COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF	:	
	:	
	:	Case No. PF-U-08-110-W
	:	
BOROUGH OF GREENVILLE	:	

PROPOSED ORDER OF UNIT CLARIFICATION

On August 27, 2008, the Borough of Greenville (Borough) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification seeking to exclude the position of Fire Chief (Chief) from the Borough's bargaining unit of firefighters. On September 3, 2008, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on November 5, 2008. The attorney for the Borough filed a letter with the Board, dated October 24, 2008, indicating that the Borough and the International Association of Firefighters, Local 1976 (Union) were in agreement that the matter should be held in abeyance pending negotiations for a new collective bargaining agreement, which could resolve the matter of excluding the Chief. On October 30, 2008, I continued the hearing indefinitely. On January 23, 2009, the Borough's attorney filed with the Board a letter requesting an adjudication of the petition. Subsequently, the parties agreed to enter into and submit factual stipulations in lieu of a hearing. On August 19, 2009, the Board received the factual stipulations. On November 23, 2009, the Board received the parties' revised and amended factual stipulations.

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

FINDINGS OF FACT

1. The Borough 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 within the meaning of Act 111 and the PLRA.

3. The parties stipulated and agreed that the Chief is the executive officer and administrative head of the Borough of Greenville Fire Department. (Stips. ¶ 1).

4. The parties stipulated and agreed that the Chief enforces Borough fire codes and ordinances. The Chief inspects and approves fire alarm systems. In 2008, the Chief inspected and approved the fire alarm system at a local hospital, which could not be approved by the Council without the Chief's approval. The Chief also reviewed and approved the fired code plan for the Buttercup Bakery Company, a local employer. The Chief reviewed and approved the University of Pittsburgh Medical Center's newly constructed MRI facility and issued a list of deficiencies that he required to be corrected before he issued a Fire Code Certificate of Occupancy. (Stips. ¶ 2).

DISCUSSION

The Borough has petitioned to exclude the Chief 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 Commonwealth Court set forth six criteria of managerial status for firefighters and police officers under Act 111. Under Star Lodge, the Borough 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).

The factual stipulations support the conclusion that the Chief is responsible for implementing policies on behalf of the Borough. The Chief is responsible for inspecting and approving fire alarm systems to ensure compliance with Borough fire codes before he issues Fire Code Certificates of Occupancy. In 2008, the Chief inspected and approved the fire alarm system at a local hospital, which could not be approved by the Council without the Chief's approval. The Chief also reviewed and approved the fired code plan for the Buttercup Bakery Company, a local employer. The Chief reviewed and approved the University of Pittsburgh Medical Center's newly constructed MRI facility and issued a list of deficiencies that he required to be corrected before he issued a Fire Code Certificate of Occupancy. (F.F. 4; Stips. ¶ 2).

In the performance of his code enforcement duties, the Chief exercises independent judgment and discretion in the application and enforcement of Borough policies involving fire and building protection and safety. By adopting these ordinances, the Borough has established its policies concerning building and fire safety matters governed by those ordinances. As the employe solely responsible for enforcing the provisions of those ordinances, the Chief independently develops inspection programs and protocols to ensure proper compliance with and implementation of Borough policies.

CONCLUSION

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

1. The Borough 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 Borough's Fire Chief is a managerial employe and is properly excluded from the bargaining unit of firefighters in the Borough Fire Department.

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 Fire Chief 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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this second day of December, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner