

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-13-73-E
: :
MOUNT CARMEL TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On July 18, 2013, the Mount Carmel Township Police Officer Association (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification pursuant to the Pennsylvania Labor Relations Act (PLRA) and Act 111, seeking to exclude the Chief of Police from the bargaining unit, as a management level employe. On July 31, 2013, the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a September 4, 2013 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning October 15, 2013 in Harrisburg as the time and place of hearing if necessary.

Mount Carmel Township (Township or Employer) and the Association subsequently agreed to submit factual stipulations in lieu of participating in a hearing. On September 13, 2013, the Board received the jointly executed stipulations of fact between the parties.

The hearing examiner, based on all matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Chief of Police, Brian Hollenbush, interviews officers for vacant positions and recommends officers to be hired by the Township Board of Supervisors (Scicchitano, Zannella, and Gasperetti). The Township Board of Supervisors customarily hires the officers recommended by Chief Hollenbush. (Joint Exhibit No. 1)
4. Chief Hollenbush has recommended discipline and termination of officers. The Township Board of Supervisors customarily acts favorably on the Chief's recommendation. (Joint Exhibit No. 1)
5. Chief Hollenbush prepares the Police Department's budget and submits it to the Supervisors. The Supervisors approve the Chief's budget without change. (Joint Exhibit No. 1)
6. Chief Hollenbush authored the Police Department's Standard Operating Procedures (SOP) manual, which was adopted by the Supervisors with few changes. The Chief has also recommended changes to the Procedures Manual which have been adopted by the Supervisors. (Joint Exhibit No. 1)
7. Chief Hollenbush has created policies in the Department which were adopted by the Supervisors. (Joint Exhibit No. 1)
8. Chief Hollenbush is the sole purchaser for the Department. All items to be purchased, such as clothing, vehicles, duty gear, and paper, must go through the Chief for approval. (Joint Exhibit No. 1).

DISCUSSION

The Association's petition for unit clarification presents one issue for decision, i.e. whether the Chief of Police position is managerial, and therefore, excluded from the bargaining unit.

As a result, the issue depends on the test set forth in **Fraternal Order of Police Star Lodge No. 20 v. Pennsylvania Labor Relations Board**, 522 A.2d 697 (Pa. Cmwlth, 1987), **aff'd** 522 Pa. 149, 560 A.2d 145 (1989). Under **Star Lodge**, the burden of proving that a position is managerial is on the party seeking to exclude the position. The party must prove that the position meets one of the six criteria of managerial status, which the Court identified as follows:

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. Significantly, the test for managerial status under Act 111 is disjunctive and not conjunctive, such that performance of any one of these functions results in a finding of managerial status. **In the Matter of the Employees of Elizabeth Township**, 37 PPER ¶ 90 (Final Order, 2006).

In the present case, the Association has sustained its burden of proving the Chief's duties meet at least one of the criteria for managerial status. In fact, the Association has established that the Chief position meets five of the six criteria for managerial status.

First of all, the Chief's duties satisfy the criteria for managerial status in overall personnel administration responsibility. Indeed, the Chief interviews officers for vacant positions and recommends officers to be hired by the Township Board of Supervisors. Likewise, the Township Board of Supervisors customarily hires the officers recommended by the Chief. In addition, the Chief has recommended discipline and termination of officers, and the Township Board of Supervisors customarily acts favorably on his recommendation. Thus, the Association has demonstrated the Chief has effective involvement in hiring, serious disciplinary actions, and dismissals.

Next, the Chief's duties also meet the managerial criteria for budget making, as the Chief prepares the Police Department's budget and submits it to the Supervisors, who approve the budget without change. As such, the Chief has demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items. Similarly, the Chief's duties satisfy the policy implementation criteria, as the Chief authored the Police Department's SOP manual, which the Supervisors adopted with few changes. What is more, the Chief has recommended changes to the Procedures Manual, which have been adopted by the Supervisors. This clearly shows the Chief has the authority to develop and change programs of the Department.

Further, the Chief has created policies in the Department, which were adopted by the Supervisors, evidencing his managerial status under the policy formulation criteria. By doing so, the Chief has demonstrated the authority to initiate departmental policies, including the power to issue general directives and regulations. Finally, the Chief is the sole purchaser for the Department, such that all items to be purchased must go through him for approval, including clothing, vehicles, duty gear, and paper. As a result, the Chief has an effective role in the purchasing process, as distinguished from merely making suggestions.

Based on this record, the Chief of Police clearly meets several of the factors deemed indicative of managerial status under the PLRA and Act 111. Accordingly, the Chief position must be excluded from the bargaining unit as a managerial employe.

CONCLUSION

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

1. The Township is public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties.
4. The Township's Chief of Police is a managerial employe and is properly excluded from the bargaining unit of police officers in the Township Police Department.

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 seventeenth day of September, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner