

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF

:  
:  
: Case No. PF-R-13-52-W  
:  
:

JEFFERSON TOWNSHIP

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On or about May 24, 2013, Teamsters Local Union No. 261 (Union or Local 261), filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board) seeking to represent the police employees of Jefferson Township (Employer or Township). On June 12, 2013, the Secretary of the Board issued an Order and Notice of Hearing in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning July 25, 2013 in Harrisburg as the time and place of hearing if necessary. Initially, this case was assigned to Jack E. Marino, Esquire, but was reassigned to the undersigned hearing examiner on or about July 11, 2013.

The hearing was necessary, but was continued to August 14, 2013 in Pittsburgh at the request of the Township and without objection from the Union. As a result, the hearing took place on August 14, 2013 before the undersigned 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. Both parties filed timely post-hearing briefs.

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. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the Pennsylvania Labor Relations Act (PLRA). (N.T. 4)
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 4)
3. The parties stipulated and agreed that the only outstanding issue in this case is the status of the Chief of Police; the parties stipulated and agreed that if the position of the Chief of Police is not found to be managerial, it shares a sufficient community of interest to be included in the bargaining unit. (N.T. 3-4)
4. The parties stipulated that the unit ("Unit") deemed appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers including, but not limited to, captains, sergeants, and patrolmen; and excluding the managerial employes. (N.T. 7-8)
5. The Jefferson Township Police Department is made up of three (3) police officers, including Chief Jeffrey Lockard, full-time Patrolman Justin Barnes, and part-time Patrolman Russell Chase. (N.T. 14)
6. The Township's current Personnel Policy, which was adopted by the Board of Supervisors in 2007, contains a description of the Chief's duties, including a provision stating the Chief shall have discretionary power to issue or set up general guidelines and procedures for the police officers while they are performing their duties. (N.T. 16-18; Employer Exhibit 1)

7. Chief Lockhard has been the Police Chief of Jefferson Township since 1996, which includes a period where he was Chief of the Jefferson-Clark Regional Police Department before it dissolved in 2004. (N.T. 53-55)
8. The Township has a pursuit policy in place that takes into consideration certain factors, including the time of day, traffic volumes, and the offense for which the subject is being pursued. The Chief has the authority to make changes to the policy via recommendation to the Board of Supervisors, who originally approved the policy through a meeting when it was introduced. (N.T. 57-58)
9. Although unsure of the exact date, Chief Lockhard made a recommendation to the Board of Supervisors to change the policy surrounding the Department's Standard Operating Procedure (SOP) following the introduction of a new domestic violence law. This required the Supervisors to take action similar to the action they took regarding approval of the pursuit policy. Chief Lockhard made the decision to use a carbon copy that was provided by the State. He reasoned that doing so would save time and effort, such that the Township would not have to reinvent the wheel. (N.T. 57-58)
10. Chief Lockhard prepares a budget for the police department each year to provide the Board of Supervisors with an analysis of what he feels it will cost to run the department. (N.T. 82-83)
11. For items such as copier maintenance, vehicle repairs, and fuel, the Chief utilizes the numbers from the previous year's budget to determine the cost, and factors in things such as inflation. He then sits down formally with Mark Williams, Chairman of the Board of Supervisors, to do the numbers. Afterwards, Mr. Williams takes those numbers to the rest of the Board of Supervisors to incorporate into the budget. (N.T. 83-84)
12. For the most part, the Board of Supervisors follows the Chief's budget recommendations. (N.T. 84-85)
13. Chief Lockhard has made several purchases through a 2010 grant from the Pennsylvania Commission on Crime and Delinquency (PCCD), including a computer, Taser, and ENRADD speed timing device. In addition, the Chief schedules the handling of any maintenance and inspection issues through the Council of Governments garage. He has the authority to independently incur those expenses and authorize repair work on behalf of the Township. The Supervisors have never overridden his authority in this regard. (N.T. 36-37; 106-107)
14. Chief Lockhard also recommended the Township purchase a new police car. The Board of Supervisors approved the request and ultimately included \$30,000.00 in the budget for the vehicle purchase. (N.T. 134-135)
15. Initially, the Chief recommended the Township buy a 2013 Ford Police Interceptor, all-wheel drive, four-door sedan. After placing the order, however, he learned from the vendor that Ford had moved the order back to 2014 due to a backlog in their 2013 bids. As a result, he was not able to get a 2013 Ford Police Interceptor, all-wheel drive, four-door sedan; but he could get a 2014 model of the same vehicle. (N.T. 114; Union Exhibit 2)
16. Shortly thereafter, the Chief learned from the car dealership that there was a 2013 Ford Police Interceptor on the lot, which was available immediately. The vehicle was not exactly what he wanted, as it had a few hundred miles on it and did not have all the markings he had ordered. (N.T. 102-103, 114-115; Union Exhibit 2)

17. The Chief recommended that the Township purchase the used car which was available immediately so the Township could depreciate it under the terms of a Law Enforcement Contract the Township has with the Army Corps of Engineers for patrolling Federal government property in the Shenango Lake area. However, the Board of Supervisors did not accept this recommendation or purchase the vehicle. Instead, the Board of Supervisors approved the purchase of the 2014 vehicle. The Township is still waiting for that vehicle. (N.T. 102-105; Union Exhibit 2)
18. In the end, the Township approved the purchase of a 2014 Ford Interceptor Model P2M, all-wheel drive, which was the same vehicle the Chief initially recommended, except a year newer. (N.T. 119; Union Exhibit 2)

#### DISCUSSION

The Union's petition for representation seeks an election to determine the exclusive bargaining representative of the police officers for the Township. The Township seeks to exclude the Chief of Police position as a managerial employee.

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 Employes 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 demonstrated that the Chief's duties meet three of the criteria for managerial status, namely policy implementation, budget making, and purchasing role. Therefore, the Chief of Police position must be excluded from the bargaining unit.

First of all, the Township has established that the Chief's duties satisfy the policy implementation criteria for managerial status. To be sure, the credible evidence showed that the Chief made a recommendation to the Board of Supervisors to change the policy surrounding the department's SOP following the introduction of a new domestic

violence law. This clearly demonstrates the Chief's authority to develop and change programs of the department. Although the Chief credibly testified that his recommendation to change the SOP with regard to the new domestic violence law also required the Supervisors to take action in terms of an approval, "the mere fact that policy determinations are subject to review by a higher authority does not necessarily negate managerial status." **Star Lodge** at 704. See also **City of Erie**, 23 PPER ¶ 23054 (Proposed Order of Unit Clarification 1992).

Further, the Chief readily conceded that he made the decision to use a carbon copy of a policy that was provided by the State because doing so would save time and effort, such that the Township would not have to reinvent the wheel. This also demonstrates his authority to develop and change programs of the department. As the Board held in **In the Matter of the Employes of Elizabeth Township**, 37 PPER 90 (Final Order 2006), "[i]t is not significant in the development of the manual for his department that [the Chief] reviewed, edited and selectively chose portions from other manuals or entirely created an original document which became the Township's manual. In either event, the drafting is exercising independent managerial discretion regarding the content of the manual." In the same vein, the Chief in the instant matter has exercised his independent managerial discretion by making the choice to adopt a carbon copy of a policy previously provided by the State. As such, his duties clearly fall within the policy implementation criteria of managerial status under **Star Lodge**.

While the Chief's decision to adopt a carbon copy for the department's SOP regarding domestic violence in and of itself would be sufficient to classify the Chief position as managerial, **In the Matter of the Employes of Elizabeth Township**, 37 PPER 90 (Final Order 2006), the Township also established that the Chief position satisfies the criteria for managerial status with regard to his purchasing role. Indeed, the Chief has made several purchases through a 2010 grant from the PCCD, including a computer, Taser, and ENRADD speed timing device. In addition, the Chief schedules the handling of any maintenance and inspection issues through the Council of Governments garage, plus he has the authority to independently incur those expenses and authorize repair work on behalf of the Township. Notably, the Supervisors have never overridden his authority in this regard. What is more, the Chief recommended the Township purchase a new police car, after which the Board of Supervisors approved the request and ultimately included \$30,000.00 in the budget for the vehicle purchase. It is of no consequence that the Chief subsequently changed his recommendation regarding which vehicle to purchase once his initial choice became unavailable. The Chief acknowledged that, in the end, the Township approved the purchase of a 2014 vehicle, which was the same vehicle he initially recommended, except a year newer. In light of this evidence, it cannot be said that the Chief merely makes suggestions with regard to his purchasing role. To the contrary, the Township has proven that the Chief has an effective role in the purchasing process.

Finally, the Township has also demonstrated that the Chief position meets the budget making criteria for managerial status. The credible evidence shows that the Chief prepares a budget for the police department each year to provide the Board of Supervisors with an analysis of what he feels it will cost to run the department. For items such as copier maintenance, vehicle repairs, and fuel, the Chief utilizes the numbers from the previous year's budget to determine the cost, and factors in things such as inflation. He then sits down formally with Mark Williams, Chairman of the Board of Supervisors, to do the numbers. Afterwards, Mr. Williams takes those numbers to the rest of the Board of Supervisors to incorporate into the budget. For the most part, the Board of Supervisors follows the Chief's budget recommendations. As previously set forth above, the Supervisors recently included \$30,000.00 in the budget pursuant to the Chief's request to purchase a new police car. 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 the credible evidence, the Township has sustained its burden of proving that the Chief of Police position is managerial. Accordingly, the Chief is not eligible to vote in an election for the exclusive bargaining representative.

## **CONCLUSIONS**

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

1. The Township is a public employer and political subdivision within the meaning of Act 111 as read *in pari materia* with the PLRA.
2. The Union is a labor organization within the meaning of Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties.
4. The unit deemed appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers, including, but not limited to, captains, sergeants, and patrolmen; and excluding managerial employes.
5. The position of Chief of Police is a managerial employe and is properly excluded from the unit.

## **ORDER**

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

### **HEREBY ORDERS AND DIRECTS**

that the Township shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes in the employer unit described in Conclusion number 4 above.

### **IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this twenty-seventh day of September, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner