

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UPPER SOUTHAMPTON TOWNSHIP POLICE :
BENEVOLENT ASSOCIATION :
 :
v. : Case No. PF-C-98-83-E
 :
UPPER SOUTHAMPTON TOWNSHIP :

FINAL ORDER

On April 27, 2000, the Upper Southampton Township Police Benevolent Association (Association) filed timely exceptions and a brief in support of exceptions to a Proposed Decision and Order (PDO) issued on April 7, 2000. The hearing examiner dismissed the Association's unfair labor practice charge, which alleged that Upper Southampton Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by appointing Sergeant David Johnson to Acting Lieutenant without bargaining with the Association. In dismissing the charge, the hearing examiner concluded that the Township's appointment of Johnson to acting lieutenant was to a position outside the bargaining unit and therefore the Township had no duty to bargain with the Association over the terms and conditions of that position. On May 15, 2000, the Township requested an extension of time in which to file a response to the Association's exceptions. The Secretary of the Board granted the Township's request and directed the Township to file its brief on or before June 2, 2000. Thereafter, the Township filed a brief in response to exceptions on May 31, 2000.

The essential facts of this case are as follows. The Association is the exclusive bargaining representative of a unit of police officers of the Township, which includes officers within the ranks of patrolman, sergeant, and detective. The positions of lieutenant and chief of police are excluded from the bargaining unit. In early December 1996, Lieutenant Miller went on inactive status and in early 1998 Chief Schultz determined that he needed to appoint an officer to temporarily act as lieutenant and cover those tasks formerly performed by Lieutenant Miller. In choosing an officer for that position, Chief Schultz reviewed the work habits of the sergeants, their work histories and competence and how they interacted with squad members. By interdepartmental memo dated March 18, 1998, Chief Schultz announced that the Township's Board of Supervisors appointed Sergeant Johnson to Acting Lieutenant. The Township did not bargain with the Association prior to appointing Johnson to "Acting Lieutenant." The Association then filed its charge alleging that the Township unilaterally changed terms and conditions of employment without bargaining when it appointed Johnson to act as lieutenant.

Before the hearing examiner, the Association argued that Johnson was in fact promoted to lieutenant, albeit temporarily, and was not merely acting in that rank as alleged by the Township. Now, in its exceptions, the Association argues that Johnson was not promoted and is instead still a sergeant within the bargaining unit. In claiming that Johnson remains in the bargaining unit, the Association contends that the Township had a duty to bargain over the wages, benefits and working conditions of the acting

lieutenant position. By allegedly unilaterally conferring wages and benefits upon him without bargaining, the Association contends the Township engaged in direct dealing with an individual member of the bargaining unit and undermined its role as bargaining representative.

However, the Township has no duty to bargain over the terms and conditions of a non-bargaining unit position that is temporarily being filled by a member of the bargaining unit. The Township contends, and the record evidence supports, that Johnson was in fact appointed by Chief Schultz to temporarily act as lieutenant, a management position that is outside of the bargaining unit. Because the position to which Johnson was appointed to temporarily act is a management position and is outside the bargaining unit, the wages and terms and conditions of that position are matters clearly within the Township's managerial prerogative. A public employer has no obligation to bargain with the exclusive representative of its employes regarding the wages, benefits and working conditions of a non-bargaining unit position. Harrison Township Water Authority, 29 PPER ¶ 29020 (Proposed Decision and Order, 1997), 29 PPER ¶ 29086 (Final Order, 1998). Indeed, a public employer has no duty to bargain under Act 111 over the terms and conditions of management positions. Township of Chartiers v. PLRB, 510 A.2d 884 n.1 (Pa. Cmwlth. 1986); Borough of Emmaus, 23 PPER ¶ 23011 (Proposed Decision and Order, 1991). The bargaining representative for employes within a bargaining unit represents those employes with regard to positions specifically included within that unit. To require employers to bargain with the exclusive representative of employes in a bargaining unit regarding non-unit or management positions would undermine the purpose of collective bargaining and bargaining unit determinations, which are intended in part to provide a clear distinction between management positions and those rank and file employes given the statutory right to collectively bargain. Lower Allen Township, 8 PPER 376 (Nisi Order of Certification, 1977), *aff'd*, 10 PPER ¶ 10047 (Final Order), *aff'd*, 11 PPER ¶ 11010 (Court of Common Pleas of Cumberland County, 1979). Contrary to the Association's position then, the Township had no obligation to bargain regarding the wages, benefits or terms and conditions of the lieutenant position, whether it be only temporary or permanent. As an acting management level employe, Johnson receives the wages and benefits as set by the Township until the employe on inactive status, Lieutenant Miller, returns to that position or the Township decides to fill that position otherwise, whereupon Johnson will, if not chosen to replace Miller, return to his bargaining unit position as sergeant. (N.T. 53). The Township had no obligation to bargain regarding the temporary appointment of Johnson to acting lieutenant and thus did not engage in direct dealing with Johnson in violation of Act 111. Accordingly, the Association's exceptions are dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed, and the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this twentieth day of June, 2000. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.