

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
:  
: Case No. PF-U-06-146-E  
:  
NORTH WALES BOROUGH :

**PROPOSED ORDER OF DISMISSAL**

On September 11, 2006, North Wales Borough (Borough) filed a Petition for Unit Clarification with the Pennsylvania Labor Relations Board (Board), seeking clarification of a unit of police officers to exclude the position of police chief.

On November 16, 2006, the Secretary of the Board issued an Order and Notice of Hearing in which December 6, 2006, in Norristown, Pennsylvania was assigned as the time and place of hearing. After a series of continuance requests, a hearing was scheduled for and took place on February 6, 2007. Both parties filed post-hearing briefs on April 23, 2007.

The examiner, on the basis of the testimony and the exhibits presented, and from all other matters and documents of record makes the following:

FINDINGS OF FACT

1. The Borough is a political subdivision of the Commonwealth.
2. The Union is a labor organization.
3. Barry J. Hackert has been chief of police since October 14, 2003. The police department is comprised of four full-time officers and one part-time officer. Hackert works a regular patrol shift. (N.T. 89, 162, 165, 166).
4. Hackert has no formal role in approving public permits, although he is asked for his opinion. A permit has never been denied based solely on Hackert's negative opinion. (N.T. 39, 40, 42, 83, 143-145, 147, 148).
5. Hackert has made clerical changes to the police manual. Those changes involved replacing outdated policies with new mandatory policies created by other agencies such as the county district attorney's office or the Municipal Police Officers Education and Training Commission. (N.T. 106, 107, 111-113).
6. Officers who change firearms need to be certified with that new firearm. There are two sources for qualification standards, the National Rifle Association and the Pennsylvania State Police. Hackert advised the Borough that using both policies to qualify officers with the new firearm might reduce the Borough's liability in the face of an allegation of unauthorized shooting. (N.T.112-116).
7. Hackert's sole involvement in the hiring of new officers is to conduct appropriate background checks when asked. (N.T. 141, 142, 154, 165).
8. Hackert has issued letters of reprimand to police officers. Hackert clears letters of reprimand with the mayor before he issues them. Hackert has never suspended an officer. (N.T. 96-99, 102, 105, 153, 154, 159; Borough Exhibit 11-14).
9. Hackert does not act as spokesman to the press for the police department. Rather, it is the mayor who speaks to the press in high visibility situations. (N.T. 139-141).
10. Hackert may only schedule himself for vacation with the mayor's prior approval. (N.T. 155).
11. The five-shift schedule worked until recently by the police department was developed and implemented by the mayor. (N.T. 89, 161-165).

12. Hackert does not have the authority to apply for grants, but rather must get the prior approval of borough council through the borough manager's office. (N.T. 63, 64).

13. Each fall the borough manager tells the various departments that their budgets are due. Toward that end, the borough manager sends forms indicating the dollars remaining in each line item of that respective department's budget. Each department then returns to the borough manager a proposed line-item budget for the following fiscal year. (N.T. 71-73).

14. When Hackert receives the borough manager's budget request the police secretary prepares a budget, based upon last year's expenditures and submits it to Hackert for his review. In some budget years the borough has returned the initial budget submission by the police because reductions must be made. The mayor goes over the police budget. Because Hackert has only recently been involved, the mayor has not yet had the chance to do any extensive review of the police budget with him. Most of the police budget is controlled by the collective bargaining agreement between the Union and the Borough. (N.T. 17, 18, 71, 72, 121-123, 130-137, 158, 160).

#### DISCUSSION

The Borough argues that the position of police chief is managerial under the PLRA as read with Act 111. In FOP Star Lodge #20 of the Commonwealth, PLRB, 522 A.2d 697 (Cmwlth. Ct., 1987), aff'd, 522 PA 149, 560 A.2d 145 (1989) (Star Lodge II), the Court found the following criteria to be germane in making a determination as to managerial status under Act 111:

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 704.

Moreover, a position may be found managerial even though it does not meet all the above-mentioned criteria, "[b]ecause all the criteria of managerial status are seldom present in any one case." 522 A.2d at 705. The Borough is adamant that the chief meets all of the Star Lodge criteria, while the Union is certain that the chief meets absolutely none of those criteria. A seriatim review of the Star Lodge criteria as applied to this record shows that the Borough has not shown that the chief meets any of the necessary criteria, and consequently the chief remains properly in the bargaining unit.

Under the rubric of policy formulation and implementation, the Borough's argument is that the chief instituted a twelve-hour shift on the weekends and that he also made an independent judgment about which firearms training officers were to receive. A perusal of the record reveals that it is not at all clear just how the weekend shift came to be, other than that after the chief and the mayor talked about the need for a weekend schedule change it was changed. Insofar as the firearms training is concerned, the chief did recommend to the mayor that the department use both suggested firearms-training

guidelines. But the reason he made that suggestion was not because he used his experience to evaluate the strengths and shortcomings of each, but rather simply because he thought that providing training under both guidelines would generally reduce the Borough's liability. Such a generic observation and suggestion does not make the chief a manager under this criterion.

For an Act 111 employe to achieve managerial status in the area of personnel administration, the employe in question must have sufficient responsibility in three areas: hiring, serious disciplinary actions and dismissals. City of Lancaster, 27 PPER ¶ 27254 (Proposed Order of unit Clarification, 1996); Curwensville Borough, 23 PPER ¶ 23090 (Order Directing Submission of Eligibility List, 1992). The three-part, conjunctive standard for overall personnel administration responsibility has not been satisfied here because the chief has not had effective involvement in hiring or serious discipline or dismissal of police officers. Simply doing background checks on police applicants is insufficient to establish effective involvement in hiring. Merely penning letters of reprimand is insufficient to establish effective involvement in serious discipline. Star Lodge, 522 A.2d at 702.

While at first blush it might seem as if Hackert exercises managerial discretion in the arena of budget preparation, a close reading of the record reveals that he does not.<sup>1</sup> First, it is important to note that most of the larger expenditures in the police budget are dictated by the parties' collective bargaining agreement, e.g. all officers' wages, the educational incentive, holiday pay, longevity and uniform maintenance. By way of example, in the 2006 budget (Borough Exhibit 7), out of a total budget of \$399,509.00 about \$347,000.00<sup>2</sup> is dictated by the parties' collective bargaining agreement. Moreover, for the remaining \$52,000.00, it is the police secretary who prepares the initial submission based upon the prior year's budget. According to the Mayor, the police secretary has "a lot of input" into the budget process, and the budget "goes through little change from year to year," since most changes are dictated by the collective bargaining agreement. (N.T. 157-160). In point of fact, the hearing had to recess briefly so the Union could have the police secretary appear and testify about the police budget's preparation and process. Her testimony was necessary because Hackert was unsure about those facets of his own department's budget. (N.T. 125). Under these facts the chief hardly exercises the kind of "effective advisory role in budget making" to which Star Lodge speaks. 522 A.2d at 704.<sup>3</sup>

The chief's role in purchasing is minimal. In point of fact, he cannot make any purchases over \$50.00 without express Borough approval. Moreover, the Borough must give its approval before the chief can make any grant applications. (N.T. 46, 63, 64). The Borough has not proved that the chief plays an effective role in purchasing.

The chief has virtually no role to play in public relations. There is nothing in this record to evidence any authority by the chief to commit departmental resources in dealing with public groups. To the contrary, Hackert does not even speak to the media during significant police actions, but rather turns the stage over to the mayor who holds news conferences and is the spokesman for the Borough. The chief has no "policy independence" in public relations. Indeed, the chief does not even conduct "mere informational contacts with the public." Star Lodge, 522 A.2d at 703.

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<sup>1</sup> The borough manager testified about the police chief's role in the budget. Her testimony, however, was so equivocal as to have little evidentiary value. (N.T. 14, 15, 20, 22, 26).

<sup>2</sup> I have included amounts for clerical employes and crossing guards in this figure. The record is silent as to whether there are other bargaining units for these employes. However, the borough manager testified that non-uniformed employes' wage increases were "to be applied across the board" for the year in question. (N.T. 20)

<sup>3</sup> In its brief the Borough cites to Ohio Township, 25 PPER ¶ 25125 (Final Order 1994), a case in which the police chief drafted the police budget, including his own salary and the salaries of other officers. However in Ohio Township, a representation case, there was no existing contract, and the chief essentially recommended his own salary increase and those of his subordinate officers in each budget. In the instant case it is the contract that dictates all police salary increases annually, making the chief, or his secretary, a simple scrivener for those budget items.

The Borough has failed to prove that Hackert displays any of the managerial indicia necessary to remove him from the bargaining unit. Consequently, the chief properly remains in the unit and this Petition is dismissed.

#### CONCLUSIONS

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

1. The Borough 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 hereto.
4. The chief of police is a not a managerial employe.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the Petition is dismissed.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to Pa. 34 Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this twenty-second day of June, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner