

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PF-U-16-117-E  
 :  
 MIDDLEBURG BOROUGH :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On December 30, 2016, Middleburg Borough (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 January 26, 2017, the Secretary of the Board issued an Order and Notice of Hearing, designating a February 23, 2017 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning April 24, 2017 in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary and was held, as scheduled, on April 24, 2017 before the undersigned Hearing Examiner of the Board, at which time the parties were afforded a full and fair opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. The Borough filed a post-hearing brief on June 7, 2017. The Middleburg Borough Police Officers Association (Union) filed a post-hearing brief on June 12, 2017.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents 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. (N.T. 3)
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 3-4)
3. The Union is the exclusive bargaining representative for a unit of police employes at the Borough. (Union Exhibit 1)
4. The Union and Borough are parties to a collective bargaining agreement (CBA), which was effective from 2009 through 2014, and which was modified by a 2015 interest arbitration award with a term commencing January 1, 2015 and continuing until December 31, 2017. (Union Exhibit 1,2)
5. Tony Jordan has been the Borough's Chief of Police since 1992 and is a member of the bargaining unit. (N.T. 9-10, 37, 41; Union Exhibit 1)
6. During his tenure as Chief, Jordan has made several hiring recommendations, which were approved by the Borough Council. For example, in 2015, Jordan recommended creating another full-time position for a police officer and hiring David Shaffer, who was previously part-time, into that position. The Borough Council approved that recommendation. In 2010, Jordan

recommended hiring two part-time police officers, which Council also approved. (N.T. 13-18; Borough Exhibit 1,2, 4)

7. In 2005, Jordan recommended hiring Chad Thomas as a full-time police officer and Darren Bassler as a part-time police officer. The Borough Council approved his recommendations. (N.T. 18-20; Borough Exhibit 5)

8. In 2000, Jordan also recommended hiring Dixie Kreamer as the police secretary, which was approved by the Borough Council. (N.T. 21; Borough Exhibit 6)

9. The Borough Council has had no involvement in the hiring process for full-time and part-time police officers, as well as the police secretary, aside from approving Jordan's recommendations. (N.T. 38)

10. The Chief has issued verbal and written reprimands in disciplinary matters. There have not been any officers discharged at the Borough. (N.T. 22, 76, 82-83)

11. The Chief has authority with regard to the Borough's purchasing process. When the Borough purchases a police vehicle, Jordan is the one who initiates the process. He reviews vendors and pricing options, and ultimately makes a recommendation as to which vendor and equipment should be purchased. (N.T. 22-23, 68)

12. In 2012, Jordan identified the need for a police vehicle and recommended buying a Ford sports utility vehicle from Buyer Warnock Fleet, which had a base price of \$28,927. The Borough Council approved his recommendation. (N.T. 24-25; Borough Exhibit 7)

13. The Chief has the authority to create the police department's policies and procedures. For example, in 1999, Jordan adopted a juvenile custody policy and put it into the department's previously existing policy manual. In addition, Jordan adopted a policy regarding domestic violence protocol and put it in the policy manual in 2001. He also developed and implemented a seat belt policy. The Chief developed these policies without approval from the Borough Council or the Mayor. (N.T. 37, 63-66; Borough Exhibit 8, 9)

#### DISCUSSION

The Borough has petitioned the Board to exclude the position of Police Chief, alleging that the position is managerial. The Union opposes the petition and contends that the Chief's duties are merely supervisory in nature, and therefore, do not support an exclusion 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 this case, the Borough has sustained its burden of proving the Chief's duties meet two of the criteria for managerial status under Act 111. Indeed, the record shows that the Chief's duties satisfy the policy formulation and purchasing role elements of the Star Lodge test. Therefore, the Chief position must be excluded from the bargaining unit.

First of all, the Chief has the authority to create the police department's policies and procedures. As previously set forth above, in 1999, Jordan adopted a juvenile custody policy and put it into the department's previously existing policy manual. In addition, Jordan adopted a policy regarding domestic violence protocol and put it in the policy manual in 2001. He also developed and implemented a seat belt policy. The Chief developed these policies without approval from the Borough Council or the Mayor. As a result, the Chief has authority to initiate departmental policies, including the power to issue general directives and regulations.

Likewise, the Chief has authority with regard to the Borough's purchasing process. When the Borough purchases a police vehicle, Jordan is the one who initiates the process. He reviews vendors and pricing options, and ultimately makes a recommendation as to which vendor and equipment should be purchased. For example, in 2012, Jordan identified the need for a police vehicle and recommended buying a Ford sports utility vehicle from Buyer Warnock Fleet, which had a base price of \$28,927. The Borough Council approved his recommendation. This evidences an effective role in the purchasing process, as distinguished from merely making suggestions.

Based on this record, the Chief of Police clearly meets two of the factors deemed indicative of managerial status under the PLRA and Act 111. Accordingly, the Chief position will 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 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 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 28<sup>th</sup> day of July, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

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JOHN POZNIAK, Hearing Examiner