

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-20-46-E
 :
 HEIDELBERG TOWNSHIP (LEHIGH) :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On February 11, 2020, Teamsters Local Union No. 773 (Teamsters or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board), alleging a 30 percent showing of interest among a unit of all full-time and regular part-time blue collar nonprofessional employes of Heidelberg Township (Township or Employer) and seeking an election pursuant to Section 603(c) of the Public Employee Relations Act (PERA or Act). On March 13, 2020, the Secretary of the Board issued an Order and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on May 18, 2020, if necessary. The hearing was subsequently continued to August 18, 2020 in light of the Covid-19 pandemic.

On August 3, 2020, the parties agreed during a prehearing conference to proceed by depositions in lieu of appearing for an in-person hearing before the Board. The depositions ensued on October 8, 2020, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Board received the deposition transcripts and evidentiary exhibits on November 11, 2020, at which point a briefing schedule was issued. The parties separately filed post-hearing briefs in support of their respective positions on December 17, 2020.

The Examiner, on the basis of 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 PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The unit deemed 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 all road crew and road superintendent; and excluding all management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.
4. Howard Huber has worked for the Township since 1998 and has been the road superintendent since roughly 2003. (N.T. I 6-7)¹

¹ The deposition transcript of Huber will be referenced as N.T. I, while the deposition transcripts of Janice Meyers and David Fink will be referenced as N.T. II and N.T. III, respectively.

5. Huber works with three other full-time individuals in the road department. He described his job duties as ensuring the road work gets completed by "get[ting] the guys out on the road, tell[ing] them what they're doing, salting, plowing, whatever needs to be done in the road department." (N.T. I 7; N.T. II 10)

6. Huber decides what projects to do in any given day or week. He instructs the crew whether they will be running equipment, driving a dump truck, laboring, or whatever else the Township needs. He schedules the road crew and their jobs. (N.T. I 8, 20)

7. On a typical day, Huber meets with the crew in the morning to let them know what the job is for the day. He described how they usually review equipment to make sure they have road signs, cones, and whatever else they need to accomplish the work. Afterwards, he spends time checking emails and returning phone calls before heading out to check driveways in the Township and/or joining the road crew. (N.T. I 29-30)

8. Huber works ten (10) hours per day, four (4) days per week, for a total of 40 hours each workweek. His schedule is Monday through Thursday 6:00 a.m. to 4:00 p.m., which is the same schedule as the road crew. He only works overtime for weather related emergencies. In those situations, he testified that he usually gets phone calls from 911 or the state police, and then he calls people out to take care of any issues. (N.T. I 8, 30)

9. When Huber joins the road crew, he performs the same work as those employees. He estimated that he works alongside the other road crew employees "at least three-quarters of the day." (N.T. I 31-32)

10. The Township tracks employe hours by having them fill out timesheets each week. Huber reviews the timesheets for the road crew and signs off on them. He also signs off for weather related emergency overtime that he authorized and schedules vacation and sick time. (N.T. I 9, 20)

11. Huber performs evaluations for the road crew employees with David Fink, who is an elected supervisor. The evaluations occur once a year. Huber fills out the evaluation forms since he works "with the guys all year," and then Fink meets with the individual employees to review the evaluations and handle questions. If there is a performance issue, Huber takes it to Fink before discussing it with the road crew. After performing the evaluations, Huber places them in a personnel file. (N.T. I 9-10, 21, 33; N.T. III 5)

12. Huber has been involved with employe discipline in the past. He testified that his involvement usually consists of write-ups and/or reporting misconduct to the Board of Supervisors. He attended an executive session during a Board of Supervisors meeting on one occasion in 2007, and then another in 2009, after which the Board of Supervisors approved a motion to terminate an employe in each instance. On another occasion in 2016, he recommended discharge for an employe named Eric Lynch during the executive session of the Board of Supervisors meeting, which was also approved. There have been three discharges in the last 17 years at the Township and no suspensions. (N.T. I 10-11, 15, 21, 35-36; N.T. III 7-8, 20; Employer Exhibit 4)

13. Huber has also been involved with hiring employees for the Township. The normal procedure begins with soliciting applicants, after

which Huber and Fink review the candidates together. Huber and Fink also interview the candidates together and arrive at a consensus recommendation. Fink testified that the two of them recommend the top candidate to the Board of Supervisors during a meeting. Fink also testified that he has never opposed any of Huber's recommendations. Over the last 17 years, Huber has participated in the hiring of three or four people. (N.T. III 9-10, 18-20)

14. Huber is authorized to spend certain small amounts of money for the road department. His authority in this regard has limits, as he is not able to spend above a certain dollar amount. (N.T. I 18, 20, 36-37; N.T. III 17)

15. For large equipment like trucks, Huber goes to the Board of Supervisors and tells them it is time to replace the trucks, at which point the Board of Supervisors authorizes Huber to solicit bids and report back at a Supervisors meeting. Huber recently obtained specifications for a truck and got a price to bring back to the Board of Supervisors. He also recommended which truck to purchase. (N.T. I 21, 37; N.T. III 24)

16. On one occasion, two (2) or three (3) years ago, Huber recommended that an employe receive a pay increase, which the Board of Supervisors approved. Aside from that instance, Huber receives the same percentage increases as the other employes. Typically, in January of every year, the Board of Supervisors makes the determination of whether the road crew employes will get a raise and by how much. Huber is paid on an hourly basis. (N.T. I 34-35; N.T. III 13, 22-23)

DISCUSSION

The Union has petitioned to represent a bargaining unit comprised of all full-time and regular part-time blue collar nonprofessional employes of the Township. However, the Township contends that the road superintendent position should be excluded from the unit as supervisory under the Act.² As the party seeking to exclude the road superintendent from the unit, the Township has the burden of proving by substantial evidence that the asserted statutory exclusions apply. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010) *alloc. denied* 17 A.3d 1256 (Pa. 2011). The Board reviews

² Although the issue was not specifically disputed by the parties, the record shows that the road superintendent shares an identifiable community of interest with the other positions in the petitioned-for unit. 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. In this case, Huber works the same schedule and hours as the other road crew employes of the Township, Monday through Thursday, 6 a.m. to 4 p.m. Huber also spends the majority of his time working alongside the other road crew employes, performing the same blue collar work as them. Further, Huber receives the same percentage pay increases as the other road crew employes. This is more than sufficient to satisfy the community of interest requirement set forth in Section 604 of the Act.

actual job duties and will only consider written job descriptions to corroborate testimony of actual duties. *Id.* at 980.

Section 301(6) of PERA provides as follows:

"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).

In Abington Heights School District, 42 PPER 18 (Final Order, 2011), the Board quoted Luzerne County Community College, 37 PPER 47 (Final Order, 2006) and opined as follows:

Employees must be excluded from the bargaining unit as supervisory if they have the authority to perform one or more of the functions listed in Section 301(6), actually exercise such authority and use independent judgment in exercising that authority. McKeesport Area School District, 14 PPER ¶ 14165 (Final Order, 1983). It must also be noted that Section 604(5) of PERA provides that the Board, in making supervisory determinations, "may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5). The Board, with appellate court approval, has looked to the extent to which supervisory duties are performed and concluded that employees who perform some supervisory duties, but do not perform those duties for a substantial portion of their work time, are not supervisors within the meaning of PERA. West Perry School District v. PLRB, 752 A.2d 462 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 795 A.2d 984 (2000; State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999); Independent Association of Pennsylvania Liquor Control Board Employees v. PLRB, 409 A.2d 532 (Pa. Cmwlth. 1980). Conversely, where the employee performs predominantly supervisory duties, that employee is excluded from the rank and file unit as supervisory. AFSCME v. PLRB, 342 A.2d 155 (Pa. Cmwlth. 1975).

As a result, the Board in Abington Heights School District, *supra*, went on to hold that, absent evidence an employee spends a majority of his or her time performing supervisory duties, this is not sufficient evidence to show that the position in question should be excluded as supervisory under Section 301(6) of PERA.

Here, the Township maintains that the road superintendent is a supervisory employe under the Act because of Huber's involvement in effective recommendations for hiring and discipline, performance evaluations, assigning work to the road crew employes, as well as scheduling leave and signing timesheets. However, even assuming these alleged job duties support a supervisory exclusion pursuant to Section 301(6) of the Act, the Township has

not been able to establish that the road superintendent spends a substantial portion or majority of his time performing supervisory duties. To the contrary, the only credible evidence of record shows that Huber spends at least 75 percent of his time each day working alongside the other road crew employes performing the same work as them.³ What is more, Huber also spends time checking emails and returning phone calls every day, in addition to working alongside the road crew. These administrative duties take up more of his time each day and are simply not indicative of supervisory status under the Act. More importantly, the record shows that in the previous 17 years, Huber has only been involved with the hiring and discipline of employes a few times. Likewise, he has only effectively recommended a pay increase on one occasion and performs evaluations for three other employes once a year. These infrequent and sporadic instances of alleged supervisory duties are simply inadequate to exclude the road superintendent from the bargaining unit. Moreover, with regard to hiring, the Board has long held that mere participation on a panel that interviews and recommends a candidate for employment is insufficient to support a supervisory determination, especially where there is no evidence regarding which candidates would have been recommended had the committee disagreed, or more specifically, if Huber disagreed with the elected Township Supervisor, Fink. Saucon Valley Education Ass'n v. Saucon Valley School District, 32 PPER ¶ 32167 (Final Order, 2001) (citing State System of Higher Education v. PLRB, 737 A.2d 313 (Pa. Cmwlth. 1999)). In fact, Fink testified that he would not go along with Huber's recommendation "if it was something obvious." (N.T. III 11). As such, even some of the road superintendent's alleged supervisory duties do not satisfy the statutory criteria for exclusion, notwithstanding the infrequency and sporadic nature of these duties.

The Township also contends that the road superintendent should be excluded as supervisory because Huber allegedly has purchasing authority, maintains the personnel files for the road crew employes and works in a separate autonomous area of the physical building. Why the Township cites these alleged factors, however, is unclear, as they are not indicative of supervisory status under the Act. The Township further maintains that the road superintendent should be excluded because the Township designed the position to be supervisory, and the employee handbook identifies it as such, which is confirmed by its placement on the Township's organizational chart. However, it is well settled that mere job title or appellation, such as supervisor or manager, is not sufficient to overcome the actual duties performed as evidence of being a supervisor in order to justify exclusion from the bargaining unit. West Perry School District v. PLRB, 752 A.2d 461, 465 (Pa. Cmwlth. 2000). At most, the record here shows that the road superintendent is simply a lead worker, and not a statutory supervisor. Accordingly, the road superintendent will not be excluded from the bargaining unit as a supervisory employe pursuant to Section 301(6) of PERA.

³ Aside from Huber's credible testimony in this regard, the only other witnesses were Fink and Janice Meyers, the Township Administrator and Secretary/Treasurer, who both conceded that they have no idea what Huber does on a daily basis. (N.T. III 16-17; N.T. II 13-14). Their testimony, then, is not competent to exclude the road superintendent from the unit on this point.

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 road superintendent shares an identifiable community of interest with the other positions in the petitioned-for unit.

5. The road superintendent is not a supervisory level employe within the meaning of PERA and is properly included in the bargaining unit.

6. The unit deemed 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 all road crew and road superintendent; and excluding all 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 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 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 11th day of January, 2021.

PENNSYLVANIA LABOR RELATION BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

