

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Construction General Laborers and :  
Material Handlers Union, Local 1058, :  
an unincorporated labor organization by :  
and through Philip Ameris, Business :  
Manager and Trustee Ad Litem, :  
Petitioner :  
 :  
v. : No. 391 C.D. 2011  
 : Submitted: September 9, 2011  
Pennsylvania Labor Relations Board, :  
Respondent :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FRIEDMAN

FILED: October 12, 2011

Construction General Laborers and Material Handlers Union, Local 1058, an unincorporated labor organization by and through Philip Ameris, Business Manager and Trustee Ad Litem (Union), petitions for review of the February 15, 2011, order of the Pennsylvania Labor Relations Board (PLRB), which dismissed the exceptions filed by the Union and made absolute and final a Proposed Order of Unit Clarification. We affirm.

Dormont Borough (Borough) filed a Petition for Unit Clarification with the PLRB, seeking to exclude the position of Building Inspector/Code Enforcement Officer (Code Enforcement Officer) from the bargaining unit for nonprofessional

employees because the Borough believes that the job is a management level position. The PLRB assigned the petition to a hearing examiner, who held a hearing on the matter.

Based on the evidence presented at the hearing, the hearing examiner found that the Code Enforcement Officer: (1) is the only employee who grants or denies building permit applications, (Findings of Fact, No. 4); (2) has the discretion to waive an architect's stamp on a proposed building plan, (Findings of Fact, No. 5); (3) can require modifications to construction drawings, (Findings of Fact, No. 6); (4) can issue stop-work or correction orders, (Findings of Fact, No. 7); (5) has the discretion to order contractors to cease, or allow them to complete, roofing work when the contractors lack a permit, (Findings of Fact, No. 8); (6) enforces the zoning laws, including the issuance of occupancy permits based on an inspection, (Findings of Fact, No. 10); (7) determines whether drawings and rebuilding plans for dwellings damaged by fire comply with the building code, (Findings of Fact, No. 11); (8) inspects and reviews all new fire alarm systems for compliance with the building code and decides whether to issue permits for those systems, (Findings of Fact, No. 12); (9) enforces the property maintenance laws, (Findings of Fact, No. 13); (10) issues citations for code violations and defends them in court, (Findings of Fact, No. 14); (11) determines whether free-standing accessory structures are sound and orders the repair of unstable structures, (Findings of Fact, No. 15); (12) determines whether shrubs or trees create sidewalk obstructions and orders trimming as needed, (Findings of Fact, No. 16); (13) has the discretion to determine whether garbage, dog feces or exposed storage has accumulated to unsanitary levels, (Findings of Fact, No. 17); (14) determines whether sidewalk cracks require repair and issues permits to fix such

sidewalks, (Findings of Fact, No. 18); (15) determines whether roofs, walls and downspouts require repairs, orders the repairs and may grant extensions for completion of the repairs, (Findings of Fact, No. 19); (16) determines whether exterior steps require repairs, orders corrective action and issues citations for inaction, (Findings of Fact, No. 20); (17) issues snow-removal and ice-removal notices, (Findings of Fact, No. 21); (18) determines whether building plans comply with lot coverage, green space and water absorption requirements, (Findings of Fact, No. 22); and (19) issues citations for abandoned or junk vehicles, (Findings of Fact, No. 23).

Based on these findings, the hearing examiner issued a Proposed Order of Unit Clarification concluding that the Code Enforcement Officer is a management level employee under section 301(16) of the Public Employe Relations Act (PERA).<sup>1</sup> Thus, the hearing officer proposed amending the bargaining unit to exclude the Code Enforcement Officer position. The Union filed exceptions, but the PLRB dismissed them and made the Proposed Order of Unit Clarification absolute and final. In doing so, the PLRB pointed out that this court recently affirmed the PLRB in *Municipal Employees of the Borough of Slippery Rock v. Pennsylvania Labor Relations Board*, 14 A.3d 189 (Pa. Cmwlth. 2011), upholding the PLRB’s determination that a code enforcement officer is a management level employee. The Union now petitions this court for review.<sup>2</sup>

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<sup>1</sup> Act of July 23, 1970, P.L. 563, *as amended*, 43 P.S. §1101.301(16). Section 301(16) of PERA contains the statutory definition of “management level employe.”

<sup>2</sup> Our scope of review is limited to determining whether constitutional rights were violated, whether the PLRB committed an error of law or whether the necessary findings of fact are **(Footnote continued on next page...)**

The Union argues that the PLRB acted unreasonably, arbitrarily and capriciously in determining that the Code Enforcement Officer is a management level employee. We disagree.

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). If some of an employee’s functions meet only one part of the test, the employee will be considered managerial. *Westmoreland County v. Pennsylvania Labor Relations Board*, 991 A.2d 976, 985 (Pa. Cmwlth. 2010), *appeal denied*, \_\_\_ Pa. \_\_\_, 17 A.3d 1256 (2011). To be excluded from a bargaining unit as a management level employee who responsibly directs the implementation of policy, the employee “must either engage in meaningful participation in the development of the employer’s policy or *must ensure fulfillment of that policy by concrete measures.*” *Id.* at 985-86 (emphasis added). In other words, “the employee must be responsible for not only monitoring compliance with a policy, but also for taking action in situations where noncompliance is found.” *Slippery Rock*, 14 A.3d at 192.

Here, the Code Enforcement Officer not only monitors for compliance with zoning, building and property maintenance policies, but also takes various types

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**(continued...)**

supported by substantial evidence. *Slippery Rock*, 14 A.3d at 192. Moreover, we defer to the conclusions of the PLRB if they are reasonable and not arbitrary or capricious. *Id.*

of actions where noncompliance is found, e.g., denies applications for permits and issues stop-work orders, corrective orders, citations and notices. Because the Code Enforcement Officer ensures the fulfillment of policies by concrete measures, the Code Enforcement Officer responsibly directs the implementation of the Borough's policies, making the Code Enforcement Officer a managerial level employee.

Accordingly, we affirm.<sup>3</sup>

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ROCHELLE S. FRIEDMAN, Senior Judge

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<sup>3</sup> We note that the Union's argument in this case is not based on the statutory definition of "management level employee." Rather, the Union attempts to compare the function of the Code Enforcement Officer with the function of other types of employees, including employees covered by the Act of June 24, 1968, P.L. 237, *as amended*, 43 P.S. §§217.1-217.10, commonly known as Act 111. However, in *City of Pittsburgh v. Pennsylvania Labor Relations Board*, 556 A.2d 928, 933 (Pa. Cmwlth. 1989), this court held that the statutory definition of "management level employee" in section 301(16) of PERA is not to be read *in pari materia* with Act 111.

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ORDER

AND NOW, this 12<sup>th</sup> day of October, 2011, the order of the Pennsylvania Labor Relations Board, dated February 15, 2011, is hereby affirmed.

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ROCHELLE S. FRIEDMAN, Senior Judge