

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-13-31-E
 :
 BIRMINGHAM TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On March 20, 2013, the Birmingham Township Police Officers Association (Association or Petitioner), filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent all full-time and regular part-time police officers of Birmingham Township (Township or Respondent). On April 10, 2013 the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a pre-hearing conference on April 24, 2013 for the purpose of resolving the matters in dispute through mutual agreement of the parties and May 9, 2013 in Harrisburg, was assigned as the time and place of hearing if necessary.

The pre-hearing conference did not resolve the matters in dispute and a hearing was necessary. The Township moved to continue the hearing. Over the objection of the Association, the Examiner continued the hearing. On June 6, the parties submitted stipulations in lieu of appearing at a hearing to present evidence.

The examiner, on the basis of the stipulations and of all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The parties stipulated that Birmingham Township is an employer within the meaning of the Pennsylvania Labor Relations Act (PLRA) with its address located at 1040 West Road, West Chester, Pennsylvania 19382. (Stipulation)
2. The parties stipulated that Birmingham Township Police Officers Association is a labor organization within the meaning of the PLRA with its address located at c/o Joseph W. Chupein, Esquire, 25 West Second Street, P.O. Box 900, Media, Pennsylvania 19063. (Stipulation)
3. The parties stipulated that the unit ("Unit") deemed 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 including, but not limited to, patrol officers and corporals; and excluding the Chief of Police (the "Chief"), the rank of Sergeant (the "Sergeant") and any other managerial employes, as well as the part-time casual Officer John R. Freas. (Stipulation)
4. The parties stipulated that the Chief performs the following managerial functions and is therefore properly excluded from the Unit:
 - a. The Chief has the authority to and has, in fact, instituted disciplinary proceedings and investigations on behalf of the police department.
 - b. The Chief has the authority to and has, in fact, represented the police department in public relations matters, including but not limited to utilizing his independent judgment in assigning police department personnel and equipment for use in community functions.
 - c. The Chief has the authority and has, in fact, made hiring decisions concerning police officer applicants.
 - d. The Chief has the authority and has, in fact, prepared the budget and handles financial matters. (Stipulation)

5. The parties stipulated that the Sergeant performs the following managerial functions and therefore is properly excluded from the Unit:
 - a. The Sergeant has the authority to and has, in fact, instituted disciplinary proceedings and investigations on behalf of the police department.
 - b. The Sergeant has the authority to and has, in fact, represented the police department in public relations matters, including but not limited to discussing Township public safety issues with the press as well as utilizing his independent judgment in assigning police department personnel and equipment for use in community functions.
 - c. The Sergeant has the authority to and has, in fact, made hiring recommendations concerning police officer candidates. (Stipulation)
6. The parties stipulated that part-time officer John R. Freas is a casual employe, properly excluded from the Unit, because he works less than eight hours a week and/or because he is sporadically scheduled to work for the Department. (Stipulation)

DISCUSSION

The Association's petition for representation seeks an election to determine the exclusive representative of the police officers of the Township.

The Township seeks to exclude the positions of chief and sergeant as a managerial employees and a part-time officer as a casual employee.

As for the positions of chief and sergeant, the Board follows the test set forth 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), in which the Commonwealth 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."

522 A.2d at 704.

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**).

The stipulations for the position of chief and sergeant meet the requisite elements of **Star Lodge, supra**. Accordingly, the positions of chief and sergeant are

managerial and the persons holding those positions are not eligible to vote in an election for the exclusive representative.

As for the status of the part time officer, John Freas, the Board has included part-time officers in a bargaining unit if they regularly appear on a schedule for a minimum of hours a week. Officers who meet the definition of regular part-time officers are different from casual employees who only come to work as "fill-in" employees. The Board has determined that regular part-time employees share a community of interest with full time employees 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 employees 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.

In the present case, the parties stipulated John Freas is only sporadically scheduled to work as a police officer. Based on this stipulation, Freas will be deemed a casual employee and not a regular part-time officer who is eligible to vote in an election for a bargaining representative.

CONCLUSIONS

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

1. Birmingham Township is an employer within the meaning of the Act 111 as read in pari materia with the PLRA.
2. The Birmingham Township Police Officers Association 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. That the unit appropriate for collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers, including, but not limited to, patrol officers and corporals; and excluding managerial employees.
4. The position of chief is a managerial employee.
5. The position of sergeant is a managerial employee.
6. The position held by John R. Freas is a casual employee and not 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 Township shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employees 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 seventeenth day of June, 2013.

PENNSYLVANIA LABOR RELATION BOARD

Thomas P. Leonard, Hearing Examiner