Mathesz, are responsible for enforcing work safety policies upon and among each other. Employes are screened for drugs and alcohol by random selection by a third-party vendor. Any road crew member can report an employe who presents for duty in an inebriated state. (N.T. 80-81, 84)

31. The Township employs a Code Enforcement Officer. Road crew employes are expected to report property violations or violations of Township ordinances, where matters appear to be "things that are getting out of hand," to the Code Enforcement Officer. (N.T. 29)

32. It is the responsibility of the Code Enforcement Officer to patrol and inspect for violations of Township ordinances and building codes. Mr. Mathesz and the road crew do not determine whether there is a violation of Township ordinances. (N.T. 30)

33. Mr. Mathesz does not perform the work with the Township Zoning Officer as indicated on his job description. He does not complete routine inspections of Township properties for code violations. He does not suggest the creation of and/or amendment to Township Ordinances that may come up due to a problem experienced by the Department. (N.T. 50; Employer Exhibit 1)

34. Mr. Mathesz was not involved in creating or implementing vacation or any other policies. He has no discretion regarding the manner in which employes take accrued vacation. Mr. Mathesz cannot deny a person vacation time unless it would compromise operational needs created by short staffing. Mr. Gehringer maintains records of vacation hours accrued and used, for scheduling purposes. A vacation slip goes to the Township Manager where she also approves and maintains records of vacation time. The Township Manager approves requested vacation leave. (N.T. 31, 109, 161)

35. One time, Mr. Mathesz denied vacation to an employe during the winter who wanted to leave town for a wedding. The Township manager reversed Mr. Mathesz's decision and allowed the employe to take leave for the wedding. Mr. Mathesz has no authority to stop an employe from taking leave, only the Township Manager has that authority. (N.T. 142-144, 161)

36. Mr. Mathesz has no discretion to ignore or suspend any policies. Mr. Mathesz does not interpret any Township policies. If an employe needs time off for a death in the family, the employe must seek approval from the Manager. Any policy suspension, deviation or modification must be approved by the Township Manager/Human Resources Director. Mr. Mathesz follows the Township attendance policy, but he has no authority to change or suspend the policy, and he has not enforced it. Mr. Mathesz had to make a recommendation to the Township Manager for her approval for an employe who needed time off for an emergency where the employe was not in compliance with the attendance policy. (N.T. 36, 57, 88, 100-101, 110, 117, 161; Employer Exhibit 5 p. 6)

37. Mr. Gehringer's vacation slips are approved by both Mr. Mathesz and Ms. Seiple. Mr. Mathesz has never denied Mr. Gehringer a vacation day due to the previously scheduled vacation day of either himself or other road crew employes. Mr. Mathesz and Mr. Gehringer have both been off at the same time in the past. (N.T. 41-42)

38. Mr. Mathesz has discussed wages with Ms. Seiple. One time, Mr. Mathesz informed Ms. Seiple that one of the seasonal employes, who had worked for the Township for eight years, received his pesticide certification and should receive a wage increase. Ms. Seiple agreed with Mr. Mathesz, and she obtained approval from the board of supervisors for a raise for that employe. Ms. Seiple does not interact with the Public Works Department employes and sometimes forgets that they are there. She relies on Mr. Mathesz to inform her of salary and employment matters in that Department. (N.T. 44-47, 141-142)

39. Ms. Seiple informs Mr. Mathesz and Mr. Gehringer when performance reviews are due. Mr. Mathesz conducts performance reviews of the Crew Leader, Tom Gehringer only. In conducting those reviews,

Mr. Mathesz determined whether he believed Mr. Gehringer was satisfying certain standards. Mr. Mathesz participates in the performance reviews of the crew members conducted by Mr. Gehringer. (N.T. 54-56, 87, 118-119, 120-122, 148; Employer Exhibits 2 & 5 at p. 11)

40. Mr. Mathesz oversees the Crew Leader's scheduling of special work including the installation and maintenance of highway signage. Any road crew employe can determine whether a sign needs to be replaced. Signs are in stock in the inventory. Mr. Mathesz works with Mr. Gehringer to determine the types of work and materials that are required. (N.T. 57-62; Employer Exhibit 1)

41. Mr. Mathesz and other employes suggest changes in working conditions to improve production and quality of work, equipment performance and efficiency of work, like any other crew member. (N.T. 62; Employer Exhibit 1)

42. Rose Wedde is appointed each year by the Township Board of Supervisors. Ms. Wedde credibly testified that she performs everything on her job description except for opening the mail. (N.T. 123-125; Employer Exhibit 3)

43. Ms. Wedde has her own office. Her office is locked when she is not occupying it. Ms. Wedde maintains confidential and financial information in her office including health insurance information, Township investment information, bank account information and revenue information. (N.T. 125, 135-136, 149-150, 166)

44. Ms. Wedde manages the Township's investments and pays the Township's bills. She gives monthly reports, including financial reports, to the Board of Supervisors. (N.T. 127, 151-152)

45. Ms. Wedde also maintains a safe in her office for the safekeeping of tax records. There is no cash in the safe. She also maintains locked file cabinets with payroll records and financial investment information. (N.T. 125-127)

46. Ms. Wedde oversees office clerical personnel and completes performance reviews for those employes. She has never disciplined an employe. (N.T. 127-128)

47. Ms. Wedde receives the same Township benefits as the office assistants. The Township Manager maintains all the Township personnel files. Ms. Wedde has no access to personnel files unless the Township Manager gives her access. (N.T. 129-131, 161)

48. Ms. Wedde is not involved in creating or developing any Township policies. She has no discretion to suspend, modify or ignore the policies. (N.T. 131, 161)

49. Ms. Wedde does not and cannot suspend layoff, recall, promote, discharge, assign, reward or discipline any employes. (N.T. 132-133, 163-164)

50. Ms. Wedde discusses the preliminary budget with the Township Manager and transfers the prior year's budget numbers to the current year's budget. The Township Manager gives Ms. Wedde the budget

numbers for the current year and Ms. Wedde modifies the numbers in the budget from the prior year to reflect the new numbers. (N.T. 133-135)

DISCUSSION

The Township contends that the positions of Public Works Coordinator and Township Secretary/Treasurer should be excluded from the proposed bargaining unit of nonprofessional employes at the Township. As the party seeking the exclusions, the Township has the burden of establishing the necessary facts to support the exclusions. In the Matter of the Employes of State System of Higher Education, 29 PPER ¶ 29234 (Final Order, 1998), aff'd, 737 A.2d 313 (Pa. Cmwlth. 1999). The policies of the Act seek to protect public employes by affording them the right to join a union and benefit from the fruits of collective bargaining. In the Matter of the Employes of Rome Township, 40 PPER 54 (Order Directing Submission of Eligibility List, 2009).

PUBLIC WORKS COORDINATOR

The Township contends that the Public Works Coordinator should be excluded from the unit as a management level employe. The Township is not arguing that the Coordinator is a manager because he is directly involved in the creation of policy or above a first-level statutory supervisor. (N.T. 173-175). Indeed, the inclusion of the Crew Leader in the bargaining unit was not contested or litigated in these proceedings, nor was his status as a statutory supervisor. The Township rather posits that the Coordinator is a manager because he implements multiple policies by exercising discretion to effectively utilize Township resources. (N.T. 174). The Township argues that the Coordinator implements "a whole host of handbook policies." (N.T. 174). The Coordinator, argues the Township, made recommendations to the Township Manager that were followed when the budget permitted. (N.T. 175). The Township also maintains that the Coordinator is involved in implementing employment policies, safety policies and financial policies, which involvement is not routine or clerical work. (N.T. 175).

Section 301(16) of the Act provides that a "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). The Board has held that a manager is either: an employe who directly determines policy, implements policy or is above the first-level of supervision. Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010). The only managerial issue regarding the Coordinator in this case is whether Mr. Mathesz responsibly directs the implementation of Township policy with managerial discretion, under the second prong of Section 301(16). The Township does not take issue with the first and third prongs.

The Board has held that employes who implement policy within the meaning of the statutory definition are the following type of individuals:

[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.

Horsham Township, 9 PPER ¶ 9157 (order and Notice of Election, 1978).

The evidence in this case shows that Mr. Mathesz follows and applies the policies contained in the Township Personnel Manual, which is expected of every employee. He does not and he cannot exercise any discretion to change, alter, interpret or modify any of the Township's policies, which is the hallmark of policy implementation. Therefore, his applications of the Township's policies are indeed clerical and routine in nature and he does not have a concrete role in exercising managerial discretion in fulfilling Township policies.

The Board and its examiners have long recognized a distinction between managerial discretion and technical discretion. Allegheny County, 47 PPER 4, 9 (Proposed Order of Unit Clarification, 2015). Mr. Mathesz absolutely utilizes discretion within his field of expertise in determining the manner in which road work, road maintenance, equipment maintenance, snow removal and lawn care is performed. However, he does not define problems within the operational aspects of the Township or implement solutions to those managerial problems. The problems he identifies and resolves are those within the purview of his technical expertise. An employee's decisions are not managerial if they are part of the routine discharge of his/her professional or technical duties, as here. Municipal Employees of the Borough of Slippery Rock v. PLRB, 14 A.3d 189 (Pa. Cmwlth. 2011).

The record shows that there is one manager in the Township and that is the Township Manager. All decisions, suspensions and alterations regarding policy go through Ms. Seiple. All budget and purchasing decisions over \$500 are made by Ms. Seiple. Mr. Mathesz plans road projects and directs his crew to perform their various seasonal duties. These duties are the same from year to year and Mr. Mathesz relies on his technical expertise to prioritize projects and to determine which road projects or seasonal duties require attention first.

Equipment maintenance schedules are dictated by use or equipment operation. One of the road crew employees maintains the Excel spreadsheet records tracking equipment maintenance. Mr. Mathesz can identify problems with equipment in the Public Works Department because he works with the equipment and has first-hand knowledge of operational failures and expenses. Although Mr. Mathesz may purchase smaller items

such as shovels, brooms and fasteners from local vendors with whom the Township has accounts, so may any road crew member. When Mr. Mathesz spoke to Ms. Seiple about the backhoe, he reported that the age of the backhoe resulted in frequent repairs to keep it operational and sought a new backhoe from Ms. Seiple. Mr. Mathesz interacted with equipment dealers and discussed specifications and pricing for a new backhoe and reported that information to Ms. Seiple. Mr. Mathesz communicated with the dealers because he has the professional expertise in discussing the technical details of heavy equipment, not Ms. Seiple. After reporting the backhoe information to Ms. Seiple, she determined that the backhoe could not be purchased until 2018 or 2020. Mr. Mathesz had no authority or discretion to purchase equipment without approval from Ms. Seiple. Specifically, his recommendation to purchase a new backhoe was rejected even after he obtained all the necessary specifications and pricing information and even though, in his opinion, the Township needed a new one.

Moreover, even if Mr. Mathesz had the authority to effectively recommend the purchase of new heavy equipment like a backhoe, the Board has held that, under PERA, an employe's authority to effectively recommend capital purchases is not, by itself, determinative of whether a Township employe is a manager. In the Matter of the Employes of East Mead Township, 47 PPER 46 (Order Directing Remand to the Examiner for Further Proceedings, 2015). In East Mead Township, 47 PPER 6 (Proposed Order of Dismissal, 2015), I concluded that the road master in that case was a management level employe because he effectively recommended the purchase of a new \$200,000 grader and a new \$110,000 truck. In East Mead, there was no township manager and the road master was in charge of the daily operations and daily decision making in the Township, to which the elected board of supervisors deferred. The board of supervisors deferred to the road master's choice of specifications on the equipment. The East Mead board of supervisors also deferred to the road master's decision to incur the expense of purchasing new expensive equipment, thereby conferring tremendous authority on the road master, considering the annual budget for East Mead was only \$400,000.

The Board reversed my determination and held that the discretion to identify the need for, and effectively recommend, capital purchases constituting a large percentage of the East Mead annual budget did not make a manager. The Board concluded that the road master was not a manager even though the East Mead road master liaised with the equipment dealers selecting township appropriate specifications and pricing, even though there was no township manager and even though the supervisors deferred to and adopted the decisions of the road master.

In reversing my conclusion in East Mead Township, the Board stated as follows:

However, the Road Master's recommendation of purchases of equipment, in and of itself, is insufficient to establish that the position is effectively involved in the implementation of Township policy regarding road repair and maintenance.

East Mead, 47 PPER 166. The East Mead Board further opined that, "[a]s in West Penn Township, [37 PPER 120 (Final Order, 2006)] and Liberty Borough, [39 PPER 55 (Order Directing Submission of Eligibility List,

2007)] the record reflects that the work of the Road Master in repairing the Township's roads and recommending the purchase of equipment is routine in nature and that the position is required to obtain approval for major purchases." East Mead, 47 PPER at 167.

Ms. Seiple, not Mr. Mathesz, prepares the budget. Although Mr. Mathesz sometimes identifies products, services and equipment needs to Ms. Seiple during budget preparation season, if asked, in some years, Mr. Mathesz is informed that there will be no changes to the Township budget. Mr. Mathesz has requested more funds from Ms. Seiple for certain line items in the past, but those requests have met with both rejection and approval. It's whatever Ms. Seiple decides, not Mr. Mathesz. Mr. Mathesz merely reports and identifies needs to the Manager who ultimately has the discretion to adjust the budget or to purchase needed products and services. In Berks County, 35 PPER 25 (Final Order, 2004), the held that "[w]e believe that the participation in the budgetary process must go beyond purchasing of equipment and must extend to the overall budget in order to substantiate a management level exclusion under PERA." Berks County, 35 PPER at 82. Mr. Mathesz clearly has no involvement at all in the overall Township budget.

Even though purchasing is not a managerial function under PERA, East Mead, supra, it is worth emphasizing here that Mr. Mathesz has no role in the annual purchasing of products necessary for the function of the Road Works Department. The Township purchases salt, gasoline and diesel fuel under a contract with the Commonwealth, which selects from bids submitted by the salt manufactures and fuel suppliers. The Township is obligated to use the suppliers chosen by the Commonwealth. The amount of salt, gas and diesel budgeted and purchased is pre-determined by the prior year's usage. Unless a new development is constructed within the Township, the same amounts of these products are purchased from year to year. Moreover, Mr. Mathesz is not part of the bidding process for Township road or bridge projects. The Township Manager selects contractors for road projects.

Although Mr. Mathesz and his road crew perform building maintenance and repairs on Township buildings, there is no set policy regarding building repair work. Mr. Mathesz must obtain approval from the Township Manager before he performs any building maintenance unless the repair involves a safety issue. All road crew employes, including Mr. Mathesz are expected to report possible property violations in the Township to the Code Enforcement Officer. The road crew and Mr. Mathesz do not patrol the Township looking for violations of the Township's ordinances or building code and they do not determine whether a condition constitutes a violation. With respect to working with the Zoning Officer, Mr. Mathesz's actual job duties conflict with his job description. In this regard, he does not interact with the Township's Zoning Officer or complete routine inspections of Township properties for code violations, as stated therein, and he has never suggested amendments to the Township's ordinances to address any observed or anticipated problems, as also stated therein.

The record further demonstrates Mr. Mathesz's lack of managerial discretion because he has no authority to adjust or modify the Township's vacation policies. He has no discretion regarding the manner in which road crew employes take accrued leave. One time when Mr. Mathesz denied an employe leave for operational needs, the Township

Manager reversed his decision and permitted the employe to take the leave. Consequently, the Township Manager has the managerial discretion and authority to make final determinations regarding leave approval and to make adjustments to the Township's vacation policy. Mr. Mathesz applies the Township attendance policy like any other employe. He has no authority to change or suspend the policy. One time, Mr. Mathesz had to obtain the approval of the Township Manager to suspend the attendance policy to give an employe leave for an emergency where the employe was not in compliance with the policy, demonstrating that only the Township Manger can suspend or change policies.

Mr. Mathesz has on occasion sought wage increases for various individual employes by reporting their wage rates to Ms. Seiple. On one of those occasions, Mr. Mathesz informed Ms. Seiple that an eight-year seasonal employe, who had recently earned a pesticide certification, should receive a wage increase. Ms. Seiple agreed that the employe should receive an increase and obtained approval for the wage increase from the board of supervisors. However, the act of seeking the Township Manager's support and approval for a wage increase on behalf of another employe does not constitute policy implementation. The employe could have sought out Ms. Seiple and had the same discussion with her about his wages. It was Ms. Seiple whose effective recommendation for the employe's increase to the board of supervisors caused the supervisors to approve the increase and the concomitant and necessary changes to the budget, not Mr. Mathesz. And as discussed, infra, Mr. Mathesz's suggestions regarding wage increases for employes do not constitute rewards within the meaning of Section 301(6).

Mr. Mathesz conducts a performance review of the Crew Leader, Tom Gehringer, and he attends the performance reviews conducted by Mr. Gehringer of the other crew members. Mr. Gehringer and Mr. Mathesz complete the performance review process at the request of Ms. Seiple every year. The Township maintains that, in the act of completing the reviews, Mr. Mathesz is implementing policy by determining whether his Crew Leader is fulfilling the Township's employment goals for efficient, productive work with the proper attitude and in compliance with Township policies. However, evaluating whether, and the extent to which, the Crew Leader is effectively satisfying his duties and obligations is no different than determining whether an employe is in compliance with the attendance policy. The Coordinator and the Crew Leader are comparing employe behavior and work to Township standards and policies and concluding whether or not they are in compliance and to what extent. The record does not show that either the Coordinator or the Crew Leader have changed or suspended any of the Township's policies or standards in the performance review process, as required by Horsham, supra. Any employe can determine whether another employe is complying with Township standards and policies. The Coordinator and the Crew Leader are merely responsible for recording who is complying with policies and performing to expected levels.

The Township additionally argues that the Coordinator should be excluded as a statutory supervisor. The evidence shows, posits the Township, that the Coordinator was involved in terminations and hiring and whether an employe could take paid leave. (N.T. 175). The Township argues that the Coordinator is a supervisor because a regular part of his job is to make sure that schedules are being followed and policies are being met by touring around and looking at his troops.

The Coordinator addresses problems with his employes by coaching them to correct behavior.

Section 301(6) of PERA provides as follows:

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes 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). Section 604(5) of PERA provides that "[i]n determining supervisory status the [B]oard may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. 1101.604(5); West Perry Sch. Dist., supra. In determining whether an employe or employes should be deprived of the rights, benefits and privileges provided by PERA, the Board may "consider such factors as frequency, duration and importance of the various supervisory duties performed." West Perry Sch. Dist., 752 A.2d at 465. As Hearing Examiner Wallace aptly noted:

The Board will find an employe to be a supervisor if the employe actually exercises authority set forth in Section 301(6) of the Act and if the employe's exercise of such authority carries with it the power to reward or sanction employes. Belle Vernon Area School District, 21 PPER ¶ 21165 (Final Order, 1990). The Board will not find an employe to be a supervisor if the employe only exercises supervisory authority sporadically. Pennsylvania State University, 19 PPER ¶ 19156 (Final Order, 1989). Nor will the Board find an employe to be a supervisor if the employe's exercise of supervisory authority is as a substitute for his or her own supervisor. Monroe County, 18 PPER ¶ 18002 (Final Order, 1986). Nor will the Board find an employe to be a supervisor if the employe's recommendations are not given controlling weight. Cf. City of Bethlehem, 19 PPER ¶ 19205 (Final Order, 1988).

In The Matter of the Employes of Philadelphia Housing Authority, 22 PPER ¶ 22082 (Order Directing Submission of Eligibility List, 1991).

This record demonstrates that the Coordinator is a lead worker, and it lacks sufficient evidence to conclude that the Coordinator is a statutory supervisor. The Coordinator does perform administrative duties involving planning, scheduling, emailing and phoning. He plans and schedules road projects, winterization of equipment and preparation for plowing. He also schedules pothole and drainage repairs, lawn maintenance and equipment maintenance. He also assigns work and calls upon the road crew to plow roads in the winter, during and after hours. He has suggested to the Township Manager that the employes participate

in certain training. However, scheduling of work, hours and training are not functions that are recognized by Section 301(6) as supervisory.

The record also shows that Mr. Mathesz and Mr. Gehringer, on behalf of the other road crew employees, both wrote to the Township Manager explaining that one of the employees' work was consistently subpar, thereby frustrating the entire road crew team. The Township Manager and not Mr. Mathesz effectively recommended the employee's termination to the board of supervisors who voted to terminate the employee. Only the Board of Supervisors can hire and terminate employees. The effective recommendations for hiring and terminating employees in this Township come from the Township Manager and not Mr. Mathesz. The same holds true for the raises that Public Works employees receive. Mr. Mathesz does not have the ability or authority to reward or sanction. Any raises received by employees came from the board of supervisor's adoption and approval of the effective recommendations of the Township Manager. The board of supervisors adopt Ms. Seiple's recommendations and not Mr. Mathesz's.

Moreover, the Act requires the Board and its examiners to consider the extent to which an employee performs supervisory functions. To remove a position from a bargaining unit as a statutory supervisor, the person performing the duties of that positions must perform supervisory functions a majority of the time. In the Matter of the Employees of Allegheny-Clarion Valley School District, 41 PPER 21 (Proposed Order of Unit Clarification, 2010); In the Matter of the Employees of Northampton County, 36 PPER 32 (Order Directing Submission of Eligibility List, 2005). A person performing supervisory functions sporadically is merely a lead worker. To the extent that Mr. Mathesz assigns work and performs administrative duties, he does not perform those duties a majority of the time. Directing work assignments alone is insufficient to deprive an employee of the protections of the Act in satisfaction of the statutory test. Mr. Mathesz performs road crew work and equipment operations alongside his fellow road crew employees at least half the time and a majority of the time during winter months. There is no division of labor in the Public Works Department. Also, Mr. Mathesz had never suspended any employees nor does he have the power to suspend employees. He has no authority to layoff, recall, promote or terminate employees. Accordingly, Mr. Mathesz, the Coordinator, is not a statutory supervisor within the meaning of Section 301(6) of PERA.

I also conclude that Mr. Mathesz has a community of interest with the remaining nonprofessional employees in the proposed bargaining unit at the Township. Mr. Mathesz works in the same environment and under the same working conditions as the other Township employees. He receives the same health and fringe benefits as the other nonprofessional employees at the Township. He receives the same employee contribution retirement account benefits as the other employees. He also accrues paid vacation time like the other employees.

SECRETARY/TREASURER

The Township argues that the Secretary/Treasurer cannot be included in the bargaining unit as a matter of law within the meaning of West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1994). (N.T. 173). I agree. In West Hanover Township, the Commonwealth Court held that

the appointed secretary of a second class township must be excluded from the bargaining unit. The Court opined as follows:

One need not await the occurrence of actual experience in collective bargaining to conclude that placing a township officer, who functions as its official secretary, in the bargaining unit would present an impossible situation disadvantageous to all involved.

West Hanover Township, 646 A.2d at 632. The Court further opined:

The township secretary, as the official custodian of **all** files of the township, is obviously essential to performance of the bargaining function on behalf of the employer municipality. If the manager must exclude the township secretary, who is also his administrative assistant, from participation on his side of the bargaining table—as he would have to do if the township secretary is a member of the bargaining unit—the manager would be deprived of the assistance of the township officer most allied with him in the bargaining process.

Therefore, including the township secretary in the bargaining unit results in a definite conflict of interest, rather than a community of interest, with the employees who make up the larger component of the bargaining unit.

West Hanover Township, 646 A.2d at 633 (emphasis original).

Rose Wedde is appointed each year by the Township Board of Supervisors. Ms. Wedde has her own office. Her office is locked when she is not occupying it. Ms. Wedde maintains confidential and financial information in her office including health insurance information, Township investment information, bank account information and revenue information. She manages the Township's investments and pays the Township's bills. She gives monthly reports, including financial reports, to the Board of Supervisors. Ms. Wedde also maintains a safe in her office, for the safekeeping of tax records, and locked file cabinets with payroll records and financial investment information. Ms. Wedde oversees office clerical personnel and completes performance reviews for those employees. Ms. Wedde discusses the preliminary budget with the Township Manager and transfers the prior year's budget numbers to the current year's budget. The Township Manager gives Ms. Wedde the budget numbers for the current year and Ms. Wedde modifies the numbers in the budget from the prior year to reflect the new numbers. Therefore, as an annually appointed officer of the board of supervisors of a second class township under Section 504 of the Second Class Township Code and as the official custodian of all files, the position of Township Secretary/Treasurer, currently held by Ms. Wedde, is properly excluded from the proposed bargaining unit of nonprofessional employes, within the meaning of West Hanover Township, supra.

Accordingly, the position of Coordinator of the Public Works Department is not a management level or supervisory position and is properly included in the proposed bargaining unit. The position of Township Secretary/Treasurer is properly excluded from the proposed bargaining unit.

CONCLUSIONS

The hearing 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 employes in the proposed bargaining unit of nonprofessional employes at the Township, including the Coordinator of Public Works, share an identifiable community of interest.
5. The position of Coordinator of the Public Works Department is not a management level position.
6. The position of Coordinator of the Public Works Department is not a supervisory position.
7. The position of Coordinator of the Public Works Department is properly included in the proposed bargaining unit and Mr. Mathesz is eligible to vote in the election.
8. The position of Township Secretary/Treasurer is properly excluded from the proposed bargaining unit and is ineligible to vote in the election.
9. 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 non-professional employes of East Allen Township, Pennsylvania, including the Public Works Coordinator, and excluding the Township Secretary/Treasurer, management level employes, 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 Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall within ten days of the date hereof submit to the Board and the other parties an 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 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 twenty-ninth day of September, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner