

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-14-116-E
: :
ALBURTIS BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On October 27, 2014, the Borough of Alburtis (Borough or Employer) 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. On November 5, 2014, the Secretary of the Board issued an Order and Notice of Hearing, designating a December 2, 2014 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning May 22, 2015 in Harrisburg as the time and place of hearing, if necessary.

The Alburtis Police Officers Association (Association or Union) and the Borough ultimately agreed to submit factual stipulations in lieu of participating in a hearing. On or about December 9, 2014, 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 Borough 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. During the tenure of the current Chief of Police, the Borough hired at least eight part-time police officers. In each of those cases, the Chief determined there was a need to hire a part-time officer, conducted interviews for the position, and recommended the person to be hired. The Borough Council hired the person recommended by the Chief. (Joint Exhibit 1, Paragraph 1)
4. In matters of discipline of part-time officers, the Chief investigated all incidents and made the determination to impose discipline and the amount involved. Generally, substantial discipline would involve the Chief not scheduling a part-time officer to work for a one-month period or longer. In one instance, the Chief told a part-time officer to resign, and if the officer did not do so, the Chief would take more formal action. That officer resigned without any appeal to the Mayor or Borough Council. (Joint Exhibit 1, Paragraph 2)
5. There have not been any suspensions or terminations of full-time police officers during the Chief's tenure. However, there have been

instances of discipline leading to verbal and written reprimands. In all but one of these situations, the incident was investigated at the initiative of the Chief. In all situations, the Chief conducted the investigation, and his determinations on the type of discipline to be imposed were implemented. (Joint Exhibit 1, Paragraph 3)

6. The Chief approves all police department scheduling and directs the manner in which officers are to be scheduled. On one occasion, some full-time officers requested a change in scheduling which would create certain 12-hour shifts. The Chief approved the request, but added certain requirements and restrictions. The Chief presented the matter to the Mayor, who did not object, and the Chief implemented the change in accordance with his requirements and restrictions. (Joint Exhibit 1, Paragraph 4)

7. The Chief has developed and implemented general policy directives for the department, as well as specific ones, such as a Taser policy. These policies are often based on policies suggested by the Pennsylvania Chiefs of Police Association, but the Chief has determined which policies and the details of the policies to be implemented in the Borough. The Chief has discussed these matters with the Mayor, but has always been permitted to implement them as the Chief determined appropriate. The Chief makes and implements standard operating procedures on his own authority. (Joint Exhibit 1, Paragraph 5)

8. During the preparation of the Borough's annual budget, the Chief makes a proposal for the police department budget through discussion with the Borough's Executive Secretary, who inputs the Chief's proposal into software and produces hard copies of the proposal. The Borough Council generally follows the recommendations of the Chief in adopting the final budget. (Joint Exhibit 1, Paragraph 6)

9. The Chief initiates all major police department purchases, such as police cars and computers, by request to Borough Council. The Chief investigates the options and specifications of the items desired, searches for appropriate vendors and conforming products, obtains pricing, and makes recommendations for each major purchase. The Borough Council generally approves the Chief's recommendations. (Joint Exhibit 1, Paragraph 7)

10. The Borough police department participates in a number of public relations projects, including the National Night Out. The Chief approves all proposed projects, coordinates the funding of such projects (e.g., outside donations as well as department resources), and presents them to Borough Council for its approval. The Borough Council has always approved the recommendations of the Chief in these matters. (Joint Exhibit 1, Paragraph 8)

DISCUSSION

The Borough'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 Employes of Elizabeth Township, 37 PPER ¶ 90 (Final Order, 2006).

In the present case, the Borough has sustained its burden of proving the Chief's duties meet at least one of the criteria for managerial status. In fact, the Borough has established that the Chief position meets five of the six criteria for managerial status. As such, the Chief position must be excluded from the bargaining unit.

First of all, the Borough has sustained its burden of demonstrating that the Chief's duties satisfy the policy formulation criteria for managerial status. The record shows that the Chief has developed and implemented general policy directives for the department, as well as specific ones, such as a Taser policy. These policies are often based on policies suggested by the Pennsylvania Chiefs of Police Association, but the Chief has determined which policies and the details of the policies to be implemented in the Borough. The Chief has discussed these matters with the Mayor, but has always been permitted to implement them as the Chief determined appropriate. Notably, the Chief also makes and implements standard operating procedures on his own authority. Therefore, the Chief clearly has authority to initiate departmental policies, including the power to issue general directives and regulations pursuant to Star Lodge.

Similarly, the Borough has successfully shown that the Chief's duties meet the overall personnel administration responsibility element. During the tenure of the current Chief of Police, the Borough hired at least eight part-time police officers. In each of those cases, the Chief determined there was a need to hire a part-time officer, conducted interviews for the position, and recommended the person to be hired. And, the Borough Council hired the person recommended by the Chief. Likewise, in matters of discipline of part-time officers, the Chief investigated all incidents and made the determination to impose discipline and the amount involved. Generally,

substantial discipline would involve the Chief not scheduling a part-time officer to work for a one-month period or longer. In one instance, the Chief told a part-time officer to resign, and if the officer did not do so, the Chief would take more formal action. That officer resigned without any appeal to the Mayor or Borough Council. Further, while there have not been any suspensions or terminations of full-time police officers during the Chief's tenure, there have been instances of discipline leading to verbal and written reprimands. In all but one of these situations, the incident was investigated at the initiative of the Chief. In all situations, the Chief conducted the investigation, and his determinations on the type of discipline to be imposed were implemented. This clearly evidences effective involvement in hiring, serious disciplinary actions and dismissals consistent with Star Lodge.

Next, the Borough has also established that the Chief's duties fall under the budget making criteria for managerial status. The record shows that, during the preparation of the Borough's annual budget, the Chief makes a proposal for the police department budget through discussion with the Borough's Executive Secretary, who inputs the Chief's proposal into software and produces hard copies of the proposal. The Borough Council generally follows the recommendations of the Chief in adopting the final budget. As a result, the Chief has demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items.

In addition, the Borough has demonstrated that the Chief's duties satisfy the purchasing role criteria for managerial status. The parties stipulated that the Chief initiates all major police department purchases, such as police cars and computers, by request to Borough Council. The Chief investigates the options and specifications of the items desired, searches for appropriate vendors and conforming products, obtains pricing, and makes recommendations for each major purchase. The Borough Council generally approves the Chief's recommendations. This shows an effective role in the purchasing process, as distinguished from merely making suggestions.

Finally, the Borough met its burden of proof with regard to the independence in public relations criteria. The parties stipulated that the Borough police department participates in a number of public relations projects, including the National Night Out. The Chief approves all proposed projects, coordinates the funding of such projects (e.g., outside donations as well as department resources), and presents them to Borough Council for its approval. The Borough Council has always approved the recommendations of the Chief in these matters. As such, the Chief has authority to commit departmental resources in dealing with public groups.

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 Borough 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 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

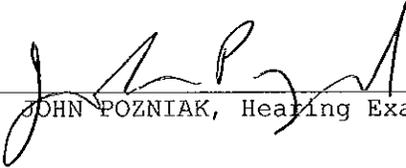
that the Petition for Unit Clarification is granted and the Chief of Police is excluded from the bargaining unit.

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 thirty-first day of December, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD



JOHN POZNIAK, Hearing Examiner