

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-12-28-E
 :
 WIND GAP BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 13, 2012, the Wind Gap Police Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the position of Chief of Police (Chief) from the bargaining unit of police officers at Wind Gap Borough (Borough). On March 26, 2012, the Board received a Stipulation of Facts filed by Ronald Karasek, Esquire, the Borough's Solicitor, obviating the need for a Hearing.

The hearing examiner, on the basis of the stipulated facts, makes the following:

FINDINGS OF FACT

1. The Borough is a political subdivision within the meaning of Act 111 as read with the Pennsylvania Labor Relations Act (PLRA).
2. The Union is a labor organization within the meaning of Act 111 and the PLRA.
3. The parties stipulated and agreed that the Chief has prepared the written Manual for the Borough Police Department, which contains standard operating procedures, rules and regulations and any amendments thereto. The Manual and the amendments have been adopted by Borough Council with no or minimal changes or revisions. (Stipulation of Facts).

DISCUSSION

The Union has petitioned the Board to exclude the Chief as a managerial employee. In FOP Star Lodge No. 20 v. Commonwealth of Pennsylvania, PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd per curiam, 522 Pa. 149, 560 A.2d 145 (1989)(Star Lodge), the Commonwealth Court set forth six criteria of managerial status for firefighters and police officers under Act 111. Under Star Lodge, the Union has the burden of proving the following:

[T]hat the [employee in the position] has authority to initiate departmental policies, including the power to issue general directives and regulations; he [or she] has the authority to develop and change programs of the department; he [or she] engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals; he [or she] effectively prepared budgets, as distinguished from merely making suggestions; he [or she] effectively engaged in the purchasing process, as compared to merely providing suggestions; or he [or she] has the authority to commit departmental resources in dealing with public groups. Significantly, the test for managerial status under Act 111 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)(emphasis added).

The factual stipulations support the conclusion that the Chief exercises independent managerial discretion. The Chief's development of the Police Department's standard operating procedures and regulations manual demonstrates that the Chief is effectively involved in the formulation of managerial policy on behalf of the Borough. Dalton Police Ass'n v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001); Elizabeth Township, supra.

CONCLUSION

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

1. The Borough is a political subdivision within the meaning of Act 111 as read with the PLRA.
2. The Union is a labor organization within the meaning of Act 111 as read with the PLRA.
3. The Board has jurisdiction over the parties.
4. The Borough's Chief of Police is a managerial employe and is properly excluded from the bargaining unit of police officers.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Chief of Police is excluded from the bargaining unit.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of March, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner