COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF

:

: Case No. PF-U-06-173-W: (PF-R-91-43-W)

NORTH SEWICKLEY TOWNSHIP

PROPOSED ORDER OF UNIT CLARIFICATION

On November 8, 2006, North Sewickley Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification alleging that the chief of police should be excluded from the bargaining unit previously certified by the Board at Case No. PF-R-91-43-W. On December 21, 2006, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on March 20, 2007. After the hearing examiner twice continued the hearing upon the request of both parties, the hearing was held on July 12, 2007. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. Neither party filed a brief.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

- 1. On July 8, 1991, the Board certified the United Steelworkers of America, AFL-CIO, CLC (Union), as the exclusive representative of a bargaining unit comprised of "[a]ll full-time and regular part-time police officers [of the Township], including but not limited to chief of police, sergeant, and patrolmen; and excluding any managerial employes." (Case No. PF-R-91-43-W)
- 2. The chief of police (Harry Bigley) has rewritten the policies and procedures manual for the police department. The board of supervisors approved the rewritten manual without change. (N.T. 13)
- 3. Chief Bigley has prepared proposed budgets for the police department. The board of supervisors usually adopted them without change. (N.T. 8, 11)

DISCUSSION

The question before the Board is whether or not the chief of police should be excluded from the bargaining unit as a managerial employe.

In <u>FOP</u> Star Lodge <u>No.</u> 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 court held that a police officer is a managerial employe if the police officer performs the following function: "Policy Formulation—authority to initiate departmental policies, including the power to issue general directives and regulations[.]" 522 A.2d at 704. The court also held that a police officer is a managerial employe if the police officer performs the following function: "Budget Making—demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items[.]" <u>Id</u>. As the court further explained, "the mere fact that policy determinations are subject to review by higher authority does not necessarily negate managerial status." <u>Id</u>.

As set forth in finding of fact 2, the record shows that the chief of police has rewritten the policies and procedures manual for the police department and that the board of supervisors approved the rewritten manual without change. Thus, it is apparent that the chief of police has formulated policy within the meaning of Star Lodge. Accordingly, the chief of police must be excluded from the bargaining unit for that reason alone. See

 $\underline{\text{Dalton}}$ $\underline{\text{Police}}$ $\underline{\text{Association}}$ $\underline{\text{v.}}$ $\underline{\text{PLRB}}$, 765 A.2d 1171 (Pa. Cmwlth. 2001), where the court held that a police chief was a managerial employe because departmental policies were as recommended by him.

As set forth in finding of fact 3, the record shows that the chief of police has prepared proposed budgets for the police department and that the board of supervisors usually adopted them without change. Thus, it is apparent that the chief of police has effectively prepared proposed budgets within the meaning of Star Lodge. Accordingly, the chief of police must be excluded from the bargaining unit for that reason as well. See Selinsgrove Borough, 34 PPER 146 (Final Order 2004), where the Board found that a police chief who prepared proposed budgets that were adopted substantially unchanged by council was a managerial employe.

CONCLUSIONS

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

- 1. The Township is an employer within the meaning of the PLRA and Act 111.
- 2. The Union is a labor organization within the meaning of the PLRA and Act 111.
- 3. The Board has jurisdiction over the parties.
- 4. The chief of police is a managerial employe.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the unit previously certified by the Board at Case No. PF-R-91-43-W is amended to exclude the chief of police.

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 days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this first day of August 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner