

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-U-21-13-E
 : (PERA-U-12,770-E)
BOROUGH OF DOYLESTOWN : (PERA-R-6820-E)

PROPOSED ORDER OF UNIT CLARIFICATION

On January 26, 2021, the Borough of Doylestown (Borough) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification under the Public Employee Relations Act (PERA or Act) seeking to exclude the position of Parking Management Supervisor from the bargaining unit of Borough employees exclusively represented by AFSCME District Council 88 (Union). On March 2, 2021, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Wednesday, June 23, 2021, in Harrisburg. On June 16, 2021, I continued the hearing at the request of the Union because the Union representative was on a medical leave of absence. I rescheduled the hearing for Friday, October 29, 2021, via Microsoft Teams. During the video hearing on that date, both parties in interest had an opportunity to present testimony and exhibits and to cross-examine witnesses. At the close of the October 29, 2021 hearing, both parties presented closing arguments in lieu of submitting post-hearing briefs.

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 Borough is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. Prior to the Borough's joining a regional police commission, parking enforcement in the Borough was part of the Borough's police department. The former parking department supervisor reported directly to the chief of police. (N.T. 14-15, 19; Petitioner Exhibit 3)
4. In 2014, the Borough's police department merged with the New Britain Borough police department to create the Central Bucks Regional Police Department under the control of the Central Bucks Regional Police Commission, which was comprised of appointees from both Borough's. In 2016, Chalfont Borough also joined the Central Bucks Regional Police Department, and the Commission is now comprised of appointees from all 3 municipalities. (N.T. 15)
5. When forming the Central Bucks Regional Police Department, New Britain Borough did not want to share the cost of supporting the parking enforcement department because New Britain did not have parking meters to enforce. Also, Doylestown Borough did not want to share the revenue generated from parking enforcement in Doylestown. (N.T. 15-16)

6. Both municipalities agreed that the new Regional Police Department would not have a parking enforcement department and that Doylestown Borough would separately retain parking enforcement for the Borough. (N.T. 16)

7. When the parking enforcement department was separated from the police department and retained by the Borough, the position of parking department supervisor began reporting directly to the Borough Manager, John Davis, instead of the police chief. (N.T. 14, 17-18, 21; Petitioner Exhibits 3 & 4)

8. The parking enforcement department has 2 full-time parking enforcement officers, 1 part-time parking enforcement officer and 1 part-time clerk, which is currently vacant. (N.T. 18, 23)

9. Bertha Skerle was previously the parking department supervisor until her retirement. As a courtesy to Ms. Skerle and out of respect for her wishes after many years of service in the bargaining unit, the Borough did not seek to remove her position from the bargaining unit until her retirement. The Borough created the new job description for the parking department supervisor in January 2020, in preparation for Ms. Skerle's retirement, and re-titled the position: "Parking Management Supervisor." The Borough promoted Mette O'Reilly in June 2020, into the position of Parking Management Supervisor upon Ms. Skerle's retirement. (N.T. 18-23, 25, 41)

10. Consistent with the new job description, the Parking Management Supervisor directly assigns duties to the parking enforcement officers. The Borough Manager does not directly interact with the officers or the clerk. The Parking Management Supervisor meets with the parking enforcement officers daily, and assigns them their routes and tasks for the day, although the routes are mostly preset. (N.T. 26-27)

11. The Parking Management Supervisor directs parking enforcement officers to cover any special details or patrols. The Parking Management Supervisor makes adjustments to patrols necessitated by call-offs or to address events, complaints from residents, and other enforcement related matters. The Parking Management Supervisor directs parking enforcement officers to investigate and assess the adequacy of parking signage and determines proper repair and placement of that signage. Ms. O'Reilly makes changes and adjustments to parking enforcement department operations based on her meetings with, and reports from, her parking enforcement officers. (N.T. 27, 65)

12. The Parking Management Supervisor reroutes parking enforcement officers during the day if another officer goes home sick. The Parking Management Supervisor is the point of contact to address issues that arise throughout the day, such as malfunctioning meters. The Parking Management Supervisor meets with the parking enforcement officers at the end of the day to review the day's activities and problems. (N.T. 27-28)

13. Prior to a parking enforcement matter being appealed to the district court, the Parking Management Supervisor deals directly with the individuals who have received parking tickets and who enter the parking office to dispute or settle their ticket. The Parking Management Supervisor adjusts or waives approximately 7% of those tickets. In those situations, the Parking Management Supervisor uses her independent judgment to determine

whether the ticket was properly issued under the circumstances. (N.T. 29-30, 45)

14. Also, consistent with the job description, the Parking Management Supervisor appears in district court on behalf of the Borough. Once a parking enforcement matter goes before the district court, the Parking Management Supervisor has already determined that the disputed ticket should apply. She discusses settlement with the ticketed individuals scheduled to have hearings. She exercises discretion and judgment when settling parking enforcement matters prior to and in district court. The Parking Management Supervisor does not need permission to settle parking enforcement cases. (N.T. 27-29, 45)

15. In August of each year, all department heads prepare a budget for their department. Consistent with the job description, the Parking Management Supervisor prepares a budget for the parking enforcement department, which includes considerations for the repair and/or replacement of parking enforcement vehicles, repair and replacement of parking payment units and meters, uniform and equipment upgrades, and office supplies. (N. 32-33)

16. Consistent with the job description, the Parking Management Supervisor participates in the interviewing and hiring process for parking enforcement department employees. (N.T. 33, 49)

17. Typically, the Borough Manager advertises for a vacant or new position and, as a result, receives a number of applications. These applications are sent directly to the department head, which is the Parking Management Supervisor for the parking enforcement officers and the parking enforcement clerk. The Parking Management Supervisor and other department heads make the initial determination about which candidates are worthy of interviews. The Borough Manager also makes a determination about which candidates to interview. The Borough Manager and the department head interview those candidates that overlap and that they both agree upon. The Parking Management Supervisor participates in the interviews. The Borough Manager and the Parking Management Supervisor look for consensus, but the hiring decision is ultimately the Borough Manager's. (N.T. 33-34)

18. The Borough Manager has deferred to the hiring recommendations of his department heads. When Parking Management Supervisor, Ms. O'Reilly, and the Borough Manager, Mr. Davis, interviewed candidates for the vacant parking enforcement clerk position, out of 2 finalists, Mr. Davis preferred one candidate and Ms. O'Reilly preferred another. Borough Manager Davis deferred to Ms. O'Reilly's selection because she would be the new employee's direct supervisor. The position remained vacant, however, due to COVID related issues. (N.T. 35-36)

19. Consistent with the job description, the Parking Management Supervisor conducts performance reviews of the parking enforcement officers because she has direct interaction with the officers and direct knowledge of their daily performance. (N.T. 36-37)

20. The parking enforcement department uses an online parking application called "Park Mobile." Ms. O'Reilly brought permit parking for residents and long-term meter parking into the Park Mobile Application (App.). Ms. O'Reilly changed the Borough's parking enforcement system of doing business from one where parking enforcement and permit transactions were done mostly in person at the front desk at the parking enforcement

office to one where transactions were completed online using the App. This change in the manner in which the Borough does business with the parking public is consistent with the job description that the Parking Management Supervisor is responsible for maintaining and managing parking enforcement programs and technology. (N.T. 38-39, 65)

21. The Parking Management Supervisor is a department head in the Borough. Borough Manager Davis testified that the Parking Management Supervisor has the authority to issue verbal warnings and written reprimands. The record does not show that the Parking Management Supervisor has actually used that authority and issued any level of discipline. Under the CBA, a disciplined employe must first grieve their discipline to their immediate supervisor, which is their department head, and then to the Borough Manager, Mr. Davis. The record does not show that the Parking Management Supervisor has received, adjusted or settled any grievances. Mr. Davis testified that Ms. O'Reilly has the authority, as a department head, to recommend serious discipline of a parking enforcement employe to the Borough Manager. The record does not show that either Ms. Skerle or Ms. O'Reilly has recommended serious discipline of parking enforcement employes. (N.T. 63-64)

DISCUSSION

The Borough seeks to remove the position of Parking Management Supervisor from the bargaining unit of non-professional Borough employes covered by the Act, positing that the position is either managerial or supervisory or both. As the party seeking to exclude a position from the bargaining unit, the Borough has the burden of establishing the statutory exclusion from the bargaining unit, with substantial, competent evidence. The Board reviews actual job duties and will only consider written job descriptions to corroborate testimony of actual duties. Westmoreland County v. PLRB, 991 A.2d 976 (Pa. Cmwlth. 2010).

Section 301 of PERA provides the following definition for a statutory supervisor:

(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).

Employes must be excluded from a bargaining unit as a statutory supervisor if they actually exercise the authority and perform the functions listed in Section 301(6), using independent judgment in doing so. In the Matter of the Employes of the Luzerne County Community College, 37 PPER ¶ 47 at 148 (Final Order, 2006). It is insufficient for an employe to perform only some of the supervisory duties or to perform those duties sporadically and not for a substantial portion of his/her work time. Id. The Board has also opined that "the right to order the work force and the ability to effect reward or sanction are what distinguish a 'supervisor' from a 'task leader.'" In the Matter of the Employes of Pennsylvania State University, Milton S. Hershey Medical Center, 20 PPER 20126 (Final Order, 1989) (quoting Danville

Area School District, 8 PPER 195 (Order and Notice of Election, 1977)). Indeed, the Board has also stated that the ability to effectuate reward or sanction is the hallmark of supervisory status. Findlay Township Water Authority, 21 PPER ¶ 21130 (Final Order, 1990).

The record in this case does not establish that the Parking Management Supervisor performs the duties listed in Section 301(6) for a substantial portion of her work time and, therefore, she cannot be excluded as a statutory supervisor. Ms. O'Reilly effectively recommended the selection and hiring of the clerk candidate. She also assigns work to the enforcement officers and adjusts their assignments to accommodate changes in the enforcement complement due to call-offs. The work assignments and the changes thereto are somewhat routine and clerical in nature because the assignments are "preset," and there is no substantial evidence that discretion is required for performing those duties.

Also, given the number of employees in the parking enforcement department, there has been no opportunity for the Parking Enforcement Manager to "transfer, suspend, layoff, recall, promote, or discharge" employees. The record shows that the Parking Management Supervisor may issue minor discipline, such as verbal and written reprimands, and that she is the first step in the grievance procedure for parking enforcement department employees. However, the record does not show that she has actually exercised that authority, that she has received or adjusted any grievances, or that she has recommended any serious discipline. The record also does not indicate whether the Parking Management Supervisor has the authority to settle first-step grievances emanating from her department. Although the Parking Enforcement Manager conducts performance reviews of parking department employees, there is no evidence that the Parking Management Supervisor can reward or sanction employees in their work assignments or conditions as a result of those performance evaluations. Accordingly, the Parking Management Supervisor cannot be excluded from the bargaining unit as a statutory supervisor under the Act.

Section 301(16) of PERA defines "Management level employe" as "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). It is well-settled that the test for a management level employe is disjunctive and includes "(1) any individual who is involved directly in the determination of policy; (2) any individual who directs the implementation of policy; or (3) employes above the first level of supervision." Pennsylvania Association of State Mental Hospital Physicians v. PLRB, 554 A.2d 1021, 1023 (Pa. Cmwlth. 1989); Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010).

The Board opined in Horsham Township, 9 PPER ¶ 9157 (Order and Notice of Election, 1978), that an employe who is "involved directly in the determination of policy would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect." Id. at 327. The Horsham Board also opined that the second prong of the managerial test included employes "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." Id. Administering a policy involves observance and interpretation of the policy where said implementation requires changes in procedures, methods or even suspension of the policy. Id.

In Municipal Employees of the Borough of Slippery Rock v. PLRB, 14 A.3d 189 (Pa. Cmwlth. 2011), the Commonwealth Court opined 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." Id. at 192. In Slippery Rock, the examiner concluded that the code enforcement officer in that case was a management level employee because he issued and denied building and occupancy permits, conducted inspections, and issued citations and enforcement notices pursuant to his employer's ordinances. The Slippery Rock hearing examiner also found that the code enforcement officer had no direct supervision, that he exercised sole discretion in his decision making, and that his decisions were not subject to the review or approval of any other employees or officials. Id.

In the instant case, the Parking Enforcement Manager exercises managerial discretion in both policy development and policy implementation, under the first two prongs of the managerial test. The Parking Enforcement Manager developed policy that changed the manner in which the parking enforcement department conducted business and improved the fundamental mission and enterprise of the Borough's parking enforcement department. In this regard, Ms. O'Reilly brought permit parking for residents and long-term meter parking into the "Park Mobile" App. Ms. O'Reilly changed the parking enforcement system of doing business from a system where parking and meter enforcement, as well as permit transactions, were done mostly in person at the front desk of the parking enforcement department office to a system where transactions were completed online using computer technology, improving the speed and efficiency of operations. This change in the manner in which the Borough does business with the parking public is consistent with the job description that the Parking Enforcement Manager is responsible for maintaining and managing parking enforcement programs and technology.

Ms. O'Reilly also implements policy for the Borough under the second test for managerial authority within the meaning of Slippery Rock, supra. Ms. O'Reilly monitors compliance with Borough parking enforcement policies and ordinances. When an individual challenges a parking ticket, Ms. O'Reilly utilizes her authority and discretion to determine whether, under the circumstances, a ticket is proper. These determinations are analogous the code enforcement officer's determinations in Slippery Rock. Ms. O'Reilly utilizes judgment and discretion when settling parking tickets before a matter reaches the district court and while a matter is pending before the district court. She exercises discretion in determining whether parking signage is properly placed and visible or in need of repair and replacement. By fulfilling these responsibilities, Ms. O'Reilly ensures the fair implementation and application of the Borough's parking policies and ordinances. She exercises discretion in implementing the Borough's parking policies and settling enforcement matters without the approval or supervision of any other Borough employe or official, including the Borough Manager.

The Parking Enforcement Manager is involved in budget development and preparation for the parking enforcement department. The Board has held that effectively recommending expenditures on equipment, even where it amounts to half the municipal budget for recommended equipment, is not a managerial function under PERA. East Mead Township, 47 PPER 46 (Order Directing Remand

to the Hearing Examiner for Further Proceedings, 2015). On this record, the Parking Management Supervisor proposes a budget for the parking enforcement department by including considerations for the repair and/or replacement of parking enforcement vehicles, repair and replacement of parking payment units and meters, uniform and equipment upgrades, and office supplies. The record, however, does not contain evidence establishing the extent to which Ms. O'Reilly's proposed budget is accepted, rejected or modified by the Borough Manager or Borough Council. The record also lacks evidence showing the manner in which her proposed budget fits into the overall budgeting scheme for the Borough, and it is, therefore, unclear whether Ms. O'Reilly's budget proposals constitute the development or implementation of Borough parking enforcement policy. Certainly there is discretion and judgment in determining whether a new parking enforcement vehicle is necessary to effectively conduct parking enforcement operations. But as previously stated, the Board has held that recommending purchases for equipment necessary for executing the employer's operations is not a managerial function.

The evolutionary history of the leadership in the parking enforcement department is instrumentally significant in understanding the manner in which the position of the Parking Management Supervisor changed from when the parking enforcement department was part of the Borough's police department and, thereafter, when it became a separate Borough department under the Borough Manager. As part of the police department, the parking supervisor answered directly to the Chief of Police who oversaw all operations within the police department. However, after parking enforcement was separated from police operations and brought directly under the Borough, the position of Parking Management Supervisor was given more autonomy, authority and discretion to act without supervision or approval from the Borough Manager. In this regard, decisions that formerly required the approval of the chief of police, are now within the sole province of the Parking Management Supervisor.

Accordingly, the Parking Management Supervisor is a manager under Section 301(16) of PERA, and is properly excluded from the bargaining unit.

CONCLUSION

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

1. The Borough 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 position of Parking Management Supervisor is a management level employe under Section 301(16) of PERA and is properly excluded from the non-professional bargaining unit of Borough employes, certified by the Board at Case Number PERA-R-6820-E, and as amended by PERA-U-12,770-E.
5. The position of Parking Management Supervisor is not a statutory supervisor under Section 301(6) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the petition for unit clarification is granted, and the bargaining unit description is hereby amended to exclude the position of Parking Management Supervisor from the bargaining unit certified by the Board at Case Number PERA-R-6820-E, as amended by PERA-U-12,770-E.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-first day of January, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Jack E. Marino
JACK E. MARINO, Hearing Examiner