

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PF-U-22-44-E
: :
BOROUGH OF SUMMIT HILL :

PROPOSED ORDER OF UNIT CLARIFICATION

On September 15, 2022, the Borough of Summit Hill (Borough) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Unit Clarification under the Pennsylvania Labor Relations Act and Act 111 of 1968 ("the Acts") seeking to exclude the position of Chief of Police from the bargaining unit of police officers represented by the Fraternal Order of Police, Schuylkill-Carbon Lodge 13 (Union). On October 12, 2022, the Secretary of the Board issued an Order and Notice of Hearing (ONH) directing that a hearing be held on Friday, January 20, 2023, in Harrisburg. I continued the hearing at the request of the Borough and without objection from the Union to Wednesday, March 29, 2023. During the hearing on that date, both parties in interest had a full and fair opportunity to present testimony, introduce documents, and cross-examine witnesses. On June 2, 2023, both parties filed briefs.

Based on the testimony and the exhibits presented at the hearing, as well as all other documents of record, the Examiner makes the following:

FINDINGS OF FACT

1. The Borough is a public employer and political subdivision within the meaning of the Acts. (N.T. 5)
2. The Union is a labor organization within the meaning of the Acts. (N.T. 5)
3. Todd Woodward is the Chief of Police for the Borough's Police Department. Chief Woodward entered into a Chief-of-Police contract with the Borough on August 23, 2021. Prior to becoming Chief in August 2021, Chief Woodward was a patrol officer for the Borough for 21 years. The Chief is currently a member of the bargaining unit of police officers. The Union negotiated his wages, which are set forth in the parties' collective bargaining agreement (CBA). The August 23, 2021 Chief-of-Police contract contains a different salary for the Chief for the remainder of 2021 and all of 2022, under the expired CBA.¹ The negotiated salary in the new CBA contains the same salary for the Chief as provided in the Chief-of-Police contract for 2023, with an added \$500 bonus. The Police Department currently has a Chief, a Sergeant, 4 full-time officers, and 4 part-time officers. (N.T. 7-13, 48; BXs-1, 1A & 2)

¹ The Borough arguably engaged in unlawful direct dealing when it entered the August 23, 2021 contract with Chief Woodward because the Chief is a bargaining unit member covered by the CBA. However, there is no cause of action for direct dealing under consideration here.

4. As of the date of the hearing, Jeffrey Szczecina had been the Mayor of the Borough for approximately 15 months. He became the Mayor after Chief Woodward was already the Chief of Police. Upon assuming his position as the elected Mayor of the Borough, Mayor Szczecina delegated the daily operations of the Borough's Police Department to Chief Woodward. (N.T. 75-77)

5. Mayor Szczecina does not dictate to the Chief how to manage the Police Department. In this regard, the Mayor told Chief Woodward that "this is his [i.e., the Chief's] [D]epartment" and that "I'm not here to micromanage his [D]epartment." The Mayor further explained that "it's his [i.e., the Chief's] Department to run, and I'm here to support him with anything he may need." Mayor Szczecina further credibly testified that the Chief has the full and sole authority to change and implement the policies of the Police Department. (N.T. 77-79)

6. Chief Woodward has researched and developed policies and presented them to Council for adoption. He has implemented those policies after adoption. Chief Woodward has also imposed discipline. The Chief has implemented work rules and modified the Department's Standard Operating Procedures. (N.T. 16-18)

7. Chief Woodward developed the Police Department's body camera policy. He researched the body cameras and submitted his body camera policy to the Pennsylvania State Police for approval, as required for every police department. In doing so, Chief Woodward studied policies from other police departments and developed a body camera policy for the Borough which he then submitted to Council for approval. The Chief also ensured that the body camera devices that he selected for the Borough officers were included on the list of approved devices for Pennsylvania. The Mayor was not involved in the development and/or implementation of the body camera use policy. (N.T. 40-41)

8. Chief Woodward is currently in the process of changing the Standard Operating Procedures Manual for the Police Department without approval or direction from the Mayor or Council. He may inform the Mayor of the results as a courtesy, but he does not need, nor did he obtain, Mayoral approval for modifying the Manual. (N.T. 68)

9. Chief Woodward receives applications for vacant positions from the Borough. He personally inspects the applications for all the required information and conducts the background checks. The Chief has the sole authority to reject an application. After completing the background checks, the Chief personally interviews the candidates for part-time positions with the Mayor, and together they decide whether to hire the candidate. (N.T. 21-23)

10. After completing the background checks for applicants seeking a full-time position, the Chief notifies the Borough's Police Committee, obtains an exam from the Pennsylvania Chiefs of Police Association, and contacts the Borough's Civil Service Commission. The Chief is present when the Commission administers the exam. After the written exam, an oral exam is administered by a board consisting of the Chief, another current or former chief and a current or retired Pennsylvania State Trooper. Then the Chief directs other testing if necessary, such as a physical fitness exam. The Chief then sends his recommendation with the scoring results to Council for a hiring vote. (N.T. 21-23)

11. Chief Woodward personally investigates and issues discipline to officers, without prior approval, for all discipline below suspension. The Chief issued discipline to an officer and placed it in his file for 1 year without approval or direction from anyone else. (N.T. 18-19, 24, 72)

12. The Chief directed the disciplined officer to attend firearms training at a certain date, time, and place. The officer failed to attend the training. The Chief independently decided to issue discipline without involvement from the Mayor. The Chief entered the written discipline into the records management system where it can be accessed or viewed by anyone in the Department. In deciding the level of discipline, Chief Woodward consulted and implemented the Standard Operating Procedures Manual. The Mayor and Council were not involved. Chief Woodward informed the Mayor of the discipline as a courtesy, at which time the Mayor told the Chief to do what he felt was necessary. (N.T. 45-47, 72, 77-78)

13. At budget preparation time, the Chief submits a list of equipment and supplies that he wants for the Police Department for the upcoming budget year to the Borough Secretary/Treasurer who incorporates the Chief's requests into the budget report that gets submitted for Council approval. The Chief does not rely on prior Police Department budgets. The Chief's list is a deviation from prior budgets, and it includes items that are not included in the previous budget. For the 2022 budget year, Chief Woodward included a request to purchase the body cameras. For the 2023 budget year, the Chief requested a new patrol car, which Council approved. Council has not changed or modified the Chief's proposed Department budget requests. (N.T. 26-27, 60-61, 70-71)

14. The Chief purchases everything for the Police Department and decides when to purchase new equipment. The Chief determines when to purchase a new vehicle, but Council approves the purchase. The Chief is not required to obtain the Mayor's approval before recommending a new vehicle purchase. No purchases require the Mayor's approval. (N.T. 28)

15. The Chief is the Police Department's liaison to the media. He is not required to obtain approval from anyone before speaking to the media, but he informs the Mayor out of courtesy. The Chief can schedule a press conference without Mayoral approval. Chief Woodward has spoken to local newspapers and television stations approximately 10 times since he became Chief in August 2021, regarding drug related problems and other quality-of-life issues affecting Borough residents. (N.T. 29-30, 63)

16. The Chief can assign officers to patrol community events without approval. If covering a special event or if providing coverage at the request of a third party will result in overtime, the Chief will obtain approval from the Mayor. The Chief does not need anyone's approval for overtime that results from filling vacancies in the regular patrol schedule, resulting from call-offs or from officers working beyond their designated shift to complete matters that arise at the end of their shift. (N.T. 31-32, 65)

17. Currently, there is a shortage of available police officers across the Commonwealth. Many police departments are hiring full-time officers leaving fewer officers available for part-time positions. When the Borough lost its civilian zoning and code enforcement officer, the Chief recommended to Council that the Borough hire an additional full-time police officer who could also assume the duties of zoning/code enforcement employe. Borough Council approved that recommendation. (N.T. 53-54)

18. The Chief directs officers to attend non-mandatory training based on his discretion. When the full-time officer became the zoning and code enforcement officer for the Borough, the Chief independently, and without any other approval, sent the officer for training, which also required the allocation of financial resources. The Chief can authorize expenditures under \$500 without approval. (N.T. 42-44, 66)

19. Chief Woodward determines, without input from Council or the Mayor, the number of officers assigned to any given shift. The Chief can add an officer to a shift without approval, which results in extra costs to the Borough. (N.T. 48-49)

DISCUSSION

The Borough argues that the position of Chief of Police is a managerial position. The standard for determining whether a position in a police department is managerial is set forth in Fraternal Order of Police Star Lodge No. 20 v. PLRB, (Star Lodge) 522 A.2d 697 (Pa. Cmwlth. 1987). The Star Lodge test lists 6 disjunctive areas of discretion and authority for determining whether a police department position is managerial, 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 serious disciplinary action; (4) Budget formulation; (5) Purchasing decisions; or (6) Independence in public relations. Independent discretion and authority under any one of the Star Lodge factors makes a manager. Dalton Borough v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001); In the Matter of the Employees of Indian Lake Borough, 40 PPER 39 (ODSEL, 2009). The Union, however, contends that the Borough has failed to meet its burden of establishing any of the Star Lodge factors and that the Chief is not a management level employe.

The Borough has met its burden of establishing with substantial, competent evidence that the Chief of Police is a management level employe within the meaning of the Star Lodge criteria, as addressed below. Significantly, the Mayor credibly testified that he has delegated daily administrative and managerial operations of the Police Department to the Chief of Police and that the Chief has the full authority to formulate and implement policies and policy changes.

The record shows that Chief Woodward has exercised independent discretion and authority in the area of policy formulation through the initiation of policies and directives as well as policy implementation through program development. Chief Woodward researched and developed the Police Department's body camera policy. He also researched and selected the body camera hardware to ensure conformity with approved body camera devices in Pennsylvania. Chief Woodward borrowed from other police departments' policies and formulated a body camera policy for the Borough's Police Department, which he then submitted to Council for approval. In Dalton, supra, the Board and the Commonwealth Court agreed with the hearing examiner that formulating policy based on examples from other police departments constitutes the valid exercise of managerial authority and discretion. The Mayor was not involved in the development and implementation of the body camera use policy or the selection of devices. Moreover, Chief Woodward is currently changing the Standard Operating Procedures Manual for the Department without approval from the Mayor or Council.

The record also shows that the Chief exercises discretion and authority regarding overall personnel responsibility and administration through effective involvement in hiring and disciplinary action. The Chief can reject any police officer applicant before the hiring process progresses to interviews or the Civil Service Commission process. Also, he personally conducts the background checks on the applicants. For part-time applicants, the Chief and the Mayor conduct interviews and together they decide whether to hire the part-time applicant or which applicant to select. Accordingly, the Chief is very effectively involved in the hiring of part-time officers. The process for hiring full-time officers involves more procedures that somewhat diminish the role of the Chief, such as the written exam, the Civil Service Commission, and the oral exam by a 3-member board. However, the Chief is still very effectively involved in the hiring of full-time officers.

Moreover, Chief Woodward effectively recommended expanding the Police Department by adding a full-time officer position, which was approved by Council. Due to a shortage of officers available for part-time positions, Chief Woodward recommended to Council that the Borough create another full-time police officer position, which could assume the duties of the civilian zoning and code enforcement employe when he/she resigned. The Council adopted that recommendation which restructured the provision of Borough services and increased the commitment of financial resources for the full-time officer in the Department. The change constituted a major policy shift affecting policing in the Borough to include code enforcement, which was formerly a civilian operation. The Chief, therefore, is effectively involved in overall personnel and administrative management as evidenced by his expansion of the police force and by his hiring of new officers.

Also, the Chief can allocate resources and direct personnel by increasing the number of officers assigned to any given shift without input or approval from the Mayor or Council. He assigns officers to patrol community events without approval. If covering a special event or providing coverage at the request of a third party will result in overtime, the Chief will obtain approval for that overtime from the Mayor. But the Chief does not need anyone's approval for overtime that results from filling the regular patrol schedule. The Chief also exercised personnel and administrative management when he required the officer performing the new code and zoning enforcement duties to receive non-mandatory training at the Borough's expense, without approval.

Chief Woodward has also exercised discretion over discipline. The Chief personally investigates and issues discipline to officers without prior approval for all discipline below suspension. In one instance, the Chief ordered an officer to attend firearms training. The officer failed to attend the training, and the Chief independently decided to issue discipline without involvement from the Mayor. Also, the Chief implemented provisions of the Police Department's Standard Operating Procedures Manual by imposing the level of punishment provided in the Manual for the specific offense. Although Chief Woodward informed the Mayor of the discipline as a courtesy, Mayor Szczecina simply told the Chief to do what he felt was necessary.

However, Star Lodge and its progeny require that, to satisfy the element of overall personnel responsibility and administration, the alleged managerial employe must be effectively involved in the hiring process, the effective recommendation of "serious" discipline, and the effective recommendation of termination. The imposition of minor discipline is

indicative of supervisory status instead of managerial status. Star Lodge, supra. Under Star Lodge, serious discipline includes suspension and/or termination, but not reprimands, warnings or relieving an officer on duty. In Warminster Township, 50 PPER 26 (Final Order, 2018), the Board dismissed the employer's argument that the elements of establishing overall personnel administration responsibility are disjunctive. The Board specifically opined, in relevant part, as follows:

However, the overall personnel administration responsibility criterion is comprised of effective involvement in three elements (hiring, serious disciplinary actions and dismissals). These elements are set forth in the conjunctive, meaning all three must be present to establish overall personnel administration responsibility. North Wales Borough, 39 PPER 10 (Final Order, 2008); see City of Nanticoke, 39 PPER 126 (Proposed Order of Unit Clarification, 2008); Wrightsville Borough, 39 PPER 134 (Order Directing Submission of Eligibility List, 2008). The Township argues on exceptions that the Board should overrule North Wales, and hold that the overall personnel administration responsibility criterion is itself disjunctive. However, such a reading would be inconsistent with Star Lodge. Indeed, Star Lodge, recognized six criteria for management status. To read the overall personnel administrative responsibility criterion in the disjunctive, as suggested by the Township, would expand the Star Lodge test beyond the six criteria outlined by the Commonwealth Court. Furthermore, as the Commonwealth Court recognized in Star Lodge, its test for managerial status was developed to recognize the Board's case law holding that management level authority over personnel matters is more than mere exercise of supervisory duties. See Dalton Police Association v. PLRB, 765 A.2d 1171 (Pa. Cmwlth. 2001).

Absent evidence of effective involvement in all three elements of hiring, firing and serious discipline, which would support a finding of overall personnel administration responsibility, performance of only one or two elements amounts to no more than carrying out supervisory duties. Thus, under Star Lodge, to establish managerial status through the criterion of overall personnel administration responsibility, there must be evidence that the position at issue is effectively involved in hiring, issuing serious discipline and dismissals. North Wales Borough, supra.

Warminster Township, supra.

Chief Woodward certainly has overall personnel administration responsibility, as commonly understood. However, there is no evidence on this record that Chief Woodward or his predecessor had occasion to recommend serious discipline and terminations. Although the Chief is effectively involved in the hiring process, exercising such authority, without also exercising the authority to effectively recommend the imposition of serious discipline and terminations, is not sufficient for overall personnel administration responsibility, under Star Lodge.

The record does demonstrate, however, that the Chief has managerial authority and discretion in the areas of budget formulation and purchasing decisions. The Chief annually submits to the Borough Secretary/Treasurer a

list of equipment and supplies that he wants for the upcoming budget year. The Secretary/Treasurer incorporates the Chief's list into a budget report for Council approval. The Chief's list is a departure from and in addition to the prior budget. Council has consistently approved the list without modification. The Chief requested body cameras for budget year 2022, and a new patrol vehicle for budget year 2023, with Council approval.

The Chief is also the Police Department's managerial spokesperson authorized to represent and bind the Police Department to the media, without prior approval, although he will notify the Mayor as a courtesy. The Chief can schedule a press conference without Mayoral approval. Chief Woodward has spoken to local newspapers and television stations approximately 10 times since he became Chief of Police in August 2021, regarding his promotion to Chief of Police, drug related problems, and other quality of life issues affecting Borough residents.

Clearly, the Mayor and the Borough Council Members have placed their trust in this Chief to solely manage the Police Department. The managerial authority of Chief Woodward is demonstrated by the extensive amount of control that the elected officials have given him and that he exercises over Police Department operations, policies, and personnel. The Mayor and Council rely extensively on Chief Woodward's discretion to make prudent purchasing decisions and budget recommendations, some of which have been significant expenditures, which Council has approved without hesitation. Also, the Mayor and Council undoubtedly trust Chief Woodward's judgment in speaking to the media and the community about events or circumstances affecting the Borough's residents and the Police Department.

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 the Acts.
2. The Union is a labor organization within the meaning of the Acts.
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 the Acts, 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 seventh day of June, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Jack E. Marino

JACK E. MARINO
HEARING EXAMINER