

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :  
: Case No. PF-U-12-109-W  
: EVERETT BOROUGH :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On August 30, 2012, Everett Borough (Borough) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the position of Chief of Police (Chief) from the Borough's bargaining unit of police officers. On September 18, 2012, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on January 13, 2013. Instead of a hearing, the parties filed a joint stipulation of facts on January 17, 2013.

The hearing examiner, on the basis of the stipulated facts and all matters of record, makes the following:

**FINDINGS OF FACT**

1. The Borough is a political subdivision within the meaning of Act 111, as read with the Pennsylvania Labor Relations Act (PLRA). (Stip. of Facts ¶ 2).
2. The Fraternal Order of Police, Lodge No. 98 (Union) is the labor organization that is the exclusive representative of the Borough's police officers within the meaning of Act 111 and the PLRA. (Stip. of Facts ¶ 1).
3. The parties stipulated and agreed that the Chief has formulated and implemented the police department's vehicle pursuit and Taser usage policies and that the Chief created the annual bicycle safety course for the officers in the police department. The Chief managed this course and unilaterally discontinued the course. (Stip. Of Facts ¶ 7-9).

**DISCUSSION**

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 Borough 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 stipulations support the conclusion that the Chief is a management level employee because he has exercised the authority to develop and formulate departmental policies, including the power to issue general directives, and the authority to develop and change programs.

#### **CONCLUSION**

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

1. The Borough is a political subdivision within the meaning of Act 111 as read with the PLRA.
2. The Union is a labor organization within the meaning of Act 111 as read with the PLRA.
3. The Board has jurisdiction over the parties.
4. The Borough's Chief of Police is a managerial employee and is properly **excluded** from the bargaining unit.

#### **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-second day of March, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner