

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-13-32-E
 :
 DERRY BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On March 22, 2013, Derry Borough (Borough or Employer), in concert with the Derry Borough Police Officers Association (Association or Union), filed a Joint Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board) pursuant to the Pennsylvania Labor Relations Act (PLRA) and Act 111, seeking to exclude the Chief of Police from the bargaining unit. The parties agreed to submit factual stipulations in lieu of participating in a hearing. The Board received the jointly executed stipulations of fact between the parties on July 13, 2013. The Board subsequently received additional jointly executed stipulations of fact between the parties on October 25, 2013 and March 14, 2014.

The 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. Randy Glick has served in the position of Chief of Police of the Derry Borough Police Department since September of 2004. (Joint Exhibit 3)
4. Since September of 2004, Chief Glick has been personally responsible for interviewing and recommending to Borough Council the hiring of over 15 part-time police officers. (Joint Exhibit 3)
5. Borough Council voted to employ only those police officers specifically recommended by Chief Glick. (Joint Exhibit 3)
6. In order for a police officer within the Borough's police department to be promoted, the Chief must provide a recommendation for the promotion to be enacted by the Borough Council. (Joint Exhibit 2)
7. Chief Glick has recommended that at least five police officers be dismissed from the department. Borough Council voted to dismiss these police officers based specifically on the recommendations of Chief Glick. (Joint Exhibit 3)
8. Chief Glick is responsible for the selection and recommendation to Borough Council of all police vehicles purchased by the Borough. The Borough does not purchase police vehicles without the approval of Chief Glick. (Joint Exhibit 3)
9. Chief Glick selects and determines the weapons purchased for the police department by the Borough. (Joint Exhibit 3)
10. Chief Glick establishes and oversees the enactment of policies for the operation of the police department. Specifically, the Chief has established policies relating to Taser use and bullet proof vests. (Joint Exhibit 3)
11. Chief Glick oversees and personally handles grant applications to obtain money for the operation of the police department. (Joint Exhibit 3)

12. Chief Glick establishes the work and vacation schedules within the police department. (Joint Exhibit 3)
13. Chief Glick establishes the route for patrols within the Borough's jurisdictional limits. (Joint Exhibit 3)
14. The Association is not stipulating or tacitly agreeing to the removal of the Chief from the bargaining unit. (Joint Exhibit 3)
15. The parties agree that the issue of the Chief's removal from or retention within the bargaining unit is an issue squarely and properly before the Board and the factual stipulations submitted by the parties shall serve as the record on which the Board shall base its determination. (Joint Exhibit 3)

DISCUSSION

The Joint 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 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 three of the six criteria for managerial status. The record shows that the Chief establishes and oversees the enactment of policies for the operation of the police department. Specifically, the Chief has established policies relating to Taser use and bullet proof vests. As a result, the Chief's duties satisfy the policy formulation criteria for managerial status, as he has shown the authority to initiate departmental policies, including the power to issue general directives and regulations.

The record also shows that, since September of 2004, the Chief has been personally responsible for interviewing and recommending to Borough Council the hiring of over 15 part-time police officers. In addition, Borough Council voted to employ only those police officers specifically recommended by the Chief. Further, the Chief has recommended that at least five police officers be dismissed from the department, and Borough Council voted to dismiss these police officers based specifically on the Chief's recommendations. As such, the Chief's duties satisfy the overall personnel administration responsibility criteria for managerial status, as he clearly has effective involvement in hiring, serious disciplinary actions, and dismissals.

The record further shows that the Chief is responsible for the selection and recommendation to Borough Council of all police vehicles purchased by the Borough. Likewise, the Borough does not purchase police vehicles without the approval of the Chief. Similarly, the Chief selects and determines the weapons purchased for the police department by the Borough. Therefore, the Chief's duties also meet the purchasing role criteria for managerial status, as the Chief has an effective role in the purchasing process.

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 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 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 nineteenth day of May, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner