

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-13-93-E
 :
UPPER MORELAND TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On October 7, 2013, Upper Moreland 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 police lieutenants from the bargaining unit. On October 22, 2013, the Secretary of the Board issued an Order and Notice of Hearing, designating a November 20, 2013 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning January 10, 2014 in Harrisburg as the time and place of hearing, if necessary.

The Township and the Upper Moreland Township Police Benevolent Association (Union) ultimately agreed to submit factual stipulations in lieu of participating in a hearing. On May 22, 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. (Joint Exhibit 1)
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (Joint Exhibit 1)
3. The Township police department is a certified police unit composed of sworn Upper Moreland police officers, including patrol officers, detectives, sergeants and lieutenants. (Joint Exhibit 1)
4. On October 7, 2013, the Township filed a petition for unit clarification requesting the lieutenants be removed from the certified bargaining unit. The petition alleges that the lieutenants should be excluded from the bargaining unit because they are managerial employes pursuant to Act 111 and **Fraternal Order of Police, Star Lodge No. 20 v. PLRB**, 522 A.2d 697 (Pa. Cmwlth. 1987). The Township alleges that the lieutenants meet all six of the criteria for managerial status as set out in **Star Lodge**. (Joint Exhibit 1)
5. The parties stipulated and agreed that the Township's lieutenants have the authority to initiate departmental policies, have initiated and drafted departmental policies and have recommended and continue to recommend the institution of departmental policies. (Joint Exhibit 1)
6. Specifically, Lieutenant Drakeley has developed and authored a domestic violence policy, while Lieutenant Troxel has developed and authored an Approved Weapons and Ammunition Policy. (Township Exhibit 1)
7. The parties stipulated and agreed that the Township lieutenants have the power to issue general directives and regulations, and have done so. (Joint Exhibit 1)
8. For example, Lieutenant Drakeley has issued directives regarding EZ Pass violations and prisoner meals. Likewise, Lieutenant Troxel has issued

directives regarding start of shift vehicle inspections and officers as witnesses at court. (Township Exhibit 2)

9. The parties stipulated and agreed that the Township lieutenants have the authority to develop and change programs of the department and have done so, and will continue to do so. (Joint Exhibit 1)
10. For instance, Lieutenant Drakeley has managed, modified, and spoken on behalf of the police department regarding the Lethality Assessment Program (LAP). Similarly, Lieutenant Troxel served as the training coordinator for the department and changed the operations and personnel of the department's training cadre for 2014. (Township Exhibit 3)
11. The parties stipulated and agreed that the Township lieutenants have engaged in and continue to engage in overall personnel administration responsibility as evidenced by their involvement in hiring, serious disciplinary actions, and dismissals. The parties stipulated and agreed that the lieutenants have disciplined, made disciplinary recommendations and made recommendations regarding hiring. (Joint Exhibit 1)
12. Specifically, Lieutenant Levy supervised and directed oral hiring interviews, supervised and directed the hiring process, and directed the Sergeants' promotional process. In addition, Lieutenant Troxel issued a disciplinary letter of caution regarding a single vehicle crash. (Township Exhibit 4)
13. The parties stipulated and agreed that the lieutenants have committed departmental resources in dealing with public groups and have spoken on behalf of the Township in dealing with public groups and the press. (Joint Exhibit 1)
14. For example, Lieutenant Drakeley has spoken to a Women's Center Retreat on behalf of the department, while Lieutenant Troxel has managed and directed a Citizen's Police Academy, a Daisy Troop Police Station Tour, and an honor guard for an elementary school ceremony. (Township Exhibit 6)

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 Lieutenants' duties meet at least one of the criteria for managerial status. In fact, the Township has established that the Lieutenant position meets three of the six criteria for managerial status. As such, the Lieutenant position must be excluded from the bargaining unit.

The record shows that the Lieutenants' duties satisfy the policy formulation criteria for managerial status. Indeed, the Lieutenants have the authority to initiate departmental policies, have initiated and drafted departmental policies and have recommended and continue to recommend the institution of departmental policies. Specifically, Lieutenant Drakeley has developed and authored a domestic violence policy, while Lieutenant Troxel has developed and authored an Approved Weapons and Ammunition Policy. In addition, Lieutenant Drakeley has issued directives regarding EZ Pass violations and prisoner meals. Likewise, Lieutenant Troxel has issued directives regarding start of shift vehicle inspections and officers as witnesses at court. As a result, the Lieutenants have authority to initiate departmental policies, including the power to issue general directives and regulations pursuant to **Star Lodge**.

The record also shows that the Lieutenants' duties satisfy the independence in public relations criteria for managerial status. The parties stipulated and agreed that the Lieutenants have committed departmental resources in dealing with public groups and have spoken on behalf of the Township in dealing with public groups and the press. For example, Lieutenant Drakeley has spoken to a Women's Center Retreat on behalf of the department, while Lieutenant Troxel has managed and directed a Citizen's Police Academy, a Daisy Troop Police Station Tour, and an honor guard for an elementary school ceremony. In doing so, the Lieutenants have committed departmental resources in the form of officer manpower and a K9 unit in dealing with public groups (Township Exhibit 6), which clearly evidences their authority to do so pursuant to **Star Lodge**.

The record further shows that the Lieutenants' duties satisfy the policy implementation criteria for managerial status. The parties stipulated and agreed that the Township Lieutenants have the authority to develop and change programs of the department and have done so, and will continue to do so. For instance, Lieutenant Drakeley has managed, modified, and spoken on behalf of the police department regarding the Lethality Assessment Program (LAP). Similarly, Lieutenant Troxel served as the training coordinator for the department and changed the operations and personnel of the department's training cadre for 2014.

Based on this record, the Lieutenant position clearly meets several 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 employee.

CONCLUSION

The 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 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 Lieutenants are managerial employes and are 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 Lieutenants are 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 eighteenth day of June, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner