

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-12-118-W
 :
FRACKVILLE BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On October 15, 2012, Frackville Borough (Borough) 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 Borough's bargaining unit of police officers. On November 6, 2012, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on April 15, 2013.

I continued that hearing at the request of the Police Negotiation Committee of the Frackville Borough Police Department (Union) over the objection of the Borough and rescheduled it for July 8, 2013. On July 1, 2013, the Board received a withdrawal of appearance from the Union's attorney. The Union did not appear for the hearing on July 8, 2013, and only the Borough presented evidence. On July 17, 2013, the Borough filed proposed findings of fact, proposed conclusions of law and a proposed order of unit clarification.

The hearing examiner, on the basis of the stipulated facts and all matters of record, 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). (Borough Exhibit 1; The Pennsylvania Manual, 6-114).
2. The Union is the labor organization that is the exclusive representative of the Borough's police officers, within the meaning of Act 111 and the PLRA. (Borough Exhibit 1, Article 3).
3. The Chief approves and assigns overtime for full-time officers (N.T. 16; Borough Exhibit 2).
4. Chief Ashman's last day of work before her medical leave of absence was November 28, 2012. (N.T. 28).
5. Sergeant Livergood is currently substituting for the Chief as the Officer-in-Charge and has assumed the duties of the Chief. (N.T. 16-17).
6. In this capacity, Sergeant Livergood has recommended discipline which has been adopted and approved by Borough Council on more than one occasion since November, 2012. He has also approved the assignment of overtime. (N.T. 19).
7. Sergeant Livergood, as Officer-in-Charge, ensures that officers receive and maintain proper training. He schedules training for officers and appropriates financial resources for that training. (N.T. 19-20).
8. Officer-in-Charge Livergood participates in the hiring of police officers. He performs the background checks, certified drivers' requests and participates in interviews. He has recommended the hiring of individual officers, and he has recommended that the Borough not hire certain individual officers. The Borough has followed those recommendations. (N.T. 20-21).
9. The Borough adopted the entire budget prepared by Chief Ashman before she left for Medical leave, except for two minor changes. (N.T. 28-30).

DISCUSSION

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 Borough 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. [**Fraternal Order of Police Lodge No. 20 v. PLRB (Star Lodge)**, 522 A.2d 697, 704 (Pa. Cmwlth. 1987, **aff'd**, 522 Pa. 149, 560 A.2d 145 (1989))]. 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 record supports the conclusion that the Chief is a management level employe because the individual performing the duties of that position is involved in overall personnel administration. Those duties include the following: approving and assigning officers for overtime; effectively recommending discipline, which is adopted by the Borough Council; approving and assigning officers for training; conducting interviews for hiring new officers; performing background checks; and effectively recommending to Borough Council which individual officers to hire or not hire. The person performing the duties of the Chief also effectively prepares the budget for the police department, as distinguished from merely making suggestions. Both Chief Ashman and Officer-in-Charge Livergood appropriated departmental resources by approving overtime and training expenditures.

CONCLUSION

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

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.

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-sixth day of July, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner