

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-14-31-E
 :
UPPER DUBLIN TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On March 31, 2014, Upper Dublin Township (Township 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 Lieutenant position from the police bargaining unit. On April 16, 2014, the Secretary of the Board issued an Order and Notice of Hearing, designating a May 21, 2014 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning August 6, 2014 in Harrisburg, as the time and place of hearing, if necessary.

The Township and the Upper Dublin Police Benevolent Association (Union) ultimately agreed to submit factual stipulations in lieu of participating in a hearing. On July 28, 2014, the Board received the jointly executed stipulations of fact between the parties, as well as exhibits submitted in support thereof.

The 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 Union is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Lieutenant developed new evaluation techniques and procedures for all patrol personnel designed to improve the methods, fairness, and equity of the evaluations. These techniques and procedures were implemented through the Evaluation Process Operations Directive #7.22.1, revised on February 3, 2014. (Joint Exhibits 1 & 2)
4. The Lieutenant is authorized to and, in fact, expends Township funds for the purchase of equipment and services for the Township police department. For example, on behalf of the Township, the Lieutenant purchased a police shed in November 2013, which totaled \$6,975.00, and a firearm training course, in June 2014. (Joint Exhibits 1 & 3)
5. The Lieutenant researches, develops, recommends, and reviews the adoption of new personnel policies, including those issued through the Social Media and Networking Operations Directive, #7.26.1, issued on March 1, 2012, and the Inspectional Services Operations Directive, #1.8.1.B, revised on March 20, 2012. (Joint Exhibits 1, 4-5)
6. The Lieutenant investigates allegations of officer misconduct and effectively recommends discipline of officers. (Joint Exhibit 1)
7. Examples of discipline effectively recommended by the Lieutenant and adopted by the department include the April 2014 unpaid suspension of an officer for improperly drawing a firearm during a traffic stop, (Incident 2013-007214), and the December 2013 unpaid suspension of an officer due to negligence leading to an automobile accident in a police vehicle, (Incident 2013-020835). (Joint Exhibit 1)
8. After the Chief's review and discipline decision, the Lieutenant position is responsible for ensuring that the discipline is disseminated, including the scheduling of

any suspension time, documentation of any mandated remedial training, and documentation of any stipulated review periods. (Joint Exhibit 1)

9. The Union contests the Township's unit clarification petition. (Joint Exhibit 1)

DISCUSSION

The Township's petition for unit clarification presents one issue for decision, i.e. whether the Lieutenant 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 Township has sustained its burden of proving the Lieutenant's duties meet at least one of the criteria for managerial status. In fact, the Township has established that the Lieutenant position meets two of the six criteria for managerial status. Therefore, the Lieutenant position must be excluded from the bargaining unit.

The record shows that the Lieutenant's duties satisfy the policy formulation criteria for managerial status. Indeed, the Lieutenant has developed new evaluation techniques and procedures for all patrol personnel designed to improve the methods, fairness, and equity of the evaluations. These techniques and procedures were implemented through the Evaluation Process Operations Directive #7.22.1, revised on February 3, 2014. Similarly, the Lieutenant researches, develops, recommends, and reviews the adoption of new personnel policies, including those issued through the Social Media and Networking Operations Directive, #7.26.1, issued on March 1, 2012, and the Inspectional Services Operations Directive, #1.8.1.B, revised on March 20, 2012. As a result, the Lieutenant clearly has the authority to initiate departmental policies, including the power to issue general directives and regulations, consistent with **Star Lodge**.

The record also shows that the Lieutenant's duties fall within the purchasing role criteria for managerial status. The Lieutenant is authorized to and, in fact, expends Township funds for the purchase of equipment and services for the Township police department. For example, on behalf of the Township, the Lieutenant purchased a police shed in November 2013, which totaled \$6,975.00, and a firearm training course, in June 2014. As such, the Lieutenant has an effective role in the purchasing process, as distinguished from merely making suggestions with respect to particular items.

Based on this record, the Lieutenant position meets two of the factors deemed indicative of managerial status under the PLRA and Act 111. Accordingly, the Lieutenant 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 Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union 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 Police Lieutenant position is a managerial employe and 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 Examiner

HEREBY ORDERS AND DIRECTS

that the Lieutenant position 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-eighth day of August, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner