

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-21-16-E
 :
 WEST MANCHESTER TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On March 2, 2021, the West Manchester Police Officers' Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification seeking to exclude the position of Lieutenant from the bargaining unit of police officers employed by West Manchester Township (Township). On March 26, 2021, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on August 18, 2021, via Microsoft Teams. On July 27, 2021, I continued the hearing based on the representation from the Township's Counsel that the matter would be submitted on a joint stipulation of facts in lieu of a hearing. On July 29, 2021, the Board received the Joint Stipulation of Facts. By email dated August 10, 2021, the Union informed me that it would not be filing a brief. On October 5, 2021, the Township filed a letter brief in support of removing the position of Lieutenant from the bargaining unit of police officers.

The hearing examiner, on the basis of the stipulations of fact and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Township is a political subdivision and public employer within the meaning of Act 111 as read with the Pennsylvania Labor Relations Act (PLRA). (Stipulation of Facts ¶ 1)
2. The Union is a labor organization within the meaning of Act 111 and the PLRA. (Stipulation of Facts ¶ 3)
3. The Township is a second-class township. The governing body and appointing authority of the Township is its board of supervisors. (Stipulation of Facts ¶s 4-5)
4. The Township provides police services to the Township through its paid Police Department (Department), and employes 28 officers, including 20 patrol officers, 4 detectives 2 lieutenants, 1 school resource officer, and 1 Chief of Police. (Stipulation of Facts ¶s 6-7)
5. The Township has voluntarily recognized the Union as the exclusive bargaining agent for police officers employed by the Township. The Township and the Union have been parties to collective bargaining agreements dating back more than 30 years. (Stipulation of Facts ¶s 8-9)
6. Through negotiations, the Township and the Union have agreed that the proper scope of the bargaining unit represented by the Union includes "all uniformed and plainclothes sworn police officers employed by the Township, below the Chief of Police." This definition of the bargaining unit

has been included in the parties' collective bargaining agreements for at least the last 30 years. (Stipulation of Facts ¶s 10-11)

7. The position of Lieutenant did not exist within the Department prior to January 2019. On or about January 7, 2019, two Lieutenant positions were created and filled for the first time. (Stipulation of Facts ¶s 12-13)

8. The duties of Lieutenant, as detailed in Department Policy No. 40-12, dated January 7, 2019, include the following:

- a. Policy enforcement, formation and interpretation as assigned by the Chief of Police.
- b. Institution of disciplinary actions including internal investigations that could lead to the administration of discipline and, in the absence of the Chief of Police, directly handle discipline.
- c. Involvement in the hiring of officers of the Department. As a second-class township, hiring and promotion in the Department are not governed by Civil Service.
- d. Preparation and application of the budget for the Department.
- e. Effectively engaging in the purchasing of equipment for the Department.

(Stipulation of Fact ¶14)

9. As examples of the foregoing job description, Lieutenants have engaged in the following duties:

- a. Researched and formulated at least the last 15-20 policies issued by the Department, including but not limited to the Department's COVID-19, Act 17 Policy, Body Camera Policy, and Holding Cell Policy;
- b. Oversaw and conducted internal investigations relating to discipline including but not limited to recommending discipline and opining on discipline to be issued by the Chief of Police and the Township Manager based on the alleged conduct and the results of the internal interviews and investigations;
- c. Interviewed candidates for hiring and made effective recommendations for hiring certain applicants and against hiring other applicants suggested by the Chief;
- d. Assisted in the budgeting process and helped to formulate the budget to be recommended by the Chief of Police;
- e. Made purchases in accordance with the budget for a variety of items, including cars, weapons, ammunition, uniforms, and supplies;
- f. Oversaw and implemented discipline particularly in the retraining and retesting required because of discipline previously recommended;

- g. Worked as the liaison with the school district and worked with the Township solicitor to negotiate the contract for the school resource officer and managing the school resource officer.

(Stipulation of Fact ¶ 15)

10. The holders of the position of Lieutenant have discharged the above duties and exercised discretion in all those foregoing areas.

(Stipulation of Fact ¶ 16)

DISCUSSION

Both the Union and the Township agree that the position of Lieutenant is a management level position that should be excluded from the recognized bargaining unit of police officers. The seminal case in determining whether a position in a police department is managerial is Fraternal Order of Police Star Lodge No. 20 v. PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987). The Star Lodge test lists 6 areas of authority that yield the conclusion that a position in a police department is managerial. Those 6 criteria are as follows: (1) Policy Formulation through Initiation of Policies and Directives; (2) Policy Implementation through Program Development; (3) Overall Personnel Responsibility and Administration through Effective Involvement in Hiring and Disciplinary Action; (4) Budget Formulation; (5) Purchasing Decisions; or (6) Independence in Public Relations. Significantly, the Star Lodge test is disjunctive, and the duties of the position holder need only meet one of the Star Lodge criteria.

On this record, the Lieutenants sufficiently satisfy the criteria set forth in Star Lodge to require the conclusion that they are management level employees of the Township's Department. The Lieutenants interview candidates for hiring and make effective recommendations for hiring certain applicants and have recommended against the hiring of other applicants suggested by the Chief of Police. The Lieutenants also have overseen internal investigations against bargaining unit officers, have made recommendations for discipline and have overseen the implementation of discipline of bargaining unit officers. The record also demonstrates that Lieutenants have researched and formulated policies adopted by the Department such as the Department's COVID-19, Act 17 policy, the Department's Body Camera Policy, and the Department's Holding Cell Policy. The Lieutenants have also recommended and made purchases of expensive items such as cars, weapons, uniforms and supplies.

Accordingly, the position of Lieutenant in the Township's Police Department is a management level position within the meaning of Star Lodge, and is properly removed from the bargaining unit.

CONCLUSIONS

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

1. The Township is a political subdivision and a public employer 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 two positions of Lieutenant at the Township Police Department are managerial positions and are properly excluded from the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111, as read with the PLRA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the two Lieutenants are excluded from the bargaining unit, and the bargaining unit description shall be amended to explicitly exclude the position of Lieutenant.

IT IS FURTHER HEREBY 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 final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-second day of October, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
HEARING EXAMINER