

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
 : Case No. PF-R-11-76-W  
 : (Case No. PF-R-84-42-W)  
MCDONALD BOROUGH :

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On May 9, 2011, the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, CLC (Petitioner), filed with the Pennsylvania Labor Relations Board (Board) a petition for representation seeking investigation of a question of representation and certification of a representative designated or selected for the purpose of collective bargaining by employees in an appropriate unit comprised of all full-time and regular part-time police officers employed by McDonald Borough (Borough).

On May 18, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on June 3, 2011. She served notice of the hearing not only on the Petitioner and the Borough but also the McDonald Borough Police Wage and Policy Unit (Incumbent), which is the current exclusive representative of the bargaining unit. See finding of fact 2, *infra*. On May 27, 2011, the hearing examiner continued the hearing upon the request of the Borough and the Petitioner and without objection by the Incumbent. On June 10, 2011, the hearing examiner further continued the hearing as the parties were to submit the case for decision on stipulated facts.

On June 30, 2011, the Borough filed a position statement averring that the petition should be dismissed (1) because "a separate union for part-time police officers is inappropriate" and (2) because

"even if it were appropriate for the part-time police officers to file for a rival union in the Borough, the contract bar rule stated in O'Hara Township would prevent the group from filing until approximately next year, at which time the bargaining must commence for a successor agreement. 9 PPER [¶] 9073 (1978), referencing 43 P.S. 217.1 (Act 111)."

On July 11, 2011, the hearing examiner rescheduled the hearing to July 22, 2011, as the parties had not been able to stipulate to the facts. On July 21, 2011, the parties submitted the case for decision on stipulated facts. On August 4, 2011, the Petitioner and the Borough each filed a brief by deposit in the U.S. Mail. The Incumbent has not filed a brief.

The hearing examiner, on the basis of the stipulations presented by the parties and from all other matters of record, makes the following:

**FINDINGS OF FACT**

1. The Petitioner is a labor organization under the Pennsylvania Labor Relations Act (PLRA) as read in *pari materia* with Act 111 of 1968 (Act 111). (Stipulation 2)

2. On August 13, 1984, the Board certified the Incumbent as the exclusive representative of a bargaining unit comprised of employees of the Borough as follows:

"All full-time and regular part-time police officers, including but not limited to the sergeants and patrolmen, and excluding the chief of police and any other management level employees."

(Case No. PF-R-84-42-W)

3. The Borough employs two full-time police officers and eleven regular part-time police officers in addition to the chief of police. (Stipulation 6)

4. Effective January 1, 2011, the Borough and the Incumbent entered into a three-year agreement covering the terms and conditions of employment of the full-time police

officers. The agreement does not cover the terms and conditions of employment of the regular part-time police officers and does not include a recognition clause. (Stipulations 5 and 7, Attachment).

5. The Petitioner has demonstrated to the satisfaction of the Board the requisite showing of interest.

### DISCUSSION

The Petitioner has petitioned to represent a bargaining unit comprised of the Borough's full-time and regular part-time police officers, exclusive of the chief of police. The bargaining unit is currently represented by the Incumbent under a certification previously issued by the Board (finding of fact 2) and currently includes two full-time police officers and eleven regular part-time police officers (finding of fact 3).

The Borough contends that the petition should be dismissed (1) because "a separate union for part-time police officers is inappropriate," (2) because "the Petitioner[] ha[s] not supported [its] burden of proving [a] community of interest" between the part-time police officers and the full-time police officers as required under Borough of Mechanicsburg, 9 PPER ¶ 9024 (Order and Notice of Hearing 1978), in order to include them in the same bargaining unit and (3) because the Petitioner has "failed to prove" that the part-time police officers have "an expectancy of continued employment" as required under School District of Millcreek Township v. Millcreek Education Association, 440 A.2d 673 (Pa. Cmwlth. 1982), in order to find them to be regular part-time. Brief at 2. The Borough also contends that the petition should be dismissed (4) because it is subject to a contract bar. Position Statement.

None of the Borough's contentions has merit.

First, the Petitioner has petitioned to represent a bargaining unit comprised of the Borough's full-time and regular part-time police officers, exclusive of the chief of police, so whether or not "a separate union for part-time police officers is inappropriate" is of no moment.

Second, in cases where a petitioner seeks to represent a previously certified bargaining unit, Board policy is to conduct an election in the unit as previously certified. Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole, Case No. PERA-R-11-108-E (Final Order, July 19, 2011). In such a case, the Board's prior determination that the employees in the bargaining unit have a community of interest may not be relitigated. Id. The Board previously included both full-time and regular part-time police officers in the bargaining unit (finding of fact 2), so the Petitioner was under no obligation to prove in this proceeding that the full-time and regular part-time police officers have a community of interest. See also Borough of Mechanicsburg, supra, where the Board opined that full-time and regular part-time police officers have a community of interest as a matter of law.

Third, the parties stipulated that the part-time police officers are regular part-time (finding of fact 3). By definition, regular part-time employees have an expectancy of continued employment. Somerset Borough, 26 PPER ¶ 26214 (Final Order 1995). Thus, contrary to the Borough's contention, the Petitioner has shown that the part-time police officers have an expectancy of continued employment.

Fourth, the contract the Borough raises as a bar to the petition is an agreement between the Borough and the Incumbent that covers the terms and conditions of employment of the full-time police officers but not the terms and conditions of employment of the regular part-time police officers and does not include a recognition clause (finding of fact 4). As the hearing examiner explained in Marion Center Area School District, 15 PPER ¶ 15097 (Order Directing Submission of Eligibility List 1984), however, in order for a contract bar to arise,

"the record must show the existence of a collective bargaining agreement which has not only been signed by both parties but also 'contain[s] substantial terms and conditions of employment deemed sufficient to stabilize the bargaining

relationship; it will not constitute a bar if it is limited to wages only, or to one or several provisions not deemed substantial.' City of Philadelphia, 12 PPER ¶ 12148 at 227 (H.Ex. 1981), aff'd, 12 PPER ¶ 12378 (1981), quoting Appalachia[n] Shale Products Co., 12 NLRB No. 149, 44 LRRM 1506, 1508 (1958)."

Id. at 223. Given that the agreement does not even speak to the terms and conditions of employment of the regular part-time police officers, it can hardly be deemed sufficient to stabilize the bargaining relationship. There is, therefore, no basis for finding that the agreement is a bar to the petition. See Coca-Cola Enterprises, Inc., 352 NLRB No. 123, 184 LRRM 1305 (2008), where the National Labor Relations Board found that a memorandum of understanding covering a limited portion of the bargaining unit was not a bar to a petition. Moreover, inasmuch as the agreement lacks a recognition clause, it presents as an individual contract between the Borough and the full-time police officers rather than as a collective bargaining agreement, which also is fatal to a finding that the agreement is a bar to the petition. See Borough of Geistown, 21 PPER ¶ 21074 (Final Order 1990), where the Board found that a contract that was signed by the employees it covered and had no recognition clause was not a bar to a petition.

#### CONCLUSIONS

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

1. The Borough is an employer under the PLRA as read in pari materia with Act 111.
2. The Incumbent is a labor organization under the PLRA as read in pari materia with Act 111.
3. The Petitioner is a labor organization under the PLRA as read in pari materia with Act 111.
4. The Board has jurisdiction over the parties.
5. A bargaining unit comprised of all full-time and regular part-time police officers of the Borough, including but not limited to the sergeants and patrolmen, and excluding the chief of police and any other management level employees, is appropriate for the purpose of collective bargaining between the Borough and an exclusive representative of its employees.
6. The petition is not subject to a contract bar.

#### 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 Borough shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the police officers 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 twelfth day of August 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner