

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-16-69-E
 : (PF-R-109-E)
UPLAND BOROUGH :

PROPOSED ORDER OF UNIT CLARIFICATION

On July 11, 2016, Upland Borough (Borough or Employer) 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 exclude the Chief of Police from the bargaining unit. On August 1, 2016, the Secretary of the Board issued an Order and Notice of Hearing, designating an August 17, 2016 pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and assigning November 7, 2016 in Harrisburg, as the time and place of hearing, if necessary.

On August 3, 2016, the Borough filed a request to consolidate the instant Petition for Unit Clarification with a charge of unfair labor practices filed by the Delaware County Lodge #27, Fraternal Order of Police (FOP or Union), which was docketed at PF-C-16-67-E. The FOP opposed the Borough's request. On August 10, 2016, I denied the Borough's request for consolidation.

The hearing was necessary and was held, as scheduled, on November 7, 2016 before the undersigned Hearing Examiner of the Board, at which time the parties were afforded a full and fair opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. Both parties filed post-hearing briefs in support of their respective positions on January 13, 2017.

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 Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 4)
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 4)
3. The FOP is the certified bargaining representative of a unit of employees in a subdivision of the employer unit comprised of all full-time and regular part-time police officers including but not limited to the sergeant and the captain; and excluding all employees exercising managerial authority, by virtue of the PLRA and Act 111. (Union Exhibit 4; PF-R-109-E)
4. In July 2008, the Borough created the position of Chief of Police to run the police department. Prior to that time, the Borough did not have a Police Chief. (N.T. 17)
5. Since creating the position, the Borough has had two people fill the Chief position. John Easton served as Chief from 2008 to January of 2015, while Nelson Ocasio was Chief from February 2015 to February 2016.¹ The Chief establishes the department's rules and regulations. For example, Easton wrote the current policy or operations manual, which was approved by the Borough Council without any changes. (N.T. 18-19, 34-35, 46-47)

¹The record also shows that, at the time of the hearing, the Borough had an Acting Chief named Mike Irely. (N.T. 46-47)

6. The Chief has established programs in the community, through the department, which required the expenditure of Borough funds and/or resources. For example, Ocasio was instrumental in establishing the Police Athletic League (PAL) program and assigned a departmental officer to work with the Philadelphia Police Department to set it up. The Borough's police department filed paperwork to start a youth sports organization within the PAL program, which consists of fundraising efforts, as well as coaching and mentoring by the actual police officers. Ocasio and Easton have both initiated other such programs, including the Grant Program through the State and the Safe Driver Program, whereby the Chief commits officers to run the programs. (N.T. 19-20, 45, 52-54)
7. Ocasio and Easton, during their respective tenures as Chief, made all recommendations for hiring and serious discipline, such as suspension, demotion, or termination. In fact, the Chief submits a letter to the Mayor in every disciplinary action so that the Mayor can make a recommendation to Borough Council. In the last eight years from 2008 to 2016, the Borough Council has followed the Chief's recommendation on hiring and serious disciplinary matters in every case. (N.T. 20-21, 47-51)
8. The Chief meets annually with the Borough Council's finance committee and establishes what the Borough Council refers to as a "wish list" regarding budgetary matters for the police department. The Borough Council establishes the total budget, while the budget for the police department is set by the committee, which is based on the Chief's recommendation. If the Chief's desired "wish list" is affordable, it is usually approved. (N.T. 21, 37-38)
9. The Borough Mayor functions as the administrative head of the police department and delegated the scheduling authority to the Chief several years ago. As a result, the Chief has handled those scheduling duties and approved overtime. The Chief has immediate decision-making ability with regard to overtime, but the Chief also has to explain his use of overtime to either the Mayor or Council when his spending reaches a certain number or level in the budget. If the Chief is going to exceed the budgeted allotment for salary and compensation, he must request an increase in that amount from Council, which in turn would have to adjust the annual budget. (N.T. 32-34, 42-43)

DISCUSSION

The Borough'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 Borough has sustained its burden of proving the Chief's duties meet at least one of the criteria for managerial status. In fact, the Borough has established that the Chief position meets four of the six criteria for managerial status. As such, the Chief position must be excluded from the bargaining unit.

First of all, the Borough has sustained its burden of demonstrating that the Chief's duties satisfy the policy formulation criteria for managerial status. The record shows that the Chief establishes the department's rules and regulations. For example, Easton wrote the current policy or operations manual, which was approved by the Borough Council without any changes. Therefore, the Chief clearly has authority to initiate departmental policies, including the power to issue general directives and regulations pursuant to **Star Lodge**.

Similarly, the Borough has successfully shown that the Chief's duties satisfy the overall personnel administration responsibility element. Indeed, the record demonstrates that Ocasio and Easton, during their respective tenures as Chief, made all recommendations for hiring and serious discipline, such as suspension, demotion, or termination. In fact, the Chief submits a letter to the Mayor in every disciplinary action so that the Mayor can make a recommendation to Borough Council. In the last eight years from 2008 to 2016, the Borough Council has followed the Chief's recommendation on hiring and serious disciplinary matters in every case. This clearly evidences effective involvement in hiring, serious disciplinary actions, and dismissals consistent with **Star Lodge**.

Next, the Borough has also sustained its burden of proof with regard to the independence in public relations criteria. The record shows that the Chief has established programs in the community, through the department, which required the expenditure of Borough funds and/or resources. For example, Ocasio was instrumental in establishing the Police Athletic League (PAL) program and assigned a departmental officer to work with the Philadelphia Police Department to set it up. The Borough's police department filed paperwork to start a youth sports organization within the PAL program, which consists of fundraising efforts, as well as coaching and mentoring by the actual police officers. Ocasio and Easton have both initiated other such programs, including the Grant Program through the State and the Safe Driver Program, whereby the Chief commits officers to run the programs. As a result, the Chief has authority to commit departmental resources in dealing with public groups.

Finally, the Borough has established that the Chief's duties fall under the budget making criteria for managerial status. The record shows that the Chief meets annually with the Borough Council's finance committee and establishes what the Borough Council refers to as a "wish list" regarding budgetary matters for the police department. The Borough Council establishes the total budget, while the budget for the police department is set by the committee, which is based on the Chief's recommendation. If the Chief's desired "wish list" is affordable, it is usually approved. Thus, 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 Borough is public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The FOP 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 Borough's Chief of Police is a managerial employe 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 Petition for Unit Clarification is granted and 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 9th day of March, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN POZNIAK, Hearing Examiner