

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-06-112-W
 :
 HANOVER TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On July 18, 2006, the Hanover Police Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation seeking under the Pennsylvania Labor Relations Act (PLRA) and Act 111 investigation of a question of representation and certification of a representative designated or selected for the purpose of collective bargaining by police officers employed by Hanover Township (Township). On August 8, 2006, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on August 22, 2006. The hearing examiner subsequently continued the hearing upon the request of both parties and rescheduled the hearing for September 29, 2006. The hearing examiner subsequently continued the hearing upon the parties' representation that they had reached a tentative settlement of the dispute underlying the petition.

On January 22, 2007, the Association requested that the hearing be rescheduled. On February 1, 2007, the hearing examiner rescheduled the hearing to March 9, 2007. The hearing examiner subsequently continued the hearing upon the request of the Township and without objection by the Association. On April 5, 2007, the hearing examiner rescheduled the hearing to April 18, 2007. The hearing examiner subsequently continued the hearing upon the request of the Township and without objection by the Association.

On May 10 and 30, 2007, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On July 2, 2007, each party filed a brief.

The hearing examiner, on the basis of the evidence presented at the hearing, makes the following:

FINDINGS OF FACT

1. The Township employs police officers. (N.T. 7)
2. The Association is a labor organization. (N.T. 7)
3. By letter dated July 7, 2004, a consulting firm (Gentile-Meinert & Associates, Inc. (Gentile-Meinert)) submitted to the Township a report recommending changes to the operation of its police department. The first recommendation was to hire a full-time chief of police. Another recommendation was to provide police services on a 24-hour basis, with at least one police officer assigned to each of three shifts over that period. The report included recommended policies and procedures for the police department. (N.T. 11-12; Employer Exhibit 1)
4. On February 17, 2005, the Township hired James L. Geho as its chief of police. The Township thereafter directed him to implement the remaining recommendations in Gentile-Meinert's report. (N.T. 16-17, 40, 85-87, 89)
5. On May 4, 2005, the Township entered into an agreement with Pavilion Partners d/b/a Post Gazette Pavilion at Star Lake for the provision by the Township of police services at a concert site operated by Pavilion Partners and known as the Post Gazette Pavilion. The agreement was signed by a member of the Township's board of supervisors (Douglas R. Bentrem) and attested to by Chief Geho. During the negotiations for the

agreement, Chief Geho made sure that the agreement included language defining the responsibilities of the police department as recommended in Gentile-Meinert's report. (N.T. 26, 51, 99-103, 123; Employer Exhibit 5)

6. By March 2006, Chief Geho implemented without change most of recommendations in Gentile-Meinert's report. He did so under the direction of Mr. Bentrem. (N.T. 17, 20, 48, 78-80, 82, 88-89, 93-98, 102-110, 115-124, 127-128, 144-145, 154-155)

7. Chief Geho recommended that two police officers be scheduled to work the third shift. The Township did not follow his recommendation. (N.T. 90-91)

8. By letter dated June 23, 2006, Chief Geho recommended to the board of supervisors the hiring of six police officers to work at the Post Gazette Pavilion. Chief Geho pre-screened the applicants. Chief Geho did not interview the applicants. The board of supervisors hired the six police officers. (N.T. 22-23, 28, 53-54, 67, 112-115, 149-151, 158, 167, 175; Employer Exhibit 4)

9. In August 2005, Chief Geho removed Sergeant Richard Gray from the schedule. Chief Geho did so at the direction of Mr. Bentrem. (N.T. 189-190, 192, 196-197; Employer Exhibit 9)

10. By July 18, 2006, Chief Geho suspended a police officer while the police officer was under investigation by the Office of Attorney General. Chief Geho did so at the direction of Mr. Bentrem. (N.T. 151-152, 158-160, 187-188, 195-196, 198-199)

11. Chief Geho has had no involvement with the preparation of a budget for the police department. (N.T. 134, 136-137, 165)

12. Prior to July 18, 2006, Chief Geho recommended to Mr. Bentrem purchases for the police department. If Mr. Bentrem agreed with the recommendation, he took it to the board of supervisors for approval. Chief Geho had no authority to make a purchase on his own. (N.T. 45-47, 106-107, 120-121, 133-134, 146-147, 164, 171-172)

13. By letter dated September 23, 2005, Chief Geho applied to the Department of Economic Development for a grant to cover the purchase of a device to time vehicle speeds. He did so after a senator asked him what could be done "about people dying on Route 18" and told him to apply for the grant. He obtained the grant. (N.T. 138-140; Employer Exhibit 8)

14. Chief Geho has presented to the public educational seminars about guns, the Township's K-9 unit and drug abuse. He obtained grants to cover the costs of those presentations. (N.T. 61-62, 137-138)

15. An appropriate unit for the purpose of collective bargaining would be comprised of all full-time and regular part-time police officers exclusive of managerial employes. (N.T. 7-8)

16. Sergeant Joe Yost and Lance Corporal Sean Conn are full-time police officers eligible for inclusion in the unit. (N.T. 8)

17. Patrol officers Dennis Ahlborn, Mark Hall, Joseph Phillips and Donald Sanders are regular part-time police officers eligible for inclusion in the unit. (N.T. 8)

18. Patrol officers who work at the Post Gazette Pavilion on a part-time basis are casual employes not eligible for inclusion in the unit. (N.T. 42-43)

DISCUSSION

The Association has filed under the PLRA and Act 111 a petition for representation seeking investigation of a question of representation and certification of a representative designated or selected for the purpose of collective bargaining by police officers employed by the Township. With the exception of the chief of police, about whom

the parties disagree, the parties have agreed to the composition of a bargaining unit for the purpose of collective bargaining. As to the chief of police, the Township contends that he should be excluded from the unit as a managerial employe, while the Association contends that he should be included in the unit as a supervisory employe. Managerial employes are not eligible for inclusion in Act 111 bargaining units, while supervisors are. City of Pittsburgh v. Commonwealth of Pennsylvania, PLRB, 556 A.2d 928 (Pa. Cmwlth. 1989). The record does not show that the chief of police is a managerial employe. Accordingly, the chief of police will be included in the unit.

Preliminarily, it is noted that the Board's focus in a case of this nature is on the job functions performed by the employe at issue prior to the filing of a petition to represent the employe. Elizabeth Township, 33 PPER ¶ 33053 (Final Order 2002), citing North Hills School District v. PLRB, 722 A.2d 1155 (Pa. Cmwlth. 1999). In and of itself, the employe's job description is irrelevant. Id., citing School District of the Township of Millcreek v. Millcreek Education Association, 440 A.2d 673 (Pa. Cmwlth. 1982). Conclusory testimony about the employe's job duties will not support a finding of managerial status. Berlin Borough, 25 PPER ¶ 25120 (Final Order 1994). Nor will speculative testimony. Lebanon County, 35 PPER 66 (Order Directing Opening and Canvassing of Challenged Ballots 2004).

In FOP Star Lodge No. 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 the performance of any of the following six functions is indicative of managerial status on the part of a police officer:

“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 704. As the court further explained, “the mere fact that policy determinations are subject to review by higher authority does not necessarily negate managerial status.” Id.

Policy Formulation

The record does not show that the chief of police has initiated departmental policies. To the contrary, the record shows that the policies and procedures for the Township's police department were recommended in a report by a consulting firm (Gentile-Meinert) before the Township even hired the chief of police (findings of fact 3-4). Thus, there is no basis for finding that the chief of police is a managerial employe because he initiated departmental policies. See Berlin Borough, supra, where the Board found that a police chief was not a managerial employe because departmental policies were as recommended by the mayor. Compare Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001), where the court held that a police chief was a managerial employe because departmental polices were as recommended by him.

The Township contends that the chief of police initiated departmental policies by implementing the policies and procedures recommended by Gentile-Meinert. Under Star Lodge, however, implementing policy is not the same as initiating policy. The Township's contention is, therefore, without merit.

Policy Implementation

The record does not show that the chief of police has developed and changed programs of the police department. To the contrary, the record shows that the chief of police implemented without change policies and procedures recommended in Gentile-Meinert's report and that he did so under the direction of a member of the Township's board of supervisors (Mr. Bentrem) (finding of fact 6). The record also shows that the Township did not follow his recommendation to change the number of police officers scheduled to work the third shift under Gentile-Meinert's report (findings of fact 3 and 7). Thus, there is no basis for finding that the chief of police is a managerial employe because he has developed and changed programs of the police department. See Berlin Borough, supra, where the Board found that a police chief who did not change the policies he implemented was not a managerial employe; Forward Township, 28 PPER ¶ 28197 (Final Order 1997), where the Board found that a police chief who operated the police department in accordance with policy was not a managerial employe; Shoemakersville Borough, 35 PPER 127 (Proposed Order of Dismissal 2004), where a hearing examiner found that a police chief who implemented policy without change was not a managerial employe. Compare Selinsgrove Borough, 34 PPER 146 (Final Order 2004), where the Board found that a police chief who changed policies he implemented was a managerial employe.

The Township contends that the chief of police developed and changed programs of the police department by implementing the policies and procedures recommended by Gentile-Meinert, by negotiating an agreement under which the Township provides police services at a concert site known as the Post Gazette Pavilion and by supporting the Township's negotiations for insurance coverage. As noted above, however, implementing policy without change as the chief of police has done will not support a finding of managerial status. The Township's contention is, therefore, without merit.

Overall Personnel Administration Responsibility

The record does not show that the chief of police has been effectively involved in hiring, serious disciplinary actions and dismissals. To the contrary, the record shows that a member of the board of supervisors (Mr. Bentrem) directed the chief of police to remove one police officer from the schedule and to suspend another police officer (findings of fact 9-10). Thus, even assuming without deciding that the chief of police has been effectively involved in hiring, there is no basis for finding that the chief of police is a managerial employe because he has been effectively involved in hiring, serious disciplinary actions and dismissals. See City of Chester, 38 PPER 50 (Proposed Order of Unit Clarification 2007), where a hearing examiner found that majors were not managerial employes because there was no showing that they had an effective role in dismissals. Compare Dalton Police Association, supra, where the court held that a police chief who effectively recommended the dismissal of police officers was a managerial employe.

The Township contends that the chief of police has been effectively involved in hiring, serious disciplinary actions and dismissals because its police officers serve under him in the chain of command, are directed by him on a daily basis and are scheduled under his direction, because he prepares the payroll for its police officers, because his hiring recommendations have always been followed, because he certifies, trains and disciplines its police officers and because its board of supervisors has not suspended or terminated any police officer. The fact that police officers serve under him in the chain of command, the fact that they are directed by him on a daily basis and the fact that they are scheduled under his direction show at best that he is a supervisor, however. See Dravosburg Borough, 35 PPER 82 (Order Directing Submission of Eligibility List 2004), where the hearing examiner found that a lieutenant who directed and scheduled police officers was a supervisor, not a managerial employe. Moreover, the fact that he prepares the payroll is irrelevant because, as set forth in Shoemakersville Borough, supra, the preparation of a payroll has nothing to do with hiring, disciplining or firing.

Furthermore, because the three elements of overall personnel administration responsibility are set forth in the conjunctive, all three must be established in order to support a finding of managerial status based on overall personnel administration responsibility. City of Chester, supra. As noted above, the record does not show that the chief of police has had an effective role in serious disciplinary actions and dismissals in that he suspended one police officer and removed another police officer from the schedule upon the direction of Mr. Bentrem. The Township's contention is, therefore, without merit.

Budget-making

The record does not show that the chief of police has effectively prepared a proposed budget. To the contrary, the record shows that the chief of police has not even been involved in the preparation of a proposed budget (finding of fact 11). Thus, there is no basis for finding that the chief of police is a managerial employe because he effectively prepared a proposed budget. See Ashland Borough, 27 PPER ¶ 27195 (Proposed Order of Unit Clarification 1996), where a hearing examiner found that a police chief was not a managerial employe because there was no showing that he effectively prepared a proposed budget. Compare Selinsgrove Borough, supra, where the Board found that a police chief who prepared proposed budgets that were adopted substantially unchanged by council was a managerial employe.

The Township contends that the chief of police has effectively prepared a proposed budget because, as a member of its board of supervisors (Gary Maxwell) testified, the chief of police "[i]s responsible for the budget for the police department" (N.T. 57) and for deciding how \$10,000.00 for equipment for the police department is to be allocated (N.T. 58) and because the chief of police prepares the bills for the police services the Township provides at the Post Gazette Pavilion. Mr. Maxwell's testimony about the chief of police's role in budget-making was conclusory, however, and has not been credited. See Elizabeth Township, supra (conclusory testimony will not support a finding of managerial status). Moreover, Mr. Maxwell further testified that he was not involved in budgetary discussions for the police department (N.T. 58). Thus, his testimony also was speculative and has not been credited for that reason as well. See Lebanon County, supra (speculative testimony will not support a finding of managerial status). The fact that the chief of police prepares the bills for the police services the Township provides at the Post Gazette Pavilion is irrelevant because the preparation of bills is a ministerial rather than managerial function. See Elizabeth Township, 30 PPER ¶ 30110 (Proposed Order of Unit Clarification 1999) (ministerial functions are not managerial functions). The Township's contention is, therefore, without merit.¹

Purchasing Role

The record does not show that the chief of police has an effective role in the purchasing process. To the contrary, the record shows that the chief of police has no authority to make a purchase on his own and that a member of the board of supervisors (Mr. Bentrem) decided if any purchases the chief of police recommended would be submitted to the board of supervisors for approval (finding of fact 12). Thus, there is no basis for finding that the chief of police is a managerial employe because he has an effective role in the purchasing process. See Homestead Borough, 26 PPER ¶ 26203 (Final Order 1998), where the Board found that a police chief whose role in purchasing was limited to making recommendations was not a managerial employe; Berlin Borough, supra (same). Compare Dalton Police Association, supra, where the court held that a police chief who made purchases on his own was a managerial employe.

The Township contends that the chief of police has an effective role in the purchasing process because its board of supervisors has approved all of his purchasing recommendations, because its board of supervisors' role is limited to signing checks for the purchases he recommends, because he decided how \$10,000.00 for equipment for the police department would be allocated, because he recommended the purchase of a police

¹To the extent that the Township predicates its contention on the testimony of another member of its board of supervisors (Herbert Grubbs), the same result obtains because Mr. Grubbs' testimony was conclusory and speculative, too. See, e.g., N.T. 17, 21, 31-33).

dog, because it bought the dog and because it reimburses him for the costs of housing the dog. The chief of police and Mr. Bentrem credibly testified, however, that the chief of police has no authority to make a purchase on his own and that Mr. Bentrem decided if any purchasing recommendations would be submitted to the board of supervisors for approval. Finding of fact 12 has been made accordingly. Moreover, to the extent that the Township relies on the fact that the chief of police recommended the purchase of two laptop computers that it bought, the record shows that he did so in April 2007 (N.T. 77). The petition was filed on July 18, 2006, so any recommendation he made in April 2007 is irrelevant. See Elizabeth Township, supra (the post-petition performance of duties is irrelevant). The Township's contention is, therefore, without merit.

Independence in Public Relations

The record does not show that the chief of police has exercised authority to commit departmental resources in dealing with public groups. To the contrary, the record shows at best that the chief of police obtained a grant to purchase a device to time vehicle speeds (finding of fact 13) and has presented to the public educational seminars about guns, the Township's K-9 unit and drug abuse (finding of fact 14). Noticeably absent from the record is any evidence that the chief of police ever deployed the speed device, much less that he did so before the petition was filed, or that his educational presentations to the public were anything more than informational. Thus, there is no basis for finding that the chief of police is a managerial employe because he has exercised authority to commit departmental resources in dealing with public groups. See Star Lodge, supra (public presentations must be more than informational in order to support a finding of managerial status). Compare Baden Borough, supra, where the hearing examiner found that a police chief who agreed to provide traffic control services to neighboring communities in the event of a catastrophe was a managerial employe; City of Easton, 33 PPER ¶ 33098 (Proposed Order of Dismissal 2002), where the hearing examiner found that a deputy fire chief who agreed to provide fire inspection services to a local college on a regular basis was a managerial employe.

The Township contends that the chief of police has exercised authority to commit departmental resources in dealing with public groups because he obtained grants for the speed device and for the educational presentations. In support of its contention, the Township cites Township of Lower Merion, 13 PPER ¶ 13276 (Final Order 1982), where the Board found that lieutenants who had the authority to commit manpower and resources to public groups were managerial employes. The mere application for grants is not indicative of managerial status, however. Shoemakersville Borough, supra. Moreover, as noted above, the record does not show that the chief of police has committed manpower and resources to public groups within the meaning of Star Lodge, supra. Thus, Township of Lower Merion is distinguishable on the facts. The Township's contention is, therefore, without merit.

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 Association 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 not a managerial employe.
5. 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 including but not limited to the chief of police, sergeants, lance corporals and patrol officers; and excluding all managerial employes.
6. Officers Ahlborn, Hall, Phillips and Sanders are regular part-time police officers eligible for inclusion in the unit.

7. Patrol officers who work at the Post Gazette Pavilion on a part-time basis are casual employes not eligible for inclusion in the unit.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the police officers eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b) following the conduct of an election.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-third day of July 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner