

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PF-U-09-115-E
:
BUTLER TOWNSHIP :

PROPOSED ORDER OF UNIT CLARIFICATION

On September 22, 2009, the Butler Township Police Officers Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a petition for unit clarification to include the chief of police in a bargaining unit comprised of police officers employed by Butler Township (Township). On October 14, 2009, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on February 16, 2010. On February 8, 2010, the hearing examiner continued the hearing because the Township's attorney had not been served with notice of the hearing and was unavailable on February 16, 2010. On March 23, 2010, the hearing examiner held the hearing and 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 April 1, 2010, the notes of testimony were filed with the Board.

The hearing examiner, on the basis of the evidence presented at the hearing, makes the following:

FINDINGS OF FACT

1. The Township has recognized the Association as the exclusive representative of a bargaining unit that includes police officers employed by the Township. (N.T. 22)
2. In 2005 or 2006, the Township's police department presented to its board of supervisors a manual of department policy/general orders. After the Township's insurance carrier and its solicitor reviewed the manual without comment, the board of supervisors adopted the manual in 2007. (N.T. 8, 12, 35-36; Employer Exhibit 1)
3. The Township's chief of police (Charles P. Altmiller) has not changed any of the policies or general orders in the manual. (N.T. 8, 13-14)
4. During the past four years, the Township has not hired a police officer. (N.T. 10, 24)
5. During the past four years, Chief Altmiller recommended that disciplinary letters for two police officers be placed in their personnel files and that a third police officer be demoted. The board of supervisors followed his recommendation as to the demotion. (N.T. 10-11, 24-27, 33-34)
6. During the past four years, the Township has not fired a police officer. (N.T. 24)
7. Chief Altmiller has recommended to the board of supervisors budgets for the police department. For the current year, "most" of his recommendations were "trimmed down" by the board of supervisors. In past years, his recommendations for training and for hiring additional police officers were denied by the board of supervisors. (N.T. 14-16, 30)
8. Chief Altmiller and the Township's manager (Steven L. Hahn) both "sign off" on invoices for purchases by the police department, the "vast majority of" which are "pretty much routine." Chief Altmiller asks Manager Hahn for approval to purchase items for the police department that are "out of the ordinary." (N.T. 16-17, 31)
9. Chief Altmiller has attended breakfast meetings of community groups, addressed the Job Corps and been interviewed by the media. (N.T. 20-22)

DISCUSSION

The Association has petitioned to include the chief of police in the bargaining unit. The Township would have the Board dismiss the petition because the chief of police is a managerial employe.

Supervisors are eligible for inclusion in Act 111 bargaining units, but managerial employes are not. City of Pittsburgh v. Commonwealth of Pennsylvania, PLRB, 556 A.2d 928 (Pa. Cmwlth. 1989). The record does not show that the chief of police is a managerial employe. Accordingly, the chief of police will be included in the unit.

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.

Policy Formulation

The record shows that the chief of police “may” have recommended or been involved with a parking ordinance four years ago (N.T. 9). Noticeably absent from the record, however, is any evidence that the chief of police actually recommended or was involved with the parking ordinance. The record also shows that the police department presented to the board of supervisors a manual of department policy/general orders that the board of supervisors adopted (finding of fact 2). Noticeably absent from the record, however, is any evidence as to the extent, if any, to which the chief of police was involved in the presentation of the manual to the board of supervisors. Although the manual itself states that it was “approved” by the chief of police (Employer Exhibit 1), that statement is hearsay. Hearsay, of course, may not form the basis for a finding of fact. See Manor Borough, 27 PPER ¶ 27025 (Final Order, 1995), citing Walker v. UCBR, 367 A.2d 366 (Pa. Cmwlth. 1976). Thus, there is no basis for finding that the chief of police meets the policy formulation criterion of Star Lodge. See North Wales Borough, 39 PPER 10 (Final Order 2008)(a police chief was not a managerial employe where there was no showing that he effectively recommended departmental policies). Compare Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001)(a police chief was a managerial employe where departmental policies were as recommended by him).

Policy Implementation

The record shows that the chief of police has not changed any of the policies or general orders in the manual of department policy/general orders (finding of fact 3). Thus, there is no basis for finding that the chief of police meets the policy implementation criterion of Star Lodge. See Forward Township, 28 PPER ¶ 28197 (Final Order 1997)(a police chief who operated the police department in accordance with policy was not a managerial employe); Shoemakersville Borough, 35 PPER 127 (Proposed Order of

Dismissal 2004)(a police chief who implemented policy without change was not a managerial employe). Compare Selinsgrove Borough, 34 PPER 146 (Final Order 2004)(a police chief who changed policies he implemented was a managerial employe).

Overall Personnel Administration Responsibility

The record shows that during the past four years the Township has not hired a police officer (finding of fact 4), the chief of police has been involved with two disciplinary letters and a demotion (finding of fact 5) and the Township has not hired a police officer (finding of fact 6). The record does not show that the chief of police was involved in any hirings or firings before then. Thus, even assuming without deciding that the two disciplinary letters and the demotion were serious disciplinary actions and that his involvement with them was effective, there is no basis for finding that the chief of police meets the overall personnel administration responsibility criterion of Star Lodge. See North Wales Borough, supra (because the three elements of the overall personnel administration responsibility criterion are set forth in the conjunctive, all three must be established in order to support a finding of managerial status under that criterion).

Budget making

The record shows that for the current year "most" of the budgetary recommendations made by the chief of police were "trimmed down" by the board of supervisors and that in past years his recommendations for training and for hiring additional police officers were denied by the board of supervisors (finding of fact 7). Thus, there is no basis for finding that the chief of police meets the budget making criterion of Star Lodge. See North Wales Borough, supra (a police chief was not a managerial employe where there was no showing that he effectively prepared a proposed budget). Compare Selinsgrove Borough, supra (a police chief who prepared proposed budgets that were adopted substantially unchanged by council was a managerial employe).

Purchasing Role

The record shows that the chief of police and the manager both "sign off" on invoices for purchases by the police department, the "vast majority of" which are "pretty much routine," and that the chief of police asks the manager for approval to purchase items for the police department that are "out of the ordinary" (finding of fact 8). Thus, there is no basis for finding that the chief of police meets the purchasing role criterion of Star Lodge. See Homestead Borough, 26 PPER ¶ 26203 (Final Order 1998)(a police chief whose role in purchasing was limited to making recommendations was not a managerial employe). Compare Dalton Police Association, supra (a police chief who made purchases on his own was a managerial employe).

Independence in Public Relations

The record shows that the chief of police has attended breakfast meetings of community groups, addressed the Job Corps and been interviewed by the media (finding of fact 9). The record does not show that he committed any departmental resources in doing so. Thus, there is no basis for finding that the chief of police meets the independence in public relations criterion of Star Lodge. See Star Lodge, supra (public presentations must be more than informational in order to support a finding of managerial status). Compare City of Easton, 33 PPER ¶ 33098 (Proposed Order of Dismissal 2002)(a deputy fire chief who agreed to provide fire inspection services to a local college on a regular basis was a managerial employe).

Supervisory duties

The Township presented testimony that the chief of police has been considered a supervisor (N.T. 8), schedules and grants time off (N.T. 11-13), oversees training (N.T. 18), performs personnel evaluations (N.T. 18-19), recommends promotions (N.T. 19) and is at the first step of the grievance procedure (N.T. 23). All of those duties are supervisory in nature, however. As noted above, supervisors are to be included in Act 111

bargaining units. City of Pittsburgh, supra. Thus, those duties provide no basis for excluding the chief of police from the unit as a managerial employe.

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 chief of police is not 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 included in 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 April 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner