

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-13-49-W
: :
BUTLER TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On May 20, 2013, the Butler Township Police Association (Union or Association) 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 include the Chief of Police in the bargaining unit. On June 12, 2013, the Secretary of the Board issued an Order and Notice of Hearing, designating a July 17, 2013 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning January 9, 2014 in Pittsburgh as the time and place of hearing, if necessary. Initially, this case was assigned to Thomas P. Leonard, Esquire, but was subsequently reassigned to the undersigned hearing examiner by the Chief Counsel.

Butler Township (Township or Employer) and the Association ultimately agreed to submit factual stipulations in lieu of participating in a hearing. On or about October 28, 2013, the Board received the jointly executed stipulations of fact between the parties.

The hearing 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.
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board certified the Association as the exclusive representative of all full-time and regular part-time police officers, including but not limited to patrolmen, sergeants, and lieutenants; and excluding the Chief of Police and other managerial employees on June 12, 1996. (Joint Exhibit No. 1, Paragraph 1)
4. On May 20, 2013, the Association petitioned the Board for unit clarification seeking to include the Chief of Police in the bargaining unit. (Joint Exhibit No. 1, Paragraph 2)
5. The Township contends that there is no basis upon which to alter the original certification or otherwise include the Chief of Police in the bargaining unit. (Joint Exhibit No. 1, Paragraph 3)
6. The Chief of Police administers and directs all uniformed and civilian employees and activities of the Township Police Department. He is responsible for promulgating and enforcing rules, regulations, and orders for the government of the Police Department subject only to approval by the Township Manager. The current Butler Township Police Department policies were created and subject to revision by the current and former Chief of Police. (Joint Exhibit No. 1, Paragraph 4)
7. The Butler Township Chief of Police can issue discipline up to a letter of reprimand without Township Board approval and makes recommendations regarding more serious discipline, and significant weight is afforded such recommendations. The former Chief of Police recommended termination of a patrol officer, and the recommendation was followed. (Joint Exhibit No. 1, Paragraph 5)

8. The Chief of Police has overall responsibility for police personnel administration, oversees the day-to-day operations of the Police Department, directs officers where and how to perform their duties, and has the authority to make decisions and implement programs regarding officer training. The Chief of Police formulates procedures relating to the business and government of the Police Department. (Joint Exhibit No. 1, Paragraph 6)
9. The Chief of Police directs and submits a budget for the Police Department. His duties in that regard include determining the need for new equipment or manpower; determining the need for capital expenditures; making recommendations to the Township through budget requests; and directing the bid specifications for major expenditures and acquisitions. The Board of Commissioners typically provides substantial deference to the budget submitted by the Chief of Police. (Joint Exhibit No. 1, Paragraph 7)
10. The Chief of Police possesses authority to cause purchases of equipment and supplies, and to furnish funds for equipment maintenance within Department allocations, as well as applicable Township rules and regulations. He has exercised that authority with regularity. (Joint Exhibit No. 1, Paragraph 8)
11. The Butler Township Chief of Police has ultimate responsibility for the work schedule for Township police officers and determines the necessary allocation of manpower. (Joint Exhibit No. 1, Paragraph 9)
12. The Chief of Police has authority to represent the Police Department in public relations activities, including communicating with the media and the public regarding Police Department matters, meeting with local civic groups, homeowners, business groups, and other related organizations. He is further responsible for allocating resources to respond to civilian complaints and making determinations concerning the commitment of Department resources to public relations activities. (Joint Exhibit No. 1, Paragraph 10)

DISCUSSION

The Association's petition for unit clarification presents one issue for decision, i.e. whether the Chief of Police 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 Chief's duties meet at least one of the criteria for managerial status. In fact, the Township has established that the Chief position meets three of the six criteria for managerial status. As such, the Chief position must be excluded from the bargaining unit.

To begin, the Township has sustained its burden of proving that the Chief's duties satisfy the policy formulation criteria for managerial status. The record shows that the Chief of Police is responsible for promulgating and enforcing rules, regulations, and orders for the government of the Police Department subject only to approval by the Township Manager. More importantly, the record also shows that the current Butler Township Police Department policies were created and subject to revision by the current and former Chief of Police. Therefore, the Chief has authority to initiate departmental policies, including the power to issue general directives and regulations pursuant to **Star Lodge**.

In addition, the Township has successfully shown that the Chief's duties meet the overall personnel administration responsibility element. The parties stipulated that the Chief can issue discipline up to a letter of reprimand without Township Board approval and makes recommendations regarding more serious discipline, and significant weight is afforded such recommendations. Indeed, the former Chief of Police recommended termination of a patrol officer, and the recommendation was followed. This clearly evidences effective involvement in serious disciplinary actions and dismissals consistent with **Star Lodge**.

Finally, the Township has also established that the Chief's duties fall under the budget making criteria for managerial status. The record shows that the Chief directs and submits a budget for the Police Department. His duties in that regard include determining the need for new equipment or manpower; determining the need for capital expenditures; making recommendations to the Township through budget requests; and directing the bid specifications for major expenditures and acquisitions. Notably, the Board of Commissioners typically provides substantial deference to the Chief's budget submissions. As a result, the Chief has demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items.

Based on this record, the Chief of Police clearly meets several of the factors deemed indicative of managerial status under the PLRA and Act 111. Accordingly, the Chief position must 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 Township is public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Association 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 Chief of Police is a managerial employe and is 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 hearing examiner

HEREBY ORDERS AND DIRECTS

that 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 twenty-first day of November, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner