

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PF-U-09-100-E  
 : (Case No. PF-R-91-124-E)  
BUSHKILL TOWNSHIP :

**PROPOSED ORDER OF UNIT CLARIFICATION**

On August 10, 2009, Bushkill Township (Township) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to exclude a captain from a previously certified bargaining unit currently represented by the Bushkill Township Police Association (Association).<sup>1</sup> On August 20, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on November 24, 2009, if the parties were unable to resolve the matters raised in the petition. The hearing was held as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. Each party made a closing argument. Neither party reserved the right to file a brief. On January 13, 2010, the notes of testimony were filed with the Board.

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. On March 27, 1992, the Board certified the Association as the exclusive representative of a bargaining unit comprised of all full time and regular part-time police officers employed by the Township, "including the assistant chief of police and patrolmen; and excluding the chief of police and all other managerial employes." (Case No. PF-R-91-124-E)

2. On May 7, 1999, the Board included the deputy chief of police in the bargaining unit. (Case No. PF-U-99-45-E)

3. In January 2008, Michael McLouth assumed the rank of captain in the Township's police department. Since then, Captain McLouth has prepared policies and procedures covering matters such as how to handle certain types of calls, use of force, vehicular chase and transport of prisoners and submitted them to the Township's solicitor (Gary Asteak, Esquire) and the Township's insurance carrier to review. Solicitor Asteak and the insurance carrier have usually returned the policies and procedures to Captain McLouth without change. Captain McLouth has distributed the policies and procedures to the Township's police officers after the chief of police (Stanley Coopersmith) signed off on them. (N.T. 6, 12-16)

4. Captain McLouth has been responsible for making sure that police officers follow the policies and procedures in the manual. (N.T. 13, 17)

5. During 2009, the Township's board of supervisors authorized the hiring of a police officer. Captain McLouth reviewed resumes from prospective police officers, invited seven of them to submit applications, determined who the top four applicants were and had them meet with Chief Coopersmith. The Township had not hired a police officer as of the date of the hearing. (N.T. 26-27, 43)

6. During 2009, Captain McLouth suspended a police officer and recommended to the board of supervisors that the police officer be fired. The police officer resigned before the board of supervisors took any action on Captain McLouth's recommendation. (N.T. 27-29, 37)

7. During 2008, Chief Coopersmith bore the brunt of the work of preparing a proposed budget for the police department for 2009. Captain McLouth researched items that he and Chief Coopersmith wanted to purchase. (N.T. 18-19)

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<sup>1</sup> The Township also petitioned to exclude a deputy chief, a sergeant and a lieutenant from the bargaining unit. The Township subsequently withdrew the petition as to those positions at the hearing, however (N.T. 3-4). The hearing examiner, therefore, will not address those positions.

8. During 2009, Captain McLouth began working on a proposed budget for the police department for 2010 after Chief Coopersmith became ill. Captain McLouth submitted a proposed budget to the board of supervisors' liaison with the police department (Ron Tucker) and the Township's manager and secretary-treasurer (Aaron Hook). Mr. Hook thought that the proposed budget was excessively high. Captain McLouth submitted another proposed budget. Mr. Hook presented the second proposed budget to the board of supervisors for its review. The board of supervisors had not passed a budget for 2010 as of the date of the hearing. (N.T. 7-8, 16, 18-19, 30-32, 35-36, 40-41, 44)

9. During 2009, Captain McLouth purchased on his own new tasers and a new pepper ball gun with monies generally allocated for minor equipment purchases in a line item of the budget. Captain McLouth also purchased ammunition, weapons and service for vehicles as anticipated by the Township each year and a new vehicle as authorized by the board of supervisors that year. (N.T. 8-9, 20-23, 34-35, 41-42)

10. During 2009, the board of supervisors decided to negotiate a renewal of an agreement it had with Intermediate Unit 20 to place a police officer in a school at no cost to the Township. Chief Coopersmith, Mr. Hook and Solicitor Asteak handled the negotiations for the Township at the outset. After Chief Coopersmith became ill, Captain McLouth, Mr. Hook and Solicitor Asteak handled the negotiations for the Township. (N.T. 10, 24-25, 31-33, 38-40)

#### DISCUSSION

The Township has petitioned to exclude the captain from the bargaining unit as a managerial employe. The Association would have the Board dismiss the petition because the captain is not 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 as follows:

"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 set forth in finding of fact 3, the record shows that the captain has prepared policies and procedures covering matters such as how to handle certain types of calls, use of force, vehicular chase and transport of prisoners and submitted them to the Township's solicitor and the Township's insurance carrier to review, that the solicitor and the insurance carrier have usually returned them to the captain without change and that the captain has distributed them to the Township's police officers after the Township's chief of police signed off on them.

On that record, it is apparent that the captain meets the policy formulation criterion of Star Lodge. See Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001)(a police chief who recommended additions to a police procedures manual that were approved by a higher authority and included in the manual was a managerial employe).

As set forth in finding of fact 9, the record also shows that the captain purchased on his own new tasers and a new pepper ball gun with monies generally allocated for minor equipment purchases in a line item of the budget.

On that record, it is apparent that the captain also meets the purchasing authority criterion of Star Lodge. See Dalton Police Association, supra (a police chief who was independently responsible for purchasing items for a police department was a managerial employe).

The record does not otherwise show that the captain meets the Star Lodge criteria for managerial status.

As set forth in finding of fact 3, the record shows that the captain is responsible for making sure that police officers follow policies and procedures, but it does not show that the captain ever changed programs of the department. Thus, there is no basis for finding that the captain meets the policy implementation criterion of Star Lodge.

As set forth in findings of fact 5-6, the record shows that the captain selected which applicants for a police officer position met with the chief of police, suspended a police officer and recommended that the police officer be fired, but it also shows that the Township had not hired a police officer as of the date of the hearing and that the police officer the captain recommended be fired resigned before the Township's board of supervisors acted on the captain's recommendation. Thus, there is no basis for finding that that captain's involvement in hirings and dismissals has been effective as required under the overall personnel administration responsibility criterion of Star Lodge.

As set forth in finding of fact 7, the record shows that the chief of police bore the brunt of the work of preparing a proposed budget for the police department for 2009. As set forth in finding of fact 8, the record shows that the captain only began working on a proposed budget for the police department for 2010 after the chief of police became ill and that the Township had not adopted a budget for 2010 as of the date of the hearing. Thus, there is no basis for finding that the captain effectively participated in the preparation of proposed budgets as required under the budget making criterion of Star Lodge.

As set forth in finding of fact 10, the record shows that the captain was involved in negotiations to place a police officer at a school, but it also shows that the board of supervisors decided to place the officer in the school in the first place and that the captain only became involved in the negotiations after the chief of police became ill. Thus, there is no basis for finding that the captain committed departmental resources in dealing with public groups under the independence in public relations criterion of Star Lodge.

Inasmuch as the captain meets two of the Star Lodge criteria, however, the captain must be excluded from the unit as a managerial employe. See Elizabeth Township, supra (an employe need only meet one of the Star Lodge criteria in order to be managerial).

The Association contends that the captain does not meet the policy formulation criterion of Star Lodge because the policies and procedures he prepared were subject to review by the chief of police and the board of supervisors. The Association cites City of Lancaster, 27 PPER ¶ 27254 (Proposed Decision and Order 1996), in support of its contention.

The Association's contention is without merit. As the court noted in Star Lodge, "the mere fact that policy determinations are subject to review by a higher authority does not necessarily negate managerial status." 522 A.2d at 704. Moreover, City of Lancaster is distinguishable on the facts. In that case, Hearing Examiner Thomas P. Leonard found deputy fire chiefs not to be managerial employes because the record only showed that they attended meetings at which policies were discussed. By contrast, as noted above, the record here shows that the captain prepared policies and procedures that were usually approved by higher authority without change.

The Association contends that the captain does not meet the purchasing criterion of Star Lodge because his purchase of ammunition, for example, was routine. The Association again cites City of Lancaster in support of its contention.

The Association's contention is without merit. As noted above, the record shows that the captain purchased a new taser and a new pepper ball gun on his own. Thus, although the captain's purchase of ammunition was routine, the record shows that the captain otherwise exercised discretion in making purchases. Moreover, nothing in City of Lancaster supports the Association's contention.

#### CONCLUSIONS

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

1. The Township 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 captain 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 captain 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 fifteenth day of January 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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DONALD A. WALLACE, Hearing Examiner