

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

On July 11, 2007, North Wales Borough (Borough) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a Proposed Order of Dismissal (POD) issued on June 22, 2007. In the POD, the Board Hearing Examiner dismissed the Petition for Unit Clarification filed by the Borough and concluded that the Borough failed to meet its burden of proving that the position of Chief of Police is a management level position warranting removal from the police bargaining unit established pursuant to Act 111 of 1968 and the Pennsylvania Labor Relations Act (PLRA). On July 30, 2007, the North Wales Borough Police Officers (Union) filed a response to the Borough's exceptions.

The Hearing Examiner's Findings of Fact are summarized as follows. Since October of 2003, Barry J. Hackert (Chief), who works a regular patrol shift, has been the Chief of Police of a department comprised of four full-time officers and one part-time officer. During his tenure, the Chief has only made clerical changes to the police procedures manual. He made a suggestion to the Borough's Mayor regarding which firearms qualifications standards to use. However, there are only two standards, and he suggested that the Borough use both in order to possibly reduce the Borough's liability in the event of a lawsuit. With regard to hiring, the Chief only conducts background checks. The Chief does issue letters of reprimand, but they must first be cleared with the Mayor. The Mayor also speaks to the press in high visibility situations. With regard to budget preparation, the Borough Manager sends forms to the various departments indicating the dollar amounts remaining in each line item of that respective department's budget. When the Chief receives the Borough Manager's budget request, the police secretary prepares a proposed police department budget based on the previous year's expenditures and gives it to the Chief for his review. Thereafter, the Mayor reviews the budget. Because Chief Hackert has only recently been involved in the budgetary process, the Mayor has not yet had the chance to do any extensive review of the police budget with him. In some budget years, the Borough has returned the initial budget submission by the police because reductions had to be made. Further, most of the police department budget is controlled by the collective bargaining agreement between the Borough and the Union.

In its exceptions, the Borough challenges the Hearing Examiner's conclusion that the Chief is not a managerial employe under FOP, Star Lodge, No. 20 v. PLRB (Star Lodge), 522 A.2d 697 (Pa. Cmwlth. 1987), affirmed, 522 Pa. 149, 560 A.2d 145 (1989). As the party seeking to exclude the position from the bargaining unit, the Borough had the burden of proving the Chief's managerial status. School District of Philadelphia v. PLRB, 719 A.2d 835 (Pa. Cmwlth. 1998).

In deciding questions of managerial status under Act 111, the Board employs the following criteria that were set forth in Star Lodge:

"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. A position need not meet all of the above-mentioned criteria to be managerial "[b]ecause all the criteria of managerial status are seldom present in any one case." Id. at 705.

The Hearing Examiner determined that the Borough failed to prove that the position of Chief satisfies any of the Star Lodge criteria for managerial status. The Borough does not except to the Hearing Examiner's conclusion that the Chief does not exercise overall personnel administration responsibility.¹ Rather, the Borough excepts to the Hearing Examiner's conclusion that the Chief does not meet the other Star Lodge criteria.

The Borough argues that the Chief participates in policy formulation and implementation, as demonstrated by his role in implementation of a twelve-hour weekend shift and the firearms qualification standards. However, the Hearing Examiner found that the record "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" (PDO at 3). Moreover, although the Chief did suggest to the Mayor that the department use both firearms qualification standards set forth in the Borough's ordinance pertaining to the police department (Union Exhibit 1), there is no evidence that the Mayor relied upon the Chief's suggestion in making the decision. Therefore, the evidence falls short of establishing that the Chief formulates or implements policy.

As to the Chief's role in public relations, the Borough argues that the Hearing Examiner failed to take into account evidence that the Chief made effective recommendations regarding the approval or denial of permits for civic groups to hold public events, where such approval would require the police department to commit resources to ensure public safety. However, such permits require the written approval of the Borough Manager and the Mayor, and the Chief does not approve or deny permit requests. (N.T. 36-40, 142-143, 147-148). Moreover, although the Chief is consulted regarding permit requests, his opinion is only solicited concerning whether he has sufficient manpower coverage for the event. Id. In order to meet the independence in public relations criteria of Star Lodge, the Chief would have to actually exercise authority to commit department resources in dealing with public groups. See Shoemakersville Borough Police Department, 35 PPER ¶ 127 (Proposed Order Of Dismissal, 2004); Allegheny Township, 32 PPER ¶ 32011 (Proposed Order of Unit Clarification, 2000). Here, the record merely indicates that the Chief states his opinion regarding whether existing manpower is sufficient to cover events for which permits are sought. Such evidence fails to substantiate authority to commit departmental resources, as is necessary to demonstrate independence in public relations.

The Borough also argues that the Hearing Examiner erred by concluding that the Chief's role in formulating the police department budget is insufficient to establish managerial status. However, the police department budget is prepared by the police secretary rather than the Chief, and is reviewed by both the Chief and the Mayor before it is submitted to the Borough Manager. (N.T. 121-123, 157-160). The Borough Manager then submits the budget to Borough Council. Id. Moreover, the record does not indicate the extent to which the approved budget reflects recommendations by the Chief. Indeed, there is no evidence that the Chief even makes changes to the initial budget prepared by the police secretary, or that the Mayor or Borough Manager rely on recommendations by the

¹ As the Hearing Examiner noted, the Chief does not meet this criterion because he has not had effective involvement in hiring or serious discipline or dismissal of police officers. Curwensville Borough, 23 PPER ¶ 23090 (Order Directing Submission of Eligibility List, 1992) (element of overall personnel administration responsibility is comprised of three parts which are set forth in the conjunctive); City of Lancaster, 27 PPER ¶ 27254 (Proposed Order or Unit Clarification) (same).

Chief in developing the budget that is submitted to Borough Council. The Chief himself conceded that the budget submitted by the police department has "always been modified or changed" and that he does not know who makes the modifications. (N.T. 122-123). The Mayor similarly testified that when the police budget is submitted to Council, there are "always ... changes made". (N.T. 160). Furthermore, as noted by the Hearing Examiner, the hearing had to be recessed in order for the police secretary to testify about the budget preparation process because the Chief was unsure about such matters. (PDO at 4). On this record, the Hearing Examiner did not err in finding that the Borough failed to demonstrate that the Chief has an effective role in budget making. See Township of Chartiers v. PLRB, 510 A.2d 884 (Pa. Cmwlth. 1986)(PLRB is not being unrealistic when it considers how effectively the chief participates in the decision-making process relating to adopting budgets and making purchases).

The Borough claims that the Hearing Examiner erred by adopting a de minimus standard with regard to the purchasing role criterion of Star Lodge. However, under Board case law, the Chief must have an effective role in purchases of a substantial nature to qualify as a manager under this criterion. Township of Chartiers, supra; City of Lebanon, 21 PPER ¶ 21028 (Order Directing Submission of Eligibility List, 1989); Heidelberg Borough, 18 PPER ¶ 18192 (Order Directing Submission of Eligibility List, 1987); Brookville Borough, 19 PPER ¶ 19124 (Order and Notice of Election, 1988); Elizabethville Police Officers Association v. Elizabeth Borough, 32 PPER ¶ 32020 (PDO, 2000). In this case, the Chief's purchasing authority, which was limited to purchases of less than fifty dollars, was simply insufficient to meet the Star Lodge criteria for managerial status.

Thus, we agree with the Hearing Examiner that the Borough failed to prove that the position of Chief of Police meets any of the Star Lodge criteria. Accordingly, the Hearing Examiner properly declined to exclude the Chief from the bargaining unit as a managerial employe.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Borough's exceptions and make the Proposed Order of Dismissal final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Order of Dismissal be and the same are hereby dismissed and the Proposed Order of Dismissal be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of January, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.