

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-U-20-268-E
: (PERA-R-18-200-E)
UPPER DARBY TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On November 6, 2020, Upper Darby Township (Township) filed a Petition for Unit Clarification (Petition) with the Pennsylvania Labor Relations Board (Board), seeking to exclude 41 positions from the bargaining unit of Township employees exclusively represented for collective bargaining purposes by the Office and Professional Employees International Union, Local 153 (Union).

On December 2, 2020, the Secretary of the Board issued an Order and Notice of Hearing designating a hearing date of May 21, 2021, in Harrisburg. The matter was continued at the joint request of the parties to October 13, 2021, to permit time for settlement discussions. The parties entered into a settlement agreement prior to the hearing. At that time, I requested that the parties file a joint request to amend the bargaining unit description based on their settlement. On August 2, 2023, the Township and the Union filed a Memorandum of Understanding (MOU) agreeing to the exclusion of a number of positions, but less than the number of positions for which the Township originally petitioned to have excluded.¹

The MOU could not provide a basis for determining whether the petitioned for positions should be excluded or for amending the bargaining unit description. In the MOU, the parties agreed that certain positions should be excluded because the job duties of the employees in those positions "meet the requirements of a management level employee, first level supervisor and/or confidential employee under the . . . Act." However, the actual job duties were not provided in the MOU. The Board must be able to identify the specific job duties of a position to determine whether that position should be excluded as either a manager, a first level supervisor, or a confidential employee. It is insufficient for the parties to simply agree that unidentified job duties of a position will meet the standard for a particular statutory exclusion. In other words, the Board does not accept legal conclusions without facts, i.e., job duties, that support them.

The MOU also proposed that certain positions would remain in the bargaining unit until the positions are vacated, and then the positions would be excluded. The Board cannot clarify a unit description with language that includes positions until they are vacated. Also, if a position, such as Code Enforcement Officer, is held by several employees and 1 employee resigns or retires, the Board will not sanction the removal of 1 Code Enforcement Officer position while leaving the remaining Code Enforcement Officer positions in the bargaining unit. All the employees holding the position are either in or out of the unit based on job duties.

¹ The signatures on the MOU are dated October 12, 2021.

The matter remained inactive, and the parties did not contact the Board until the Secretary of the Board issued a show-cause letter on October 22, 2024. On November 6, 2024, the Township filed a request to keep the matter open until the Board clarified the bargaining unit based on the MOU, wherein the parties agreed to exclude 27 positions. The Secretary of the Board treated the November 6, 2024 filing as an amendment to the original Petition, which sought to exclude 41 positions, and he issued an Amended Order and Notice of Hearing scheduling a hearing for March 5, 2025. On February 25, 2025, I granted the Township's continuance request due to the unavailability of a primary witness and rescheduled the hearing for June 18, 2025. On June 17, 2025, I cancelled the hearing at the request of the parties based on the representation that the parties would enter into and file stipulations of fact, in lieu of a hearing. On July 28, 2025, the parties submitted the Joint Stipulations of Fact (JSF), with exhibits. The JSF provides that the parties are now agreeing to the exclusion of 26, not 27, positions. On August 20, 2025, the Township filed a brief supporting the exclusion of 26 bargaining unit positions based on the JSF. The Union did not file a brief.

The Examiner, on the basis of the JSF and attached exhibits, 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 PERA. (JSF 1; PERA-R-18-200-E (Order and Notice of Election))

2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (JSF 1; PERA-R-18-200-E (Order and Notice of Election))

3. The Township and the Union are parties to a collective bargaining agreement (CBA), effective January 1, 2019 through December 31, 2022. The parties entered an agreement extending the CBA through December 31, 2027, with certain modifications to terms and conditions of employment. (JSF 1; Exhibits A & B)

4. The Township originally sought to exclude 41 positions from the bargaining unit. The Township subsequently amended its Petition and agreed with the Union to seek the exclusion of 27 positions thereby agreeing that the other 14 positions originally sought to be excluded would remain in the bargaining unit. The parties stipulated and agreed that evidence of the job duties associated with each position in the JSF would be presented at a hearing if one were to occur. (JSF 3-5, 8-9)

5. The Township's Home Rule Charter provides that the Mayor is responsible for appointing a Chief Administrative Officer (CAO), who must be confirmed by Township Council. The CAO is responsible for maintaining the day-to-day operations of the Township. (JSF 10-11)

6. The CAO is also the chief negotiator on behalf of the Township in collective bargaining negotiations for the four municipal unions that represent employees in the Township. Based on his role as chief negotiator for the Township, the CAO formulates, determines, and effectuates the Township's labor policy. The CAO is also responsible for resolving grievances

filed by the Township employees' various bargaining representatives, including this Union, as the last step in the grievance process before arbitration. (JSF 12-14)

7. The Township has one employee who serves as the Administrative Assistant to the Township's CAO. There are no other administrative assistants who work directly for the CAO. The Administrative Assistant to the Township's CAO works in adjoining offices to the CAO, provides clerical support to the CAO, and has access to confidential information involving collective bargaining and grievances, including information involving this Union. The Administrative Assistant to the Township's CAO works closely on a day-to-day basis with the CAO.

8. The Assistant Director of Licenses and Inspections works directly under the Director of the Department of Licenses and Inspections, and he is responsible for the direct supervision of 14 Inspectors, and 2 animal wardens. The Assistant Director of Licenses and Inspections is responsible for creating schedules, assigning work and enforcing all Township policies. The Assistant Director of Licenses and Inspections is responsible for monitoring employee performance and issuing corrective action and/or discipline when appropriate. The Assistant Director of Licenses and Inspections is responsible for documenting disciplinary infractions and uses independent judgment to determine whether a policy is violated and whether disciplinary action is needed. His disciplinary recommendations have always been accepted by the Director of the Department. (JSF 21-25)

9. The Assistant Director of Licenses and Inspections is also responsible for representing the Township at Step 1 of the grievance procedure for grievances involving subordinate employees. At Step 1, the Assistant Director of Licenses and Inspections uses independent judgment to determine whether to adjust a grievance and has the authority to bind the Township in a decision at Step 1 of the grievance process. (JSF 26-27)

10. The Senior Center Program Supervisor supervises employees in the position of Program Coordinator and Activity Coordinator. The Program Supervisor is responsible for planning and implementing all programming and services for the Senior Center. This includes allocating program budgets, maintaining program and activity records, planning Senior Center programs and activities with coordinators, developing the Senior Center catalog and monthly schedules, and reviewing and approving all program proposals and activities. (JSF 28-30)

11. The Senior Center Program Supervisor is responsible for setting subordinates' schedules, approving time off, and monitoring employee performance to determine if policy violations occur and to determine whether discipline should be issued when subordinates violate policy. The Program Supervisor uses judgment and discretion to determine whether policies are violated and when discipline is appropriate. The Program Supervisor uses independent judgment and discretion to decide whether to document discipline. Those recommendations are accepted by the Department Director. (JSF 31-33)

12. Recently the Program Supervisor initiated the disciplinary process for the Program Coordinator who had attendance and job performance deficiencies. The Program Supervisor unilaterally determined that discipline was appropriate and recommended that the employee receive a verbal warning. The Department Director accepted that recommendation and issued a verbal reprimand based on the Program Supervisor's recommendation. (JSF 34-36)

13. The Assistant Director of the Senior Center reports directly to the Director of Leisure Services and is responsible for supervising the Program Supervisor, Meal Program Supervisor, Administrative Assistant and Custodian. The Department of Leisure Services is made up of the following Divisions: Recreation, Senior Services, Management of Historic Sites, Trail Development, Facility Management and the Library System. The Senior Center is an accredited center providing a wide range of opportunities and services for seniors in the area. At the Senior Center, those who are 55 years of age and older can take part in a variety of recreational activities, fitness classes, and educational seminars. The Senior Center also offers support services, including legal referrals, to help members with any challenges they may be facing. (JSF 37-42)

14. The Senior Center provides nutritional support through the homebound program, with referrals from the County Office of Services for the Aging (COSA). The Center has a full-size fitness room, billiards room, and gymnasium, providing seniors with opportunities to stay active and healthy. The Assistant Director of the Senior Center is responsible for developing and maintaining programming for the Senior Center. The Assistant Director of the Senior Center is responsible for making determinations as to which programs the Senior Center pursues. The Assistant Director is also responsible for the fiscal management of the Senior Center, the management of day-to-day operations of the Center, and ensuring that the meal program is implemented and operated effectively and efficiently. (JSF 43-46)

15. The Assistant Director of the Senior Center operates as the Senior Center Manager, as the Township no longer has the position of Director of the Senior Center. The Assistant Director makes recommendations to the Director of Leisure Services regarding the operation of the Senior Center and the employees who directly report to him. Those recommendations are followed by the Director. The Assistant Director is also the Township representative at the Step 1 grievance level when the grievance involves his subordinates. At Step 1, the Assistant Director uses independent judgment to determine whether to adjust a grievance, and he has the authority to bind the Township to his decision at that stage. (JSF 47-50)

16. The Code Enforcement Officer is responsible for enforcing a broad range of Township codes and ordinances to protect the health, safety, and welfare of the community. The Code Enforcement Officer is responsible for using independent judgment and discretion to identify noncompliance with the Township's applicable codes and ordinances, and the Officer is responsible

for issuing complaints, documenting violations, and issuing legal notices when non-compliance with policies is identified. (JSF 51-52)

17. The job duties of the Code Enforcement Officer include conducting field inspections and compliance reviews related to building safety, housing safety, property maintenance, rental inspections, and use and occupancy inspections. The role involves both proactive enforcement and responsiveness to code-related complaints. Code Enforcement Officers document violations, issue legal notices, prepare case files, and provide testimony in court proceedings when required. (JSF 53-55)

18. The Code Enforcement Officer position requires regular interaction with residents, property owners, tenants, landlords, and business operators to educate residents about violations, to resolve those violations, and to promote strong community standards. Code Enforcement Officers perform the following additional duties: They perform rental property inspections, use and occupancy inspections, complaint-driven inspections, and proactive neighborhood sweeps; they identify and document violations involving building safety, housing safety, property maintenance, and all other Township requirements; they issue notices of violation, inspection reports, tickets, citations, stop-work orders, and condemnation notices in accordance with Township procedures; they photographically document and maintain accurate field reports detailing observed conditions and actions taken; they conduct follow-up inspections to confirm the abatement of violations and ensure compliance within established timeframes; they assist with dangerous or unfit building reviews and condemnation actions when required; and they perform inspection duties in a variety of environmental conditions. (JSF 56-57)

19. When out in the field conducting inspections, the Code Enforcement Officers are required to act without managerial approval when they discover noncompliance with a statute or ordinance. Code Enforcement Officers are responsible for interpreting and enforcing statutes and ordinances and applying them in the field. (JSF 58-59)

20. The Public Works Supervisor is required to oversee all division staff and to coordinate with and between divisions in Public Works. The Assistant Supervisors and Foreman report directly to the Public Works Supervisor. The position oversees the highway/street signs and traffic divisions of the Township's public works department. The Public Works Supervisor assigns work on a daily basis to subordinates, creates schedules and is the first step in the grievance procedure for grievances involving subordinates that do not directly report to a lower-level supervisor. At Step 1 of the grievance procedure, the Public Works Supervisor uses independent judgment to determine whether to adjust a grievance and has the authority to bind the Township in a decision at Step 1 of the grievance process. (JSF 60-64)

21. The Public Works Supervisor is responsible for monitoring the performance of many of his subordinates and is required to initiate

discipline and make disciplinary recommendations, which are routinely followed by the Director of Public Works. When making disciplinary decisions, the Public Works Supervisor determines whether policies are violated and whether discipline is appropriate. The Public Works Supervisor also initiates the disciplinary process. The Public Works Supervisor does not perform the same work as his subordinates, and his primary duty is supervision. (JSF 65-67)

22. The Vehicle Maintenance Service Manager directs and supervises the workers of the Vehicle Maintenance Division of Public Works. The Service Manager is the highest-ranking employee in the Vehicle Maintenance Division of the Township's Public Works Department. The Service Manager is responsible for overseeing 6 mechanics performing their job duties, which include repairing and maintaining all vehicles and equipment owned by the Township. The service manager is in charge of ensuring the maintenance and operation of 250 Township vehicles. (JSF 68-71)

23. The Vehicle Maintenance Service Manager runs the day-to-day operations of the Division, including creating schedules, giving work assignments and identifying what job duties need to be done. The Service Manager directs subordinates to perform specific duties on a day-to-day basis. The service manager is also responsible for identifying when vehicles need maintenance as well as determining when vehicles need to be replaced. The service manager makes effective recommendations as to purchase requirements in the Vehicle Maintenance Division. The Director of Public Works relies on those recommendations in determining what vehicles should be taken out of Township use and when the Township needs to purchase new vehicles. (JSF 72-74)

24. The Vehicle Maintenance Service Manager is the Township's representative at the first step in the grievance process when the grievance involves his direct subordinates. At Step 1 of the grievance procedure, the Service Manager uses independent judgment to determine whether to adjust a grievance, and he has the authority to bind the Township in a decision at Step 1 of the grievance process. The Service Manager is responsible for monitoring the performance of his subordinates, initiating discipline, and making disciplinary recommendations, which are routinely followed by the Director of Public Works. The Service Manager's primary duty is supervision, and he spends virtually all of his working time supervising and operating the Division. (JSF 75-78)

25. The Grounds Supervisor oversees the Parks Division staff of approximately 15 employees. The Grounds Supervisor ensures the maintenance of the Township's parks and other public property. The Grounds Supervisor assigns work to subordinates on a daily basis, creates the schedule, and monitors employee performance. The Grounds Supervisor determines when discipline is appropriate and is responsible for initiating the disciplinary process involving subordinates. The Grounds Supervisor writes up employees for disciplinary violations and makes recommendations that are routinely accepted by the Director of Public Works. (JSF 79-83)

26. The Grounds Supervisor is the first-step grievance representative of the Township in grievances involving subordinates. At Step 1, the Grounds Supervisor uses independent judgment to determine whether to adjust a grievance and has the authority to bind the Township in a decision at Step 1 of the grievance process.

27. The Electrical Foreman provides daily supervision of 4 electricians. The Electrical Foreman is responsible for assigning tasks on a daily basis, creating the schedule, and monitoring the work performance of his subordinates. The Electrical Foreman is responsible for enforcing all Township rules and policies on his subordinates, and he is required to identify when employees are violating policy. When employees are violating policies and/or work rules, the Electrical Foreman is responsible for determining whether discipline should be issued. The Electrical Foreman uses independent judgment and discretion to identify when violations occur and what is the appropriate disciplinary response to those violations. The Electrical Foreman drafts disciplinary documents and makes disciplinary recommendations to his Department Director, who relies on, and generally accepts, those recommendations. (JSF 86-92)

28. The Electrical Foreman is also responsible for adjusting grievances involving his subordinates, as he is the Township's representative at the first step in the grievance process under the parties CBA when a grievance involves one of his subordinates. At Step 1 of the grievance procedure, the Electrical Foreman uses independent judgment to determine whether to adjust a grievance and has the authority to bind the Township in a decision at Step 1 of the grievance process. (JSF 93-94)

29. The Assistant Supervisor of Sewer supervises the Assistant Foreman and the other workers of the Sewer Division of Public Works Department on a daily basis. The position supervises nine employees, including operators, drivers and laborers. The Assistant Supervisor of Sewer oversees the job performances of subordinate workers in the Sewer Division. The Assistant Supervisor of Sewer is familiar with the CBA and Township ordinances in order to uphold working conditions and enforce Sewer Division requirements. The Assistant Supervisor of Sewer prepares work plans and makes general work assignments for subordinates. The Assistant Supervisor of Sewer is responsible for determining the daily job duties of his subordinates based on the Township's daily needs. (JSF 95-98)

30. The Assistant Supervisor of Sewer is the first step in the grievance process on behalf of the Township when a grievance involves one of his subordinates. At Step 1 of the grievance procedure, the Assistant Supervisor of Sewer uses independent judgment to determine whether to adjust a grievance, and he has the authority to bind the Township in a decision at Step 1 of the grievance process. (JSF 99-100)

31. The Assistant Supervisor of Sewer is responsible for identifying policy violations by subordinates. He is responsible for determining when

discipline is warranted and what discipline is appropriate. The Assistant Supervisor of Sewer makes disciplinary recommendations to the Public Works Department Director. The Director routinely accepts those recommendations. (JSF 101-102)

32. The Foreman of Sanitation oversees all personnel in the Sanitation Division of the Public Works Department on a daily basis to ensure trash pick-up is proceeding as scheduled. The Foreman of Sanitation investigates and enforces property maintenance violations pertaining to the Sanitation Department. The Foreman of Sanitation coordinates the issuance of violation notices with the Property Maintenance Task Force and the Request Department. (JSF 103-105)

33. The Foreman of Sanitation is the Township's representative at the first step of the grievance process in the parties CBA when grievances involve subordinates. At Step 1 of the grievance procedure, the Foreman of Sanitation uses independent judgment to determine whether to adjust a grievance and has the authority to bind the Township in a decision at Step 1 of the grievance process. (JSF 106-107)

34. The Foreman of Sanitation is responsible for issuing disciplinary writeups when subordinates violate policy and is responsible for identifying when discipline is warranted and what level of discipline is appropriate under the circumstances. The Foreman of Sanitation makes effective recommendations regarding discipline to the Director of the Public Works Department, who routinely accepts the recommendations.

35. The bookkeeper's job duties currently do not meet the requirements to be excluded from the bargaining unit and the Township no longer requests that this position be removed from the unit. (JSF 110)

36. The Assistant Director of IT was previously a bargaining unit position. That position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 111)

37. The position of Recreation Gym Supervisor was previously a bargaining unit position. That position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 112)

38. The position of Assistant Director of Public Health was previously a bargaining unit position. That position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 113)

39. The position of Assistant Director of Community Development was previously a bargaining unit position. That position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 114)

40. The position of Building Superintendent was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 115)

41. The position of Assistant Director/Coordinator of the Pilgram Center was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 116)

42. The position of Coordinator of the Center for Family Safety was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 117)

43. The position of Tax Office Supervisor was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 118)

44. The position of Assistant Director of Property Maintenance was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 119)

45. The position of senior engineer was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 120)

45. The position of Administrative Assistant to the Director of Public Works was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 121)

46. The position of Administrative Assistant to the Department of Public Health was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 122)

47. The position of Administrative Assistant to the Director of Administrative Services was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 123)

48. The position of Highway Assistant Foreman was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 124)

49. The position of Permit Officer/Inspector was previously a bargaining unit position. This position currently does not exist, and the Township has no intention of filling that position in the future. Because the position no longer exists, the Township is requesting that the position be removed from the certification. (JSF 125)

DISCUSSION

In the JSF, the parties agreed to the job duties for 11 positions. The Township contends that these duties support the conclusion that the 11 positions should be excluded from the bargaining as either managerial, supervisory, or confidential. The parties also agreed to facts supporting the conclusion that 15 other positions no longer exist and, thus, should be removed from the bargaining unit description. The parties additionally agreed that the job duties of the position of Bookkeeper do not satisfy the requirements for any of the statutory exclusions and should remain in the bargaining unit. As the Township emphasizes in its brief, the parties agreed to the original bargaining unit description, as certified by the Board, and none of the bargaining unit positions were litigated. Thus, the Township is not required to establish changed circumstances for the positions at issue here.

The parties agreed that the following 15 positions no longer exist and that there is no intention to fill those positions in the future: Assistant Director of IT; Recreation Gym Supervisor; Assistant Director of Public Health; Assistant Director of Community Development; Building Superintendent; Assistant Director/Coordinator of the Pilgram Center; Coordinator of the Center for Family Safety; Tax Office Supervisor; Assistant Director of Property Maintenance; Senior Engineer; Administrative Assistant to the Director of Public Works; Administrative Assistant to the Department of

Public Health; Administrative Assistant to the Director of Administrative Services; Highway Assistant Foreman; Permit Officer/Inspector. Because there are no regular full-time or regular part-time employees in these positions, they are properly excluded from the bargaining unit at this time. However, the job duties of these positions were not evaluated. Thus, should any of these positions, or newly created positions, be filled with regular full-time or part-time employees in the future, those employees must then be included in the bargaining unit until the employer can establish through the Board's unit clarification process that the job duties satisfy the requirements of one of the 3 statutory exclusions.

The Township argues that the Administrative Assistant to the Township's Chief Administrative Officer (CAO) is confidential based on the job duties and the relationship that the employee in that position has with the Township's CAO.

Section 301(13) of PERA provides, in relevant part, that a 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 the employee to be privy to relevant collective bargaining strategies and information such that the union would know of the employer's plans if the information were prematurely revealed to the union by the employee. Bangor Area Sch. Dist., 9 PPER ¶ 9295, 533 (Nisi Decision and Order, 1978). In North Hills School District v. PLRB, 762 A.2d 1153, 1159 (Pa. Cmwlth. 2000), the Commonwealth Court opined that Section 301(13) (ii) assumes that an employee with a close continuing relationship with a manager, who is directly involved in collective bargaining, has access to and knowledge of the employer's bargaining strategies.

The CAO is the chief negotiator on behalf of the Township in collective bargaining negotiations for the four municipal unions that represent employees in the Township. Based on his role as chief negotiator for the Township, the CAO formulates, determines, and effectuates the Township's labor policy. The CAO is also responsible for resolving grievances from the Township's various bargaining units. The Township has one employee who serves as the Administrative Assistant to the Township's CAO. There are no other administrative assistants who work directly for the CAO. The Administrative Assistant to the Township's CAO works in adjoining offices to the CAO, provides clerical support to the CAO, and has access to confidential information involving collective bargaining with, and grievances from, all the unions. The Administrative Assistant to the CAO works closely on a day-to-day basis with the CAO. Thus, the job duties of the Administrative Assistant to the Township's CAO satisfy the requirements of both prongs of Section 301(13) of PERA. Accordingly, the Administrative Assistant to the CAO is a confidential employee who is properly excluded from the bargaining unit.

The statutory definition of a supervisor requires the employee in question to perform a set of specifically prescribed duties. 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); West Perry School District v. PLRB, 752 A.2d 461 (Pa. Cmwlth. 2000), *appeal den'd*, 568 Pa. 675, 795 A.2d 984 (2000). "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. The "hallmark of supervisory status under the Act in this regard is the ability to effect reward or sanction." Findlay Township Water Authority, 21 PPER 21130 at 324 (Final Order, 1990) (emphasis added).

In Danville Area School District, 8 PPER 08127 (Final Order, 1977), the Board stated that the term "[D]irect" infers 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." Danville, 8 PPER at 196.

Based on the JSF, a number of positions satisfy the statutory requirements for supervisory status because the employees in those positions responsibly direct and monitor the nature, quantity, and quality of their subordinates' work for most of their work time. These employees also effectuate discipline and corrective action, distinguishing them from lead workers. Additionally, all but the Senior Center Program Supervisor exercise discretion and independent judgment to adjust grievances and bind the Township at step 1 of the grievance procedure. Accordingly, the following positions are supervisory and properly excluded from the bargaining unit: Assistant Director of Licenses and Inspections; Senior Center Program Supervisor; Vehicle Maintenance Service Manager; Grounds Supervisor; Electrical Foreman; Assistant Supervisor of Sewer; Foreman of Sanitation.

Section 301(16) of the Act defines a management level employee as: "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). Port Authority of Allegheny County, 48 PPER 47 (Final Order, 2016); Allegheny-Clarion Valley School District, 41 PPER 21 (Final Order, 2010). The test is disjunctive. East Stroudsburg Area School District, 52 PPER 51 (Final Order, 2021).

The following positions are managers, and properly excluded from the bargaining unit, because the employees in those positions develop and/or implement programs and policies in their respective divisions or

supervise first-level supervisors: Assistant Director of the Senior Center; Code Enforcement Officer; Public Works Supervisor.

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 following positions are vacant and eliminated: Assistant Director of IT; Recreation Gym Supervisor; Assistant Director of Public Health; Assistant Director of Community Development; Building Superintendent; Assistant Director/Coordinator of the Pilgram Center; Coordinator of the Center for Family Safety; Tax Office Supervisor; Assistant Director of Property Maintenance; Senior Engineer; Administrative Assistant to the Director of Public Works; Administrative Assistant to the Department of Public Health; Administrative Assistant to the Director of Administrative Services; Highway Assistant Foreman; Permit Officer/inspector. The aforementioned positions are excluded from the bargaining unit. Should any regular full-time or part-time employees fill any of these positions in the future, they must be placed in the bargaining unit until the Township proves a statutory exclusion for the position(s), through the Board's unit clarification process.

5. The position of Administrative Assistant to the Township's CAO is confidential and is thereby properly excluded from the bargaining unit under Section 301(13) of the Act.

6. The following positions are supervisory under Section 301(6) of the Act and are properly excluded from the bargaining unit: Assistant Director of Licenses and Inspections; Senior Center Program Supervisor; Vehicle Maintenance Service Manager; Grounds Supervisor; Electrical Foreman; Assistant Supervisor of Sewer; Foreman of Sanitation.

7. The following positions are management-level positions and are properly excluded under Section 301(16) of the Act: Assistant Director of the Senior Center; Code Enforcement Officer; Public Works Supervisor.

8. The job duties of the position of Bookkeeper do not meet the requirements for any of the statutory exclusions, and the position is properly included in the bargaining unit.

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 bargaining unit of employees certified by the Board at PERA-R-18-200-E, is herein and hereby amended to exclude the following positions:²

Administrative Assistant to the Township's Chief Administrative Officer; Assistant Director of Licenses and Inspections; Senior Center Program Supervisor; Public Works Supervisor; Vehicle Maintenance Service Manager; Grounds Supervisor; Electrical Foreman; Assistant Supervisor of Sewer; Foreman of Sanitation; Assistant Director of the Senior Center and Code Enforcement Officer. The following eliminated positions, unless filled, are also excluded: Assistant Director of IT; Recreation Gym Supervisor; Assistant Director of Public Health; Assistant Director of Community Development; Building Superintendent; Assistant Director/Coordinator of the Pilgram Center; Coordinator of the Center for Family Safety; Tax Office Supervisor; Assistant Director of Property Maintenance; Senior Engineer; Administrative Assistant to the Director of Public Works; Administrative Assistant to the Department of Public Health; Administrative Assistant to the Director of Administrative Services; Highway Assistant Foreman; Permit Officer/inspector.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of August, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/S/ Jack E. Marino

JACK E. MARINO, Hearing Examiner

² Should the parties desire a new comprehensive bargaining unit description, based on this clarification order, they must file a joint request for amended certification with the Board.