

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-13-42-E
 :
 SUGARLOAF TOWNSHIP :

PROPOSED ORDER OF DISMISSAL

On April 29, 2013, the Fraternal Order of Police, Christina Lodge No. 84 (FOP or Petitioner), filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent a unit of police officers of Sugarloaf Township (Township) described as "all police officers, including patrolman, sergeants, and Chief of Police, exclusive of managerial employees." The petition stated that the reason the petition was filed was to include the Chief of Police in the bargaining unit.

By letter dated May 2, 2013, the FOP requested the Petition for Representation be amended to be considered a **Westmoreland Intermediate Unit** petition. By letter dated May 13, 2013, the Township asserted a contract bar defense to the FOP's Representation Petition and further asserted that the FOP utilized an incorrect procedure in filing a Representation Petition pursuant to **Westmoreland Intermediate Unit**.

On May 9, 2013, the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a pre-hearing conference on May 15, 2013 for the purpose of resolving the matters in dispute through mutual agreement of the parties and June 7, 2013 in Harrisburg, was assigned as the time and place of hearing if necessary.

The hearing was necessary, and held before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

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. Sugarloaf Township is a political subdivision of the Commonwealth of Pennsylvania and an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act (PLRA). (N.T. 25, 99, Respondent Exhibit 1)
2. The Township and the Sugarloaf Township Police Department, also known as the Sugarloaf Township Association, are parties to a collective bargaining agreement which was entered into on January 1, 2013 for a term of three years, ending on December 31, 2015. (N.T. 25, 99, Respondent Exhibit 1)
3. The parties stipulated that the Sugarloaf Township Association is the recognized bargaining representative of the police officers and is not certified by the Board as the representative. The Township has recognized the Association as the exclusive representative since at least 2003. (N.T. 5-6, Respondent Exhibits 1 and 2)
4. In Article I of the collective bargaining agreement, the employees covered by the agreement are referred to as those employees listed in Article IV: patrolman, patrolman 1st Class, Corporal and Sergeant. (N.T. 25, 99, Respondent Exhibit 1)
5. Chief Joshua Winters has served as the Chief of Police for the Township since October, 2011. He was hired as a part-time patrolman in 2004, moved to full-

- time status in 2005, promoted to corporal in 2008 and promoted to sergeant in 2009. (N.T. 11)
6. Chief Winters testified that he signed an authorization card designating the Fraternal Order of Police, Christina Lodge 84, as the exclusive bargaining representative. (N.T. 14)
 7. Chief Winters testified that he wished to designate the Sugarloaf Township Association as his bargaining representative. (N.T. 17)
 8. Besides Chief Winters, the Township also employs three full-time patrolmen: Tom Brown, Robert Minnick and Justin Ackerman. (N.T. 17)
 9. The Township is governed by three elected supervisors. They are Jack Wittig, Earl Miller and Rick Weaver. Mr. Wittig is the supervisor who serves as the liaison with the police department. Chief Winters reports to Wittig. Wittig oversees the police department and gives Chief Winters direct orders. (N.T. 58)
 10. Chief Winters initiated the process of developing new police department policies. He testified that he stated to Supervisor Wittig that he thought the policies and procedures manual was outdated and needed to be changed and updated. (N.T. 97-98)
 11. Chief Winters' initiative resulted in the following General Orders that are now in place for the department: Code of Conduct: Professional Conduct (General Order 1406); Harassment/Sexual Harassment (General Order 1407); Release of Records-Right To Know (General Order 2702); Use of Authorized Less Than Lethal Weapons (General Order 2801); Communicable/Infectious Disease Procedures (General Order 2802); Persons/Prisoners Under the Influence of Drugs and/or Alcohol (no Order number and Search and Seizure (no Order number). Chief Winters did the research on the appropriate orders to be recommended, either adopting other department's orders or writing revisions to their orders. He then sent them to the Supervisors for their approval. (N.T. 25, 85-99, Respondent Exhibits 6, 7, 8, 9(a), 9(b), 10, 11, 12 and 13)
 12. Chief Winters typically works either an eight (8) or ten (10) hour shift depending on the need of the department. (N.T. 18)
 13. Chief Winters sets the schedule for each officer and determines what part-time officers the Township employs. (N.T. 19, 58)
 14. Chief Winters took the part-time officers who had been used off "the books" of the Township, which effectively resulted in the Township deciding not to use part-time officers. (N.T. 58)
 15. Chief Winters recommends to the Township supervisors the need to hire new police officers. (N.T. 27)
 16. Chief Winters has conducted interviews of candidates for hire and has recommended to the supervisors the best candidates to hire. The Supervisors approved his recommendations. (N.T. 28, 62-63)
 17. Chief Winters has made numerous purchases on behalf of the Township in the six (6) months prior to the Representation Petition being filed. (N.T. 25, 99, Respondent Exhibit 4)
 18. On June 18, 2012, the Township Supervisors and Chief Winters participated in a conference call with American Computer Associates, Inc. to order a computer system at a cost of \$4,898. Chief Winters recommended the Township purchase that particular computer system. (N.T. 37-38, 73-74)

19. On January 15, 2013, Chief Winters applied to the Office of Attorney General (OAG) for a \$1,000 grant to purchase two breath testing instruments to be used in Driving Under the Influence enforcement and education. The OAG awarded the Township the grant. Chief Winters then independently purchased the equipment. (N.T. 32-33, 66-68, Respondent Exhibits 4 and 5)

DISCUSSION

The FOP's petition for representation seeks to include the chief of police in a recognized unit of police officers represented by the Sugarloaf Township Association.

Before the hearing, the Township argued that the FOP's petition on its face is inappropriate because of the contract bar rule. In **O'Hara Township**, 9 PPER ¶ 9073 (Order Fixing Time and Place of Election, 1978), 10 PPER ¶ 10313, (Final Order, 1979) the Board announced that in future representation cases involving police officers under Act 111, that it would follow the contract bar rule of the Pennsylvania Labor Relations Act (PLRA), which prohibits the filing of a rival representation petition while there was a valid collective bargaining agreement in place.

Since at least 2003, the Sugarloaf Township Association has been the recognized exclusive representative of the police officers. The Association and the Township are parties to a collective bargaining agreement that expires at the end of 2015. The FOP is a rival organization. Under these facts, the FOP's petition is defective under the contract bar rule.

However, at the hearing, the FOP counsel moved to amend the petition so as to change the name of the party filing it to the Association. The Township did not oppose the motion and the hearing examiner granted the motion.

Chief Joshua Winters did testify that the authorization card he signed authorized the FOP Christina Lodge 84 as the exclusive representative for the purposes of filing the representation petition. However, in the hearing, Chief Winters testified that he desired to change his authorization to the Association. Winters' statement combined with counsel's unopposed motion to amend the petition is sufficient to deem the Association as the petitioner for this hearing and to treat the Association as seeking a **Westmoreland Intermediate Unit** election.

In **Westmoreland Intermediate Unit**, 12 PPER ¶ 12347 (Order and Notice of Election, 1981), the Board enunciated the rule that in unit clarification petitions that sought to increase the bargaining unit by more than 15%, a petition for representation is the appropriate vehicle to accrete those petitions into the existing bargaining unit. The same procedure is applied in cases brought under Act 111 and the PLRA. **See, West Reading Borough**, Case No. PF-U-13-63-E (Administrative Dismissal, July 2, 2013) (Petition for Unit Clarification dismissed for violating **Westmoreland Intermediate Unit** 15% rule).

The Township argues that the FOP's attempt to seek a **Westmoreland Intermediate Unit** is not appropriate in this case, as that decision does not provide an alternate procedure for a non-incumbent labor organization to file a representation petition. As stated above, the Township did not oppose the FOP's motion to amend the petition to place the Association in its place as the petitioner. Accordingly, it is appropriate to move to the next step of the process.

Before deciding whether the Board should conduct a **Westmoreland Intermediate Unit** election, it must be decided whether the chief of police should be in the unit. Does he share a community of interest with the other police officers? If he does share a community of interest, does the Township still have grounds to exclude him as a managerial employee?

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 Board established the criteria which would exclude a police employee as a managerial employee. Those criteria are

"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, so 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).

The parties thoroughly examined whether the chief is a managerial employee in the hearing and in their briefs. The chief performs the same police duties as his fellow officers perform, which would establish a community of interest. However, he also performs three of the managerial duties set forth in **FOP Star Lodge No. 20**, supra.

First, with regard to policy formulation, Chief Winters has had a significant role in the issuance of updates to the police department manual and has drafted new general orders, policies and procedures. Although the Township Supervisors had to approve his recommendations for the updates, it was Chief Winters who initiated the process. He testified that he stated to Supervisor Wittig that he thought the policies and procedures manual was outdated and needed to be changed and updated.

Second, as to "overall personnel administration" duties, Chief Winters' time as chief demonstrates he has had an "effective involvement in hiring." For the past two hires, the Chief has interviewed the candidates for the vacancies and has recommended to the Supervisors the best candidate. The Supervisors followed his recommendations. Also, Chief Winters decided that the Township would not use part-time officers and he removed the part-time officers from "the books" of the Township.

Third, with regard to purchasing duties, Chief Winters testified that he made numerous purchases on behalf of the police department without approval from the Township supervisors. The purchases included breath testing equipment from a grant. Also, Chief Winters recommended the Township purchase a computer system costing over \$4,000 after studying the needs of the department. The Township Supervisors agreed with his recommendation.

The Township has sustained its burden of proving Chief Winters is a managerial employee under **Star Lodge**. Because of this, the position of chief of police cannot be accreted into the existing unit of police officers represented by the Association. Accordingly, there is no basis to proceed to an election under **Westmoreland Intermediate Unit**.

CONCLUSIONS

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

1. Sugarloaf Township is an employer within the meaning of the PLRA as read *in pari materia* with the Act 111.

2. Fraternal Order of Police Christina Lodge 84 is a labor organization within the meaning of the PLRA as read *in pari materia* with Act 111.

3. Sugarloaf Township Police Department, also known as the Sugarloaf Township Association, is a labor organization within the meaning of the PLRA as read *in pari materia* with Act 111.

4. That the chief of police is a managerial employee and is not eligible to vote in a **Westmoreland Intermediate Unit** election.

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 petition for representation is dismissed.

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 days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this ninth day of August, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner