

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PF-R-05-170-E  
: :  
HOOVERSVILLE BOROUGH :

**ORDER DIRECTING THE SUBMISSION OF ELIGIBILITY LIST**

On December 12, 2005, the Teamsters Local 110 (Petitioner or Union) filed a petition for representation with the Pennsylvania Labor Relations Board (Board) seeking to represent the police employes of Hooversville Borough (Respondent or Borough).

On December 20, 2005, the Secretary of the Board issued an order and notice of hearing in which the matter was assigned to a hearing scheduled, if necessary, on January 20, 2006, in Pittsburgh, before Thomas P. Leonard, Esquire, a hearing examiner of the Board. The hearing was necessary but the time and place of the hearing was changed to February 27, 2006, in Johnstown.

At that time, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The 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. That Hooversville Borough is a political subdivision of the Commonwealth of Pennsylvania and an employer within the meaning of section 3(c) of the PLRA with its address located at P.O. Box 176 Hooversville, Pennsylvania 15936.
2. That Teamsters Local Union 110 is a labor organization within the meaning of section 3(f) of the PLRA with its address located at P.O. Box 180 Ebensburg, Pennsylvania 15931.
3. That the Borough is governed by the seven-member Borough Council and a Mayor. (N.T. 71-78, 80).
4. That the Borough currently does not have a full-time manager. The Borough contracts with Judy Shaffer, who has worked as consultant doing the manager's duties since January 2005. Shaffer had served as the borough manager from January, 1977 to January, 2004. (N.T. 21-22, 90)
5. That in addition to Chief Timothy Kuzmiak, the Borough's police department employs three officers. (N.T. 11)
6. That Chief Kuzmiak works 40 hours a week. He usually works four days on the second shift and one day on the first shift, also known as the day shift. The part-time officers are scheduled to work 24 hours a week, typically Saturdays and Sundays, and a partial shift on Thursday. (N.T. 12)
7. That the Borough has a contract to provide police services to Stoystown Borough, which is five miles to the south of the Hooversville Borough. (N.T. 12-13)
8. That Chief Kuzmiak began his career with the Borough as a part-time police officer in June 2001. He left the Borough's employment in August, 2002, to serve as a capitol police officer in Harrisburg. In April, 2004, he returned to Hooversville as a part-time officer. In October, 2004, he became a full-time officer and chief of police. (N.T. 9-10)

9. That in 2005, Chief Kuzmiak drafted the police department's policy on the use of non-lethal force, which is also known as the taser policy. It was Kuzmiak's idea to obtain a taser, which cost \$799. Training cost an additional \$225. Kuzmiak was concerned about the liability issues if the taser was not used properly and explained to council the need to have a policy in place. Kuzmiak presented the policy to the Council, which approved it. (N.T. 30-36, 52, 74-75, Joint Exhibit 2)

10. That Chief Kuzmiak recommended the hiring of officers Chad Salley, Timothy Way and Michael Popma. The Council accepted Kuzmiak's recommendations on all these officers. (N.T. 38-49, 73, 81-83)

11. That in 2005, Chief Kuzmiak recommended the dismissal of a part time officer, Timothy Way, from the department for his failure to work the shifts he was scheduled to work. The Council accepted Kuzmiak's recommendation. (N.T. 49-51, 59-61, 70-71, 83 Joint Exhibit 5)

#### DISCUSSION

The Union's petition for representation requires a decision on one issue. The Borough contends that the position of chief of police, held by Timothy Kuzmiak, is a managerial employe and thus not be eligible to vote for an exclusive representative.

The Borough asserts that the position is managerial within the meaning of Fraternal Order of Police, Lodge No. 20 v. Pennsylvania Labor Relations Board, 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd, 522 Pa. 149, 560 A.2d 145 (1989) (Star Lodge). In Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001), the Commonwealth Court explained that "this Court concluded [in Star Lodge] that if a position encompasses decisional authority in any of the [above-described] areas, that position will be identified as managerial." id. at 1175 n.6 (emphasis added).

Under Star Lodge, the burden of proving that an employe is a managerial employe is on the Borough, as the party seeking to exclude the position. The Borough must prove that the position meets one of the six criteria of managerial status, which the court stated were:

Policy Formulation - authority to initiate departmental policies, including the power to issue general directives and regulations;

Policy Implementation - authority to develop and change programs of the department;

Overall Personnel Administration Responsibility - as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals;

Budget Making - demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items;

Purchasing Role - effective role in the purchasing process, as distinguished from merely making suggestions;

Independence in Public Relations - as evidenced by authority to commit departmental resources in dealing with public groups.

522 A.2d at 705.

In the present case, the Borough has satisfied its burden of proof with regard to two of the Star Lodge managerial criteria. The Borough has demonstrated that Chief Kuzmiak has had an effective role in policy formulation and in overall personnel administration responsibility.

As for policy formulation, Chief Kuzmiak drafted the non-lethal force policy. He initiated the process of developing a policy because of his concern about legal

liability. He took the lead in the process because, by his own admission, there is no one else who manages the police department who was able to develop such a policy.

As for overall personnel administration, Chief Kuzmiak was responsible for recommending the hiring of three of the part-time officers in the department and for recommending the later dismissal of one of these officers for his inability to be available to work. At the hearing on this petition, Kuzmiak tried to minimize his role in the hiring process. But the Borough witnesses who testified on the issue of hiring, provided credible testimony that Kuzmiak's recommendations were a significant factor in the Borough's decision to hire the officers.

#### CONCLUSIONS

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

1. That the Borough is an employer within the meaning of section 3(c) of the PLRA.
2. That the Union is a labor organization within the meaning of section 3(f) of the PLRA.
3. That the Board has jurisdiction over parties hereto.
4. That the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers of the Borough, excluding managerial employees.
5. That the position of chief of police, held by Timothy Kuzmiak, is a managerial employe.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA, the examiner

#### HEREBY ORDERS AND DIRECTS

that the Borough shall within ten (10) days from the date hereof submit to the Board and the Petitioner an alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above, and

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the order of the Board Representative to be issued pursuant to 34 Pa. Code §95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this twenty-first day of April, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner

April 21, 2006

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HOOVERSVILLE BOROUGH  
Case No. PF-R-05-170-E

Enclosed please find a copy of the Order Directing Submission of Eligibility List issued  
in the above-captioned matter.

Sincerely,

THOMAS P. LEONARD  
Hearing Examiner

Enclosure

cc: Judy Shaffer  
Teamsters Local 110  
Pittsburgh Regional Office