

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-R-08-82-E
 :
 :
 WRIGHTSVILLE BOROUGH :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On June 26, 2008, the Wrightsville Borough Police Officer's Association (Association) filed with the Pennsylvania Labor Relations Board (Board) 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 an appropriate unit of police officers employed by Wrightsville Borough (Borough). On July 17, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on July 25, 2008, if the parties were unable to resolve the matters in dispute by then. The hearing was held as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On September 2, 2008, each party filed a brief.

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

FINDINGS OF FACT

1. The parties stipulated that the Borough is an employer under the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111). (N.T. 4)
2. The parties stipulated that the Association is a labor organization under the PLRA as read in pari materia with Act 111. (N.T. 4)
3. The Borough employs six police officers, one of whom (Wayne Pearson) is the chief, two of whom (Michael Carpenter and Michael Jeffries) are full-time and three of whom (John Leaman, Joshua Keller and Ronald Tobias) are part-time. (N.T. 4-6, 8)
4. The parties stipulated that an appropriate unit for the purpose of collective bargaining between the Borough and the Association would be comprised of all full-time and regular part-time police officers exclusive of any managerial employees. (N.T. 4)
5. Chief Pearson decided what the standard operating procedures for the police department would be. He did not submit them to the Borough's council for adoption. They are currently in effect. (N.T. 10-11, 16-17, 23-24)
6. Chief Pearson recommended to council that a police officer be suspended for two days without pay. Council followed his recommendation. (N.T. 13-14)
7. Chief Pearson has not been involved in any hirings. (N.T. 14)
8. Chief Pearson has the authority to purchase office supplies and oil changes. He has no authority to make a "major" purchase such as for tires without the approval of the Borough's mayor and council. He purchased start-up equipment for the police department upon the direction of the mayor after the mayor compiled a list of the equipment to purchase. He recommended the "amount" to be purchased. The mayor followed his recommendation. (N.T. 12, 17-18, 22-23)
9. The parties stipulated that Officers Leaman, Keller and Tobias are not regular part-time. (N.T. 4-5)
10. The Association has demonstrated to the satisfaction of the Board the requisite showing of interest as set forth in the PLRA.

DISCUSSION

The Association has petitioned to represent a bargaining unit comprised of the Borough's police officers, including the chief of police. The parties disagree as to whether or not the chief of police should be included in the unit. According to the Association, the chief of police is at best a supervisory employe and thus eligible for inclusion in the unit. For its part, the Borough contends that that chief of police is a managerial employe because he formulates policy, has overall personnel administrative responsibility and has an effective role in purchasing. The Borough would have the Board exclude the chief of police from the unit accordingly.

The party seeking to exclude an employe from a bargaining unit as managerial has the burden of proving that the employe is managerial. North Wales Borough, 39 PPER 10 (Final Order 2008).

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 by a police officer of any of the following six functions is indicative of managerial status:

"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. The court cast those criteria in the disjunctive, not the conjunctive, so an employe who meets any one of them is managerial. Elizabeth Township, 37 PPER 90 (Final Order 2006).

As explained below, the record shows that the chief of police meets the policy formulation criterion of Star Lodge but not the overall personnel administrative responsibility and the purchasing role criteria of Star Lodge. Given that an employe need only meet one of the Star Lodge criteria of managerial status in order to be managerial, however, it is apparent that the chief of police is a managerial employe. It follows, then, that the chief of police must be excluded from the unit.

In support of its contention that the chief of police meets the policy formulation criterion of Star Lodge, the Borough points out that he decided what the standard operating procedures for the police department would be, that he did not submit them to the Borough's council for adoption and that they are currently in effect. See finding of fact 5. In Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001), the court held that a police chief met the policy formulation criterion of Star Lodge where the standard operating procedures for his department were as recommended by him. Inasmuch as the record shows that standard operating procedures for the police department are as decided by the chief of police, a finding of managerial status is even more compelling here than it was there. Thus, the same result a fortiori obtains.

In its brief at 4, the Association contends that the chief of police does not meet the policy formulation criterion of Star Lodge because "he possesses only the ability to gather information for consideration by the Borough." The record does not show that to be the case, however. To the contrary, as set forth in finding of fact 5, the record shows that the chief of police decided what the standard operating procedures for the police department would be. Accordingly, the Association's contention is without merit.

The Association also contends that the chief of police does not meet the policy formulation criterion of Star Lodge because "[t]he temporary use of unadopted SOPs as a 'guideline' is not equivalent to an independent authority to act." Id. The Association cites no authority in support of its contention, however, and none has been found. To the contrary, on a substantially similar record in City of Sharon, 31 PPER ¶ 31067 (Proposed Order of Unit Clarification 2000), a hearing examiner found a chief firefighter to be a managerial employee. In that case, the chief firefighter approved the standard operating procedures for his department without submitting them to a higher authority for further approval. Compare Plains Township, 24 PPER ¶ 24081 (Final Order 1993), where the Board found that a chief of police who recommended to his employer that certain standard operating procedures be implemented for his department was not a managerial employee because his employer never accepted his recommendation, leaving his department without any standard operating procedures. Accordingly, the Association's contention is without merit.

In support of its contention that the chief of police meets the overall personnel administration criterion of Star Lodge, the Borough points out that he recommended to the Borough's council that a police officer be suspended for two days without pay and that council followed his recommendation. See finding of fact 6. In order for the Board to find that an employe meets the overall personnel administration criterion of Star Lodge, however, the record has to show that the employe is effectively involved not only in serious disciplinary matters but also in hirings and dismissals. Hanover Township, 39 PPER 58 (Order Directing Submission of Eligibility List 2007); City of Chester, 38 PPER 50 (Proposed Order of Unit Clarification 2007). The record shows that the chief of police has not been involved in any hirings. See finding of fact 7. Moreover, the record does not show that the chief of police has been involved in any dismissals. Thus, there is no basis for finding the chief of police to be managerial under the overall personnel administration criterion of Star Lodge. Accordingly, the Borough's contention is without merit.

The Borough also contends that the chief of police meets the overall personnel administration criterion of Star Lodge because the record shows that he is involved in scheduling (N.T. 18-19). Under Star Lodge, however, scheduling is a supervisory, not a managerial, responsibility. Dravosburg Borough, 35 PPER 82 (Order Directing Submission of Eligibility List 2004). Accordingly, the Borough's contention is without merit.

In support of its contention that the chief of police meets the purchasing role criterion of Star Lodge, the Borough points out that he has the authority to make routine expenditures on his own, that he recommended to the Borough's mayor the "amount" of start-up equipment to purchase and that the mayor followed his recommendation. See finding of fact 8. Notably, however, the record also shows that the chief of police's purchasing authority does not extend to "major" purchases such as buying tires. Id. In addition, the record shows that the chief of police purchased start-up equipment for the police department upon the direction of the mayor after the mayor compiled a list of the equipment to purchase. On that record, the chief of police's involvement in purchasing is too limited to be considered effective. See Berlin Borough, 25 PPER ¶ 25120 (Final Order 1994)(police chief was not a managerial employe because his role in purchasing was too limited to be considered effective); Slippery Rock Borough, 32 PPER ¶ 32093 (Proposed Order of Dismissal 2001)(employe whose authority was limited to making purchases of \$100.00 or less did not have an effective role in purchasing). Accordingly, the Borough's contention is without merit.

CONCLUSIONS

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

1. The Borough is an employer under the PLRA as read in pari materia with Act 111.
2. The Association is a labor organization under the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The unit deemed appropriate for the purpose of collective bargaining between the Borough and the Association is a subdivision of the employer unit comprised of all full-time and regular part-time police officers exclusive of any managerial employes.
5. Chief Pearson is a managerial employe not eligible for inclusion in the unit.
6. Officers Leaman, Keller and Tobias are not regular part-time police officers and are not eligible for inclusion in the unit.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, 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 fifth day of September 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner