

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PF-U-09-13-E
 :
 SOUTH LONDONDERRY TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On January 27, 2009, South Londonderry Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the Chief of Police (Chief) from its bargaining unit of police officers. On February 11, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on March 16, 2009, if the parties were unable to resolve the matters in dispute at a pre-hearing telephone conference on February 26, 2009. The hearing was twice continued at the requests of the South Londonderry Police Officers Association (Union) and without objections from the Township. Subsequently, the parties agreed to submit stipulations of fact in lieu of a hearing. On March 27, 2009, the parties submitted factual stipulations, and on June 23, 2009, the parties submitted revised Factual Stipulations. Neither party filed a brief. The examiner relies herein solely on the Factual Stipulations of June 23, 2009.

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

FINDINGS OF FACT

1. The Township is a political subdivision within the meaning of Act 111 as read with the Pennsylvania Labor Relations Act (PLRA).
2. The Union is a labor organization recognized by the Township as the exclusive representative of Township police officers within the meaning of Act 111 and the PLRA.
3. The Chief has the authority to initiate departmental policies, including the power to issue general directives and regulations. He exercised this authority when he developed and implemented protocol for e-mail and internet access, overtime and the boarding of animals at the Valley Animal Hospital. (Stips. ¶ 1).
4. The Chief has the authority to review and amend the police department policy. The Chief has recently revised and the Township's discrimination and harassment policy. (Stips. ¶ 2).
5. The Chief has independent authority to represent the police department to the public. He held community watch meetings in 2008 and has assigned police personnel to community functions. (Stips. ¶ 3).
6. The Chief has the authority to prepare, and does prepare, proposed budgets for the police department. The Chief's recommendations in this regard are given great weight by the Township Manager and Board of Supervisors. His 2009 budget was approved with very little modification. (Stips. ¶ 4).
7. The Chief provides recommendations for capital expenditures and day-to-day expenses. He has made purchases related to his day-to-day operations and his recommendations to the Board of Supervisors regarding capital expenditures for upcoming budget years are accepted with little modification. (Stips. ¶ 5).
8. The Chief has the authority to make recommendations concerning police department hiring and firing. The Chief recruited, interviewed and recommended the hiring of two officers in June 2006. The Board of Supervisors and Township Manager afforded the Chiefs

recommendations great weight and these officers were hired. The Chief also recommended the termination of another officer and this recommendation was followed. (Stips. ¶ 6).

DISCUSSION

The Township has petitioned to exclude the Chief of Police and maintains that the Chief is 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. Under Star Lodge, the Township has the burden of proving the following:

[T]hat the [employe in the position] has authority to initiate departmental policies, including the power to issue general directives and regulations; he [or she] has the authority to develop and change programs of the department; he [or she] engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals; he [or she] effectively prepared budgets, as distinguished from merely making suggestions; he [or she] effectively engaged in the purchasing process, as compared to merely providing suggestions; or he [or she] has the authority to commit departmental resources in dealing with public groups. [Fraternal Order of Police Lodge No. 20 v. PLRB (Star Lodge), 522 A.2d 697, 704 (Pa. Cmwlth. 1987, aff'd, 522 Pa. 149, 560 A.2d 145 (1989)]. Significantly, the test for managerial status under Act 111 is disjunctive and not conjunctive, such that the performance of any of the above functions results in a finding of managerial status.

In the Matter of the Employes of Elizabeth Township, 37 PPER 90 at 291 (Final Order, 2006)(citing Star Lodge, supra).

Here, the Chief has initiated departmental policies and has issued general directives and regulations. He has developed and changed programs within the Department. In 2007, the Chief developed and implemented protocol for e-mail and internet access as well as overtime at the Township Police Department. He also implemented policies and procedures for the boarding of animals secured by the Township Police Department at the Valley Animal Hospital. Significantly, the Chief recently revised the Police Department's discrimination and harassment policy. The record also shows that the Chief of Police has independent authority and discretion to commit the Department's resources in dealing with public groups. The Chief has held community watch meetings and has assigned police personnel to community functions that are not part of the routine functions of the Department.

The record also shows that the Chief is engaged in overall personnel administration as evidenced by effective involvement in hiring, serious disciplinary actions and dismissals within the meaning of Star Lodge, supra. The Chief has the authority to make recommendations concerning police department hiring and firing. The Chief recruited, interviewed and recommended the hiring of two officers in June 2006. The Board of Supervisors and the Township Manager gave the Chief's recommendations great weight and, as a result, the Township hired the recommended officers. The Chief also recommended the termination of another officer and this recommendation was also followed.

Furthermore, the Chief effectively prepares budgets, as distinguished from merely making suggestions. The record in this case shows that the Chief has the authority to prepare, and does prepare, proposed budgets for the Police Department. The Chief's recommendations in this regard are given great weight by the Township Manager and Board of Supervisors. The Chief's 2009 Police Department budget was approved with slight modification. Moreover, the Chief is effectively engaged in the purchasing process, as compared to merely providing suggestions. The Chief has made purchases related to his day-to-day operations and his recommendations to the Board of Supervisors regarding capital expenditures for upcoming budget years have been accepted with little modification. Accordingly, the Township has met its burden of proving that the Chief is a managerial employe under Star Lodge.

CONCLUSION

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

1. The Township is a political subdivision within the meaning of Act 111 as read with the PLRA.
2. The Union is a labor organization within the meaning of Act 111 as read with the PLRA.
3. The Board has jurisdiction over the parties.
4. The Township's Chief of Police is a managerial employe and is properly excluded from the bargaining unit of police officers.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read 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 thirtieth day of June, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner