

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
:
: Case No. PERA-R-17-281-E
:
SCOTT TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On October 5, 2017, Teamsters Local Union No. 229 (Teamsters or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board), alleging a thirty percent showing of interest among the full-time and regular part-time blue-collar nonprofessional employes of Scott Township (Township or Employer) and seeking to represent those employes for the purpose of collective bargaining. On October 20, 2017, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating November 27, 2017, in Harrisburg, as the time and place of hearing, if necessary. The hearing was subsequently continued to December 20, 2017.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board on December 20, 2017, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Township filed a post-hearing brief on February 7, 2018. The Union filed a post-hearing brief on February 12, 2018.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA or Act). (N.T. 6)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)

3. The parties stipulated that if the daycare workers are not found to be blue-collar, the unit deemed appropriate for the purposes of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time blue-collar nonprofessional employes, including but not limited to department of public works and road crew employes, and excluding all management level employes, supervisors, first level supervisors, confidential employes, and guards as defined in the Act. (N.T. 11)

4. The Township has four full-time employes, who work as part of the road crew. They are Edward Hlavaty, Robert Frazier, Gerard Frazier, and

Gregory Tellip.¹ The Township also employs Justin Ezerkis as a part-time employe in the road crew. The road crew employes take care of the Township's roads, parks, and buildings, drive trucks, cut grass, as well as operate and clean equipment. (N.T. 27-28, 80; Exhibit P-2)

5. The road crew employes work out of a garage, which is located in the Township. There are no other employes, who work out of that garage. (N.T. 28)

6. Ezerkis worked for approximately 30 to 40 hours per week during the summer of 2017, primarily cutting grass, cleaning the Township's Civic Center, and taking care of the parks. (N.T. 19, 28-29)

7. The full-time road crew employes work 7:00 am to 3:00 pm Monday through Friday for the entire year. They receive hourly wages and are eligible for health insurance benefits. (N.T. 30-32)

8. The road crew employes report to either the Roadmaster, who is Hlavaty, or the foreman, who is Stanley Stracham. Stracham previously worked for the Township, but was laid off sometime around 2016. The Township reappointed Stracham on a part-time basis as of December 4, 2017. (N.T. 32-35, 76-79, 81-82)

9. The full-time road crew employes all have a Class B CDL license. They are required to drive trucks during snow storms and to operate other heavy vehicles, such as the recycling truck, as part of their everyday duties. In addition, Robert Frazier has a number of other certifications in welding and mechanics. The road crew employes are subject to call outs during emergencies, such as snow storms, downed trees, heavy storms and/or wash outs. (N.T. 36-37, 81)

10. The Township also has several individuals employed as daycare workers, who operate out of the Township's Civic Center, which is an office building and a separate facility from the garage. The daycare is not a licensed or credentialed facility. The daycare workers typically color and sing songs with the children, who are mostly three or four years old. The daycare workers do not perform any physical labor outside of the Civic Center, such as mowing, snow plowing, or welding. They do not have a supervisor or foreman and report directly to the Board of Supervisors. (N.T. 39-42, 82-86)

11. The daycare workers typically work from 7:30 am to 11:30 or 12:00 pm, except in times when the enrollment increases, such that their hours might extend to 2:00 or 2:30 pm. The daycare follows the schedule for the local school district and is closed over the summer, as well as the Christmas holiday. The daycare workers are laid off during those times and collect unemployment benefits. (N.T. 87-88)

12. Tom Wicks is employed as the Township's Secretary/Treasurer. He is responsible for payroll, answering phones, processing paperwork, and paying the Township's bills. He works Monday through Friday 9:00 am to 3:00 pm at the Civic Center. He does not perform any duties with the road crew and reports directly to the Board of Supervisors. (N.T. 42-44, 69, 71)

¹ Hlavaty was an elected Township Supervisor at the time of the December 20, 2017 hearing. He was not reelected to that position, and his term ended on December 31, 2017. (N.T. 18-22; Exhibit P-2)

13. Carl Ferraro is employed as the Township's Administrator/Zoning and Code Enforcement Officer. He is responsible for enforcing the zoning ordinances, along with some human resources and payroll duties. He also handles the CDL drug testing program, disability insurance, workers' compensation, and processes grant applications. He works from 8:30 am to 4:30 pm at the Civic Center and reports directly to the Board of supervisors. He does not have a CDL license, nor does he perform any duties with the road crew. (N.T. 44-46, 66-67, 69-70, 89, 100)

14. As the Zoning and Code Enforcement Officer, Ferraro also issues zoning permits for buildings and structures located within the Township, enforces the ordinances, examines alleged violations of ordinances, and prosecutes those alleged violations in court. Ferraro has the discretion to decide whether to prosecute those alleged violations in court. (N.T. 111-112)

DISCUSSION

The Union has petitioned to represent a unit of blue-collar nonprofessional employes consisting of the Township's road crew and department of public works employes. However, the Township opposes the Petition on the grounds that the proposed unit violates the Board's policy favoring broad-based bargaining units. Specifically, the Township claims that a unit of blue-collar nonprofessional employes should also include the Township's daycare workers, along with the Township Administrator/Zoning and Code Enforcement Officer and the Secretary/Treasurer.

Section 604 of PERA provides, in relevant part, as follows:

The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

- (1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of overfragmentation.

43 P.S. § 1101.604.

In determining whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employes, grievance procedures, bargaining history, and employes' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. *Id.* at 464.

The Board long ago enunciated a policy that it will certify as appropriate blue-collar units, white-collar units, or blue and white-collar units together. To avoid the effects of overfragmentation, the Board decided, however, that it will not certify different units of blue-collar employes but would require all of the blue-collar employes to be in one unit. Upper Southampton Township Municipal Authority, 21 PPER ¶ 21080 (Order

Directing Submission of Eligibility List, 1990) citing Methacton School District, 11 PPER ¶ 11040 (Decision and Order, 1980); Montgomery County Intermediate Unit No. 23, 11 PPER ¶ 11227 (Final Order, 1980).

In this case, the record shows that the Union has petitioned for an appropriate unit of all full-time and regular part-time blue collar nonprofessional employes, consisting of the department of public works and road crew employes. First of all, there is clearly an identifiable community of interest among the road crew employes. Likewise, the daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and Secretary Treasurer are all white collar employes. Therefore, the Union has not petitioned for an inappropriate unit by seeking to represent the road crew employes, and not these other classifications.

As Hearing Examiner Thomas Leonard observed in Upper Southampton Township Municipal Authority, there is a classic distinction between white-collar and blue-collar employment, which consists of administrative office work versus manual labor. The daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and Secretary/Treasurer work exclusively in the Township's administrative offices located at the Civic Center, whereas the road crew employes work out of a garage located in the Township, as well as out in the field among the Township's roads, parks, and other buildings. Only the road crew employes perform manual labor activities, such as road work, cutting grass, plowing snow, cleaning and operating equipment, and driving heavy trucks. The daycare workers, on the other hand, take care of small children, while the Township Administrator/Zoning and Code Enforcement Officer and Secretary/Treasurer perform duties primarily consisting of office and/or paperwork.² Each group possesses distinct skills or trade and work experience not possessed by the other. *Id.* For example, the full-time road crew employes all have a Class B CDL license because they have to drive trucks during heavy snow storms and operate other heavy vehicles, like the recycling truck, as part of their everyday job duties. There is no evidence whatsoever that the daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and/or the Secretary/Treasurer have any similar requirements. Furthermore, the road crew employes are subject to call outs during emergencies, such as storms or downed trees. Once again, there is no evidence that the daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and/or the Secretary/Treasurer have any such requirements. In addition, the road crew employes report to their own Roadmaster and/or the foreman, whereas the daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and the Secretary/Treasurer report directly to the Board of Supervisors.

What is more, the daycare workers perform work on a daily basis which is similar to the job duties of teacher aides, i.e. working with groups of students, providing individual assistance to students, and supervising students in educational games. See Commodore Perry School District, 11 PPER ¶ 11168 (Proposed Order of Unit Clarification, 1980), 12 PPER ¶ 12082 (Final Order, 1981). The Board has long held these duties to be white-collar and placed such aides in white-collar nonprofessional units. Garnet Valley School District, 15 PPER ¶15004 (Order Directing Submission of Eligibility List, 1983) citing Pittston Area School District, 12 PPER ¶12180 (Final Order, 1981).

² The record shows that Ferraro did plow snow and perform road work occasionally to fill in for somebody in the past. However, he has not performed either of these duties since at least 2015. (N.T. 99-100).

Similarly, the Township Administrator/Zoning and Code Enforcement Officer, aside from being a white-collar employee, must be excluded from the bargaining unit as a manager. The record shows that Ferraro enforces the Township's zoning ordinances, examines alleged violations, and has the discretion to decide whether to prosecute those alleged violations in court. This clearly satisfies the statutory definition for a manager under Section 301(16) of PERA. Municipal Employees of the Borough of Slippery Rock v. PLRB, 14 A.3d 189 (Pa. Cmwlth. 2011).

Likewise, it is well settled that Wicks, as the Township's Secretary/Treasurer, must be excluded from the bargaining unit as a matter of law. In West Hanover Township v. PLRB, 646 A.2d 625 (Pa. Cmwlth. 1994), the Commonwealth Court held that the Township Secretary, as the official custodian of all files for the Township, is obviously essential to performance of the bargaining function on behalf of the employer municipality. See also In the Matter of the Employes of Ford City Borough, 47 PPER 51 (Final Order, 2015) quoting West Hanover Township, at 632-633. Thus, the Court held that the Township Secretary must be excluded as a confidential employee under Section 301(13) of PERA. Accordingly, the Union has petitioned for an appropriate unit, consistent with longstanding Board and Court precedent, and an election must ensue consistent with Section 603 of PERA to determine the exclusive representative.³

The parties dispute whether the part-time position held by Ezerkis is regular or casual within the meaning of the Act. The record shows that Ezerkis worked for approximately 30 to 40 hours per week during the summer of 2017, primarily cutting grass, cleaning the Township's Civic Center, and taking care of the parks. Although there was no definitive testimony indicating that Ezerkis would be employed again for the summer of 2018, Ferraro readily conceded that when Stracham previously worked for the Township in 2016, he typically went to Florida during the winter months and worked full-time for the summer, which Ferraro described as "the busy times." (N.T. 77). As such, it is clear that the Township has regularly employed someone as a part-time laborer for the summer months. Therefore, this position must be included in the petitioned-for unit.

The parties also dispute whether Hlavaty's position of Roadmaster should be included in the petitioned-for unit. Section 301(2) of PERA provides that elected officials shall not be included within the definition of a public employee. 43 P.S. § 1101.301(2). However, the record shows that Hlavaty was not reelected to the Township Supervisor position, and his term ended on December 31, 2017. Thus, Hlavaty now satisfies the definition of a public employee under Section 301(2) of PERA, as he is no longer an elected official. In any event, the Township did not present any evidence to show that the Roadmaster position meets the requirements for a statutory exclusion as a supervisor or manager. As a result, the Roadmaster position must be included in the petitioned-for unit.

Finally, the parties dispute whether the foreman, Stracham, should be included in the petitioned-for unit. The Union contends that since Stracham was hired in December 2017, which was after the Representation Petition was

³ It cannot be seriously contested that there is an identifiable community of interest among the road crew employees. Indeed, the record shows that they all work out of the same location, perform the same blue-collar work, report to the same people, receive hourly wages, and are eligible for health insurance.

filed, he should be excluded from the bargaining unit. However, the Union cites no authority to support such a proposition. Nor has the Union presented any evidence to support a supervisory or managerial exclusion under PERA. Accordingly, the foreman position must be included in the petitioned-for unit.

CONCLUSIONS

The 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 Township's department of public works and road crew employes share an identifiable community of interest.

5. The Roadmaster position held by Hlavaty is not supervisory or managerial, and is properly included in the bargaining unit, as a public employe.

6. The position held by Ezerkis is that of a regular part-time employe and properly included in the bargaining unit.

7. The foreman position held by Stracham is not supervisory or managerial, and is properly included in the bargaining unit.

8. The daycare workers, Township Administrator/Zoning and Code Enforcement Officer, and Secretary/Treasurer positions are white-collar employes.

9. The position of Township Administrator/Zoning and Code Enforcement Officer held by Ferraro is managerial and properly excluded from the bargaining unit.

10. The position of Secretary/Treasurer held by Wicks is a confidential employe and properly excluded from the bargaining unit.

11. 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 blue-collar nonprofessional employes, including but not limited to department of public works and road crew employes, and excluding all management level employes, supervisors, first level supervisors, confidential employes, white-collar employes as designated herein, and guards as defined in the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

that the Township shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth in Conclusion 11 above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this second day of March, 2018.

PENNSYLVANIA LABOR RELATION BOARD

John Pozniak, Hearing Examiner