

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: Case No. PF-D-10-66-W
: (PF-R-02-75-W)
EAST TAYLOR TOWNSHIP :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On May 4, 2010, Chief Kenneth Smith (Chief Smith) filed with the Pennsylvania Labor Relations Board (Board) a petition for decertification alleging that thirty per cent or more of the employees of East Taylor Township (Township) in a bargaining unit previously certified by the Board assert that the certified representative of the bargaining unit, Teamsters Local Union No. 110 (Union), is no longer their representative. On May 11, 2010, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on June 4, 2010, if the parties were unable to resolve the matters in dispute by then. On May 18, 2010, the hearing examiner, upon the request of the Union and without objection by Chief Smith or the Township, continued the hearing to June 11, 2010. On June 10, 2010, the hearing examiner cancelled the hearing as the only matter in dispute is a legal issue involving Chief Smith's standing to file the petition that the Union raised in a proffer by letter dated that day.

The hearing examiner, on the basis of all matters of record, makes the following:

FINDINGS OF FACT

1. On July 11, 2002, the Board certified the Union under the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) as the exclusive representative of a bargaining unit comprised of "[a]ll full-time and regular part-time police officers [employed by the Township] including but not limited to the chief of police and patrol officers; and excluding any managerial employees." (Case No. PF-R-02-75-W)

2. Chief Smith has demonstrated to the satisfaction of the Board the requisite showing of interest.

DISCUSSION

Chief Smith has filed a petition to decertify the Union as the exclusive representative of the bargaining unit.

The Union contends that the petition should be dismissed because Chief Smith is a managerial employe not eligible for inclusion in the unit and therefore has no standing to file the petition. In support of its contention, the Union has made a proffer that it

"will present evidence that Chief Smith (1) makes policies and policy modifications, (2) disciplines police officers, and (3) effectively recommends individuals for hire."

An employe included in a unit has standing to file a decertification petition. Charley v. PLRB, 583 A.2d 65 (Pa. Cmwlth. 1990).

A close review of the record reveals that the unit includes the chief of police (finding of fact 1). Thus, Chief Smith has standing to file the petition.

The Union's proffer to support its contention to the contrary must be denied.

In Medical Rescue Team South Authority, 31 PPER ¶ 31059 (Final Order 2000), the Board explained that

"an election pursuant to a petition for decertification must be held in the unit as previously certified by the Board. Midwestern Intermediate Unit IV, 15 PPER ¶ 15178 (Final Order, 1984), aff'd, 16 PPER ¶ 16109 (Court of Common Pleas of Butler County; 1985)."

Id. at 145. See also Clearfield County, 24 PPER ¶ 24173 (Order and Notice of Decertification Election 1993)(same). Thus, the propriety of an employee's inclusion in a unit previously certified by the Board may not be litigated in a decertification proceeding. Antietam School District, 33 PPER ¶ 33139 (Order Directing Opening and Canvassing of Challenged Ballots 2002).

Given that the unit includes the chief of police, the propriety of his inclusion in the unit may not be litigated at this time.¹

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 section 3(c) of the PLRA as read in pari materia with Act 111.
2. Chief Smith is an employe under section 3(d) of the PLRA as read in pari materia with Act 111.
3. The Union is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.
4. The Board has jurisdiction over the parties.
5. The unit appropriate for a decertification election is comprised of all full-time and regular part-time police officers of the Township including but not limited to the chief of police and patrol officers and excluding any managerial employes.

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 Township shall within ten days of the date hereof submit to the Board an alphabetized list of the names and addresses of the police officers eligible for inclusion in the unit set forth above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that no exceptions may be filed to this procedural order. See 34 Pa. Code § 95.96(a).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this fourteenth day of June 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner

¹ It is noted that on May 17, 2010, the Union filed a petition for unit clarification to exclude the chief of police from the unit (Case No. PF-U-10-80-W). Given that the Union's petition post-dates Chief Smith's petition and that Board policy is to hold a decertification election in the unit as previously certified by the Board, the Union's petition is not a bar to a decertification election. If the Union prevails at a decertification election, the propriety of the chief of police's inclusion in the unit may be litigated pursuant to the Union's petition at that time.