

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF
DUNMORE BOROUGH

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: Case No. PF-U-11-122-E
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:

PROPOSED ORDER OF UNIT CLARIFICATION

On September 15, 2011, the Borough of Dunmore (Borough) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the position of Fire Chief from the bargaining unit of fire officers represented by the International Association of Fire Fighters, Local Union No. 860, AFL-CIO (Union). On September 22, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on March 16, 2012, in Harrisburg. I rescheduled the hearing for March 22, 2012. The Union did not appear for the hearing on that date. Immediately prior to the hearing, I telephoned the office of the attorney of record for the Union, Mr. Thomas Jennings, Esquire, and confirmed that he received notice of the hearing and that no one would be appearing on behalf of the Union.¹ I thereafter proceeded to conduct the hearing without Union representation or attendance.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Borough 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. Christopher P. DeNaples is the Fire Chief of the Borough Fire Department. (N.T. 11; Borough Exhibit 2).
4. The Chief has selected applicants for firefighting positions in the Borough. After the Chief interviewed applicants, he gave Borough Council his recommendations for new hires. Borough Council hired all the firefighters that the Chief recommended. (N.T. 17-18; Borough Exhibit 3).
5. Chief DeNaples has recommended discipline of firefighters to Borough Council. Council has suspended firefighters based on the Chief's recommendation to do so. (N.T. 19).
6. On October 20, 2008, Chief DeNaples created and implemented a new policy requiring all firefighters to consult with the Chief regarding Fire Department matters before discussing such matters with members of Borough Council or administration. The policy provides for discipline if not followed. The Chief did not obtain approval from Borough Council for this policy. Chief DeNaples enforced this policy against two firefighters in April 2011. Borough Council members adhere to the policy and direct all inquiries regarding the Fire Department to the Chief. (N.T. 31-33; Borough Exhibits 8 & 9).
7. On March 13, 2009, the Chief developed a policy for the Fire Department requiring that only the Chief and Assistant Chief, with limited exception, are permitted

¹ The Union's attorney did not enter an appearance on behalf of the Union.

to submit requests for purchase orders. He issued the policy to all firefighters and Borough officials. (N.T. 34-36; Borough Exhibit 10).

8. On September 1, 2009, Chief DeNaples instituted a policy mandating the immediate and primary use of new personal protection equipment in which he forbade the removal of identifying name designations on the equipment. (N.T. 47; Borough Exhibit 13).

9. On April 29, 2010, Chief DeNaples instituted a summer dress code policy requiring all fire officers to wear a blue Blauer uniform shirt while on duty with certain designated exceptions. The Chief enforces the dress code policies daily. (N.T. 47-48; Borough Exhibit 14).

10. Chief DeNaples enforces the policy requiring all firefighters to maintain their street familiarization training and requiring fire officers to log that training for the Chief's review. (N.T. 49; Borough Exhibit 15).

11. On June 20, 2008, Chief DeNaples issued a policy requiring the officer in charge to take all identifying accountability tags from firefighters when Ladder 6 is dispatched to a mutual aid call and to give those tags to the firefighter riding in the officer's seat so he can, in turn, give the tags to the incident commander of the requesting fire company. (N.T. 52-53; Borough Exhibit 18).

12. Chief DeNaples recommends firefighter training for his firefighters. He also recommends the denial of certain training. The Borough Council Fire Liaison follows the Chief's recommendations regarding fire training and gives "complete weight" to the Chief's recommendations. (N.T. 56-58; Borough Exhibit 19 & 20).

13. On April 18, 2011, Chief DeNaples recommended to Borough Council that one of his officers attend the Pennsylvania State Fire Academy for fire operations at large structures. The Chief included in his recommendation notice that the Borough would have to pay for a hotel room, meals, one week's wages for the training officer and one week's wages for an officer to cover the training officer's shifts. The Borough approved the training and the expenditures based on the Chief's recommendation. (N.T. 60-61; Borough Exhibit 21).

14. Municipal fire departments assist neighboring municipal fire departments. Municipalities create a "run card" or "run worksheet" defining the order in which other municipalities will be dispatched to provide support if another incident arises in the municipality while their fire apparatus is already dispatched to an incident. The run card is filed with the county 911 Comm. Center which dispatches the next municipality on the run card. (N.T. 61-63).

15. Chief DeNaples created the run card for the Borough without any involvement from Council members, and he designated which municipalities would provide support (and the order in which those municipalities would provide it) for the Borough if the Dunmore Fire Apparatus was already dispatched to an incident when another emergency arises in the Borough. (N.T. 61-63).

16. The Borough incurs an expense, when it uses its trucks and associated fuel and personnel, by responding to another municipality's emergency. The Chief approves the designation of the Borough Fire Department on another municipality's run card without input from Borough Council. (N.T. 63-65).

17. Borough Council and the Fire Liaison on Council have never denied a purchase order requested from Chief DeNaples. The Chief frequently requests purchase orders for the following: inspections and repairs on equipment, replacement of equipment damaged fighting fires or responding to other emergencies and new gear for individual personnel. These expenditures have added up to thousands of dollars in one purchase order, and the Borough always grants the Chief's requests. (N.T. 66-70; Borough Exhibit 23, 24 & 25).

18. On March 10, 2011, Chief DeNaples requested that Council approve the use of remaining grant funds for the purchase of new fire hose. Council wanted to use the money for replacement air packs. Council, however, approved the Chief's request to purchase hose instead of air packs. (N.T. 71; Borough Exhibit 26).

DISCUSSION

The Borough has the burden of proving the managerial status of the Fire Chief because it is pursuing the exclusion of that position from the unit. In the Matter of the Employes of Elizabeth Township, 37 PPER 90 (Final Order, 2006). In Elizabeth Township, the Board enunciated the test for determining the managerial status of a position as follows:

In order to meet its burden of establishing the managerial status of the . . . position, the [employer] was required to prove that the actual job duties satisfy one of the following criteria: that 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.

Elizabeth Township, 37 PPER at 291. The employee in the position at issue must exercise decisional authority in any of the six above-mentioned areas. Dalton Police Ass'n v. PLRB, 765 A.2d 1171 n.6 (Pa. Cmwlth. 2001). The test set forth in Star Lodge makes it difficult to exclude a position from a bargaining unit as managerial because the criteria focus on the level of discretion exercised by the person occupying the position in question rather than the critical nature of that person's duties. Dalton Police Ass'n, 765 A.2d at 1177. As the Board representative stated in the case In the Matter of the Employes of Franklin Township, 16 PPER 16145 (Order and Notice of Election, 1985), "[i]t is the exercise of independent discretion, the authority to choose between competing policy alternatives, which raises an employe to management level status and not merely the exercise of discretion within parameters set out by the employer." Id. at 373.

Policy Formulation and Implementation

The record establishes with substantial credible evidence that Chief DeNaples exercises independent discretion in formulating and implementing policies for the operation of the Fire Department, without seeking approval from Borough Council. In Elizabeth Township, supra, the Board relied on Dalton, supra, and concluded that a deputy police chief's development of his department's standard operating procedures alone was sufficient to make him a manager. The deputy chief in Elizabeth Township developed his department's policy manual by adopting policies and procedures from other police departments' policy manuals. The Board concluded that by selecting which policies to adopt for his department, the deputy chief was exercising discretion and judgment in setting policy, thereby satisfying the first Star Lodge criterion. Elizabeth Township, supra.

Although the record is unclear regarding the Chief's development of the manual of operating procedures for the Fire Department, the Chief has formulated many individual policies affecting operations. The Chief formulated dress code policies and policies for the use and protection of personal gear and equipment. The Chief formulated a policy in which he restricted firefighter access to Borough officials without first addressing a matter with him. He implements and enforces the policy on street familiarization training by monitoring the training log. He also developed the protocol that the fire officer in charge must follow when the Borough's apparatus is dispatched for mutual aid to another municipality, and he restricted the list of fire personnel who may request purchase orders to include only himself and the Assistant Chief, with limited exceptions. None of these policies were reviewed or modified by Borough Council.

Overall Personnel Administration

Chief DeNaples has been involved in the overall personnel administration of the Borough's Fire Department, as evidenced by his effective involvement in hiring and disciplining fire officers. The Chief has selected applicants for firefighting positions in the Borough. After the Chief interviewed applicants, he gave Borough Council his recommendations for new hires. Borough Council hired all the firefighters that the Chief recommended. Chief DeNaples has also recommended discipline of firefighters to Borough Council. Council has suspended firefighters based on the Chief's recommendation to do so. The Chief also determines when officers require training and effectively recommends training to Council. The Borough Council's Fire Liaison testified that he gives complete weight to the Chief's training recommendations.

Commitment of Departmental Resources

This record also demonstrates that Chief DeNaples has the authority and independent discretion to commit Fire Department resources, incurring significant costs to the Borough. On April 18, 2011, Chief DeNaples recommended to Borough Council that one of his officers attend the Pennsylvania State Fire Academy for fire operations at large structures. The Chief included in his recommendation notice that the Borough would have to pay for a hotel room, meals, one week's wages for the training officer and one week's wages for an officer to cover the training officer's shifts. The Borough approved the training and the expenditures based on the Chief's recommendation.

The Chief permitted other municipalities to designate the Borough's Fire Apparatus on their run cards without input from Borough Council. The use of the Borough's fire trucks, fuel and personnel, by responding to another municipality's emergency, incurs additional significant costs to the Borough. Also, neither Borough Council nor the Fire Liaison has denied a purchase order requested from Chief DeNaples. The Chief frequently requests purchase orders for inspecting and repairing equipment, replacing equipment damaged in fighting fires or responding to other emergencies and new gear for individual personnel. These expenditures have added up to thousands of dollars in one purchase order and the Borough always grants the Chief's requests. On March 10, 2011, Chief DeNaples requested that Council approve the use of remaining grant funds for the purchase of new fire hose. Council wanted to use the money for replacement air packs. Council, however, approved the Chief's request to purchase hose instead of air packs. Chief DeNaples is effectively engaged in purchasing fire equipment and materials, as opposed to merely making suggestions.

The record duties of Chief DeNaples establish that he is a management level employee of the Borough and that his position is properly excluded from the bargaining unit of firefighters. The Chief exercises independent managerial discretion in the operation of the Fire Department. The record lacks evidence that shows that Council has set any significant boundaries limiting the Chief's independence or his discretion in Fire Department operations. Accordingly, the petition for unit clarification is hereby granted.

CONCLUSION

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

1. The Borough 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 Borough's Fire Chief is a managerial employe and is properly excluded from the bargaining unit of fire officers in the Borough Fire 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 Fire Chief 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 May, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner