

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :

:  
: PF-U-12-104-E  
: (PF-R-92-12-E)

LEHIGH TOWNSHIP :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On August 20, 2012, Lehigh Township (Township or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) requesting that the Board exclude the position of chief of police from the unit of the Township's police officers, certified by the Board at PF-R-92-12-E and represented by the Lehigh Township Police Association (Association).

On September 10, 2012, the Secretary of the Board issued an Order and Notice of Hearing in which October 23, 2012, was assigned as the time of a telephone pre-hearing conference and March 1, 2013 in Harrisburg was assigned as the time and place of hearing, if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

On September 10, 2012, the Township and the Association also submitted a joint stipulation of fact in lieu of a hearing.

The Examiner, on the basis of the joint stipulation of fact and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. Lehigh Township is an employer within the meaning of section 3(c) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111, with its address located at 1069 Municipal Road, Walnutport, Pennsylvania. 18088.

2. The Lehigh Township Police Officers Association is a labor organization within the meaning of section 3(f) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111, with its address located at P.O. Box 902, Cherryville, PA 18035.

3. On April 29, 1992, at Case No. PF-R-92-12-E, the Board certified the Association as the exclusive representative of a unit of Township employees comprised of

"All full-time and regular part-time police officers including but not limited to the chief of police and patrolmen; and excluding management level employees"

(Case No. PF-R-12-92-E, Board Exhibit 1)

4. The parties stipulated that the immediate past Chief of Police, Jeffry Schuler, who retired in August, 2012, had the authority to exercise and has exercised duties that are set forth below. (Joint Stipulation of Fact)

5. The parties stipulated that Chief Schuler was succeeded by Chief Scott Fogel, who will continue with the same authority to exercise duties that Chief Schuler had. (Joint Stipulation of Fact)

6. The parties stipulated that the position of Chief of Police possesses and has exercised the power and authority to formulate policy in the Department, including, but not limited to, the issuance of original and amended departmental policies, standard operating procedures, policy manuals and similar documents. (Joint Stipulation of Fact)

7. The parties stipulated that the position of Chief of Police possesses and has exercised the power and authority to commit the department's resources to various programs, both inside and outside Northampton County. (Joint Stipulation of Fact)

8. The parties stipulated that the position of Chief of Police possesses and has exercised the authority to prepare and to submit to the Board of Supervisors an annual proposed budget. In the context of budgeting, the position of Chief of Police provides significant and meaningful input into the budget for the Police Department. (Joint Stipulation of Fact)

9. The parties stipulated that the position of Chief of Police possesses and has exercised the authority to initiate disciplinary action against members of the Department. This authority takes the form of both initialing disciplinary investigations and making meaningful recommendations as to the appropriate level of disciplinary action to take against an officer. (Joint Stipulation of Fact)

10. The parties stipulated that the position of Chief of Police possesses and exercises the authority to provide meaningful input into the selection and promotion of personnel in the Township's Police Department. (Joint Stipulation of Fact)

11. The parties stipulated that the position of Chief of Police possesses and has utilized authority to initiate and to purchase items and equipment for the police department without requiring the prior approval of the Board of Supervisors. (Joint Stipulation of Fact)

#### DISCUSSION

The Township's petition for unit clarification seeks to exclude the position of chief of police from the bargaining unit of police officers certified by the Board twenty years earlier, in 1992.

In **FOP Star Lodge No. 20 v. Commonwealth, PLRB**, 522 A.2d 697 (Pa. Cmwlth. 1987), **aff'd**, 522 Pa. 149, 560 A.2d 145 (1989), the court held that the following six functions are indicative of managerial status for firemen and policemen under Act 111:

"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 at 704.

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 Employes of Elizabeth Township**, 37 PPER 90 at 291 (Final Order, 2006)(citing **Star Lodge, supra**).

In the present case, the parties submitted a joint stipulation of fact showing that the chief of police has the authority to exercise and actually does exercise all six of the managerial functions under **Star Lodge, supra**. Accordingly, the position of chief of police will be designated as a managerial employe and will be excluded from the bargaining unit.

#### CONCLUSIONS

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

1. The Township is an employer within the meaning of section 3(c) of the PLRA as read in pari materia with Act 111.
2. The Association is a labor organization within the meaning of section 3(f) of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The position of chief of police is a managerial employe and is excluded from the bargaining unit.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the unit of police officers of Lehigh Township certified by the Board at Case Number PF-R-92-12-E is hereby amended to exclude the position of chief of police.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions to this order filed pursuant to 34 Pa. Code § 95.98 (a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this nineteenth day of September, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner