

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PF-U-20-69-W  
:  
CITY OF PITTSBURGH :

**PROPOSED ORDER OF DISMISSAL**

On October 28, 2020, the Fraternal Order of Police, Fort Pitt Lodge No. 1 (FOP or Union) 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 include the position of commander into a bargaining unit of police officers employed by the City of Pittsburgh (City or Employer).

On December 2, 2020, the Secretary of the Board issued an Order and Notice of Hearing, assigning February 24, 2021, via Microsoft TEAMS, as the time and manner of hearing, if necessary.

The hearing was continued and eventually held on April 20, 2021, via Microsoft TEAMS before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. A second day of hearing was held on May 25, 2021.<sup>1</sup> The FOP submitted a post-hearing brief on September 2, 2021. The City submitted a post-hearing brief on September 27, 2021.

The Examiner, on the basis of all of the matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. The City is a 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 FOP represents approximately 923 active, sworn police officers employed by the City. The bargaining unit officers are all employed in the Pittsburgh Bureau of Police (Bureau or PBP) (N.T. 14).
4. The hierarchical rank structure of the Bureau is as follows: patrol/police officer, master police officer, detective, sergeant, lieutenant, commander, assistant chief, deputy chief, Chief of Police, Public Safety Director. (N.T. 15; City Exhibit 3).
5. The following ranks or classifications are included in the FOP bargaining unit: patrol/police officer, master police officers (officers with

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<sup>1</sup> No evidence or testimony was offered by the parties on the second day of hearing.

more than 15 years of service), detectives within the investigative bureaus, sergeants, and lieutenants. (N.T. 14).

6. The FOP has represented officers up to and including lieutenant since at least the early 1990s. (N.T. 16).

7. At the time of the hearing, there were 13 commander positions in the Bureau. (N.T. 31-32).

8. Commanders are responsible for patrol zones and specialized units. The City of Pittsburgh is divided into 6 patrol zones, each with a commander assigned. There are two commanders of special deployment (SWAT, K-9, River Rescue, Mounted Unit, Bomb Unit, etc). There is a watch commander. There is a commander of the Narcotics and Vice unit. There is a commander of Major Crimes unit. There is an administration commander. There is a commander of the report and records room. There is a Chief of Staff commander. And there is a commander of the Office of Strategy, Responsibility and Accountability (OSAR). The OSAR commander and the chief of staff commander report directly to the Chief of Police. (N.T. 33-35, 98-99; City Exhibit 4).

9. Commanders are sworn police officers and perform police work. They wear uniforms and work directly with members of the bargaining unit. They have the same Commonwealth certifications as bargaining unit police officers. (N.T. 21-22, 32).

10. The Bureau's Organizational and Rank structure document describes commanders in the following manner: "A Police Commander shall provide executive management and leadership to an operational unit, under the direction of the Chief of Police, Deputy Chief, or an Assistant Chief of Police. The Commander exercises command and control of operations, administration and command supervision of personnel within their respective units." (N.T. 98; City Exhibit 3, 4).

11. Christopher Ragland is a police officer employed by the City. He has been a commander since March 2015. Ragland started as patrolman in 1994. He was promoted to lieutenant in 2001. He was then promoted to commander in 2015. Ragland is currently the commander of OSAR. He also served as a zone commander. He reports directly to the Chief of Police. OSAR is responsible for policy review, accreditation, and generally reviewing best practices for the Bureau. Ragland has a lieutenant and five detectives assigned to him as staff. OSAR reviews all Bureau procedural orders every 24 months. If a change in policy is needed, Ragland and OSAR review relevant best practices and get feedback from affected units. Then Ragland and OSAR would put together a draft policy which would go to command review. Command review consists of about 44 city employees including in the Law Department. After the policy is reviewed by the Command review, it goes to the Union, the Civilian Police Review Board and the Human Relations commission for review. Then, ultimately, it is sent to the Chief of Police for signature. For initiatives, which differ from formal policy, the Chief of Police directs Ragland and OSAR to review an initiative. Ragland, as commander, does not initiate a change in a policy or initiate new policy. The Chief of Police is responsible for implementing any policies which come from OSAR. Not all of the policy recommendations made by Ragland and OSAR are followed by the Chief of Police. (N.T. 29-41, 54-56, 116; City Exhibit 10).

12. Commanders are involved in the Bureau hiring process. Commanders have been part of the three-member panels that administer the oral portion of the job application process for prospective police officers. There is also a separate written component as part of the job application process. Commanders serve with lieutenants and sergeants on this oral panel. The oral panel makes a recommendation to hire or not hire candidates. The recommendation goes to the Chief of Police. (N.T. 41-44).

13. Commanders, as well as all other supervisors in the Bureau, can initiate discipline. The process begins with the write-up of a disciplinary action report (DAR). This report then flows up the chain of command. There will eventually be a disciplinary hearing with the Chief of Police who makes a recommendation as to discipline. The recommendation then goes to the Public Safety Director who has final say. Supervisors (sergeants, lieutenants and commanders) can recommend oral reprimands, written reprimands, or suspensions. They cannot recommend termination. (N.T. 42-43, 119-120, 132).

14. Ragland, as a commander, follows the following procedure when recommending discipline for an employee under his command. Ragland would first alert the Assistant Chief. Ragland would then serve the DAR and make sure the employee understood it and ask for a response. Then Ragland would make sure the employee signed the report, Ragland would sign it, and then send the report to the Chief of Police and up the chain of command for recommendation. (N.T. 42-44; FOP Exhibit 12).

15. From time to time, as a commander, Ragland would give statements to the media. The request to make a statement comes from the Public Information Officer (who is part of the Public Safety Department and not the Bureau). (N.T. 44-45)

16. As commander, Ragland has had no authority with respect to budgets. (N.T. 46).

17. John Fisher is a commander in the Bureau. He has been employed by the Bureau since 1988. He started as a patrol officer. He was then promoted to detective. By 1995 he was promoted to sergeant. He was promoted to commander in 2018 where he was assigned to the administrative branch where he oversaw the Office of Policy and Accreditation and Professional Standards (eventually abolished and turned into OSAR), the Pittsburgh Police Training Academy, the Office of Municipal Investigations, and the property room. In February 2021, he was reassigned as commander for Zone 3. In Zone 3, Fisher oversees 3 lieutenants, 10 sergeants, 8 plain clothes detectives, and approximately 100 patrol officers. (N.T. 69-72).

18. Fisher has initiated discipline. He also has directed sergeants and lieutenants to initiate discipline. To start a discipline action, Fisher would draft a DAR or review a DAR drafted by a sergeant or lieutenant. Then Fisher sends a copy of the DAR to the Assistant Chief of Operations for review. The DAR is served on the officer and then forwarded through the chain of command: the Assistant Chief, the Deputy Chief and then the Chief of Police. Each review the DAR, can make their own recommendations, change the discipline, or dismiss the DAR. Ultimately, there would be a disciplinary hearing with the Chief of Police. The Public Safety Director has the ultimate oversight of the discipline action. (N.T. 72-76).

19. As commander, Fisher has "hired overtime" which means utilized overtime in his zone. Sergeants and lieutenants can also "hire overtime". (N.T. 76-77).

20. As commander, Fisher has participated in community meetings and community events. Fisher sometimes delegates the responsibility to attend these public meetings to sergeants and lieutenants. (N.T. 79-80).

21. As commander, Fisher is not involved in any budget process, other than making requests. (N.T. 80-81).

22. As commander of the administrative branch, Fisher made selections for vacancies in his unit. He and his staff put out a solicitation of interest, conduct interviews of candidates and made the final determination which would be forwarded to the Assistant Chief. The recommendation was mostly followed, but sometimes the Assistant Chief wanted a different person in a particular position. (N.T. 82-83).

23. As zone commander, Fisher approved overtime details to deal with public complaints about, for example, disorderly pedestrians and speeding vehicles. (N.T. 85).

24. Scott Schubert is the Chief of Police. He was promoted to commander in 2007. He was commander in charge of the Special Deployment Division. In 2008 he was also made commander of zone 6 in addition to the previous duties. He was promoted to Assistant Chief of Operations in 2014. He was made Chief of Police in 2017. (N.T. 92-99).

25. Commander Eric Holmes is the Chief of staff and reports directly to the Chief of Police. Commander Holmes is responsible for the Real Time Crime Center. He was responsible for implementing the Bureau's participation in the Department of Justice community program under then-President Obama. Holmes is responsible for attending meetings on behalf of the Chief of Police including regional committees, and the Human Relations Commission. Holmes coordinates with the University of Pittsburgh and other local universities. Holmes is responsible for coordinating dignitary protection. When meeting with other organizations and the community, Holmes has the authority to speak for the Chief of Police and make commitments on behalf of the Bureau. Holmes is responsible for approving or disapproving all purchases within the Bureau. (N.T. 99-101; City Exhibit 8).

26. A memo entitled "PBP Chief of Staff: duties, responsibilities and current projects" dated January 1, 2019, is an accurate list of duties for the Chief of staff. The memo lists the following duties for the Chief of Staff commander:

- City of Pittsburgh Bureau of Police Site Coordinator for the National Initiative
- City of Pittsburgh Bureau of Police LGBTQIA+ liaison
- City of Pittsburgh Bureau of Police Multi Cultural Unit liaison
- Complete the yearly Duty Commander schedule
- Approve all travel / training requests Bureau wide
- Approve all purchases Bureau wide after they are reviewed by Personnel and Finance manager Lee Schmidt
- Attend meetings on behalf of the Chief of Police as assigned

- Complete the command staff meeting agenda
- Chief's suite administrative support staff liaison
- Administrative Duties as assigned

(N.T. 102; City Exhibit 8).

27. With respect to approval of Bureau wide purchases, Commander Holmes' list of duties memo has the following entry: "Every member of the PBP is required to submit a special (memo) via their chain of command when requesting the City of Pittsburgh purchase items related to job functions and duties. The memo is reviewed and approved by the Personnel and Finance Deputy Director prior to the Chief of Staff [Commander Holmes] approval." The memo is an accurate summary of Commander Holmes' job functions. (N.T. 102; City Exhibit 8).

28. Commander Holmes used his authority to issue and establish the Real Time Crime Center stolen vehicle program. The program applies Bureau-wide to all personnel. (N.T. 102-103; City Exhibit 4).

29. All commanders share responsibility for serving as "Duty Commanders". Duty Commanders are responsible for everything that happens in the City of Pittsburgh and are the highest-ranking officer from 4 p.m. until 8 a.m. the next morning. The Duty Commander is responsible for following up and responding to major incidents such as a shooting, a major car crash, or a kidnapping. The Duty Commander is responsible for answering questions from lieutenants or other field supervisors. The Duty Commander can move resources around the City to respond to events as needed. This position is staffed by all the current commanders who rotate through week-to-week. The Duty Commanders speak to the media and do not need permission from the Chief of Police to do so. (N.T. 105-107; City Exhibit 7).

30. Lavonnie Bickerstaff has been with the Bureau since 1990. She was first a patrol officer and promoted to sergeant in 1995. She was promoted to commander in 2014. She was first commander of Zone 1. She later became commander of Major Crimes. She was promoted to Assistant Chief in 2017. When she was commander of Zone 1, Bickerstaff put together an initiative to provide safety and security for Zone 1 residents because there was an uptick in the number of shootings. Bickerstaff put together a 24-hour detail (an overtime detail) that allowed Zone 1 officers to work "24/7". Her plan authorized overtime from April 10<sup>th</sup> to April 17<sup>th</sup>, 2016. This plan authorized by Bickerstaff came in response to attendance at community meetings and concerns from the public about the uptick in gun violence. Bickerstaff notified the Assistant Chief at that time about her program. (N.T. 152-155, 160, 178-180, 183; City Exhibit 12).

31. As Zone 1 commander, Bickerstaff put together an initiative for an event called "Chaz Day" which she believed needed "beefed up" police presence. As part of this initiative, Bickerstaff authorized overtime and deployed Bureau resources including a SWAT quick response team. Bickerstaff notified her superiors in the chain of command about her actions. (N.T. 156-158; City Exhibit 13).

32. As Zone 1 commander, Bickerstaff put together a flyer to provide to the public as information about the police response in Zone 1. Bickerstaff had noticed that the public wanted more police coverage. She, as commander, took steps to "beef up" patrols, have more community involvement, work with Narcotics and Vice and Major Crimes to do more investigations in

Zone 1. She put this information in the flyer which was distributed to the public. (N.T. 159-161; City Exhibit 15).

#### DISCUSSION

The Union has petitioned the Board to include the position of commander in the bargaining unit, alleging that the position has an identifiable community of interest with the police officers in the bargaining unit. The City opposes the petition and argues that the commanders should be excluded because they are managerial employees.

With respect to community of interest, it is clear that the commanders have an identifiable community of interest with the other police officers in the unit, but for their status as managerial which is discussed below. The Union in this matter put forth sufficient evidence to show that the commanders would have an identifiable community of interest with the other police officers. The City then had the burden of showing that the commanders should be excluded from the unit. The City met this burden.

The relevant test in this matter is 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. Elizabeth Township, 37 PPER ¶ 90 (Final Order, 2006).

With respect to policy formulation, the record shows that the commanders do not have the authority to initiate departmental policies, including the power to issue general directives and regulations. On this issue, there was lengthy testimony and evidence regarding Commander Ragland's role in OSAR. I find that this record is not sufficient to establish that commanders are responsible for policy formulation, as the ultimate authority rests above the commanders in the chain of command and the record shows that Commander Ragland does not have effective authority to formulate Bureau policy. The Chief of Police relies upon OSAR as a dedicated and focused support for the Chief's job of promulgating policy for the Bureau, but the record shows that the Chief of Police has not delegated his power to formulate policy to OSAR.

With respect to policy implementation, the record shows that commanders have the authority to develop and change programs of the department. In this matter, Chief Schubert credibly testified that Commander Holmes has used his authority as commander to issue and establish the Real Time Crime Center stolen vehicle program. The program applies Bureau-wide to all personnel. Commander Holmes was also responsible for implementing the Bureau's participation in the Department of Justice community program under then-President Obama. This is sufficient evidence to show that commanders have the authority to develop and change programs for the whole Bureau.

With respect to overall personnel administration responsibility, the Board recently held the following:

Absent evidence of effective involvement in all three elements of hiring, firing and serious discipline, which would support a finding of overall personnel administration responsibility, performance of only one or two elements amounts to no more than carrying out supervisory duties. Thus, under Star Lodge, to establish managerial status through the criterion of overall personnel administration responsibility, there must be evidence that the position at issue is effectively involved in hiring, issuing serious discipline and dismissals.

Warminster Township, 50 PPER ¶ 26 (Final Order, 2018) (internal citations omitted).

The record shows that commanders have effective involvement in hiring, but do not have the authority or effective authority to issue serious disciplinary actions and dismissals. With respect to hiring, the record shows that, as commander of the administrative branch, Commander Fisher made selections for vacancies in his unit. He and his staff put out a solicitation of interest, conducted interviews of candidates and made the final determination which would be forwarded to the Assistant Chief. The recommendations were usually followed which means Fisher's determinations were effective.

However, the record does not show that commanders have effective involvement in issuing serious discipline or dismissals. The record shows that commanders are the first step (along with other supervisors) in a

lengthy discipline process where the ultimate authority for serious discipline is above commanders in the chain of command and lies with the Public Safety Director. There is no evidence on this record of commander's role in terminating employment of any police officer. Therefore, the record shows that commanders do not meet all of the elements of this prong, and, pursuant to Warminster Township, supra, they do not meet the Star Lodge factor for overall personnel administration responsibility.

With respect to budget making, there was no evidence in this record that commanders were involved in budget making.

With respect to purchasing role, the evidence in this matter shows that commanders have an effective role in the purchasing process, as distinguished from merely making suggestions. The record shows that Commander Holmes is responsible for approving or disapproving all purchases within the Bureau. Commander Holmes' duties were credibly testified to by Chief Schubert, and the City supported Chief Schubert's testimony with respect to Commander Holmes duties with persuasive and credible evidence in the form of City Exhibit 8, which is a recent memo describing Holmes' duties as a commander. This memo states that: "Every member of the PBP is required to submit a special (memo) via their chain of command when requesting the City of Pittsburgh purchase items related to job functions and duties. The memo is reviewed and approved by the Personnel and Finance Deputy Director prior to the Chief of Staff [Commander Holmes] approval." This memo along with Chief Schubert's credible testimony support a finding that commanders have an effective role in the purchasing process for the Bureau.

With respect to independence in public relations, the record shows commanders have had the authority to commit departmental resources in dealing with public groups. In order to satisfy this prong, the rank in question should appear before governmental groups and the public as departmental spokesman with the authority to make commitments of the manpower and resources of the department. "When public relations actions reveal policy independence in the commander, they are managerial, as distinguished from mere informational contacts with the public." Star Lodge, supra.

The record in this matter shows that Commander Holmes has independence in public relations. Chief Schubert credibly testified that when Commander Holmes meets with other organizations and the community, Holmes has the authority to speak for the Chief of Police and make commitments on behalf of the Bureau.

Additionally, in this matter, Lavonnie Bickerstaff credibly testified that when she was commander of Zone 1 she, in response to dealing with communications with the public, initiated programs that used department resources. As Zone 1 commander, Bickerstaff put together an initiative for an event called "Chaz Day" (City Exhibit 13). As part of this initiative, Bickerstaff authorized overtime and deployed resources from the Bureau including a SWAT quick response team. Though Bickerstaff had superior officers in the chain of command whom she notified about these actions, her decisions effectively implemented the plans. In particular, I find the following testimony from Bickerstaff on direct to be credible:

Q. What kind of requests would you get from the community in Zone 1?

A. The majority of the requests of the - during that time, 2015 to 2016, was they wanted more police and they wanted more coverage and they wanted the violence to stop, the gun violence to stop.

Q. And what steps did you take to address those concerns?

A. The primary step that I took, of course, was to actually beef up patrols, have more community involvement, work with Narcotics and Vice and Major Crimes detectives over here in Major Crimes and in Investigations so that I could drive down some of the violence.

Q. And would you communicate some or any those efforts to the community?

A. Yes. And I put them in that flier [City Exhibit 15]. That was the primary purpose of the flier so somebody would have action steps they could take away with them.

Q. And those items that you just listed, who would approve them?

A. I approve them. I put together the flier. I did most of the work when it came to Zone 1 as far as management of that team.

[N.T. 160-161]. Specifically, City Exhibit 15, which is a public flyer put together by Bickerstaff when she was a commander, shows that commanders in the Bureau have independence in public relations. On the flyer Bickerstaff's name and rank (commander) are listed on top of the page which denotes that the flyer came from Commander Bickerstaff and was issued under her authority. In the section "ZONE ONE POLICE RESPONSE", one of the listed elements is "Increase Police Visibility in High-Crime Areas". I find that, based on the record as a whole, increasing the visibility of the police in high-crime areas is a commitment of Bureau resources. Thus, taken together, the flyer shows the public that Commander Bickerstaff has the authority to, and is, committing Bureau resources and reveals policy independence as commander. This satisfies the Star Lodge test for independence in public relations.

Continuing, the record in this matter shows that **all** commanders, serving as "Duty Commanders", have independence in public relations. Commanders share responsibility for serving as "Duty Commanders". Duty Commanders are responsible for everything that happens in the City of Pittsburgh as the highest-ranking officer from 4 p.m. until 8 a.m. the next morning. The Duty Commander can move resources around the City to respond to events as needed. The Duty Commanders speak to the media and do not need permission from the Chief of Police to do so. I find that this record shows that the Duty Commander is the public face of the Bureau with the authority to make commitments of the manpower and resources of the Bureau.

Outside of the scope of the Star Lodge analysis, the Union presented evidence and made arguments for the proposition that commanders took the role of the now-defunct captain rank in the Bureau. The Union argues that the

captain rank had previously been in the bargaining-unit and therefore the commander rank should also be in the unit as it essentially replaced captain. I find that even if captains had been part of the bargaining unit in the past, the City in this case has shown sufficient evidence to exclude commanders as managerial and, therefore, the historical status of captains and their relationship to commanders, if any, is not relevant for this proposed order.

In conclusion, the record is clear that the Bureau's commanders are managerial under the Star Lodge test. The record shows that the commanders satisfy the following prongs of the Star Lodge test: policy implementation, purchasing role, and independence in public relations.

As the commanders are managerial employes under Star Lodge, the petition filed by the Union to accrete them to the existing bargaining unit will be dismissed.

#### **CONCLUSION**

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

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union 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 position of commander is managerial 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 denied and 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 (20) days of the date hereof, this order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this 2nd day of December, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN HELMERICH, Hearing Examiner