

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PF-U-12-43-E  
: :  
ROBESON TOWNSHIP :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On March 23, 2012, Robeson 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 April 3, 2012, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on June 20, 2012. On July 30, 2012, the Township's attorney filed with the Board a stipulation of facts jointly executed by the representatives of the Township and the Robeson Township Police Association (Union).

The hearing examiner, on the basis of the stipulated facts and all matters of record, 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). (Stip. of Facts ¶s 1-5).
2. The Union is a labor organization within the meaning of Act 111 and the PLRA. (Stip. of Facts ¶s 1-5).
3. The parties stipulated and agreed that the Chief has created and developed standard operating procedures for the police department. He has issued general work orders and has developed regulations for the use of the Township's firing range, which includes use by third-party agencies, as well as rules for the possession and maintenance of fire arms by Township police officers. (Stip. of Facts ¶ 14).
4. The parties stipulated and agreed that the Chief participates in the hiring process by arranging for advertising and testing, conducting background investigations, reviewing the candidates' qualifications and conducting interviews. The Township Board of Supervisors generally accepts the Chief's recommendations with respect to hiring candidates for full- and part-time positions. (Stip. of Facts ¶s 18-19).
5. The parties stipulated and agreed that the Chief is responsible for officer training without oversight from the Board of Supervisors. The Chief selects the schools and training programs for the officers. He also selects the officers who must attend those programs. (Stip. of Facts ¶ 22).
6. The Chief prepares the operating budget for the police department. The Chief makes discretionary purchases without prior approval from the Board of Supervisors. The Chief purchases police cars and equipment and maintenance for the cars; he purchases weapons, ammunition and computer equipment to meet departmental needs, as determined by the Chief. (Stip. of Facts ¶s 25-27).

**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 Employes 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 his effective involvement in hiring and selecting candidates for full- and part-time police officer positions. The Chief arranges for the testing of candidates. He conducts candidate interviews and reviews candidate qualifications. He also conducts background investigations on presumptively qualified candidates. The Township Board of Supervisors accepts the Chief's recommendations with respect to the hiring of candidates that he has selected for full- and part-time positions.

The Chief also exercises the managerial authority to initiate, develop and change departmental programs and policies, including the power to issue general directives and regulations. Specifically, the Chief has created and developed standard operating procedures for the Department, which alone is sufficient under **Star Lodge** to remove him from the unit as managerial. **Dalton Police Ass'n v. PLRB**, 765 A.2d 1171 n.6 (Pa. Cmwlth, 2001). He has issued general work orders and has developed regulations for the use of the Township's firing range, which includes use by third-party agencies, as well as rules for the possession and maintenance of fire arms by Township police officers. In this regard, the Chief is responsible for establishing and implementing policies in the interest of the Township that govern the administration of the police department, the behavior of officers and the use of Township facilities.

Moreover, the Chief effectively prepares the police department annual budget, as distinguished from merely making suggestions, and he is effectively engaged in the purchasing process. The Chief exercises managerial authority in making discretionary purchases of police vehicles and maintenance and equipment for those vehicles, without specific prior approval from the Board of Supervisors. He similarly purchases weapons, ammunition and computer equipment which are, in his determination, necessary to meet departmental needs. By determining what equipment to purchase and when to purchase that equipment, the Chief makes managerial determinations in the interest of the Township that effectuate the proper delivery of police services including the type, level, manner and effectiveness of those services.

#### 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 twenty-second day of August, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner