

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-11-108-E
 :
 DOUGLASS TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On August 26, 2011, Douglass Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the position of Chief of Police (Chief) from the Township's bargaining unit of police officers. On September 1, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on February 13, 2012. On October 19, 2011, the Township Manager filed with the Board a stipulation of facts agreed to by the Township and the Douglass Township-Berks Police Association (Union).

The hearing examiner, on the basis of the stipulated facts, makes the following:

FINDINGS OF FACT

1. The Township is a political subdivision within the meaning of Act 111 as read with the Pennsylvania Labor Relations Act (PLRA).
2. The Union is a labor organization within the meaning of Act 111 and the PLRA.
3. The parties stipulated and agreed that David Franke is the Chief of the Township's Police Department.
4. The parties stipulated and agreed that the Chief chooses candidates to be interviewed by the Board of Supervisors for the hiring of police officers.
5. The Chief narrows a pool of police candidates to a group of three who are then passed along to the Board of Supervisors. The Supervisors strongly consider the Chief's recommendations. Chief Franke has been involved in the hiring of four part-time and five full-time officers, including all currently employed officers.
6. Chief Franke discharged a police officer who was unable to meet department expectations.

DISCUSSION

The Township has petitioned to exclude the Chief as a managerial employee. In FOP Star Lodge No. 20 v. Commonwealth of Pennsylvania, PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd per curiam, 522 Pa. 149, 560 A.2d 145 (1989)(Star Lodge), the Commonwealth Court set forth six criteria of managerial status for firefighters and police officers under Act 111. Under Star Lodge, the Township has the burden of proving the following:

[T]hat the [employee in the position] has authority to initiate departmental policies, including the power to issue general directives and regulations; he [or she] has the authority to develop and change programs of the department; he [or she] engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals; he [or she] effectively prepared budgets, as distinguished from merely making suggestions; he [or she] effectively engaged in the purchasing process, as compared to merely providing suggestions; or he [or she] has the authority to commit departmental resources in dealing with public groups. [Fraternal Order of Police Lodge No. 20 v. PLRB (Star Lodge), 522 A.2d 697, 704 (Pa. Cmwlth. 1987, aff'd, 522 Pa. 149, 560 A.2d 145 (1989)]. Significantly, 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 Employees of Elizabeth Township, 37 PPER 90 at 291 (Final Order, 2006)(citing Star Lodge, supra)(emphasis added).

The factual stipulations support the conclusion that the Chief is engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals. The Chief chooses candidates to be interviewed by the Board of Supervisors for the hiring of police officers by narrowing the pool of police candidates to a group of three, who are then sent to the Board of Supervisors with his recommendations, which the Supervisors strongly consider and follow. Chief Franke has effectively recommended the hiring of four part-time and five full-time officers, including all currently employed officers. Moreover, Chief Franke exercised independent managerial discretion in effectuating the discharge of a police officer who, in the Chief's judgment, was unable to meet department expectations.

CONCLUSION

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

1. The Township is a political subdivision 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 Township's Chief of Police is a managerial employe and is properly excluded from the bargaining unit of police officers in the Township Police Department.

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 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 second day of December, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner