

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
: :  
: Case No. PF-R-23-28-W  
: (PF-R-41-W)  
SHARPSBURG BOROUGH :  
:

**ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST**

On March 29, 2023, General Teamsters, Chauffeurs and Helpers Local 249, International Brotherhood of Teamsters (Teamsters or Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, seeking an investigation into a question of representation of all full-time and regular part-time police officers employed by Sharpsburg Borough (Borough or Employer) and alleging that thirty per cent or more of those employes, excluding the Chief of Police and managerial employes, wish to be exclusively represented by the Union.

On April 12, 2023, the Secretary of the Board issued a letter declining to issue an order and notice of hearing due to deficiencies in the petition for representation. By letter dated April 24, 2023, the Union amended its petition. On May 5, 2023, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on June 6, 2023, via Microsoft Teams. The parties agreed to proceed by way of joint stipulations of fact in lieu of a hearing. The parties filed joint stipulations of fact on August 2, 2023. The Union and Employer filed post-hearing briefs on August 25, 2023.

The Hearing Examiner, on the basis of the evidence presented in the stipulations and from all other matters 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 PLRA. (Joint Stipulation 1).

2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA, as read with Act 111. (Joint Stipulation 2).

3. The Borough employs both uniformed police officers and non-uniformed employees. The Borough does not currently employ any part-time police officers. (Joint Stipulation 3, 11).

4. On August 18, 1978, the Board issued a Nisi Order of Certification at PF-R-41-W recognizing the Sharpsburg Borough Police Wage and Policy Committee ("Wage and Policy Committee") as the exclusive representative of the following bargaining unit of Borough employees: "all full-time and regular part-time policemen, including but not limited to patrolmen and the Chief of Police, and excluding management level employees." (Joint Stipulation 5; Joint Stipulation Exhibit 1).

5. For several decades, the Chief of Police has not been part of the bargaining unit in practice. Rather, the Borough negotiated separate Employment Agreements with the Chief of Police. (Joint Stipulation 6).

6. The Chief of Police has and exercises authority to make decisions and effective recommendations for the Borough with regard to policy formulation, policy implementation, personnel administration including hiring, firing, discipline, and scheduling of police officers, purchasing, and exercising independence in public relations by committing departmental resources to public groups and events. (Joint Stipulation 8).

7. For several decades, the Wage and Policy Committee negotiated agreements with the Borough on behalf of the police officers. The most recent agreement was executed on December 22, 2022, with the effective dates of January 1, 2023, through December 31, 2025. The agreement is between the Borough and "the Police Department of the Borough of Sharpsburg hereinafter referred to as the "Police"". The agreement defines "police" as "all full-time police officers in the Borough of Sharpsburg". The agreement does not contain a recognition clause mentioning the Wage and Policy Committee. (Joint Stipulation 9, 10; Joint Stipulation Exhibit 3).

8. On April 24, 2023, the Wage and Policy Committee executed a Disclaimer of Interest which was filed with the Board. (Joint Stipulation 14; Stipulation Exhibit 6).

9. The Borough and the Union agree that an appropriate unit is: "all full-time and regular part-time police officers, excluding the Chief of Police and other managerial employees." (Joint Stipulation 16).

10. The full-time and regular part-time police officers employes share an identifiable community of interest. PF-R-41-W.

#### **DISCUSSION**

The Union filed a petition on March 29, 2023, to represent the full-time and regular part-time police officers, excluding the Chief of Police, of Sharpsburg Borough. The Wage and Policy Committee is the certified representative of the regular part-time and full-time police officers. The full-time police officers negotiated an employment agreement with the Borough that has the effective dates of January 1, 2023, through December 31, 2025. In O'Hara Township, 9 PPER ¶ 9073 (Order Fixing Time and Place of Election, 1978), 10 PPER ¶ 10313, (Final Order, 1979), the Board announced that in future representation cases involving police officers under Act 111, that it would follow the contract bar rule of the PLRA which prohibits the filing of a rival representation petition while there was a valid collective bargaining agreement in place.

The contract bar rule does not apply in this matter. It is proper to include all regular part-time police officers in a unit with full-time police officers and a community of interest among full-time and regular part-time police officers is presumed. Borough of Mechanicsburg, 9 PPER ¶ 9024 (Order and Notice of Hearing 1978). Agreements will not bar an election if they do not include regular part-time police officers as they are not sufficient to stabilize the bargaining relationship. McDonald Borough, 43 PPER 42 (Order Directing Submission of Eligibility List, 2011). The Board will not apply a contract bar where the incumbent agreement lacks a recognition clause.

Borough of Geistown, 21 PPER ¶ 21074 (Final Order, 1990). No contract bar should apply when the underlying labor organization has disclaimed interest in the unit. See, e.g., NLRB v. Circle A&W Products, 647 F.2d 924 (9th Cir. 1981), 454 U.S. 1054 (1981) (cert. denied) (granting enforcement of an NLRB order finding that an existing collective bargaining agreement did not bar a representation election because the contracting union disclaimed interest in representing the bargaining unit). In this matter, the agreement is limited to only the full-time police officers of the Borough and does not contain a recognition clause. Furthermore, the Wage and Policy Committee executed a disclaimer of interest which was filed with the Board on April 24, 2023. I find that the policy of the Board is furthered by allowing the Union to have an election, not barred by the existing agreement, because the existing agreement does not cover regular part-time police officers, does not have a recognition clause, and the Wage and Policy Committee disclaimed interest in the unit.

On page 9 of its Brief, the Borough argues that the policy found at McDonald Borough should not apply in this case because "there are no part-time police officers employed by the Borough." I do not agree that the fact that the Borough does not have any regular part-time police officers now to be an impediment to applying the policy in McDonald Borough. Importantly, regular part-time police officers are included in the certification of the bargaining-unit. Therefore, on its face, the existing agreement does not cover the entire certified bargaining unit. Further, it is within the managerial prerogative of the Borough to hire regular part-time police officers at any time. If it did so, the existing agreement would not cover said regular part-time police officers and thus undermine the stability of the bargaining relationship.

On page 14 of its Brief, the Borough argues that the effect of the disclaimer of interest executed by the Wage and Policy Committee should be discounted because it "is a nakedly transparent attempt to avoid what is the clear application of the contract bar rule." On page 17 of its Brief, the Borough asserts the disclaimer is a "purported disclaimer of interest." On page 19 of its Brief, the Borough asserts "[a] disclaimer of interest may void a contract and avoid application of a contract bar only when it is the true result of an arms-length, non-collusive occurrence which is not designed simply as a vehicle to escape contractual obligations." Even if I were to agree with the Borough's arguments that a "sham" disclaimer would avoid the application of a contract bar, this record does not show that the disclaimer of interest was a sham. It is true that the attorney for the Union forwarded the disclaimer of interest to the Board on behalf of the Wage and Policy Committee, however I do not find that fact sufficient to show that the disclaimer was a sham. Furthermore, even if the disclaimer of interest is a sham, as argued by the Borough, there would still be no contract bar as the existing agreement does not cover regular part-time police officers and does not have a recognition clause.

Moving on, the Union wishes to exclude the Chief of Police from the proposed unit as a managerial employee. The relevant test in this matter is set forth in Fraternal Order of Police Star Lodge No. 20 v. Pennsylvania Labor Relations Board, 522 A.2d 697 (Pa. Cmwlth, 1987), aff'd 522 Pa. 149, 560 A.2d 145 (1989). Under Star Lodge, the burden of proving that a position is managerial is on the party seeking to exclude the position. The party must prove that the position meets one of the six criteria of managerial status, which the Court identified 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 697, at 705.

In this matter the parties agree and the record shows that the Chief of Police exercises authority to make decisions and effective recommendations for the Borough with regard to policy formulation, policy implementation, personnel administration including hiring, firing, discipline, and scheduling of police officers, purchasing, and exercising independence in public relations by committing departmental resources to public groups and events. For these reasons, the Chief of Police shall be excluded from the bargaining unit as a managerial employe.

Based on the above, there is no contract bar to an election. The Wage and Policy Committee has disclaimed interest in the unit. The Chief of Police will not be included in the bargaining-unit pursuant to Star Lodge. The election may proceed.

#### CONCLUSIONS

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 and public employer under Act 111, as read with the PLRA.
2. The Union is a labor organization under the PLRA, as read with Act 111.
3. The Board has jurisdiction over the parties.
4. The Union has an adequate showing of interest.

5. Sharpsburg Borough Police Wage and Policy Committee disclaimed its right to act as the exclusive representative of the employees in the unit certified at PF-R-41-W.

6. The full-time and regular part-time police officers employes share an identifiable community of interest.

7. The Chief of Police is a managerial level employe.

8. The petition is not subject to a contract bar.

9. The unit deemed appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time police officers of the Borough; and excluding the Chief of Police and any other management level employes.

**ORDER**

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the Borough shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employes eligible for inclusion in the unit set forth above.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this thirtieth day of August, 2023.

**PENNSYLVANIA LABOR RELATIONS BOARD**

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Stephen A. Helmerich, Hearing Examiner