

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-21-59-E
: :
BOROUGH OF COLWYN :

PROPOSED ORDER OF UNIT CLARIFICATION

On June 28, 2021, the Borough of Colwyn (Borough) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification seeking to exclude the position of Chief of Police from the bargaining unit of police officers employed by the Borough Police Department (Department) and represented by the Delaware County Fraternal Order of Police, Lodge No. 27 (Union). On July 19, 2021, the Secretary of the Board issued an Order and Notice of Hearing directing that a hearing be held on Monday, October 25, 2021, in Harrisburg. On October 19, 2021, I continued the hearing based on the representation from the Borough's Counsel that the matter would be submitted on a joint stipulation of facts in lieu of a hearing. On December 22, 2021, the Board received the Joint Stipulation of Facts and Joint Exhibits.

The hearing examiner, on the basis of the Joint Stipulation of Facts, Joint Exhibits attached and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Borough is a political subdivision and public employer within the meaning of Act 111 as read with the Pennsylvania Labor Relations Act (PLRA). (Stipulation of Facts ¶ 1)
2. The Union is a labor organization within the meaning of Act 111 and the PLRA. (Stipulation of Facts ¶ 3)
3. The governing body and appointing authority of the Borough is the Borough Council. (Stipulation of Facts ¶ 5)
4. The Borough provides police services to the Borough through its paid Police Department, which employes 11 part-time police officers, all supervised and managed by the full-time Chief of Police. (Stipulation of Facts ¶s 6-7)
5. The current Chief of Police has been employed by the Borough for approximately the past 14 months. (Stipulation of Facts ¶ 8).
6. On or about January 23, 1980, the Board certified a bargaining unit description consisting of police employes of the Borough at Case No. PF-R-125-E. (Stipulation of Facts ¶ 9).
7. In January 2020, the parties entered into a settlement agreement resolving terms and conditions of employment for the police officers of the Borough. As part of the agreement, the Union agreed to the removal of the Chief of Police from the bargaining unit and agreed to cooperate in the unit

clarification filing with the Board. (Stipulation of Facts ¶ 11-12; Attachment A)

8. In June 202[1]¹, the Borough and the Union entered into a Memorandum of Understanding (MOU) providing that, based on the duties of the Chief of Police, the Chief should be removed from the bargaining unit and no longer covered by the terms of any collective bargaining agreement. (Stipulation of Facts ¶ 13; Attachment B)

9. Consistent with the job duties of the Chief contained within Attachment C, titled "Command and Control" of the Department, the Chief of Police is involved in policy formulation and interpretation; he effectively recommends and institutes disciplinary actions and initiates internal investigations that have resulted in the administration of discipline. The Chief directly imposes discipline. The Chief is directly involved in the hiring of officers, and he is directly involved in the preparation of the Department's budget. (Stipulation of Facts ¶ 14; Attachment C)

10. The Chief regularly determines the number of officers per shift and the shift schedule. The Chief has implemented at least 15 policies since he commenced working for the Borough, including policies on vehicle pursuit, uniforms, chain of command protocols, sick and bereavement leave, as well as officer conduct. All policies recommended by the Chief to Borough Council have been approved and adopted by Borough Council. (Stipulation of Facts ¶ 15a)

11. The Chief has also developed operational program changes within the Department, such as the new bicycle patrol program to better help conduct law enforcement and better engage the public. (Stipulation of Facts ¶ 15b)

12. The Chief has conducted internal investigations of officers resulting in discipline. The Chief recently conducted two such investigations of the same officer. The first investigation resulted in the Chief's recommendation that Council place the officer on a short unpaid suspension and a performance improvement plan, which was approved by Council. The second investigation led to a recommendation of dismissal, which was also approved by Council. The Chief has the authority to and does implement day-to-day counseling and progressive discipline, which is not reviewed by Council. (Stipulation of Facts ¶ 15c)

13. The Chief has recruited and personally interviewed officer candidates. With the Chief's approval, candidates are then further interviewed by the Chief and Borough Council members. The Chief has recommended 7 candidates for hire since working with the Borough, and all 7 candidates were approved for hire by Borough Council. (Stipulation of Facts ¶ 15d)

14. The Chief has worked on creating the Department budget with the Borough Manager, which was approved by Borough Council. (Stipulation of Facts ¶ 15e)

¹ The stipulation of facts, paragraph 13, provides that the Borough and the Union entered into the MOU in June 2020, but the MOU attached as Attachment B shows that the document was signed in June 2021.

15. The Chief has spoken to the media representing the Borough regarding Borough law enforcement issues. The Chief also worked with the media in honoring 2 officers who conducted a rescue during a house fire. The Chief has implemented several programs to engage the public. One such program is the "Bookmates Program" where an officer visits a school (either virtually or in person) to read with children in kindergarten through second grade. Another public program is the "Pop-up Bar-b-Que Program" in which officers and the Borough host a bar-b-que for the public in the Department parking lot on short notice. The Chief has also implemented a program through which officers visit and assist elderly citizens in the Borough during storms and other difficult times to assist with snow removal and other tasks. (Stipulation of Facts ¶ 15f)

DISCUSSION

Both the Union and the Borough agree that the position of Chief of Police is a management level position that should be excluded from the bargaining unit of police officers. The seminal case in determining whether a position in a police department is managerial is Fraternal Order of Police Star Lodge No. 20 v. PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987). The Star Lodge test lists 6 areas of authority that yield the conclusion that a position in a police department is managerial. Those 6 criteria are as follows: (1) Policy Formulation through Initiation of Policies and Directives; (2) Policy Implementation through Program Development; (3) Overall Personnel Responsibility and Administration through Effective Involvement in Hiring and Disciplinary Action; (4) Budget Formulation; (5) Purchasing Decisions; or (6) Independence in Public Relations. Significantly, the Star Lodge test is disjunctive, and the duties of the position holder need only meet one of the Star Lodge criteria.

On this record, the duties of the Chief of Police satisfy the criteria set forth in Star Lodge, which requires the conclusion that the Chief is a management level employe of the Borough's Department. The Chief utilizes his sole discretion in determining the complement of officers on each shift as well as shift assignments. He has developed significant policies directly related to law enforcement operations within the Department, such as vehicle pursuit policies. He has also developed and changed policies related to overall Department management such as sick and bereavement leave policies, uniform policies and officer conduct policies. The Chief has also developed operational program changes within the Department, such as the new bicycle patrol program to better help conduct law enforcement and better engage the public. All of these policies have been adopted and approved by Borough Council.

The Chief has conducted internal investigations of officers resulting in discipline issued by Council as a result of the Chief's internal investigations and recommendations. The Chief recently conducted two such investigations of the same officer, resulting first in a short unpaid suspension and then in a recommendation for dismissal, which was adopted and implemented by Council. The Chief has the authority to and does implement day-to-day counseling and progressive discipline, which is not reviewed by Council.

In terms of hiring, the Chief has recruited and personally interviewed officer candidates. The Chief has recommended 7 candidates for hire since working with the Borough, and all 7 candidates were approved by Borough Council. Additionally, the Chief has worked on creating the Department budget

with the Borough Manager, which was approved by Borough Council. The Chief has also spoken to the media regarding Borough law enforcement issues and regarding the honoring of 2 officers who conducted a rescue during a house fire. The Chief has implemented the following programs to engage the public: The "Bookmates Program" where officers read with children in kindergarten through second grade; the "Pop-up Bar-b-Que Program, where the Department hosts a Barb-b-Que for the public in the Department parking lot on short notice; an aid program whereby officers visit and assist elderly citizens in the Borough during storms and other difficult times.

Accordingly, the position of Chief of Police of the Borough's Police Department is a management level position within the meaning of Star Lodge, and is properly removed from the bargaining unit.

CONCLUSIONS

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

1. The Borough is a political subdivision and a public employer 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 position of Chief of Police of the Borough Police Department is a managerial position and is properly excluded from the bargaining unit.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111, as read with the PLRA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the Chief of Police is excluded from the bargaining unit, and the bargaining unit description shall be amended to explicitly exclude the position of Chief of Police.

IT IS FURTHER HEREBY 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 and become final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this fourth day of January, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino \s

JACK E. MARINO
HEARING EXAMINER