

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PF-R-11-93-E
:
MONTGOMERY TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On June 24, 2011, the International Association of Fire Fighters Local (Union or Petitioner) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) seeking certification as the exclusive representative of all full-time and regular part-time captains and firefighters of Montgomery Township (Township or Respondent).

On July 5, 2011, the Secretary of the Board issued an order and notice of hearing directing that a pre-hearing telephone conference be held on July 14, 2011 and a hearing, if necessary, be held on July 27, 2011 in Harrisburg.

The hearing was necessary, but the time and location of the hearing was changed to August 11, 2011 in Montgomeryville, at which time both parties were given the opportunity to present testimony, cross-examine and introduce documentary evidence.

The parties submitted post-hearing briefs on October 11, 2011. The hearing examiner, on the basis of the record and facts, makes the following:

FINDINGS OF FACT

1. Montgomery Township is a political subdivision within the meaning of Act 111 with its address located at 1001 Stump Road, Montgomeryville, Pennsylvania 18936. (N.T. 9)

2. The International Association of Fire Fighters is a labor organization within the meaning of the PLRA with its address located at 2048 Derry Street, Harrisburg, Pennsylvania 17104. (N.T. 9)

3. The Township is organized under the second class township code and governed by a five member board of supervisors. The supervisors have appointed a township manager to run the day to day operations of the Township. (N.T. 10, 12)

4. The parties stipulated and agreed that the position of Director of Fire Services, held by Richard Lesniak since June 2011, is a managerial employe and not eligible for vote in a representation election. (N.T. 5-6)

5. Director Lesniak reports to the Township Manager. (N.T. 10)

6. The township's fire department is comprised of paid employes and volunteers. (N.T. 6-7)

7. The Township employs one full-time paid fire fighter, Robert Hedden. (N.T. 36)

8. The Township employs two paid captains: Frank Colelli and John Scheiter. (N.T. 7)

9. The Township appointed Colelli and Scheiter as captains in 2006. They had been firefighters in the department since 2002. (N.T. 11-13, 66 and 73)

10. The Township created the position of captain in 2006. (N.T. 11)

11. The Township employs eleven regular part-time fire fighters eligible to vote in the representation election. They are Shawn Shade, Rob Roy, Jeff Tomczak, Harry Reese, Dave Gallagher, Rusty Layre, John Naylor, Todd Kulp, Curtis Diehl, Any Perlman and Carmen Conicelli. (N.T. 65)

12. The department's volunteer firefighters are not eligible to vote in a representation election. (N.T. 6-7)

13. The chief of the volunteers is Christopher Mann. (N.T. 64)

14. The volunteers receive a subsidy of \$15.00 a shift. The chief of the volunteers receives \$20 a shift. (N.T. 35)

15. Volunteer fire chief Mann is the commander of the department for operations. When a fire alarm comes in and the department responds, the firefighters work under Chief Mann. (N.T. 32)

16. Director of Fire Services Lesniak is the commander of the department for administrative day-to-day operations, such as performing fire house duties of maintaining and testing equipment. (N.T. 33)

17. The Director of Fire Services is also referred to as Chief by the captains. (N.T. 26, 44)

18. Captain Colelli works Tuesday through Friday, 7:30 am to 5:30 pm. Captain Scheiter works Monday through Thursday, 7:30 a.m. to 5:30 p.m. (N.T. 34)

19. Colelli and Scheiter alternate in working in the position of captain every other week. The weeks they are not working as captain, they work as a firefighter, at the same rate of pay as captain. (N.T. 34, 64, 73)

20. Captains and firefighters have many of the same duties. For example, they do firehouse duties such as cleaning bathrooms, sweeping floors, stocking toilet paper and taking out trash. They also do equipment checks on fire apparatus, saws and trucks. (N.T. 33)

21. On November 25, 2009, the Director of Fire Services evaluated Colelli's performance for the period September 1, 2008 to August 31, 2009. He chief recognized an accomplishment in the prior year was that Colelli "assisted in writing, revising and implementing department directives and SOGs [standard operating guidelines]." (N.T. 26, 27, 44, Township Exhibit 1)

22. Colelli had written a draft of an SOG for water rescue pursuant to the Director's request. The Director revised Colelli's writing before it was put in an order and implemented. (N.T. 44)

23. Colelli explained that the Director had asked him to put together guidelines for water rescue because he knew that Colelli had guidelines from his former department in Norristown. After Colelli gave the Director the guidelines, the Director revised them before issuing them as an SOG. (N.T. 44)

24. The fire department regularly inspects commercial buildings in the Township pursuant to a schedule that divides the township into 25 inspection districts. (N.T. 15, 17, 36-41)

25. The two captains and firefighter Hedden perform the commercial building inspections. Occasionally, the part-time firefighters also perform the inspections. (N.T. 36, 76)

26. The captains, firefighter Hedden and a majority of the part-time firefighters have received training in fire inspections and received fire inspector I and II

certifications from the International Fire Service Accreditation Council after taking a 40 hour class on fire inspections at the Bucks County Community College. The class instructed the captains how to inspect buildings and how to read and interpret the International Fire Code. (N.T. 13, 36)

27. If the captains find a violation when doing inspections, they provide a report to the owner with recommendations to the property owners. They tell the owner a re-inspection will be in two weeks. If there is no correction or compliance, a third inspection is made. If still no correction or compliance, the matter goes to the director of fire services acting as fire marshal, who makes the decision to file a district justice citation against the property owner. However, the decision to order the property owner to take action is that of the director of fire services as chief fire marshal. (N.T. 18-22, 41-42)

28. If a citation case goes to a hearing before the district justice, the captain presents the case to the District justice. (N.T. 23)

29. Each year, in conjunction with National Fire Prevention Week, the township's fire department sends the employees, including captains, to visit various locations in the township to give presentations about fire safety and fire evacuation strategies. The visits may occur over three to four weeks. (N.T. 28-29, 31).

30. The locations that are visited include schools, day-care facilities, health care facilities, motels and hotels. (N.T. 28)

31. The Director of Fire Services has the final say on the scheduled visits. (N.T. 31)

DISCUSSION

The Union's Petition for Representation for the firefighters of Montgomery Township presents one issue: whether the position of captain is a managerial employee and therefore excluded from the list of employees eligible to vote in the Board election. There are two captains in this relatively small department. There are only two other full-time employees, the Director of Fire Services and a full time firefighter. There is also a roster of regular part-time paid firefighters and volunteer firefighters.

In FOP Star Lodge No. 20 v. Commonwealth, PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd, 522 Pa. 149, 560 A.2d 145 (1989), the court held that the following six functions are indicative of managerial status for firemen and policemen under Act 111:

"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."

The test for managerial status under Act 11 is disjunctive and not conjunctive, such that the performance of any of the above functions results in a finding of managerial status. In the Matter of the Employees of Elizabeth Township, 37 PPER 90 at 291 (Final Order, 2006)(citing Star Lodge, supra).

As the party seeking to exclude the position of captain, the Township has the burden of proving the requisite elements of the exclusion. See Star Lodge, supra.

The Township's first basis for asserting that the captains are managerial is "policy formulation." The Township contends that the standard operating guidelines (SOGs) for water rescue that Captain Colelli wrote for the chief's review is as an example of policy formulation that would exclude the captains as managerial.

The Board has held that writing of department policy or guidelines is an example of Star Lodge policy formulation, even if it is then passed on to a superior for review and issuance, as long as the superior does not revise the policy. In Elizabeth Township, supra, the Board concluded that the deputy chief's development of his department's standard operating procedures alone was sufficient to make him a manager where the evidence showed the deputy chief "submitted the completed manual to the Chief who conveyed the manual to the Township Board of Commissioners without modification." 37 PPER at 291. In Dalton Police Ass'n. v. PLRB, 765 A. 2d 1171 (Pa. Cmwlth. 2001), the Commonwealth Court affirmed the Board's determination that the Chief of Police was managerial, based on the Borough's proof that the Chief's drafting of a police procedures manual that was adopted by the Mayor without change. The Court noted that there was no evidence that the Mayor made changes to the police procedures manual prepared by the Chief. Id. at 1175 n. 5.

In the present case, Captain Colelli testified that the chief revised the SOG for water rescue after he submitted it to the chief. He testified that although "a lot of the information" he put in was used, but the chief also revised it. Since Captain Colelli's draft of the SOG was revised by the chief, this exercise of policy writing by Captain Colelli is insufficient to meet the standards set forth in Elizabeth Township and Dalton Police Association. Based on this record, the facts do not support the assertion that the captains perform the function of policy formulation so as to meet the first indicia of the Star Lodge test.

The Township's second basis for asserting that the captains are managerial is their performance of fire code inspections of commercial properties in the Township. However, these duties are not exclusive to the captains. Full-time firefighters and the majority of the part-time firefighters also perform fire inspections. Because the fire inspection duties are not limited to the fire captains, these duties will not serve as the basis for finding the captains to be managerial. Accordingly these are insufficient facts to use this basis for finding the captains are managerial employees.

The Township's third basis for asserting that the captains are managerial is that they display "independence in public relations-as evidenced by authority to commit public resources in dealing with public groups." Star Lodge, supra. In order to meet this criterion, the employer must prove that the employee has the authority to commit departmental resources. Id. For example, in Township of Lower Merion, 13 PPER ¶ 13276 (Final Order, 1982), lieutenants were found to be managerial employees because they met with various governmental and civic groups as departmental spokesmen "with authority to make commitments of the manpower and resources of the department." Id. The Board distinguished this from merely acting as a liaison with citizen groups, which was not an indicia of managerial status.

The captains' fire prevention week duties are those of a liaison or coordinator, as opposed to a manager who commits public resources to public groups. These duties are not a demonstration of new commitments of public resources. The fire prevention week activities occur every year at the same time. The captains

repeat the general activities they have done in prior years. They are not the ones in the department making the commitment of public resources. The captains merely coordinate with the public to schedule activities which the department has determined that its employees would attend. Furthermore, the Director of Fire Services has the final say on the schedule of visits. Accordingly these are insufficient facts to prove this basis for finding the captains are managerial employees.

CONCLUSIONS

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

1. Montgomery Township is an employer within the meaning of the Act 111 as read in pari materia with the PLRA.
2. The International Association of Fire Fighters is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. A bargaining unit appropriate for the purpose of collective bargaining is a unit comprised of all full-time and regular part-time firemen of the Township, including but not limited to the position of firefighters and captains and excluding managerial employees.
4. The position of Director of Fire Services is a managerial employee.
5. The position of Captain is not a managerial employee.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the police officers eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this fourth day of November, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner