

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-21-238-E
:
SULLIVAN TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On October 15, 2021, Teamsters Local Union No. 118 (Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) alleging a 30 percent showing of interest among a unit of full-time and regular part-time nonprofessional, blue-collar employees of Sullivan Township (Township or Employer). On November 10, 2021, the Secretary of the Board issued an Order and Notice of Hearing, directing a hearing on January 12, 2022, if necessary. The parties elected to enter joint stipulations of fact in lieu of appearing for an evidentiary hearing before the Board. The Board received the jointly executed stipulations of fact on February 7, 2022. The parties each filed separate post-hearing briefs in support of their respective positions on March 10, 2022.

The Hearing Examiner, on the basis of all 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). (Joint Exhibit 1)¹
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Joint Exhibit 1)
3. By letter dated September 22, 2021, the Union requested a Joint Request for Certification from the Township. The Township subsequently denied the Union's request. (Joint Exhibit 1)
4. On October 15, 2021, the Union filed a Petition for Representation with the Board seeking to represent a unit described as "[a]ll full-time and regularly scheduled part-time employees of the Sullivan Township Highway Department including, but not limited to road master, foreman, operator, and road maintenance; and [e]xclud[ing] [s]easonal employees, management employees, supervisors, first-level supervisors, confidential employees, clerk, and elected employees as defined in the Act." (Joint Exhibit 1)
5. The Township disputes the appropriateness of the petitioned-for unit. The Township contends that the bargaining unit should include all full-time and regular part-time blue-collar, nonprofessional employes of the Township including but not limited to Highway Department employes and Sewer

¹ The jointly executed stipulation of facts has been designated as Joint Exhibit 1. The parties also attached copies of the timecards for the Sewer Plant Operator for the period of May 31, 2021 to January 1, 2022, which have been designated as Joint Exhibit 2.

Plant Operator, but excluding seasonal employes, management employes, supervisors, first-level supervisors, confidential employes, office clerical employes, elected supervisors, and guards as defined in the Act. (Joint Exhibit 1)

6. Joseph Tice has been employed with the Township as the Sewer Plant Operator since 2013. (Joint Exhibit 1)

7. The Highway Department consists of four employes, one of whom is an elected Supervisor of the Township. Andrew Tice is the elected Supervisor, and as a result, the parties agree that he is excluded from the bargaining unit. (Joint Exhibit 1)

8. The remaining members of the Highway Department consist of two members of the Road Crew, who are Derrick Carnwright and Stephen Tice, along with the Roadmaster, Ronald Vance. The parties agree that these employes should be included in the bargaining unit. (Joint Exhibit 1)

9. The included Highway Department employes report to the Township Supervisors. (Joint Exhibit 1)

10. Each of the included employes of the Highway Department works a full-time schedule of hours, is paid hourly, and receives full-time benefits from the Township. (Joint Exhibit 1)

11. The Sewer Plant Operator works a part-time schedule of hours, is paid hourly, and receives part-time benefits from the Township. (Joint Exhibit 1)

12. The Sewer Plant Operator reports to the Township Supervisors. (Joint Exhibit 1)

13. The minimum qualifications for all positions in the Highway Department and for the Sewer Plant Operator are a High School Diploma or GED degree and a CDL license. (Joint Exhibit 1)

14. The Highway Department employes occasionally assist the Sewer Plant Operator in the maintenance and repair of the Sewer Plant. (Joint Exhibit 1)

15. The Sewer Plant Operator occasionally operates some of the equipment operated by the Highway Department employes. (Joint Exhibit 1)

16. The parties submitted true and accurate copies of the timecards for the Sewer Plant Operator for the period of May 31, 2021 to January 1, 2022. The timecards show that the Sewer Plant Operator worked at least 12 hours for every week during this period. (Joint Exhibit 1 & 2)

DISCUSSION

The Union has petitioned to represent a bargaining unit comprised of all full-time and regular part-time nonprofessional, blue-collar employes of the Township. However, the Township contends that the Union has petitioned for an inappropriate unit, as the petition does not include the Sewer Plant Operator position. The Township maintains that the Sewer Plant Operator shares an identifiable community of interest with the other employes in the petitioned-for unit. Likewise, the Township submits that the Sewer Plant

Operator should not be excluded from the unit because the position is regular part-time, and not casual under the Act.

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 over fragmentation.

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 inappropriate unit of all full-time and regular part-time blue-collar nonprofessional employes insofar as the petition does not include the Sewer Plant Operator position. First of all, there is clearly an identifiable community of interest between the Sewer Plant Operator and the rest of the employes in the petitioned-for unit. The record shows that the three Highway Department employes and the Sewer Plant Operator all report directly to the Township Supervisors. The record also shows that the minimum qualifications for the Highway Department employes and the Sewer Plant Operator are the same, i.e. a High School Diploma or GED degree and a CDL license. The record further shows that the Highway Department employes and the Sewer Plant Operator are paid hourly wages and receive benefits through the Township. Finally, the Highway Department employes assist the Sewer Plant Operator in the maintenance and repair of the Sewer Plant, while the Sewer Plant Operator occasionally operates some of the equipment used by the Highway Department employes. Perhaps most importantly, however, the parties do not dispute that the Highway Department employes and the Sewer Plant Operator are all nonprofessional, blue-collar employes, which necessitates that they be included in the same unit for purposes of collective bargaining.

The Union points to what it calls "significant differences" between the Highway Department employees and the Sewer Plant Operator in support of its argument here. Specifically, the Union claims that the Highway Department employees and the Sewer Plant Operator perform entirely different job functions, work in separate areas, work different schedules and hours, have different compensation and benefit packages, have dissimilar working conditions, and do not share the same desires. Of course, the Union's contentions are not all borne out by the stipulated record here, as there is no evidence regarding employee desires or the exact nature of their compensation and benefits packages. Nevertheless, even if the Union's arguments did have support in the record, they still must fail as a matter of law. Indeed, such minor differences simply reflect the division of labor at the Township and do not destroy the clearly identifiable community of interest based on the findings of fact set forth herein. See In the Matter of the Employees of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) *citing* Pennsylvania State University v. PLRB, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (the Board need not find an identical community of interest but merely an identifiable community of interest).

In addition, the Union contends that the Sewer Plant Operator "only works a very limited part-time schedule," which suggests that the Union maintains the position is casual, and not regular part-time under the Act.

The Board has held that regular part-time status exists when an employee works on a recurring basis with a reasonable expectation of continued employment. Independence Township, 27 PPER ¶ 27108 (Order Directing Submission of Eligibility List, 1996) *citing* Community College of Philadelphia v. PLRB, 432 A.2d 637 (Pa. Cmwlth. 1981), *aff'd*, 437 A.2d 942 (Pa. 1982). However, part-time employees who work as a matter of special engagement with no reasonable expectation of continued employment are excluded from bargaining units as casual employees. *Id.* *citing* Erie County Area Vocational-Technical School v. PLRB, 417 A.2d 796 (Pa. Cmwlth. 1980).

The parties submitted true and accurate copies of the timecards for the Sewer Plant Operator for the period of May 31, 2021 to January 1, 2022. The timecards show that the Sewer Plant Operator worked at least 12 hours for every week during this period. As such, it cannot be seriously contested that the Sewer Plant Operator works on a recurring basis with a reasonable expectation of continued employment. Accordingly, it must be concluded that the Sewer Plant Operator position satisfies the Board's definition of regular part-time status and must be included in the petitioned-for 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 employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.

4. The Township's Highway Department employees and Sewer Plant Operator share an identifiable community of interest.

5. The Sewer Plant Operator position held by Joseph Tice is that of a regular part-time employee and properly included in the bargaining unit.

6. The position held by Andrew Tice is that of an elected official and is properly excluded from the 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 blue-collar nonprofessional employees, including but not limited to Highway Department employees, Road Crew employees, Roadmaster, and Sewer Plant Operator; and excluding all management level employees, supervisors, first-level supervisors, confidential employees, white-collar employees, 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 employees eligible for inclusion in the unit set forth in Conclusion 7 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 22nd day of March, 2022.

PENNSYLVANIA LABOR RELATION BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner