

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
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:  
: Case No. PF-U-04-97-W  
: (PF-R-93-54-W)  
ELIZABETH TOWNSHIP :

**FINAL ORDER**

On October 17, 2005, Elizabeth Township (Township) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions and a supporting brief to a Proposed Order of Dismissal (POD) issued September 28, 2005. In the POD, the Hearing Examiner dismissed the Petition for Unit Clarification filed by the Township and concluded that the Township failed to meet its burden of proving that the position of Deputy Chief of Police is a management level position warranting removal from the police bargaining unit as governed by Act 111 and the Pennsylvania Labor Relations Act (PLRA). After a review of the exceptions, brief and all matters of record the Board makes the following:

**AMENDED FINDING OF FACT**

5. In 2001 Black and then Sergeant Wallace, now Chief Wallace, attended a course offered to assist police departments in gaining accreditation. One of the matters addressed in the course was that an out-dated manual was an impediment to accreditation. Consequently, then Chief Graham asked Black to prepare a police manual. Black initiated his work on the new police manual as a sergeant and completed the manual after he was promoted to Deputy Chief. Black obtained information from several different police departments throughout the Commonwealth. Black selected the items from those various sources which he believed would serve Elizabeth Township's police department. When Black completed the manual, he submitted it to Chief Wallace. The Township Board of Commissioners adopted the manual by ordinance without modification. (N.T. 83-86).

**DISCUSSION**

William K. Black became the Deputy Chief in December of 2002. Before that promotion, he was a patrol officer and then a sergeant for a total of fifteen years. When Black was a sergeant, he was the shift supervisor in charge of four police officers on his shift. As a sergeant, Black directed the narcotics unit and authorized narcotics officers to leave the Township for investigations. Then Sergeant Black was also a K-9 officer who gave public demonstrations and performed regular patrol duties. In 2001 Black and then Sergeant Wallace, now Chief Wallace, attended a course offered to assist police departments gain accreditation. That course made it clear that an out-dated manual was an impediment to accreditation, so then Chief Graham asked Black to prepare a manual. Black started that task as a sergeant and finished the manual after he was made Deputy Chief. In compiling the manual, Black obtained information from several different police departments throughout the Commonwealth. Black selected the items from those various sources which he believed would serve Elizabeth Township's police department. When Black completed the manual, he submitted it to Chief Wallace. The manual was adopted by ordinance without modification from Chief Wallace or the Township Commissioners.

For the 2005 police budget, Chief Wallace gave Black budget sheets to complete and return. Chief Wallace then submitted the budget to the Township. The Township rejected this budget and adopted its own version of the police budget. Black did not attend any budget meetings, and he did not participate in any discussions regarding the budget changes. Since becoming Deputy Chief, Black has allowed an officer to make an appearance in a parade with a Township cruiser and allowed K-9 demonstrations for groups. The

police department work schedule is comprised of three shifts. The department is divided into four teams of three officers each. Black cannot change the number of officers per shift, but he can replace absent officers when necessary. Black recommended a change to ten-hour shifts, but the Township rejected that proposal.

Since Black was promoted to Deputy Chief, the Township has hired two new officers in the department. Black's involvement in the hiring of these two officers was limited to his observation of oral interviews and the civil service administered examination. Although he was asked if each candidate was someone who should be hired, he indicated that all the candidates were good and did not recommend one over another. The parties' collective bargaining agreement describes classes of officers. Classes are designated "A" through "E" and each successive class offers increased pay. Officers are initially hired as class "E" and work their way to class "A". Movement through the classes is determined by the passage of time. When an officer has spent the requisite period of time in his current class, Black, as Deputy Chief, notifies the Township Commissioners, who automatically move the officer to the next class. Moving through the classes represents changes in seniority, not promotions. In the last fifteen years, every officer has moved to the next class according to the contractually mandated schedule. Black performs the same duties as Deputy Chief that he performed as a sergeant. He patrols on a daily basis, answers calls, makes arrests, assists with on-going investigations, is called out for overtime, and is the shift supervisor. The Chief performs none of these duties. When the Chief is absent, Black substitutes for the Chief.

In its exceptions, the Township generally objects to the findings of fact and conclusions of law that the position of Deputy Chief is not a management position. The Township argues that it demonstrated that management duties were actually performed by the Deputy Chief. In this regard, the Township specifically excepts to the Examiner's findings for each of the managerial criteria under FOP, Star Lodge, No. 20 v. PLRB (Star Lodge II), 522 A.2d 697 (Pa. Cmwlth. 1987), aff'd, 522 Pa. 149, 560 A.2d 145 (1989).

As the proponent of removing the Deputy Chief from the bargaining unit, the Township had the burden of proving the managerial status of the Deputy Chief. Official Court Reporters of the Court of Common Pleas of Philadelphia County v. PLRB, 446 A.2d 1357 (Pa. Cmwlth. 1982); In the Matter of Berwick Township and Oxford Township, 32 PPER ¶ 32 (Proposed Order of Unit Clarification, 2000); Chambersburg Area Sch. Dist., 27 PPER ¶ 27263 (Order Directing Submission of Eligibility List, 1996); In the Matter of the Employees of Sugarcreek Borough, 33 PPER ¶ 33060 (Proposed Order of Dismissal, 2002). In order to meet its burden of establishing the managerial status of the Deputy Chief position, the Township was required to prove that the actual job duties satisfy one of the following criteria: that the Deputy Chief has authority to initiate departmental policies, including the power to issue general directives and regulations; he has the authority to develop and change programs of the department; he engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals; he effectively prepared budgets, as distinguished from merely making suggestions; he effectively engaged in the purchasing process, as compared to merely providing suggestions; or he has the authority to commit departmental resources in dealing with public groups. Star Lodge II, 522 A.2d at 704. 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.

Deputy Chief Black's testimony during direct examination, on pages 83-86 of the notes of testimony, which was credited by the Examiner, reveals that Black has a meaningful role setting policy as a manager of the police department for the Township. Black specifically testified that he compiled the police manual by accumulating information about police manuals from other police departments throughout the Commonwealth. His compilation necessarily required the use of his discretion and judgment to select and adopt policies, which Black believed should govern his department, and to reject those policies and procedures that he believed did not "serve our department as our department exists." (N.T. 85). Black's testimony further reveals that he submitted the completed manual to the Chief who conveyed the manual to the Township Board of Commissioners without modification. The Board of Commissioners adopted the manual by way of ordinance in the form as compiled by Black. The Board and the

Commonwealth Court have held that a position in a police department is managerial where the job duties include in part the development of policies and procedures in the form of a departmental manual. Star Lodge II. It is not significant in the development of the manual for his department that Black reviewed, edited and selectively chose portions from other manuals or entirely created an original document which became the Township's manual. In either event, the drafting is exercising independent managerial discretion regarding the content of the manual. Dalton Police Ass'n v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001). Accordingly, the Township has met its burden of proving that the position of Deputy Chief is a management position by establishing that the actual job duties of that position includes policy formulation for the Township police department in satisfaction of one of the Star Lodge II criteria.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the Township's exceptions, in part, grant the Township's petition for unit clarification and reverse the determination in the POD that Deputy Chief Black was not a managerial employe.<sup>1</sup>

#### CONCLUSIONS

CONCLUSIONS 1 through 3 of the Proposed Order of Dismissal are affirmed and incorporated herein by reference.

CONCLUSION 4 is vacated and set aside.

5. The position of Deputy Chief of police of Elizabeth Township is managerial under the PLRA and Act 111.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Order of Dismissal be and the same are hereby sustained, in part; and that the Order on pages 5 and 6 of the Proposed Order of Dismissal be, and the same hereby is, vacated and set aside. The Board further orders and directs that the petition of unit clarification is granted and the position of Deputy Chief is excluded from the unit.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of July, 2006. 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.

CHAIRMAN L. DENNIS MARTIRE DISSENTING

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<sup>1</sup> The Board need not address the Township's remaining exceptions given the present disposition.