

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PF-R-18-13-E  
:  
LOWER SWATARA TOWNSHIP :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On January 29, 2018, as amended on January 30, 2018, the Teamsters, Local Union No. 776 (Union, Teamsters or Local 776) filed with the Pennsylvania Labor Relations Board (Board) a rival petition for representation pursuant to the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, seeking an investigation into a question of representation of all full-time and regular part-time police officers, including but not limited to detectives, sergeants, school resource officer(s) and patrolmen, excluding the Chief of Police, employed by Lower Swatara Township (Township) and alleging that thirty per cent or more of those employes wish to be exclusively represented by the Union. The Teamsters' petition also averred that the incumbent representative currently representing the petitioned-for employes was the Lower Swatara Township Police Civic Association (Association) in the fourth year of a collective bargaining agreement. On February 12, 2018, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Friday, March 23, 2018. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Township and the Union filed post-hearing briefs on April 16, 2018, and April 17, 2018, respectively.

The hearing examiner, on the basis of the evidence presented at the hearing, the joint stipulation of facts<sup>1</sup> and from all other matters of record, makes the following:

**FINDINGS OF FACT**

1. The Township is a political subdivision and public employer within the meaning of Act 111, as read with the PLRA. (N.T. 5; J.S. ¶ 1)
2. The Union and the Association are labor organizations within the meaning of Section 3(f) of the PLRA, as read with Act 111. (N.T. 6; J.S. ¶ 3).
3. The Township employs both uniformed police officers and non-uniformed employes. (N.T. 6; J.S. ¶ 2)

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<sup>1</sup>The Township, the Teamsters and the Association all entered into the Joint Stipulation of Facts. (N.T. 4, 9). Citations to the Joint Stipulation of Facts will be designated as "J.S."

4. Certain of the Township's non-uniformed employees are represented by Teamsters Local Union 776, a local union affiliated with the International Brotherhood of Teamsters, pursuant to an election certified at Docket No. PERA-R-17-280-E. (N.T. 6; J.S. ¶ 3)

5. Police officers employed by the Township are sworn officers certified under Pennsylvania Act 120, who are responsible for, among other things, enforcing the laws of the Commonwealth of Pennsylvania. (N.T. 6, 18; J.S. ¶ 4)

6. The uniformed police officers are presently represented by the Association, which is an independent labor organization. (N.T. 6-7; J.S. ¶ 5)

7. On or about January 29, 2018, Local 776 filed a petition for representation to represent the uniformed police officers who are currently represented by the Association. (N.T. 7; J.S. ¶ 6)

8. Local 776's petition seeks to represent a unit comprised of all full-time and regular part-time police officers including, but not limited to, detectives, sergeants, school resource officer(s) and patrolmen. (N.T. 7; J.S. ¶ 7)

9. Local 776's petition does not seek to represent either the Chief of Police (Chief) or guards as defined by the Public Employee Relations Act (PERA). (N.T. 7; J.S. ¶ 8)

10. The position of Chief has never been included in the bargaining unit represented by the Association nor has it ever been covered by any collective bargaining agreements. (N.T. 7-8, 13; J.S. ¶ 9)

11. To the parties' knowledge, the position of Chief has never been removed from any unit of police officers by order of the Board. (N.T. 8; J.S. ¶ 10)

12. The Chief is responsible for supervising the detectives, sergeants, school resource officer(s) and patrolmen in the petitioned for bargaining unit. (N.T. 8, 13; J.S. ¶ 11)

13. The Chief has the authority to initiate departmental policies, including the power to issue general directives and regulations. The Chief also possesses the authority to develop and change operational programs of the department. (N.T. 8, 13-14; J.S. ¶ 12)

14. The Chief is responsible for implementing the policies and directives of the Township's Board of Commissioners. (N.T. 8; J.S. ¶ 13)

15. The Chief is responsible for internal affairs investigations, and the Chief makes recommendations as to potential discipline as well as hiring recommendations through the civil service process. The Chief's disciplinary recommendations are accepted by the Township Commissioners. (N.T. 8-9, 13-14, 17; J.S. ¶ 14)

16. The Chief speaks independently to the media regarding issues involving the Police Department and serves as the public information officer. (N.T. 9, 14; J.S. ¶ 15)

17. The Chief is responsible for providing a proposed budget for the Department for the Board of Commissioners' review and for overseeing the approved Police Department budget. The Chief's proposed budget is generally accepted by the Township Commissioners. (N.T. 9, 13; J.S. ¶ 16)

18. The Chief is authorized to make purchases below the statutory limit imposed by the Second-Class Township Code. He is responsible for major and minor equipment purchases. (N.T. 9, 14; J.S. 17)

19. The Chief completes end-of-the-month reports and statistics from the fire department and Hershey Med. EMS. (N.T. 13)

20. The Police Department ensures safety of persons and property on Township property and other property in the Township. The Police Department has protected Township employees from non-employees who posed a threat to the Township employees after entering Township property. If there were a strike or other labor unrest involving non-uniformed Township employees, the Township intends to utilize the Police Department to protect persons and property on Township property. (N.T. 14-16)

#### **DISCUSSION**

The Township argues that the Board must deny the Teamsters' petition for representation for the Township's uniformed officers because, if granted, the Township's public works employees would be placed in a single unit with police officers, who are guards for purposes of PERA, which is prohibited by Section 604(3) of PERA. The Township further maintains that, under PERA, the guard exception prohibits the Board from permitting employees employed as guards to enforce against employees and other persons rules to protect property of the employer and the safety of persons on the employer's property to be included in any unit with other public employees. (Township's Post-hearing Brief at 3-4).

The Township cites cases decided under PERA holding that the burden on an employer to establish the guard status of employees is low and the employer need only establish the plan or intent to utilize a certain group of employees as guards. The Township contends that it easily met that burden of proof on this record, which shows that the Township officers will be used to protect Township property and persons thereon during labor unrest. (Township's Post-hearing Brief at 3-6). The Township reiterates the policy behind the guard exception under PERA and emphasizes that the guard exception is a "protection to public employers to ensure that during labor unrest, the employer will have guards to enforce its rules for the protection of property and safety of persons, without being confronted with a division of loyalty between the employer and the dissatisfied union members." (Township's Post-hearing Brief at 4-5) (citations omitted).

The Township further maintains that the police officers, if represented by the Union, "would be confronted with the very type of division of loyalty [PERA's] 'guard exception' seeks to protect employers against." (Township's Post-hearing Brief at 6). The Township argues that it "is not saying that its uniformed police officers cannot be organized under Act 111. And, additionally, the Township is not saying that its uniformed police officers must be organized under [PERA]." (Township's Post-hearing brief at 9) (emphasis original). Township contends that it is entitled to the guard protections under PERA because "that would include the Township's public works employees in the same bargaining unit with any individuals who act as guards." (Township's Post-hearing Brief at 9-10).

The Township, in its brief, repeatedly asserts that granting the petition would amount to placing the police officers in the same unit as the public works employes. However, such a result would not obtain. The Township's other position is that the officers "cannot be represented by the *same union* because that strips the Township of its rights under Section 604(3) [of PERA]," to prevent a conflict of interest. (Township's Post-hearing Brief at 9) (emphasis original). In this regard, the Township also cites to the Teamsters constitution, Article XIX, Section 7(b)(7) and argues that the Teamster constitution prohibits members from violating the picket lines of other Teamster locals. The Township contends that violators could be sanctioned and the fact that they may be excused from sanction is insufficient to prevent the risk of sanction for violating a picket line. The Township claims that the risk of sanction arguably supports the Township's position that there would be a divided loyalty. (Township's Post-hearing Brief at 6-7).

Although the Township asserts that this case presents an issue of first impression for the Board, (Township's Post-hearing Brief at 8) (stating that "this case poses a new, novel and unanswered question"), the Board long ago rejected the position advanced by the Township here. In Union Township, 25 PPER ¶ 25198 (Final Order, 1994), the employer filed three petitions (a unit clarification, an amendment of certification and a decertification) requesting that the Teamsters local be prohibited from representing the police employes of the township as a result of its certification to represent non-uniformed, non-professional employes of the employer under PERA. In that case, the employer argued that, the police officers were guards and that under Section 604(3) of PERA they must be included in a security guard only bargaining unit and that their bargaining representative must not be affiliated with any other organization which represents or includes members or persons outside of the security guard classification.<sup>2</sup>

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<sup>2</sup> Section 604 of PERA provides, in relevant part, as follows:

The [B]oard shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the [B]oard shall:

.....

(3) Not permit . . . any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons

The Union Township Board poignantly stated as follows:

[T]he [t]ownship's argument ignores the fact that the police employes certified under Act 111 are in no way governed by the provisions of PERA. Section 301(2) of PERA specifically excludes employes covered by Act 111 from its definition of "public employe." The Township's contention that Act 111 and PERA are to read *in pari materia* is erroneous and has been specifically rejected by the Pennsylvania Supreme Court in Philadelphia Fire Officers v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977). See also Commonwealth of Pennsylvania v. PLRB and FOP, 441 A.2d 470 (Pa. Cmwlth. 1982), *aff'd in relevant part*, 502 Pa. 7, 463 A.2d 409 (1983). In Philadelphia Fire Officers, the Pennsylvania Supreme Court stated that "employes covered by Act No. 111 are not in any respect covered by PERA." (citation omitted).

Union Township, 25 PPER at 511.

The Union Township Board further opined as follows:

This result is further buttressed by the Commonwealth Court's decision in Capitol Police[supra]. Capitol Police involved an attempt by the Fraternal Order of Police to represent under Act 111 a unit of capitol policemen who had previously been certified in a separate security guard unit under PERA and were represented by the United Plant Guard Workers of America [UPGWA], an exclusive security guard employe organization. In its analysis of whether the employes were police under Act 111 or security guards under PERA, the Commonwealth Court noted that in the event the employes were covered by Act 111, the UPGWA would be legally prohibited from representing them because police employes under Act 111 would be persons outside of the security guard classification under Section 604(3) of PERA. The Commonwealth Court recognized that the security guard classification under PERA and police status under Act 111 were mutually exclusive. So too here, because the employes are admittedly covered by Act 111, they are outside the security guard classification under PERA and Section 604(3) of PERA can in no way prohibit the [u]nion from representing both the police employes under Act 111 and the nonprofessional employes under PERA.

Union Township, 25 PPER at 511.

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on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

43 P.S. § 604(3).

The parties in this case agree that the police officers in the proposed bargaining unit currently represented by the Association are sworn police officers certified under Act 120, who are entitled to organize under Act 111, not PERA. (F.F. # 5; Township's Post-hearing Brief at 9). Consequently, those officers have a sworn duty to protect, not only the Township's property and persons thereon, but other property within the Township and persons therein. Pursuant to Union Township, the employes' Act 111 status as sworn officers under Act 120, employed by a political subdivision, as opposed to an authority, removes them from any application of the guard exclusion under PERA. Moreover, under Capitol Police, supra, by virtue of their status as Act 111 police officers, the officers are outside of the guard classification, and a guard union is prohibited from representing them. Id. (holding that the guard classification under PERA and the Act 111 status of police officers are mutually exclusive). Furthermore, uniformed police officers could not violate their sworn duty to protect citizens and property simply because non-uniformed Township employes, represented by Local 776, were picketing or striking, in the event that Local 776 becomes the certified bargaining representative of the officers.

Similarly, officers will not disobey orders or their sworn duty, as peace officers, to protect persons and property simply because Article XIX, Section 7(b)(7) allows sanctions against a Teamster member for crossing a picket line authorized by any local affiliated with the International Brotherhood of Teamsters.<sup>3</sup> The threat of discipline from the Chief and the Township has more influence on the officers' loyalty (for violating their duty or their orders) than the ethereal possibility of sanction from the International. The special status of duty-bound and sworn Act 111 police officers, under law, renders the guard exclusion inapplicable. Capitol Police, supra; Union Township, supra. Although the Township maintains that "it is also entitled to the protections of Section 604(3) [of PERA] by virtue of its employment of public works employees, who are indeed 'public employees' as defined by Act 195," (Township's Post-hearing Brief at 9), the Township in fact enjoys and has the loyal, premium, duty-bound protections of its sworn police officers, who will protect persons and property without bias, judgment or influence from the Teamsters or any other person or organization.

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<sup>3</sup> Article XIX, Section 7 of the Constitution and Bylaws for the International Brotherhood of Teamsters provides, in relevant part, as follows:

(b). The basis for charges against members, officers, elected Business Agents, Local Unions, Joint Councils, or other subordinate bodies for which he or it shall stand trial shall consist of, but not be limited to, the following:

. . . .

(7). Crossing an authorized primary picket line established by the member's Local Union or any other subordinate body affiliated with the International Union.

([http://old1.Teamster.Org/about/constitution/article\\_XIX\\_.htm](http://old1.Teamster.Org/about/constitution/article_XIX_.htm)).

In FOP Star Lodge No. 20 v. Commonwealth of Pennsylvania, PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd per curiam, 522 Pa. 149, 560 A.2d 145 (1989) (Star Lodge), the Commonwealth Court set forth six criteria of managerial status for firefighters and police officers under Act 111. Under Star Lodge, the Township has the burden of proving the following:

[T]hat the [employee in the position] has authority to initiate departmental policies, including the power to issue general directives and regulations; he [or she] has the authority to develop and change programs of the department; he [or she] engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals; he [or she] effectively prepared budgets, as distinguished from merely making suggestions; he [or she] effectively engaged in the purchasing process, as compared to merely providing suggestions; or he [or she] has the authority to commit departmental resources in dealing with public groups. [Fraternal Order of Police Lodge No. 20 v. PLRB (Star Lodge), 522 A.2d 697, 704 (Pa. Cmwlth. 1987, aff'd, 522 Pa. 149, 560 A.2d 145 (1989))]. Significantly, the test for managerial status under Act 111 is disjunctive and not conjunctive, such that the performance of any of the above functions results in a finding of managerial status.

In the Matter of the Employees of Elizabeth Township, 37 PPER 90 at 291 (Final Order, 2006) (citing Star Lodge, supra) (emphasis added).

The record in this case establishes that the Chief of Police meets several of the Star Lodge factors and must be excluded as a managerial employee. The Chief is responsible for supervising the detectives, sergeants, school resource officers and patrolmen in the petitioned-for bargaining unit. The Chief has initiated and issued departmental policies, including general directives and regulations, and concomitantly developed and changed operational programs of the Department. The Chief has also implemented the policies and directives of the Township's Board of Commissioners.

The Chief conducts internal affairs investigations and makes recommendations for discipline, which have been accepted by the Board of Commissioners. The Chief also makes hiring recommendations through the civil service process. Additionally, the Chief speaks independently to the media regarding issues involving the Police Department and serves as the public information officer. The Chief provides a proposed Police Department budget for the Board of Commissioners' review, and he oversees the approved Police Department budget. The Chief's proposed budget is generally accepted by the Township Commissioners, and he is responsible for major and minor equipment purchases. Accordingly, the Chief is properly excluded from the bargaining unit as a management level employee under Star Lodge, supra.

#### CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record, concludes and finds as follows:

1. The Township is a political subdivision and public employer under Act 111, as read with the PLRA.

2. The Union is a labor organization under the PLRA, as read with Act 111.

3. The Association is a labor organization under the PLRA, as read with Act 111.

4. The Board has jurisdiction over the parties.

5. The full-time and regular part-time sworn police officer employes of the Township Police Department share an identifiable community of interest.

6. The Township's Act 111 police officers are not guards as a matter of law; the guard exclusion under PERA does not apply to the Township's police officers as a matter of law; and the Teamsters, Local 776 is a proper labor organization for representing the Township police officers in the proposed Act 111 unit, if elected.

7. The unit deemed appropriate for the purpose of collective bargaining between the Township and the Union is a subdivision of the employer unit in the Township Police Department comprised of all full-time and regular part-time police officers including, but not limited to, detectives, sergeants, school resource officers and patrolmen, and excluding the Chief of Police and other managerial employes hereinafter employed.

8. The position of Chief of Police is managerial and therefore excluded from the appropriate unit herein.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the PLRA, as read in pari materia with Act 111, the hearing examiner

**HEREBY ORDERS AND DIRECTS**

that the Township shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the police employes eligible for inclusion in the unit set forth above.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-sixth day of April 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner