

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PF-R-11-134-E
:
LANSFORD BOROUGH :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On the October 12, 2011, the Fraternal Order of Police, Schuylkill-Carbon Lodge 13 (FOP or Petitioner), filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent the police employes of Lansford Borough (Borough). On October 24, 2011 the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties and December 8, 2011 in Harrisburg, was assigned as the time and place of hearing if necessary.

The hearing was necessary, and held before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

The examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents of record, makes the following:

FINDINGS OF FACT

1. Lansford Borough is a political subdivision of the Commonwealth of Pennsylvania and an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act (PLRA) with its address located at 26 East Patterson Street, Lansford, Pennsylvania 18232. (N.T. 9)

2. That the Fraternal Order of Police, Schuylkill-Carbon Lodge 13 is a labor organization within the meaning of Section 3(f) of the PLRA with its address located at c/o Lightman, Welby, Stoltenberg Caputo, 2705 North Front Street, Harrisburg, Pennsylvania 17110. (N.T. 9)

3. The parties stipulated and agreed that the Borough's police department includes a full-time Chief of Police, John Turcmanovich. His position is in dispute in this case. (N.T. 9)

4. The parties stipulated and agreed that Sergeant Jack Soberick and Patrol Officers Jeffrey Ohl, Joshua Tom, Robert Shubeck and Brian Horos are eligible. (N.T. 9)

5. The parties stipulated that the Borough employs one regular part-time officer, Jason Helmer and that officer Helmer is eligible to vote in an election for a bargaining representative. (N.T. 8)

6. The Chief of Police is John Turcmanovich. He has been the chief since 2007. (N.T. 11)

7. Chief Turcmanovich works 7:00 am to 3:00 pm on a ten day rotation schedule. He will start his rotation on Tuesday and work until Thursday of the following week. He then has a four day weekend off before resuming work again on Tuesday. (N.T. 41)

8. Chief Turcmanovich proposed a protective vest use policy to the Borough Council and the Council adopted the policy. (N.T. 32, 67-68)

9. By having a vest policy in place, the Borough was able to obtain a grant to purchase the vests for the police department. (N.T. 32, 67-68)
10. Chief Turcmanovich recommends the hiring of part-time police officers. (N.T. 21, 23)
11. The council always follows the chief's recommendations for hiring the officers. (N.T. 60)
12. Chief Turcmanovich commits the resources of the police department in response to public demands. (N.T. 52-53)
13. As an example of committing police resources, he has directed the police department to spend more time in areas where the public has made complaints about parking and loitering (N.T. 52-53)
14. That officer Amy Barclay is a part-time officer. (N.T. 11)
15. Barclay began working for the Borough two years ago and has worked continuously since that time. (N.T. 12-13)
16. Barclay works the 3 pm to 11 pm shift every weekend, Friday, Saturday, Sunday and Monday for a total of 32 hours. (N.T. 12)
17. Barclay works on a schedule prepared a month in advance by Chief Turcmanovich. (N.T. 12-14)
18. Barclay worked pursuant to this weekend schedule as recently as the weekend before the hearing date in this matter. (N.T. 16)
19. The Chief continues to maintain Barclay on the schedule despite her being reinstated to a full time position in another department. (N.T. 16)

DISCUSSION

The Fraternal Order of Police, Lodge 13 filed a petition for representation to be certified as the exclusive representative of the police officers of Lansford Borough. At the hearing, the FOP amended the petition to seek to represent all full-time and regular part-time police officers of the Borough, in order to conform to the Board's practice regarding the description of bargaining units. The Borough does not object to the amendment. There are two issues for decision.

The first issue is whether the position of chief, held by John Turcmanovich, is a managerial employe under the test set forth in Fraternal Order of Police Lodge Star Lodge No. 20 v. Pennsylvania Labor Relations Board, 522 A.2d 697 (Pa. Cmwlth, 1987), aff'd per curiam, 522 Pa. 149, 560 A.2d 145 (1989) (Star Lodge). Under Star Lodge, the burden of proving a managerial employe is on the party seeking to exclude the position. The court cast those criteria in the disjunctive, not the conjunctive, so an employe who meets any one of them is managerial. Elizabeth Township, 37 PPER 90 (Final Order 2006).

The six criteria of managerial status are:

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 697, at 705.

In the present case, the Borough has met its burden of proving that the chief meets the Star Lodge test for managerial status by the exercise of independent effective managerial authority. First, he has the authority to initiate departmental policies. He wrote the Borough's police vest policy. Second, the chief has demonstrated overall personnel administration responsibility. He recommends the hiring of part-time police officers. The Council always follows his hiring recommendations. Third, the Chief shows independence in public relations. He has directed the police department to spend more time in areas where the public has made complaints about parking and loitering. The Borough has met its burden of proving that Chief Turcmanovich is a managerial employe under Star Lodge.

The second issue is whether Amy Barclay is a regular part-time officer within the meaning of that term as developed by the Board. The Board has determined that regular part-time employes share a community of interest with full-time employes and are eligible to be included in a bargaining unit. In Bethlehem Township, 10 PPER 10050 (Order and Notice of Election, 1979), the Board stated, "However where employes do exhibit a regularity of employment with consistent and repeated service and some expectancy of continued employment they will be deemed regular part-time and included within the unit comprised of full-time police officers." 10 PPER at 81.

Officers who meet the definition of regular part-time officers are different from casual employees who only come to work as "fill-in" employes. The Board has established a two part test for distinguishing "regular part-time" from casual employes: first, that the employes work on a scheduled basis for the employer as opposed to being called in on short notice and second, that the employes "exhibit a regularity of employment with consistent and repeated service and an expectancy of continued employment." Borough of Whitaker, 14 PPER ¶ 14200 (Order Directing Submission of Eligibility List, 1983), 14 PPER ¶ 14273 (Final Order, 1983). "Merely appearing on the schedule is not sufficient, it is the frequency and regularity of employment which is relevant to a determination that an employe is regular part-time." Borough of Whitaker, supra.

Officer Barclay's record of employment shows that she is a regular part-time police employe. For the last two years, she has worked every weekend pursuant to a schedule devised by Chief Turcmanovich. The Borough questioned whether she would be on the schedule in the future since she had recently been reinstated to work in another department. However, the Chief testified credibly that she worked on the schedule after she had been reinstated and that he intended to maintain her on the schedule. Accordingly, Officer Barclay is eligible to vote in an election for a bargaining representative.

CONCLUSIONS

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

1. That Lansford Borough is an employer within the meaning of Section 3(c) of the PLRA.

2. That the Fraternal Order of Police Lodge 13 is a labor organization within the meaning of Section 3(f) of the PLRA.

3. That the Board has jurisdiction over the parties hereto.

4. That 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 police officers of the Borough, excluding managerial employes.

5. That the position of chief, held by John Turcmanovich, is managerial employe.

6. That Jack Soberick, Jeffrey Ohl, Joshua Tom, Robert Shubeck and Brian Horos are eligible to vote for a representative.

7. That Jason Helmer is a regular part-time police officer.

8. That Amy Barclay is a regular part-time police officer.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the Borough shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes in the employer unit described in Conclusion number 4 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 twenty-fifth day of January, 2012.

PENNSYLVANIA LABOR RELATION BOARD

Thomas P. Leonard, Hearing Examiner