

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-12-111-E
: :
WINDSOR TOWNSHIP AND YORK TOWNSHIP :
ACTING BY AND THROUGH :
YORK AREA REGIONAL POLICE :
DEPARTMENT :

AMENDED PROPOSED ORDER OF UNIT CLARIFICATION¹

On September 6, 2012, Windsor Township and York Township acting by and through York Area Regional Police Department (Department or Petitioner) filed a petition for unit clarification with the Pennsylvania Labor Relations Board (Board) seeking to exclude the position of lieutenant from the unit of all full-time and regular part-time police officers of the Department and represented by the York Area Regional Police Association (Association or Respondent).

On September 18, 2012, the Secretary of the Board issued an order and notice of hearing directing that a pre-hearing telephone conference be held on October 25, 2012 and, if necessary, a hearing be held on March 1, 2013, in Harrisburg.

The hearing was necessary, and was held as scheduled, at which time both parties were given the opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The parties submitted post-hearing briefs on October 11, 2011. The hearing examiner, on the basis of the record and facts, makes the following:

FINDINGS OF FACT

1. Windsor Township and York Township acting by and through York Area Regional Police Department is an employer within the meaning of the Pennsylvania Labor Relations Act as read in pari materia with Act 111. (N.T. 8)
2. The parties stipulated and agreed that the York Area Regional Police Association is a labor organization within the meaning of the PLRA as read in pari materia with Act 111. (N.T. 8)
3. The Association is the exclusive representative of a unit of all full time and regular part-time police officers excluding the chief of police.
4. The Department was formed in 2000 as a consortium of 12 police departments in York County. Chief Thomas Gross has served as the chief since that time. (N.T. 45, 54-55)
5. The Department employs approximately 50 officers, who hold the ranks of officer, corporal, sergeant, school resource officer, detective, lieutenant and chief. Currently, only the position of chief is excluded from the bargaining unit. (N.T. 12, 33, Petitioner Exhibit 2)
6. Paul C. Redifer held the position of lieutenant from April, 2011 to October 4, 2012. He had served in the Department from its creation in 2000. (N.T. 9, Petitioner's Exhibit 1)
7. Lt. Redifer was second in command and reported to Chief Thomas C. Gross. (N.T. 12, 33, Petitioner Exhibit 2)

¹ This Amended Proposed Order of Unit Clarification is issued to reflect the correct name of the employer.

8. When the Department hired a new officer, Lt. Redifer and Chief Gross studied the top three candidates from a civil service list and then made a joint recommendation of a candidate to the York Area Regional Police Commission for the hiring. (N.T. 25-27, 46-47, Petitioner Exhibit 5)
9. When an officer is accused of engaging in misconduct, Lt. Refifer was the Department official who investigated the validity of the accusation and who decided to recommend discipline to the Chief. The Chief always agreed with the lieutenant's recommendation for discipline. (N.T. 18-21, 42-43, Petitioner Exhibit 8)
10. On April 14, 2008, Lt. Redifer committed two Department Police officers to the City of York Police Department to assist with security for the visit to York by Michele Obama, who was campaigning on behalf of her husband. He committed the officers without the approval of the Chief. (N.T. 22-23, Petitioner Exhibit 11)

DISCUSSION

The Department's petition for unit clarification seeks to exclude the position of lieutenant from a unit of police officers on the grounds that the position is a managerial employee. The lieutenant is the second in command of a 50 person department that also employs the ranks of officer, corporal, sergeant, school resource officer, detective and chief. Currently, only the position of chief is excluded from the bargaining unit.

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**).

As the party seeking to exclude the position of lieutenant, the Department has the burden of proving the requisite elements of the exclusion. See **Star Lodge, supra**.

The Department has proven that the lieutenant performs at least two of the **Star Lodge** managerial functions. The proof consisted of the testimony of former Lieutenant Paul Redifer, who retired a month after this unit clarification petition was filed, and of documents supporting his testimony.

First, The Department has demonstrated the lieutenant has "overall personnel administration responsibility." The Department proved that the lieutenant has a serious role in hiring new officers. When the Department decides to hire, the lieutenant and the Chief make a joint recommendation of a candidate to the Commission overseeing the Department. Also, the Department proved that the lieutenant has a serious role in the discipline of officers. Lieutenant Redifer testified that he regularly reviewed charges of officer misconduct and made recommendations for the appropriate discipline, which the chief had always followed.

Second, the Department has demonstrated that the lieutenant possesses "independence in public relations" as evidenced by authority to commit departmental resources in dealing with public groups. Lt. Redifer regularly committed police officers to public events and businesses when the officers may cost the department overtime. As an example, Lt. Redifer testified that in 2008, he committed two police officers to assist the City of York police department with security during the visit of Michele Obama, campaigning for her husband in his bid for the presidency. Redifer made this commitment on his own, without the Chief's approval.

The Department has met its burden of proof under **Star Lodge, supra**. Based on the evidence submitted by the Department, the position of lieutenant is a managerial employee and the position 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:

1. Windsor Township and York Township, acting by and through York Area Regional Police Department York Area Regional Police Department is an employer within the meaning of the Act 111 as read in pari materia with the PLRA.
2. The York Area Regional Police Association is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The position of lieutenant is a managerial employee.

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 lieutenant 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 third day of May, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner