

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PF-U-17-80-E  
:  
WARMINSTER TOWNSHIP :

**FINAL ORDER**

Warminster Township (Township) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 3, 2018, from a Proposed Order of Unit Clarification (POUC) issued on June 13, 2018. In the POUC, the Hearing Examiner clarified the existing recognized bargaining unit of police officers, represented by the Warminster Township Police Benevolent Association (Association) under Act 111 of 1968 and the Pennsylvania Labor Relations Act (PLRA), to exclude the chief of police, and to include the position of Lieutenant.

A bargaining unit of "all [p]olice [e]mployees whom the Township employs on either a full-time or part-time bases (sic) as sworn [p]olice [o]fficers, excluding the rank of Lieutenant and the Chief of Police," has been recognized in the parties' collective bargaining agreements for in excess of twenty years. On October 26, 2017, the Association filed a Petition for Unit Clarification with the Board seeking to include the positions of Lieutenant and Chief of Police in the recognized bargaining unit of police officers employed by the Township.

In lieu of a hearing, on April 18, 2018, the parties submitted joint stipulations of fact to the Hearing Examiner. Based on the stipulations, the Hearing Examiner concluded that the Chief of Police qualifies as management level under the test set forth in Fraternal Order of Police Star Lodge No. 20 v. Pennsylvania Labor Relations Board, 522 A.2d 697 (Pa. Cmwlth, 1987), aff'd 522 Pa. 149, 560 A.2d 145 (1989). The Hearing Examiner also determined that the parties' stipulations of fact were not sufficient to establish that the Lieutenants exercised managerial authority under the Star Lodge test.

The Commonwealth Court in Star Lodge, delineated six criteria that would render a position managerial under Act 111. Those criteria are as follows:

Policy Formulation - authority to initiate departmental policies, including the power to issue general directives and regulations;

Policy Implementation - authority to develop and change programs of the department;

Overall Personnel Administration Responsibility - as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals;

Budget Making - demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items;

Purchasing Role - effective role in the purchasing process, as distinguished from merely making suggestions;

Independence in Public Relations - as evidenced by authority to commit departmental resources in dealing with public groups.

522 A.2d at 704. Performance of one of the six criteria is sufficient to find managerial status. Elizabeth Township, 37 PPER ¶ 90 (Final Order, 2006). The burden of proving that a position meets one of the managerial criteria under Star Lodge is on the party seeking to exclude the position from the bargaining unit. See Plains Township, 24 PPER ¶24081 (Final Order, 1993). Thus, here, the Township had the burden to prove that the positions of Chief of Police and Lieutenant satisfy one of six criteria of managerial status.

There is no dispute on exceptions to the Hearing Examiner's finding that the Chief of Police engages in policy implementation, exercises overall personnel administration responsibility and budget making authority, and has independence in public relations, and thus is a management employee under the Star Lodge criteria. On exceptions, the Township argues that the Hearing Examiner erred in failing to find that the stipulations of fact were sufficient to conclude that the Lieutenants engage in policy implementation and/or exercise overall personnel administration responsibility under the Star Lodge test for managerial status.

The parties' stipulations of fact regarding the duties of the Lieutenants are as follows:

15. The duties of the Lieutenants, as detailed in Department Policy 7.12.1, dated December 6, 2011, include the following:

- a. Issue or recommend discipline, including issuance of reprimands, cautionary letters and suspensions. The effectiveness of the Lieutenant's involvement was evidenced where a Lieutenant recommended a police officer be discharged and the recommendation was accepted;
- b. Develop and maintain standards for officers assigned to specialized units. The exercise of this authority is evidenced by the Lieutenant being in the process of completely changing and restructuring the Department's Field Training Program for all new police officers and reporting his progress to the Chief of Police;
- c. Develop and implement minimum requirements for selection to specialized units. Exercise of this authority was evidenced in making recommendations to the Chief of Police for selection of police officers

for specialized units, and those recommendations are routinely accepted.

(FF 17, Stipulations of Fact ¶15).

On exceptions, the Township argues that the Lieutenants' authority to recommend discharge of a police officer, is sufficient to establish the overall personnel administration responsibility criterion under Star Lodge. The Board has held that the six criteria for managerial status are disjunctive, in that establishing any one of the criteria (policy formation, policy implementation, overall personnel administration, budget making, purchasing role, or independence in public relations), is sufficient to establish managerial status. Elizabeth Township, supra. However, the overall personnel administration responsibility criterion is comprised of effective involvement in three elements (hiring, serious disciplinary actions and dismissals). These elements are set forth in the conjunctive, meaning all three must be present to establish overall personnel administration responsibility. North Wales Borough, 39 PPER 10 (Final Order, 2008); see City of Nanticoke, 39 PPER 126 (Proposed Order of Unit Clarification, 2008); Wrightsville Borough, 39 PPER 134 (Order Directing Submission of Eligibility List, 2008).

The Township argues on exceptions that the Board should overrule North Wales, and hold that the overall personnel administration responsibility criterion is itself disjunctive. However, such a reading would be inconsistent with Star Lodge. Indeed, Star Lodge, recognized six criteria for management status. To read the overall personnel administrative responsibility criterion in the disjunctive, as suggested by the Township, would expand the Star Lodge test beyond the six criteria outlined by the Commonwealth Court. Furthermore, as the Commonwealth Court recognized in Star Lodge, its test for managerial status was developed to recognize the Board's case law holding that management level authority over personnel matters is more than mere exercise of supervisory duties. See Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001). Absent evidence of effective involvement in all three elements of hiring, firing and serious discipline, which would support a finding of overall personnel administration responsibility, performance of only one or two elements amounts to no more than carrying out supervisory duties. Thus, under Star Lodge, to establish managerial status through the criterion of overall personnel administration responsibility, there must be evidence that the position at issue is effectively involved in hiring, issuing serious discipline and dismissals. North Wales Borough, supra.

As the Hearing Examiner found based on the Stipulations of Fact, the Lieutenants issue or recommend discipline, including issuance of reprimands, cautionary letters and suspensions, and a Lieutenant had recommended that a police officer be discharged and the recommendation was accepted. However, the Hearing Examiner correctly points out that there is no evidence of record that the Lieutenants have any involvement in the hiring process. Accordingly, on this record, the Township failed to sustain its burden of establishing that the Lieutenants exercise overall personnel administration responsibility sufficient to be management level under Star Lodge. See North Wales Borough, supra.

With respect to the Star Lodge criteria of policy formation and implementation, for policy formation there must be evidence of effective authority to develop and adopt policies or programs for the employer, whereas for policy implementation, there must be evidence of authority to create and effectuate changes to those policies or programs. Elizabeth Township, supra. The managerial aspect of policy formation and implementation is not necessarily destroyed where the policy is reviewed by others higher in management. Star Lodge, supra; City of Nanticoke, supra. However, to constitute the exercise of managerial authority over policy formation or implementation, there must nevertheless be substantial evidence of independent discretion in formulating the content of the policy or policy changes, and that, based on the drafter's effective recommendation, the policy, or changes to the policy, were adopted by the employer. See Elizabeth Township, supra; Dravosburg Borough, 35 PPER 82 (Order Directing Submission of Eligibility List, 2004).

The Stipulations of Fact are that the Lieutenant is in the process of changing and restructuring the Department's Field Training Program for all new police officers. The parties' stipulation is only that the Lieutenant is reporting his progress to the Chief of Police. There is no evidence that the Field Training Program has actually been changed or that the Chief has implemented any proposals on which the Lieutenant may be working. Thus, there is a lack of substantial evidence that the Lieutenant's work on the Department's Field Training Program is sufficient to sustain the Township's burden under the policy formation or implementation elements of the Star Lodge test. See Dravosburg Borough, supra.

The Township argues in its brief on exceptions that because the Lieutenants recommend police officers for selection to specialized units and the qualifications for promotion or selection to specialized police units is generally a managerial prerogative, the Lieutenants satisfy the criterion for policy implementation under Star Lodge. The parties' Stipulations of Fact provide that the Lieutenants' alleged authority to develop and implement minimum requirements for selection to specialized units is evidenced by the Lieutenant making recommendations to the Chief of Police for selection of police officers for specialized units, and those recommendations being routinely accepted. However, that stipulation is not substantial evidence that an actual policy outlining qualifications for selection to specialized units has been promulgated and adopted, or that the Lieutenants have changed an existing policy or requirement regarding qualifications. See Dravosburg Borough, supra. At best, the parties' stipulation that the Lieutenant recommends officers for selection to specialized units is evidence of nothing more than a supervisory function of the assignment of personnel. Butler Township, 41 PPER 43 (Proposed Order of Unit Clarification, 2010). Accordingly, the Township has failed to establish that in recommending police officers for selection to specialized units, the Lieutenant exercised policy implementation indicative of managerial authority under Star Lodge.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that, based on the Stipulations of Fact, the Township failed to sustain its evidentiary burden of establishing that the position of Lieutenant exercised overall personnel administration responsibility or engaged in

policy formation or implementation. As such, on this record, the Township failed to sustain its burden of proving that the position of Lieutenant must be excluded from collective bargaining as a manager under the Star Lodge test. Accordingly, the Hearing Examiner did not err in issuing a POUC including the position of Lieutenant in the parties' recognized bargaining unit under Act 111. The exceptions to the POUC, filed by the Township, shall therefore be dismissed, and the POUC made absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Warminster Township are hereby dismissed, and the June 13, 2018, Proposed Order of Unit Clarification, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this sixteenth day of October, 2018. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.