

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF EMPLOYES OF :
SELINGSGROVE BOPROUGH : Case No. PF-U-03-19-E
 : (PF-R-90-14-E)
 : (PF-U-95-187-E)

Final Order

Selinsgrove Police Officers Association (Union) filed timely exceptions and a supporting brief on October 24, 2003, with the Pennsylvania Labor Relations Board (Board) from a Proposed Order of Dismissal (POD) issued October 7, 2003. In the POD, the Hearing Examiner dismissed the Petition for Amendment of Certification for purposes of expanding the police unit to include the Chief of Police in the existing unit. The Hearing Examiner found that the Chief of Police is a managerial employee, and as such, is properly excluded from the bargaining unit. Selinsgrove Borough (Borough) filed a Brief in Response on October 31, 2003.

The Union sets forth seven (7) exceptions, which may be summarized as follows. In the Findings of Fact, the Hearing Examiner imputed discretion to the Chief of Police Thomas Garlock in carrying out his administrative duties, when in actuality, the Borough required the Chief of Police follow rigid procedures in executing those duties. Consequently, the Hearing Examiner erred in classifying the position of Chief of Police as a managerial employee.

The findings of facts within the POD are as follows. On June 4, 1990, the Board certified the Union as the exclusive representative of all full-time and regular part-time police officers, including the Chief of Police. Pursuant to a Petition for Unit Clarification in 1995 jointly filed by the Borough and the Union, the Board entered a Nisi Order of Unit Clarification amending the order of certification to exclude the Chief of Police from the bargaining unit as a managerial employee.

Prior to hiring the incumbent Chief of Police in 1995, the Borough sought the advice of a management consultant regarding a wide range of matters of management of the police department (Margesson Report) that guided Chief Garlock following his hire.

When the Borough hired Garlock, it was with the understanding the position be excluded from the bargaining unit represented by the Union, which was accomplished by the joint request for unit clarification excluding the chief from the unit. Since his hiring, Chief Garlock has had two employment contracts with the Borough, the last expiring on December 31, 2001. He is currently employed under the terms of the second expired contract. Each contract included the following:

The position of Chief of Police will include total responsibility for the day-to-day management of the Selinsgrove Police Department, including, but not limited to, the formulation and implementation of all operational procedures and policies.

The Borough and the Union are parties to a Collective Bargaining Agreement (CBA) effective from January 1, 2001 to December 31, 2003. The CBA provides that the Mayor has oversight responsibility for policy and planning matters and is responsible to the Council for the police, but the Chief of Police is delegated primary responsibility for day-to-day management of the Police Department. This management includes such areas as developing and implementing standard operating procedures.

Through its exceptions, the Union asserts that the Hearing Examiner mischaracterized the level of discretion the Chief of Police exercises in fulfilling his administrative duties. Specifically, the Union excepts to the Hearing Examiner's Finding of Fact No. 12, 13, 14, 15, 16 and 17 (POD 2-3). The Board finds substantial evidence to support each of these findings of fact and will discuss each sequentially.

The Union first asserts that Finding of Fact No. 12 is inaccurate in stating that the Borough requested the Chief of Police comment on the formulation of the Margesson Report. (Exceptions of Selinsgrove Police Officers Association to Proposed Order of Dismissal (Union's Exceptions) Section 6(A)). This exception misstates the Hearing Examiner's finding. The Hearing Examiner found that the Borough asked Garlock for his opinions to the recommendations and not on their formulation (POD 2). The record contains substantial testimony evidencing this finding, including the testimony of Chief Garlock admitting that the Borough asked for his recommendations in implementing the policy changes contained in the report. (N.T. 33, 66, 148; Respondent's Exhibit 2).

The Union further argues that the Borough mandated a course of action implementing the policy changes leaving Chief Garlock little or no discretion. Assuming this is true, *arguendo*, there were multiple approaches to choose from in implementing the changes found in the Margesson report. The Borough provided Chief Garlock complete discretion in determining, in his professional opinion, the most efficient and effective approach. (N.T. 16, 17, 42, 66, 149, 189, 190, 191, 201; Respondent's Exhibit 2). Therefore, the Board finds substantial evidence in support of Finding of Fact No. 12 and dismisses this exception.

The Union next asserts that Finding of Fact No. 13 is incorrect, as Chief Garlock "had no role in development of policy, but simply was required to implement the same." (Union's Exceptions, Section 6(B)). Again, this assertion is contrary to Chief Garlock's own testimony. The direct examination of Chief Garlock included the following exchange:

Q Okay. You have some policy formation, don't you, as your current position of Chief of Police?

A I formulate operational procedures and policies.

Q Now, when you say you formulate operational procedures, that's day-to-day affairs?

A How a police officer does his job, yeah.

(N.T. 149). The Board agrees with the Hearing Examiner's conclusion that the chief developed and implemented the standard operating procedures for the police department. Consequently, this exception is dismissed.

The Union next claims that Finding of Fact No. 14 is in error, because the Margesson Report dictated the rules and regulations addressed and implemented by the chief. (Union's Exceptions, Section 6(C)). This assertion omits the fact that Chief Garlock exercised his discretion in developing and implementing the changes in policy. For example, Chief Garlock shifted the department's policies from a procedurally based system to one that is ethically based. (N.T. 149). He also formulated policies with regard to the enforcement of Borough ordinances, grievance procedures, and the use of computers. (N.T. 200-201, 204). Therefore, this exception is dismissed.

In their fourth exception, the Union challenges the Hearing Examiner's Finding of Fact No. 15, arguing that Chief Garlock sought the Borough's direction, which was never provided, in implementing the physical-fitness testing program. (Union's Exceptions, Section 6(D)). The chief did not require such direction in implementing the other twenty-eight (28) provisions of the Margesson Report; therefore, the Hearing Examiner properly discredited his testimony that he required direction for implementing the physical-fitness plan. The record further supports the finding that the chief exercised discretion in not implementing a physical fitness testing policy at the time of his hiring, despite Council conveying their wishes that he implement such a plan. (N.T. 18, 208-209). Accordingly, the Board dismisses this exception.

In their fifth exception, the Union argues that the Borough prohibited the chief from submitting applications for grants without prior approval. (Union's Exceptions, Section 6(E)). This exception is contrary to the testimonial and documentary evidence contained in the record. There is substantial evidence proving that without prior approval from the Borough, Chief Garlock applied for and implemented the grant known as a STOP grant through the Women in Transition program, used to help investigate incidents of women abused in the community. (N.T. 89-90, 103, 105-107; Petitioner's Exhibit 3). That the Borough later ratified this action does not diminish or disprove the fact that Chief Garlock acted without prior approval. The Board, therefore, dismisses this exception.

The Union next asserts that Chief Garlock is not responsible for developing a budget, because his proposed budget is altered without additional input from him. (Union's Exceptions, Section 6(F)). This assertion, however, ignores the ample testimony proving that the proposed budget is prepared by the chief and is accepted substantially as submitted. (N.T. 38, 46, 48, 78, 79, 84, 111, 113, 150, 191). The Board agrees with the Hearing Examiner's finding that "the Chief is responsible for developing a proposed budget for the police department..." (POD 3). Accordingly, this exception is dismissed.

Lastly, the Union challenges the Hearing Examiner's determination that the Borough failed to sufficiently prove that the Chief of Police is a managerial employee. The Board agrees with the Hearing Examiner that the position of Chief of Police is managerial in nature, and as such, should be excluded from the bargaining unit.

FOP, Star Lodge No. 20 v. Commonwealth, PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987), *aff'd*, 522 Pa. 149, 560 A.2d 145 (1989)(Star Lodge II),

is well-established as the controlling authority in this area. As stated in that case, a position is deemed managerial if the employee performs at least one of the following six functions:

- 1) Policy Formulation - authority to initiate departmental policies, including the power to issue general directives and regulations;
- 2) Policy Implementation - authority to develop and change programs of the department;
- 3) Overall Personnel Administration Responsibility - as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals;
- 4) Budget Making - demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items;
- 5) Purchasing Role - effective role in the purchasing process, as distinguished from merely making suggestions; and
- 6) Independence in Public Relations - as evidenced by authority to commit departmental resources in dealing with public goods.

Star Lodge, 522 A.2d at 577-578.

The Board finds that the Borough sufficiently proved that Chief Garlock actually performed four of the aforementioned functions, including policy formulation, policy implementation, independence in public relations, and budget making, and will discuss each separately *infra*.

First, the Board finds generally that Chief Garlock exercised actual authority in policy formulation, and specifically, that the chief initiated departmental policies and issued general directives and regulations. Altering the standard procedures for the day-to-day operations of the police department, even with approval from a higher authority, is sufficient to establish actual exercise of policy formulation. See Dalton Police Ass'n v. PLRB, 765 A.2d 1171, 1175 (Pa. Cmwlth. 2001). As established *supra*, Chief Garlock prepared the police department's rules and regulations, basing them on ethical standards rather than merely procedural ones. Therefore, with regard to this function, the chief acted as a managerial employee.

Second, the Borough proved that Chief Garlock functions as a managerial employee in implementing policy. As Star Lodge states, policy implementation is the authority to develop and change the department's programs. Star Lodge, 522 A.2d at 704. Chief Garlock not only developed and implemented a new standard operating procedure, he also implemented the Margesson Report. While this was accomplished at the Borough's behest, the chief exercised his own discretion in choosing the proper approach to best effectuate the changes. These acts are consistent with that of a managerial employee implementing policy.

Third, the Borough established that Chief Garlock demonstrated independence in public relations, by committing departmental resources in obtaining a grant, through the Women in Transition program, to help investigate incidents of women abused in the community. This commitment of departmental resources in applying for the grant falls squarely within Star Lodge's definition of independence in public relations. Id. Therefore, the chief acted as a managerial employee by performing this function.

Finally, the Board finds that the chief exercised actual authority in budget making. Star Lodge defines this function as "demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items." Id. As previously established, Chief Garlock proposed annual budgets that were approved substantially without change, distinguishing his proposals from mere suggestions. Consequently, the chief acted as a managerial employee by performing this function.

Accordingly, the Board finds that the Borough met its burden of proving that the position of Chief of Police is properly excluded from the bargaining unit as a managerial employee and dismisses the Union's final exception.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Selinsgrove Police Officers Association's exceptions and make the Proposed Order of Dismissal final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed in the above-captioned matter be and the same are hereby dismissed and the Proposed Order of Dismissal 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, L. Dennis Martire, Member, and Anne E. Covey, Member, this eighteenth day of November, 2003. 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.