

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
:
: Case No. PF-U-08-23-E
:
: (PF-R-02-136-E)
CITY OF NANTICOKE :

PROPOSED ORDER OF UNIT CLARIFICATION

On February 19, 2008, the City of Nanticoke (City) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the chief of police and "non-regular part-timers" from a bargaining unit of its police officers for which it has recognized the City of Nanticoke Police Officer's Association, FOP Lodge No. 36 (Association), as the exclusive representative. On February 29, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on April 16, 2008, if the parties were unable to resolve the matters in dispute at a pre-hearing telephone conference on April 7, 2008. At the pre-hearing conference, the parties agreed to submit the case on stipulated facts. On April 8, 2008, the hearing examiner cancelled the hearing pending the receipt of stipulated facts. On April 28, 2008, the parties submitted stipulated facts. Neither party filed a brief.

The hearing examiner, on the basis of the stipulated facts, makes the following:

FINDINGS OF FACT

1. The City has recognized the Association as the exclusive representative of a bargaining unit comprised of the City's full-time police officers, including its chief of police. (Stipulations 2-3)
2. The City's council annually adopts "virtually in whole" a police department budget prepared by the chief of police. (Stipulation 4(d))

DISCUSSION

The City has petitioned to exclude the chief of police and "non-regular part-timers" from the bargaining unit.

The City avers that the chief of police should be excluded from the bargaining unit as a managerial employe.

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 set forth six criteria of managerial status for police officers, one of which is budget-making, which it defined as "demonstrated effectiveness in the preparation of proposed budgets, as distinguished from merely making suggestions with respect to particular items[.]" 522 A.2d at 704.

As set forth in finding of fact 2, the record shows that the City's council annually adopts "virtually in whole" a police department budget prepared by the chief of police.

In Selinsgrove Borough, 34 PPER 146 (Final Order 2004), the Board found that a chief of police who prepared proposed budgets that were adopted substantially unchanged by a borough's council was a managerial employe under the budget-making criterion of Star Lodge. The Board excluded the chief from the bargaining unit accordingly.

The record here is substantially the same as the record in Selinsgrove Borough. The same result therefore obtains.

The City avers that "non-regular part-timers should be excluded from the bargaining unit "[t]o the extent that the City has ever recognized non-regular part-time police officers in the bargaining unit." The record does not show, however, that the City has ever recognized non-regular part-time police officers as members of the bargaining unit. Thus, there is no case or controversy involving non-regular part-time police officers for the Board to decide at this time. Cf. SSHE, Indiana University, 30 PPER ¶ 30203 (Final Order 1999)(the Board will not process a charge in the absence of a case or controversy).

CONCLUSIONS

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

1. The City is an employer under the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111).
2. The Union 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 chief of police is a managerial employe.

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 chief of police is excluded from the bargaining unit.

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 twentieth day of May 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner

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May 20, 2008

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CITY OF NANTICOKE
Case No. PF-U-07-23-E

Enclosed is a copy of my proposed order of unit clarification.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: JOSEPH C RUDOLF, ESQUIRE
CITY OF NANTICOKE
FRATERNAL ORDER OF POLICE WYOMING VALLEY LODGE 36