

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-16-333-E
 :
 :
 :
 CUMBERLAND TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On November 21, 2016, Teamsters, Local 776 (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation, pursuant to the Public Employe Relations Act (Act or PERA), alleging that thirty percent or more of the professional and nonprofessional employes in the Road Maintenance Department (Road Department) and secretaries of Cumberland Township (Township) wish to be exclusively represented by the Union.¹ On December 7, 2016, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Wednesday, February 15, 2017, in Harrisburg. 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. By agreement of the parties, both parties filed their post-hearing briefs on May 11, 2017.

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. 6)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. The parties stipulated and agreed that the employes in the proposed bargaining unit share an identifiable community of interest. (N.T. 6)
4. Benjamin Thomas is the Township Manager. The Township's Secretary-Treasurer is Carol Merryman. The Township's Planning Secretary-Receptionist is Michele Long. The current Road Superintendent is Chris Walters. The former Road Superintendent is Thomas Shealer. The terms "Superintendent of Roads" and Roadmaster" are used interchangeably. (N.T. 11-16, 42-43, 46, 72-73, 121-122)
5. The Roadmaster oversees operations in the Road Department. He assigns work to the road crew with the Road Foreman, such as filling potholes, trimming brush and replacing signage, and he prioritizes the work. The Roadmaster reports directly to the Township Manager. The Roadmaster also works alongside the road crew employes in the field at least 50% of the time. He plows snow, trims trees, repairs drainage and storm sewer problems and sometimes mows grass. (N.T. 21-23, 63, 83-84, 94, 121-122, 131-132)
6. The Road Department is comprised of five employes. Three crew members report to the Road Foreman who reports to the Roadmaster. The Roadmaster was involved in developing the job descriptions for road crew positions. (N.T. 19, 92)
7. The Roadmaster has recommended discipline of a road crew employe to the Township Manager. The Township Manager followed the Roadmaster's recommendation. The Roadmaster can verbally warn or correct a road crew employe without approval from the Township Manager, but beyond telling an employe to wear a safety vest or glasses or wear a seatbelt, he seeks advice on discipline from the Township Manager. When the Roadmaster reported to the Township Manager that a road crew employe was taking Township material

¹By letter dated January 12, 2017, the Union amended its petition to include only nonprofessional employes.

for his personal use, the Township's legal counsel, the Township Manager and the Roadmaster all equally recommended suspension and the full Township Board of Supervisors approved. The Roadmaster did not determine the length of the employe's suspension. When the employe returned, he committed the same infraction and the Roadmaster recommended termination and his recommendation was followed. (N.T. 23, 84-86, 88-89, 129)

8. There have been two terminations from the Road Department determined and issued by the Township Board of Supervisors, which followed the recommendations of the Roadmaster in both cases. (N.T. 110)

9. The Roadmaster is involved in reviewing applications for new hires for road crew, and he selects which candidates will receive an interview. There is a team interview process which includes the Roadmaster, the Personnel Committee and the Township Manager. The Roadmaster makes a recommendation after interviews and his recommendation is most likely followed. The Township Manager and the Board of Supervisors have followed the Roadmaster's recommendation to promote an employe to replace the former Roadmaster. (N.T. 24-26, 89, 111)

10. The Township Manager leads a team for developing a proposed budget. The team is comprised of department heads, i.e., the Police Chief (or Lieutenant), the Roadmaster and the Secretary-Treasurer. The Roadmaster attends Finance Committee meetings and reviews line items involving road maintenance. The Roadmaster estimates the costs for foreseeable and projected road maintenance matters and submits his estimates to the manager's team. The Roadmaster averages the cost of road salt for the previous 3-5 years and estimates the cost of road salt for the upcoming budget year. The Roadmaster, Township Manager and Secretary Treasurer work together on formulating recommendations for line items in the general budget, including identifying capital reserves for buying new equipment. The Secretary-Treasurer includes the proposed costs into a written budget proposal. The Roadmaster's budget recommendations have been modified and rejected as presented. (N.T. 25-26, 64-66, 81, 93-94, 139)

11. The Finance Committee, like the other Township Committees, is comprised of two elected supervisors. The Roadmaster will attend public meetings of the Township Board of Supervisors. During those meetings, he presents road maintenance needs and costs to the Township Board and apprises them of the funds remaining in the budget. The Roadmaster's recommendations are generally followed. (N.T. 25-26, 104)

12. The Roadmaster reviews payroll timesheets sheets biweekly and approves them with his signature. The timesheets record an employe's hours worked and the projects on which he worked in the biweekly period. The Roadmaster submits the approved timesheets to the Secretary-Treasurer or the Planning Secretary-Receptionist for payroll. (N.T. 26-27)

13. The Roadmaster approves vacation, sick and bereavement leave for road crew employes. He can approve leave for an employe during snow season when everyone is needed. (N.T. 27, 63-64, 75-76, 101)

14. The Roadmaster completes purchase orders for items costing in excess of \$100. The purchase orders are attached to invoices for auditing purposes. Mr. Walter purchases small items such as clothing, shovels or a load of gravel without the approval of the Township Manager. The Township Manager must approve larger purchases exceeding \$100 or more, and then the Highway and Finance Committees must further approve such purchases, after which the full Board of Supervisors must also approve the purchase.² Mr. Walter purchases road signs routinely and selects the vendors for the signage. (N.T. 45, 68-70, 78, 102-104, 122-123)

15. The Roadmaster routinely and annually purchases certain necessary items, such as road cinder or salt, without discretion. Mr. Walter obtains rubber-stamp approval

² I credit Mr. Walter's testimony that approval is necessary for purchases exceeding \$100 over the Township Manger's testimony on this point that his approval is only required for \$500 or more.

from the Township Manager to purchase road cinder or salt and then he completes the purchase order that will be attached to the invoice and other paperwork. (N.T. 46)

16. Mr. Walter researches costs and obtains quotes for atypical purchases and presents the cost information to the Township Manager and the justification for the purchase. The Township Manager will then determine the budget line item with enough money left and to which the purchase can be debited and determines whether the purchase is within the approved budget. The Township Manager may or may not approve the purchase depending on cost and the budget. (N.T. 47-48, 80, 123)

17. The Township has a list of established vendors that are pre-approved by the Commonwealth of Pennsylvania, Department of General Services for items such as replacement truck tires. In non-emergency situations, Mr. Walter consults with the Township Manger to replace truck tires after obtaining price quotes from the vendors. The Township Manager determines whether the purchase can be included in a line item contained in the approved budget. The Township Manager determines whether the purchase price requires approval from the Finance Committee and the full Township Board of Supervisors. (N.T. 47-48, 78)

18. Mr. Walter researched options for and recommended the purchase of a new dump truck. The Township Manager and Mr. Walter reviewed the options with the Finance Committee and the Highway Committee, including finance, dealer/vendor and equipment options. Both committees will review the two options that Mr. Walter presented and will forward his recommendation and his favored option to the full Township Board of Supervisors. (N.T. 48-49, 67, 81-82, 142-143)

19. Mr. Walter is in the process of obtaining price quotes on a new guard rail. He has obtained a quote of over \$10,000. The guardrail matter will be presented to the full Township Board of Supervisors for final approval. (N.T. 51, 135)

20. The Roadmaster determines whether the Township Road Department crew will perform the work on a project or whether a vendor will perform the work. The guardrail project will be done by a vendor. (N.T. 51)

21. Job applications for positions in the Road Department are reviewed by the Roadmaster, the Road Foreman, the Township Manager and the Personnel Committee from which 3-4 are chosen for interviews. After the first round of interviews, the Roadmaster recommends to the Township Manager and Personnel Committee which candidates to recall for a second interview, after which the Roadmaster makes a recommendation to the Township Manager. The Township Manager then relays the recommendation to the full Board of Supervisors. The Township Board of Supervisors determines which candidate to hire based on the recommendation of the Township Manager. (N.T. 53-54, 62, 125-127, 146-147)

22. Mr. Walter consulted with the Township Manager regarding the possible discipline of an employe in the Road Department. The Township Manager ultimately decided to create a written record of a consultation with the employe. Written discipline must be approved by the Township Manager. (N.T. 56, 108)

23. Weather conditions require employes in the Road Department to work overtime when it snows or floods or there are road obstructions. The Road Department crew does not need approval to work overtime for snow removal or other safety related overtime. The Roadmaster removes debris and fallen limbs from Township roads on his own without approval from the Township Manager. Mr. Walter consults with the Township Manager for his approval to repair damage that will require additional money. (N.T. 57-60, 133)

24. The former Roadmaster performed road crew employe evaluations with a written evaluation sheet. Mr. Walter, the current Roadmaster, has done one six-month employe evaluation for a new hire completing his probationary period. Mr. Walter has not done any other performance evaluations in one-and-one-half years. (N.T. 84, 128)

25. The Planning Secretary-Receptionist reports to both the Secretary-Treasurer and the Township Manager. The Planning Secretary-Receptionist answers the phone calls

that come into the Township. She is the first person a member of the public sees when walking into the Township Building. She works in an open area. There are three offices on the right of the open area and one office situated to the back and left. Of the three offices on the right, the first office is the Secretary-Treasurer's; the second office is the Township Manager's; and the third office is leased to the Cumberland Township Sewer Authority for its administrative secretary. The office in the back to the left belongs to the Township's Zoning/Building Code Officer. (N.T. 29-30)

26. The Planning Secretary-Receptionist does correspondence for the Township Manager and the Zoning/Building Code Officer but those duties do not consume much of her time. She monitors land development projects, active subdivision plans and places that information into agendas for the Township Planning Commission meetings. She provides similar material to the Township Zoning/Building Code Officer and the Township Manager. (N.T. 30-32)

27. The Planning Secretary-Receptionist provides applications to Township residents seeking to alter or develop their property and refers those residents to the Township Zoning/Building Code Officer regarding Township zoning and building ordinances. She also processes completed applications by collecting fees, ensuring Zoning/Building Code Officer approval and returning approved applications to the applicants. (N.T. 32-33)

28. The Planning Secretary-Receptionist also distributes occupancy certificates that have been signed by the Township Zoning/Building Code Officer. She works with the Township's law firm to ensure that the Township is properly adhering to its own zoning and other ordinances. (N.T. 34-356)

29. The Planning Secretary-Receptionist receives, logs and distributes the mail in the absence of the Secretary-Treasurer. She receives payments to the Sewer Authority and ensures proper documentation and payment credit before forwarding the payments to the Sewer Authority office. She also receives payments made to the Township for which she generates an Excel spreadsheet for the Secretary-Treasurer. (N.T. 36)

30. The Planning Secretary-Receptionist and the Secretary-Treasurer alternate the months that they perform payroll duties. The Secretary-Treasurer and the Planning Secretary-Receptionist compute and determine throughout the year the amount of pay per each hourly employe based on the approved timesheets submitted by the department heads. (N.T. 37-41)

31. The Planning Secretary-Receptionist posts job vacancies on the Township website. The Secretary-Treasurer advertises job vacancies in the newspaper. (N.T. 52, 125-126)

DISCUSSION

The Township seeks to exclude the positions of Roadmaster, as either a management level employe or a supervisor, and the position of Planning Secretary-Receptionist, as confidential. (N.T. 7; Township's Post-hearing Brief at 2). 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). This burden is high because 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).

1. Roadmaster

The Township argues that the Roadmaster's "management duties include direct oversight and control over the day-to-day assignment of work within the [D]epartment; a substantial role in the hiring, promotion, and discipline of employees; and significant input into developing and administering the Department's budget." (Township's Post-

hearing Brief at 6). The Township further maintains that the Roadmaster directly oversees daily operations of the Road Department by identifying and prioritizing the work that needs to be performed on a daily basis. (Township's Post-hearing Brief at 7). Operational oversight is evidenced by the Roadmaster's development of job descriptions and the completion of performance evaluations to determine whether they are satisfying the expectations and duties listed in those descriptions. (Township's Post-hearing Brief at 8). Additionally, the Roadmaster oversees the assignment of weather related overtime and lets the manager know when the road crew will be utilizing overtime for foreseeable projects. (Township's Post-hearing Brief at 7). The Township further contends that the Roadmaster's role in interviewing and hiring new employees supports the conclusion that the Roadmaster is a management-level employee, as does the fact that he is "heavily involved with developing the Road Maintenance Department's budget," every month. (Township's Post-hearing Brief at 8-9).

Section 301(16) of the Act provides that a "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). A manager is either an employee 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). An employee is considered managerial if his or her duties satisfy any one part of the test. **Municipal Employees of the Borough of Slippery Rock v. PLRB**, 14 A.3d 189 (Pa. Cmwlth. 2011).

In this case, the record does not show that the Roadmaster develops policies for the Township. Indeed, personnel policies have been modified and developed as a communal effort with equal input from all employees and then recommended to the Board of Supervisors by the Township Manager. Also, the record does not support a finding that the Roadmaster is above the first level of supervision. The Board has held that employees 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 insure 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, 327 (Order and Notice of Election, 1978) (emphasis added). Significantly, the **Slippery Rock** Court emphasized that "in order to be considered a management level employee, the employee must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found." **Slippery Rock**, 14 A.3d at 192. In **School District of Philadelphia v. PLRB**, 719 A.2d 835 (Pa. Cmwlth. 1998), the Commonwealth Court agreed with the Board's conclusion that the position of Coordinator, Teaching and Learning Network was not managerial. Both the Board and the Court concluded that, although the duties included ensuring that the school district complied with federal, state and local court mandates and federal regulations, the record did not indicate that the Coordinators had any responsibility to take any action where non-compliance was found. **Id.** at 837-838. Moreover, 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). An employee's decisions are not managerial if they are part of the routine discharge of his/her professional or technical duties, as here. **Slippery Rock v. PLRB, supra**.

The evidence in this case shows that the Roadmaster does not implement policy within the meaning of **Horsham, supra; Slippery Rock, supra; and School District of**

Philadelphia, supra, and, therefore, is not a management level employe. Although the Roadmaster frequently monitors compliance with Township safety, employment, road repair and road maintenance policies, the record does not establish that the Roadmaster has created, changed, or suspended Township policies or procedures. In this regard, the Roadmaster follows policies like any other employe in the Township. The Roadmaster's prioritizing of assignments and dispatching the road crew during emergencies is a matter of technical discretion and expertise and not managerial discretion. The case law in this area requires a management level employe to have exercised independent judgement and leadership authority in redirecting from the routine orbit of operations by issuing directives that exceed existing policy (through modification, suspension or initiation) to address a unique set of circumstances thereby ensuring and maintaining the effective operation of the employer's enterprise. The evidence in this case fails to demonstrate that the Roadmaster has ever taken such action or initiative or that he possesses the authority to do so.

The Roadmaster's involvement in the budget shows that he is one of several people at the Township who collaborate on developing a budget and that the budget development is routine in nature. The Roadmaster reviews the cost of past routine expenditures (such as the necessary annual purchases of cinder and salt) and averages those costs over the past few years from which he offers a line item amount for the purchase. He also selects vendors from a pre-approved list from the Department of General Services and exercises little, if any, discretion in choosing a vendor where such choice is dictated by price. The Roadmaster also reviews the foreseeable upcoming projects in the Township and offers a cost estimate for those projects. It is the Roadmaster's technical skill and expertise in construction, road repair and large equipment operation that qualifies him to foresee and price quote necessary maintenance work in the Township for any given budget year and not managerial discretion.

There is a collaborative team that has input on budget development and each team member is a cog in the cooperative, codependent parts of modifying and developing the budget. Moreover, the budget must be reviewed and approved at three different groups of personnel. The Township Manager, Township Secretary-Treasurer and the Roadmaster collaborate on the budget first. Then the Highway Committee must review and modify the budget. Then the Finance Committee reviews and modifies the budget. Then the full Board of Supervisors reviews and approves the recommended budget. Although the Roadmaster makes recommendations that are often followed in budget development, his recommendation is one factor among the input from several other Township employes and elected committee members. Therefore, the allocation of Township money for road maintenance is the result of the recommendation of many individuals working collaboratively, and not the Roadmaster. Furthermore, this Board has held that a Roadmaster's adopted recommendation to allocate substantial amounts of financial resources for the purchase of road department equipment and other items, such as trucks, does not support the conclusion that the roadmaster 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).

The Roadmaster's involvement in developing job descriptions and completing performance evaluations also fails to support a finding that the Roadmaster is a manager. Compiling a job description for a position merely involves the routine collection and distillation of observed duties of the road crew employes. The task of compiling a job description is routine and clerical in nature and not managerial. The completion of written performance evaluations is a policy imposed on the Roadmaster by the Township and involves assessing whether employes meet expectations against the job descriptions, as approved by the Township. It does not involve managerial discretion of implementing or changing policy. Indeed, completing the performance reviews is a matter of following policy and routine, and the act does not support a finding of managerial status.

The Township additionally argues that the Roadmaster should be excluded as a statutory supervisor. (Township's Post-hearing Brief at 10-11). The Township maintains that "the Roadmaster has a great deal of control over the employees of the Road Maintenance Department." (Township's Post-hearing Brief at 11). Although the Roadmaster occasionally performs work alongside his road crew employes, argues the Township, "he is far more often performing the very type of first-level supervisory functions that are

contemplated by PERA—namely effectively recommending the hiring, promotion, discipline, and discharge of employees; directing the work of the employees; and exercising independent judgment with budgetary matters.” (Township’s Post-hearing Brief at 11).³

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 employees 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) (emphasis added); **West Perry School District v. PLRB**, 752 A.2d 461, 465 (Pa. Cmwlth. 2000). In determining whether an employee or employees 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. Also, a mere job title is insufficient to overcome the evaluation and balancing of actual job duties. **Id.** As Hearing Examiner Wallace aptly noted:

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

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

Additionally, in **Danville Area School District**, 8 PPER 195 (Order and Notice of Election), the Board explained the meaning of the statutory requirement that a supervisor responsibly directs his subordinate employees and opined as follows:

“[D]irect” infer[s] authority to order employees as to the nature, quality and quantity of their work. “Responsibly” infers authority to grant reward or sanction should such orders not be followed, or, to a substantial degree, to be able to effectively recommend such reward or sanction. The right to order the work force and the ability to effect reward or sanction are what distinguish a “supervisor” from a “task leader.”

Danville, 8 PPER at 196. In **Findlay Township Water Authority**, 21 PPER ¶ 21130 (Final Order, 1990), the Board emphasized that “[t]he hallmark of supervisory status under [PERA] is the ability to effect reward or sanction.” **Id.** at 324.

On this record, the Roadmaster does indeed perform the functions of a statutory supervisor. He is involved in the hiring process, and he has recommended serious

³ The Township asserts in its brief that I should consider the duties performed by the previous Roadmaster. I agree, and I have indeed considered those duties and made findings that included the job duties of the prior Roadmaster, Thomas Shealer.

discipline, which recommendation was followed. The previous Roadmaster's recommendation to promote Mr. Walter to the position of Roadmaster to replace him was also followed. The Roadmaster, with the help of the Road Foreman, also prioritizes road projects and assigns work. Also, the former Roadmaster regularly completed written performance evaluations and Mr. Walter has completed one in the past year and a half for an employee completing his six-month probationary period, which can affect the future job security and rewards or sanctions of the employees. In this context, however, the record lacks evidence indicating that the Roadmaster directly recommends rewarding or sanctioning employees who exceed, meet, or fail to meet expectations.

Contrary to the Township's argument, however, the record does not support a finding that the Roadmaster is "far more" performing the functions of a statutory supervisor than he is performing the same duties as his road crew employees working alongside of them. The frequency with which and the extent to which the Roadmaster assigns work, promotes, hires or disciplines employees is very infrequent in this Township. Although the Roadmaster testified that he performs "administrative duties" at least 50% of the time, "administrative duties" are not statutory supervisor duties. In this regard, the record does establish that the Roadmaster performs statutory supervisory duties a very small percentage of the time. Accordingly, the Roadmaster is not a statutory supervisor such that he should be deprived of the rights under the Act.

1. Planning Secretary-Receptionist

The Township claims that the Planning Secretary-Receptionist should be excluded from the proposed bargaining unit because she is a confidential employee. (Township's Post-hearing Brief at 4). The Township argues that the Planning Secretary-Receptionist has access to private employee information because she performs payroll duties 50% of the year, which includes access to employees' personal and tax information, hours of work and paid time off for each employee. (Township's Post-hearing Brief at 4). The Planning Secretary-Receptionist, contends the Township, prepares agendas for Planning Commission meetings, prepares Zoning Hearing Board cases and works closely with the Township's engineer on Planning Commission matters. (Township's Post-hearing Brief at 4). She also assists the Township Manager and the Secretary-Treasurer with administrative tasks and letter writing and assists the Police Department with clerical duties. (Township's Post-hearing Brief at 4-5). The Planning Secretary-Receptionist, maintains the Township, has access to information not available to the general public and works in a close continuing relationship with the Township Manager who plays an integral role in collective bargaining negotiations. (Township's Post-hearing Brief at 5).

Section 301(13) of PERA provides the statutory requirements for removing a confidential employee from the bargaining unit as follows:

"Confidential employee" shall mean any employee who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

43 P.S. § 1101.301(13).

In defining the nature of Section 301(13)(i), the Board has required that the employee in question be privy to the employer's bargaining strategy. In this regard, the Board has opined as follows:

[A]n employee does not have access to confidential collective bargaining information when she simply takes basic data and compiles reports which may eventually be used in negotiations as the position of the employer when the person who compiles the basic data has no information which would be considered confidential as a result of that compilation. It is only when an employee is privy to relevant determinations of the employer's policy that that person may be found to be confidential. The collective bargaining information must be of such definite nature that the union would know of the employer's plans if the information is revealed.

Bangor Area Sch. Dist., 9 PPER ¶ 9295, 533 (Nisi Decision and Order, 1978). In **Bangor**, the payroll clerk prepared all aspects of employe payroll, insurance benefits, accumulated medical insurance price quotes and wage data. The **Bangor** Board concluded that the payroll clerk was not confidential because she was not privy to the employer's policy determinations in the field of labor relations. Also, the Bookkeeper in **Bangor**, who was responsible for generating reports and accumulating cost data and who did not have access to the employer's policies in labor relations, was also not confidential. **Id.**

In **Columbia/Snyder/Montour/Union Mental Health/Mental Retardation Program v. PLRB**, 383 A.2d 546 (Pa. Cmwlth. 1978), the proposed confidential employe arguably had access to and knowledge of budgets, allocations of funds, salaries and memoranda concerning proposed salary increases before being made known to the union. The Commonwealth Court agreed with the Board that the employe was not confidential. The **Columbia/Snyder** Court placed paramount importance on the fact that, even in the employe's new position in the fiscal department, "she would have access to no information relevant to collective bargaining which could be considered outside the 'public record.'" **Id.** at 551. Similarly, in **Tunkhannock Area School District**, 29 PPER ¶ 29023 (Final Order, 1997), the Board held that an accounting supervisor who priced fringe benefit proposals was not privy to bargaining strategies of a definite nature so as to seriously impair the employer's bargaining position if such information was revealed to the union, within the narrow construction of Section 301(13), as mandated by the Supreme Court in **Altoona, supra**. Also, in **Western Beaver County School District**, 37 PPER 53 (Proposed Order of Unit Clarification, 2006), the examiner held that the payroll clerk was not confidential, even though the clerk had access to payroll, grievances, personal information and had provided information for collective bargaining and budget preparation, because the payroll clerk was not privy to the employer's bargaining strategy.

The record in this case shows that the Planning Secretary-Receptionist has access to employe payroll information, residents' payments to the Township and the Sewer Authority, applications for building permits, planning commission and zoning hearing board matters as well as other public and non-public data. However, the record is devoid of any evidence showing that the Planning Secretary-Receptionist has even a tenuous connection to the bargaining process, and she certainly is not privy to collective bargaining strategies. In **PLRB v. Altoona Area School District**, 480 Pa. 148, 389 A.2d 553 (1978), our Supreme Court held that "a minimal connection with collective bargaining would distort the legislative intent to accord employes in the public sector the right to organize and have the benefit of union representation." **Id.** at 157, 389 A.2d at 558. Accordingly, the Planning Secretary-Receptionist is not confidential within the meaning of Section 301(13) (i).

In **North Hills Sch. Dist. v. PLRB**, 762 A.2d 1153 (Pa. Cmwlth. 2000), **Petition for allowance of appeal denied**, 566 Pa. 653, 781 A.2d 150 (2001), the Commonwealth Court interpreted Section 301(13) (ii) and opined as follows:

PERA defines two distinct categories of confidential employees. Section 301(13)(ii) of the PERA, which applies here, defines a confidential employee in broad terms as "any employe who works...in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

....

[S]ection 301(13) (ii) of the PERA does not even mention the content of the information accessible to the employe; rather, in that second category of confidential employe, the focus is upon the level of association that the public officer or representative has with the employer's collective bargaining process.

....

Where an employe has a close continuing relationship with such involved management personnel, the PERA appears to assume that that employe would

have access to confidential information, so that their "inclusion in the bargaining unit would seriously impair the public employer's ability to bargain on fair and equal footing with the union." [PLRB v. Altoona Area Sch. Dist., 480 Pa. 148, 389 A.2d 553 (1978)].

Id. at 1158-1159 (emphasis removed).

In **Neshannock Educational Support Professionals Association v. PLRB**, 22 A.3d 1103 (Pa. Cmwlth. 2011), The Commonwealth Court relied on the Supreme Court's decision in **Altoona, supra**, and its own prior decisions in **North Hills, supra**, and **Gallas v. PLRB**, 636 A.2d 253 (Pa. Cmwlth. 1993) and emphasized that "the employes that were found to have a 'close continuing relationship' under Section 301(13) (ii) worked directly for members of the bargaining team and/or performed work related to collective bargaining on a regular basis." **Neshannock**, 22 A.3d at 1107. However, contrary to the assertion made by the Township in its Post-hearing Brief, the record in this case is again devoid of sufficient evidence tending to show that the Planning Secretary-Receptionist works directly for a member of the Township's bargaining team or that she regularly performs work related to collective bargaining. The record does not indicate that the Township Manager or the Township Secretary-Treasurer are on the Township's bargaining team or that they negotiate on behalf of the Township instead of the elected Supervisors or the Township's solicitor. Although the Township asserts in its Post-Hearing Brief that the Township Manager negotiates with the police union, there is insufficient evidence that the Manager is on the bargaining team or that the Township Planning Secretary-Receptionist has actually worked for the Township Manager preparing collective bargaining documents and reviewing or seeing Township bargaining strategies and proposals. Therefore, the Planning Secretary-Receptionist is not confidential under Section 301(13) (ii).

Accordingly, the position of Roadmaster is not a management level or supervisory position and is properly **included** in the proposed bargaining unit. The position of Planning Secretary-Receptionist is not a confidential position and is 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 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 Roadmaster and the Planning Secretary-Receptionist, share an identifiable community of interest.
5. The position of Roadmaster is not a management level position or a supervisory position and is properly **included** in the proposed bargaining unit.
6. The position of Planning Secretary-Receptionist is not a confidential position and is properly **included** in the proposed bargaining unit.
7. 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 including but not limited to secretaries and employes of the Road Maintenance Department of Cumberland Township, Pennsylvania, including the Roadmaster and the Planning Secretary-Receptionist, and excluding management level employes, supervisors, 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 fifteenth day of June, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner