

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ROSETO POLICE ASSOCIATION :  
 :  
 :  
 v. : Case Nos. PF-C-10-58-E  
 : PF-C-10-113-E  
 : PF-C-10-165-E  
ROSETO BOROUGH :

**PROPOSED DECISION AND ORDER**

On April 23, 2010, the Roseto Police Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111, at Case No. PF-C-10-58-E, and therein alleged that Roseto Borough (Borough) violated Section 6(1)(a), (c) and (e) of the PLRA by unilaterally eliminating all full-time positions and establishing a wage scale for part-time officers.

On May 11, 2010, the Secretary of the Board (Secretary) issued a complaint and notice of hearing assigning the matter to Hearing Examiner Timothy Tietze and scheduling a hearing for July 22, 2010, in Allentown, Pennsylvania. Mr. Tietze granted the Borough's continuance request and rescheduled the hearing for October 19, 2010.

On July 29, 2010, the Union filed with the Board a charge of unfair labor practices, under the PLRA and Act 111, at Case No. PF-C-10-113-E, and therein alleged that the Borough violated Section 6(1)(a), (c), (d) and (e) of the PLRA. The Union specifically alleged that the Borough retaliated against Officer Jane, Union President, for pursuing negotiations for an initial collective bargaining agreement and for filing the prior charge at No. 10-58, by suspending her under the pretext of engaging in certain alleged misconduct.<sup>1</sup> On August 17, 2010, the Union filed an amended charge alleging that the Borough terminated Officer Jane for discriminatory reasons.

On August 12, 2010, the Secretary issued a complaint and notice of hearing assigning the matter to Mr. Tietze and scheduling a hearing for October 19, 2010, thereby consolidated Case Nos. 10-58 and 10-113 for hearing purposes. On October 19, 2010, Mr. Tietze granted the parties' joint request for a continuance of that hearing to pursue settlement discussions.

On November 4, 2010, the Union filed with the Board a charge of unfair labor practices, under the PLRA and Act 111, at Case No. PF-C-10-165-E, and therein alleged that the Borough violated Section 6(1)(a), (c), (d) and (e) of the PLRA. The Union specifically alleged that the Borough retaliated against Chief of Police, Jack Nicholais, for pursuing Act 111 interest arbitration on behalf of the Union after Officer Jane was terminated and for planning to testify at a previously scheduled unfair practice hearing, by terminating his employment on November 2, 2010.

On November 23, 2010, the Secretary issued a complaint and notice of hearing assigning the matter to me and scheduling a hearing for December 10, 2010, in Harrisburg. On December 1, 2010, I continued the hearing to December 14, 2010. On December 2, 2010, I granted the Borough's request for a continuance of the December 14, 2010, hearing and rescheduled the hearing for December 20, 2010. By letter dated December 9, 2010, I informed the parties that the two cases previously assigned to Mr. Tietze had been reassigned to me; I consolidated them for hearing purposes with Case No. 10-165, already assigned to me; and I scheduled the consolidated hearing for December 20, 2010. Eventually, three days of hearing were held on the three consolidated charges: December 20, 2010, February 4, 2011 and February 16, 2011. During the hearings on those dates, the

---

<sup>1</sup> Officer Jane is not the real name of the Officer.

Borough and the Union were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Union and the Borough both filed post-hearing briefs.

The hearing examiner, on the basis of the testimony and exhibits presented at the hearings and from all other matters and documents of record, makes the following:

#### FINDINGS OF FACT

1. The Borough is a political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 4).

2. The Union is a labor organization within the meaning of Act 111 and the PLRA. (N.T. 4).

3. Jack Nicholais was the Chief of Police for the Borough between August 2006 and November 2010. On December 1, 2008, the Chief and the Borough entered into an employment contract effective January 1, 2009 through December 31, 2010. (N.T. 351; Borough Exhibit 3).

4. On December 1, 2008, Officer Jane and the Borough entered into an employment contract effective January 1, 2009 through December 31, 2010. Officer Jane was hired as a full-time officer for the Borough after working as a part-time officer for the Borough since 2002. (N.T. 230-231; Borough Exhibit 4).

5. Paragraph 8 of Officer Jane's employment contract provides, in relevant part, as follows:

Notwithstanding the fact that the parties have entered into this written Agreement, the Employee acknowledges herein that she is an at-will Employee and that this Agreement may be terminated by either party for any reason whatsoever upon two week's notice in writing to the other party. Additionally, in the event of a violation of the material terms and conditions of this Agreement by either party, the other party may terminate the Agreement without advance notice and with pay only to the date of termination. The employer may also terminate this Agreement at any time without advance notice in the event the Employee is guilty of any immoral or illegal conduct tending to injure the reputation of the Employer or which is, in the opinion of the Employer, adverse to the performance of her duties as a full-time police officer.

(Borough Exhibit 4).

6. Officer Jane was the lead organizer of the Union. On April 13, 2009, Officer Jane filed a petition for representation with the Board. After a mail ballot election, the Board certified the Union as the exclusive collective bargaining representative on June 10, 2009. (N.T. 262, 351-352; PERA-R-09-45-E).

7. In July 2009, Officer Jane approached the Borough to initiate collective bargaining. She was advised by the Borough solicitor that she missed the statutory deadline for bargaining in 2009 for 2010. (N.T. 231).

8. In October 2009, Officer Jane was reprimanded for failing to notify the Northampton County Communications Center (Comm. Center) that she was on duty. The Comm. Center was reporting to citizens of the Borough that no officer was on duty when in fact Officer Jane was on duty. (N.T. 264-265, 388).

9. On January 22, 2010, Officer Jane hand delivered a letter, dated January 21, 2010, to Mayor Desiree DeNicola requesting bargaining for the contract term to commence in January 2011. Attached to the letter was a list of nineteen matters about which the Union sought to bargain. Officer Jane sent the same letter and attachment to Borough

Council President Michael Romano. Officer Jane hand delivered the letter and attachment to Mr. Romano on February 11, 2010. Mr. Romano knew of Officer Jane's and the Chief's involvement in the Union. (N.T. 101-103, 157, 167, 234, 378; Police Exhibit 1).

10. The list included the following items: wage and salary increases, contract duration, longevity for full-time officers, work hours, overtime pay, court appearances, meal and mileage allowances, insurance provisions for full time officers, retirement health insurance for full time officers, sick leave for full time officers, funeral leave for full-time officers, holidays, vacation time, uniform and equipment, pension, school and seminars, grievance procedure, drug testing and payroll deductions. (Police Exhibit 1).

11. On February 10, 2010, Chief Nicholais slipped and fell while on duty during a snow storm. He injured his back and right knee. He was on light duty until March 3, 2010. Between March 3, 2010 and May 25, 2010, the Chief was off work on full workers' compensation. The Chief was on light duty from May 25, 2010 until November 2, 2010. Chief Nicholais did not return to full duty any time after his injury. (N.T. 93, 380-381, 486-487).

12. Chief Nicholais has significant knee problems. At Borough Council meetings, Chief Nicholais needed help standing and had difficulty walking. Council Member Kenneth Tillman observed that the Chief was bent over and needed to hold on to the podium for balance. Chief Nicholais admits that he is unable to perform the physical and confrontational duties of a police officer on full duty. The Chief's injuries prevent him from patrolling and his physician would not permit him to patrol. (N.T. 78-80, 94-95, 382-384)

13. Sometime after the delivery of the bargaining proposals, Borough police officers received notice of a police department meeting with Borough Council scheduled for February 18, 2010. (N.T. 235, 352).

14. Council Member Tillman is the chairperson for the law and personnel committee. Mr. Tillman chaired the February 18, 2010 law and personnel meeting with the police department. Also present at the meeting was the Mayor, Council Member Craig DeFranco, Council Member Jonathan Caponigro, the Borough solicitor plus three police officers: Chief Nicholais, Officer Jane and Officer Kitler. (N.T. 11-13, 51-52, 159, 165-166, 235-236, 266, 300; Police Exhibit 2).

15. At the February 18, 2010 meeting, Mr. Tillman informed the police officers that he was recommending the elimination of the full-time police department and that the department would be completely part time. The stated reason for the proposed change was to save money by paying part-time officers less wages than full-timers and less than part-timers previously earned and by avoiding automatic annual raises as well as paid time off. Council Member Romano and Mayor DeNicola understood that the proposal contemplated the re-application of the two full-time officers for part-time positions. The two officers would not automatically be made part-time officers. (N.T. 16, 30-33, 51-52, 56-57, 85, 111-112, 127, 161-164, 178, 235-236, 238, 351-352, 494; Police Exhibit 2).

16. The Borough's surplus on December 31, 2005 was \$200,000. At the end of 2009, the budget surplus was \$56,000. In 2010, the year-end budget surplus was \$121,000. A one-Mill tax increase was passed for 2010. The same year, the Borough eliminated expenditures on street repairs, charitable and library donations and the Borough's 100-year anniversary celebration fund. No streets were repaired in 2010. The Borough promoted the Borough Secretary to Borough Manager and compensated her for the additional hours she worked. In 2010, the Borough financed a new truck at the approximate cost of \$48-50,000. (N.T. 20-21, 26-30, 117, 120, 122-126, 149, 163, 183, 186-187, 268, 491-492; Borough Exhibits 7 & 8).

17. At the Borough Council meeting on March 1, 2010, Mr. Tillman moved to transform the police department into a completely part-time police force effective January 1, 2011. (N.T. 56; Borough Exhibit 1).

18. There were citizens at the March meeting of Borough Council who voiced concern about eliminating the full-time police force. After debating the matter at the March meeting, Mr. Tillman withdrew the motion and no action was taken. (N.T. 53-54, 126, 146, 168, 173, 300, 319-320, 495).

19. Under Mr. Tillman's proposal, the part-time police force would provide the exact same police coverage as the full-time police force, i.e., 96 hours per week. Changing to an all part-time force would save an estimated \$17,000 per year. (N.T. 32-33, 55-57, 85, 107-109, 146, 161; Borough Exhibit 1).

20. The written motion for the part-time police force provides, in relevant part, as follows:

- Effective date will be January 1, 2011

- ALL officer[s] become part time

- Part time means a maximum of four, eight hour shifts per week. 12 shifts total for entire department. Exception may apply during the year when additional officers are needed. The Mayor will recommend additional time and with the approval of the Finance committee along with the Borough Manager the action will be taken.

- Elimination of the title Chief of Police

- Establish a new position called "Officer in Charge"

- All officers that work a holiday will receive time and half

- Seven holidays are given in a calendar year

- New Years Day
- Easter
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving
- Christmas

- A new base rate for part time will be \$16.00/hour

- A new "Loyalty" rate of .15 per hour

- This .15 per hour for every year an officer works for Roseto Borough

- The Officer in Charge patrolman will receive an additional \$2.00 per hour

- Shifts will be determined on a rotating basis starting with the most senior officer

- Minimum savings to Borough is over \$17,000 per year and expected to be higher in 2011.

(Borough Exhibit 1).

21. Michael O'Connor is a Borough resident who circulated a petition among Borough residents in support of maintaining the full-time positions. While seeking signatures, Mr. O'Connor came upon Mr. Tillman's home and talked with Mr. Tillman about the police department and a public works position for himself. (N.T. 217-225).

22. At the April 5, 2010 public meeting, Borough Council voted to adopt Resolution No. 395. The Resolution eliminated the full-time police force, effective

January 1, 2011, and adopted the terms outlined in Mr. Tillman's March 2010 motion. Paragraph 5 of the Resolution provides that "[t]he Office of Chief of Police and all other subordinate officer classifications inconsistent with the terms of this Resolution shall be abolished by Ordinance." (N.T. 55-56, 238-239, 495; Borough Exhibits 1 & 5).

23. At the May 3, 2010 public meeting, Borough Council adopted Ordinance No. 402. Paragraph 1 provides that "[t]he Office of Chief of Police created by Section 32-1 of the Codified Ordinances of the Borough of Roseto shall be abolished." Paragraph 2 provides that "[S]ection 32-2 of the Codified Ordinances of the Borough of Roseto entitled 'Subordinate officer classifications' shall be repealed effective January 1, 2011. (N.T. 498-499; Borough Exhibit 6).

24. Council Member Ruck voted for a part-time police force due to the budget, lack of revenue, lack of development in the Borough and the Borough's large elderly population. (N.T. 339).

25. Sometime in spring of 2010, Officer Jane drove her marked police cruiser on a one-way street, called Clay Street, in the opposite direction without emergency lights or sirens. A civilian witnessed and reported the incident. (N.T. 36-37, 60-62, 273-276).

26. Cathy Martino was the Borough Secretary for eighteen years from 1991 to 2009. On January 1, 2010, she became the Borough Manager. As Borough Secretary and then Manager, Ms. Martino attended to the daily operations of the Borough including but not limited to the following: payroll, accounts payable and receivable, Council meeting minutes, telephone calls and contact with residents for collecting tax bills or sewer bills. (N.T. 480).

27. Since 1991, in doing the payroll for the police department, Ms. Martino would always receive the police schedule, from either the Mayor or the Chief, in advance of any given month. Sometimes it would be late. Beginning in 2010, the Chief gave the police schedules for the upcoming month to the Mayor until he received a letter from the Borough solicitor and then he again gave them directly to the Borough Manager. (N.T. 361, 389-390, 487-489).

28. The Chief was out of work collecting full workers' compensation benefits as of March 3, 2010, and Ms. Martino had not yet received the police schedule. Officer Jane was appointed the Officer in Charge by Mayor DeNicola. Officer Jane sent a memo to Ms. Martino stating that she would not supply the police schedule until the month was over and that, if she wanted it, she could fill out a right-to-know form. (N.T. 489-490, 510).

29. On April 21, 2010, Officer Jane attended the first of a two-day Mandatory Police Update training course provided by Lackawanna College. She did not attend the second day of training. (Borough Exhibit 10).

30. In the early morning hours of April 22, 2010, Officer Jane and her husband had a domestic dispute. Officer Jane drove her car barefoot and in a short sleeve shirt in cool temperatures to a neighboring police department. At that police department, she spoke with an officer she knew about the incident. She was extremely upset. Officer John investigated and notified other police departments. The officers decided to involve the District Attorney.<sup>2</sup> (N.T. 250-252, 457-465; Borough Exhibit 2).

31. While awaiting the Assistant District Attorney's return telephone call, Officer Jane, referring to her husband, told Officer John: "They're thinking about locking him up. I won't testify, I'll just say that I lied, or I'll recant everything that I said and I want to talk to the DA when they call." (N.T. 66, 285, 462-464; Borough Exhibit 2).

32. While another officer was on the telephone with the assistant district attorney, Officer Jane thrust a piece of paper in Officer John's direction that stated:

---

<sup>2</sup> Officer John is not the real name of this officer.

"I will not testify!" This statement was signed by Officer Jane with her name in print also. (Borough Exhibit 2).

33. As a result of the domestic dispute and interviewing with police for several hours, Officer Jane took a personal day instead of attending the second day of training. She noted "training" on her time card for April 22, 2010 and forgot to replace it with "personal day." (N.T. 40, 72, 253-255, 336-338).

34. Officer Jane attended a meeting with Council members on the police committee on May 25, 2010. When she arrived at the meeting, she appeared frustrated and aggravated. During the meeting, Officer Jane sat hunched over and appeared to be texting and ignoring Council members. The Council members discussed the Clay Street incident as well as Officer Jane's refusal to provide the requested police schedule. Council Member DeFranco asked Officer Jane to produce the police schedule and she refused. Also during the meeting, Officer Jane admitted to traveling the wrong way on Clay Street and explained that she was meeting a confidential informant. She was "flippant" in her response. (N.T. 276, 280, 308-309, 320-321, 323-325; Police Exhibit 4).

35. Council Member John Caponigro, Chairman of the Police Committee, read about Officer Jane's domestic dispute in the newspaper. Based on that article, he asked Council Member Ruck to contact the District Attorney's office to obtain a report on the April 22, 2010 incident. During the May 25, 2010 police committee meeting, Officer Jane was asked about the domestic incident and she refused to talk about it. (N.T. 303, 307, 310 326, 342; Police Exhibit 4).

36. Council Member Ruck contacted the Lackawanna County Community College and learned that Officer Jane did not attend training on April 22, 2010. Officer Jane's time card for that day indicated an 8-hour training day. She received three hours of overtime pay for that week. (N.T. 40, 72, 256, 336-338).

37. The Council members discussed the impact on the Borough as a result of Officer Jane's position that she would lie if required to be a witness against her husband. Council Member Tillman concluded that Officer Jane's dishonesty could harm the Borough's reputation and negatively impact Officer Jane's duties as a police officer. Mayor DeNicola supported Officer Jane's suspension because of her statement that she would lie about the domestic incident and because of the alleged involvement of a firearm in the domestic incident. (N.T. 70-71, 75, 520).

38. In mid-July, Police Committee Council members and Mayor DeNicola met with Officer Jane and informed her that she was suspended based on three incidents: driving a Borough police vehicle in the wrong direction on Clay Street; Officer Jane's refusal to provide the Borough Manager with a timely and accurate police schedule, while substituting for the Chief as Officer in Charge; and Officer Jane's involvement in a domestic dispute involving a firearm which she failed to report to the Borough. At this meeting, Officer Jane did not respond to the allegations. (N.T. 35-37, 60-65, 90, 132-133, 189-190, 199-202, 242, 245-246, 260, 277, 312-314, 327-330, 335; Police Exhibit 4).

39. Officer Jane was terminated at the Borough Council meeting on August 2, 2010, by all but one Council member. (N.T. 260, 312-314, 317; Police Exhibit 4).

40. Sometime prior to receiving his non-renewal letter, dated November 2, 2010, Chief Nicholais's physician informed him that he was a candidate for knee surgery. The Chief then informed Council Member Tillman that his physician wanted him on light duty. Mayor DeNicola has witnessed the Chief's knee give out and she almost had to catch him. The Chief told the Mayor that he was in great pain after physical therapy sessions. Just prior to November 2, 2010, the Chief told Mayor DeNicola that he would have to be out another eight or nine months depending on his doctor's advice and he may need a knee replacement. Mayor DeNicola was performing some of the Chief's duties due to his condition. The Chief often called off when his knee swelled. (N.T. 190-191, 204, 371, 383-384, 441).

41. Mayor DeNicola, Council Members Tillman, Ruck and DeFranco all went together on the morning of November 2, 2010 to hand deliver the Chief's non-renewal letter to show solidarity in their decision. This was handled peacefully and professionally. In November 2010, Mayor DeNicola and another officer cleaned the police station and discovered a backlog of mail and paperwork to which the Chief had not attended. In the backlog of mail, there were unopened subpoenas or letters requiring the attendance of officers in court for a date that had passed. (N.T. 207-210, 442-444).

42. The Policy and Procedures Manual of the police department applies only to the police department, and it is not binding on Council members. (N.T. 395-396, 528; Borough Exhibit 15).

The Disclaimer contained in the Policy and Procedures Manual provides the following:

1. This manual is designed only to be a general guide to some key policies. . . . this manual is not intended to create any contractual or other legal rights. It is designed solely as a guide and does not alter your at-will employment status. . . .

2. These policies and procedures are for internal use only, and do not enlarge an officer['s] civil or criminal liability in any way. They should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of these policies and procedures, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

(Borough Exhibit 15).

## DISCUSSION

### 1. PF-C-10-58-E

In this charge, the Union alleged that the Borough engaged in unfair practices under Section 6(1)(a), (c) and (e) by eliminating the full-time police force and unilaterally changing wages and other terms and conditions of employment for part-time officers after being presented with bargaining demands. The Union claims that the change constitutes a bargaining violation, an independent 6(1)(a) for interfering with, restraining and coercing bargaining unit members in the exercise of protected rights as well as retaliation for engaging in those protected activities.

#### A. Bargaining Violation

The Board has held that an employer must maintain the status quo as to mandatory subjects of bargaining pending an initial collective bargaining agreement or interest arbitration award with its employees' exclusive bargaining representative. International Brotherhood of Electrical Workers v. Upper Leacock Township, PERA-C-11-71-E (Final Order, November 15, 2011); Moshannon Valley Education Support Professionals v. Moshannon Valley School District, 41 PPER 81 (Final Order, 2010). The Board has also held that "[a] public employer's decision to eliminate positions and to reassign the duties of those positions to other bargaining unit members falls within the employer's managerial prerogative." Association of Pennsylvania State College and University Faculties v. State System of Higher Education Kutztown University, 43 PPER 52 (Final Order, 2011). In this case, the Borough did not possess a duty to bargain the elimination of the positions of Chief and the subordinate full-time officer position.

However, Section 1 of Act 111 expressly provides that compensation and wage scales are mandatory subjects of bargaining and may not be changed unilaterally during the

status quo period following certification and pending an initial contract or interest award. An employer commits a bargaining violation by changing wages after a union is certified without negotiating those changes with the exclusive bargaining representative. Moshannon Valley, supra. Also, the Commonwealth Court has held that an employer violates its bargaining obligations to its police employees' bargaining representative when it unilaterally changes or establishes scheduling, holidays or vacation days affecting the entire bargaining unit. Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). In this regard, the Upper Saucon Court opined as follows:

In this case, it requires no stretching of definitions to see that shift schedule assignments relate closely to hours. In fact, shift assignments would seem to fall within the meaning of "minimum distribution of . . . hours throughout the days of the week." Therefore, we reject the Township's contention that the shift system change at issue here is not a mandatory subject of bargaining because it does not concern "hours" as that term is used in Act 111.

We likewise reject the Township's contention that the shift system change, affecting as it did the scheduling of days off, does not concern "terms and conditions of . . . employment." 43 P.S. § 217.1. Whether a given subject is "a term or condition of employment" or a matter of managerial prerogative should be determined in the first instance by the PLRB. In its Final Order, the PLRB stated:

"As the hearing examiner noted, in this case there can be no doubt that the schedule change is rationally related to the police officers' duties. Furthermore, the Pennsylvania courts have cited with approval federal case law holding that changes in work schedules constitute changes in working conditions and are therefore mandatorily negotiable. We likewise find that the change in the shift system in this case constituted a unilateral change in working conditions and accordingly affirm the hearing examiner's finding of an unfair practice.

(Final Order at 3 (citations omitted).) This is in accord with our discussion in City of Harrisburg, wherein we noted with approval cases decided under PERA and the National Labor Relations Act which held that "matters having to do with 'break time,' indistinguishably similar to . . . days off scheduling . . . , have been held to be matters which must be subject to bargaining." City of Harrisburg, at 197, 471 A.2d at 168. Accordingly, we affirm the PLRB's determination that the shift system change was a mandatory subject of bargaining under Act 111."

Upper Saucon, 620 A.2d at 75 (citations omitted).

The record shows that the Borough unilaterally adjusted the hourly wages of the part-time officers in the bargaining unit and unilaterally established a new shift rotation as well as recognized holidays, without bargaining with the Union. (F.F. 20 & 22). Accordingly, the Borough engaged in unfair practices in violation of Section 6(1)(e) when it adopted Resolution No. 395 which incorporated the terms and conditions of employment for the part-time officers contained in Borough Exhibit 1.

## **B. Discrimination**

The Union also claims that the February 2010 proposal to eliminate the two full-time positions and the April 2010 elimination of those positions was retaliatory and discriminatory because the positions were held by officers who were actively involved in organizing the Union and pursuing bargaining.

In FOP, Lodge No. 7 v. City of Erie, 39 PPER 60 (Proposed Decision and Order, 2008), I articulated the legal analysis for a discrimination claim in the following manner:

In a discrimination claim under Section 6(1)(c) [and 6(1)(d)] of the PLRA, the claimant has the burden of proving that the employe engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employe that was motivated by the employe's engaging in that known protected activity. Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004); FOP, Lodge 5 v. City of Philadelphia, 38 PPER 184 (Final Order, 2007). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented, or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. In PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board opined that "[t]here are a number of factors the Board considers in determining whether anti-union animus was a factor in the [adverse action against] the Complainant." Id. at 380. These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employe, the effect of the employer's adverse action on other employes and protected activities, and whether the action complained of was "inherently destructive" of important employe rights. Centre County, 9 PPER at 380. The close timing of an employer's adverse action alone is not enough to infer animus, but when combined with other factors can give rise to the inference of anti-union animus. PLRB v. Berks County, 13 PPER ¶ 13277 (Final Order 1982); City of Philadelphia, supra; Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984). Evidence that the employer has failed to adequately explain its adverse actions or that it has set forth shifting reasons for an adverse action can support an inference of anti-union animus and may be part of the union's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). Montgomery County Geriatric and Rehabilitation Center, 13 PPER ¶ 13242 (Final Order, 1982), aff'd, Montgomery County v. PLRB, 15 PPER ¶ 15089 (Court of Common Pleas of Montgomery County, 1984). However, mere suspicion is insufficient to sustain a discrimination charge. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974).

Only if the union establishes a prima facie case that an employer's adverse action against an employe was motivated by the employe's protected activity does the burden shift to the employer. West Shore Educ. Ass'n v. West Shore Sch. Dist., 23 PPER ¶ 23031 (Final Order, 1992). In such instances, the employer may rebut the union's prima facie case in one of two ways: (1) an employer may prove that the action complained of was taken for legitimate business reasons and not unlawful motive; or (2) the employer may prove that, despite evidence of unlawful motive, the employer would have taken the same action anyway because the legitimate business reason was the overriding, proximate cause of the adverse employment action and not the unlawful motive. Upland Borough, supra. West Shore Sch. Dist., supra; Teamsters Local Union No. 32 v. Washington Township Mun. Auth., 20 PPER ¶

20128 (Final Order, 1989). The latter is otherwise known as a "dual motive" case. Indiana Area Educ. Ass'n v. Indiana Area Sch. Dist., 34 PPER 133 (Final Order, 2003). In either defensive posture, an employer's insubstantial or pretextual explanation for adverse action coupled with close timing of that adverse action to protected activity can establish a prima facie case and a sufficient evidentiary of basis to find a violation of Section (6)(1)(c). Colonial Food Service Educ. Personnel Ass'n v. Colonial Sch. Dist., 36 PPER 88 (Final Order, 2005); Lehigh Area School District v. PLRB, 27 PPER ¶ 27001 (Pa. Cmwlth., 1996).

City of Erie, 39 PPER at 204-205.

The Borough, in its post-hearing brief, concedes that the record establishes the first two prongs of the Duryea Borough standard. The Borough stated that "[t]here is no doubt that the two officers who formed the Association [Union], Chief Nicholais and Officer [Jane], were engaged in activity that is protected by the Act [PERA]. Additionally, the Borough was clearly aware that they engaged in such activity." (Borough's Post-hearing Brief at 26). As properly articulated by the Borough, therefore, "the critical question is whether any action of the Borough was undertaken in response to those employees having engaged in protected activity or whether there were separate, legitimate reasons for each action taken." (Borough's Post-hearing Brief at 27).

On this record, the Union did not establish that the Borough's elimination of the two full-time police officer positions was unlawfully motivated. Although the timing of the proposed and actual elimination of the two positions (in February and April 2010 respectively) closely follows the Union's bargaining demands in July 2009 and in January 2010, timing alone is insufficient to draw an inference of Union animus, leaving mere suspicion, which is insufficient to sustain a discrimination charge.

The Union claims that Council Members Romano and Tillman made anti-union statements. (Union's Post-hearing Brief at 21-22). The Union specifically claims that, at the March 2010 Council meeting, Mr. Romano replied to a request by the Chief to hire a third full-time officer with law enforcement stimulus money by stating that, if a third full-time officer were hired, the police would unionize. (Union's Post-hearing Brief at 21-22). However, Mr. Romano credibly testified that he did not make that statement or any other statements expressing opposition to the Union or unionizing. (N.T. 145). I also do not credit the statement because in March 2010, Mr. Romano who is Borough Council President and received the Union's bargaining proposals in January 2010, was well aware that the Union was already certified. Mr. Romano knew that a third full-time officer was unnecessary to form or maintain the Union as certified by the Board.

The Union further claims that Mr. Tillman told Mr. O'Connor, a Borough resident who circulated a petition in support of maintaining the full-time police force, that the Borough cannot afford the Union, Union wages or the impact of police unionizing. The Union also claims that Mr. Tillman made similar remarks about being unable to afford Union wage demands at the March 2010 Council meeting. Mr. Tillman credibly and categorically denied making either of those statements. He also credibly denied making any statements to any person regarding the police unionizing or collective bargaining. (N.T. 34-35). Also Council Member Ruck credibly and categorically denied making any statements referring to the Union or the cost to the Borough of the Union. Mr. Ruck further stated that anyone who stated anything to the contrary would not be correct. (N.T. 302).

Alternatively, in PLRB v. City of Easton, 9 PPER ¶ 9109 (Nisi Decision and Order, 1978), the Board held that a public official may make non-threatening statements concerning the financial impact on the public employer resulting from union demands and that it is not evidence of animus to say that a union cost more money. In City of Easton, the mayor made statements indicating that layoffs could result if an arbitration award provided in excess of the six percent wage increase that the employer had budgeted for the firefighters. The union claimed that the statement intimidated the firefighters and evidenced a take-it-or-leave-it approach to bargaining. The Board opined as follows:

The Complainant has not satisfied us that the Mayor threatened to layoff firefighters or that the statements worked to interfere with the right to proceed to arbitration. Instead, we believe these statements to be nothing more than an expression of one of the avenues left to Respondents. That this was the eventual course pursued by the City does not transcend this statement into a threatening, coercive, and/or intimidating statement. The Mayor's expression was an economic reality. As a public official in the midst of contract negotiations it is not unusual and may in fact be his responsibility to keep the public informed as to the progress at the bargaining table.

City of Eaton, 9 PPER at 229.

The statements attributed to Mr. Tillman and Mr. Romano, which I have concluded were not made, are non-threatening and reflect the public officials' expressions that Union demands present economic challenges for the Borough. Under City of Eaton, the Council members have a first amendment right to speak factually and truthfully to their constituents about the economic challenges presented by interest arbitration and collective bargaining, in light of union demands, as long as those statements are not threatening and no adverse action is taken against employees in retaliation for unionizing or bargaining. In this case, there is a nexus between the elimination of the two full-time positions and the dire economic circumstances confronted by the Borough. There is, however, no substantial evidence of a retaliatory or discriminatory motive connected to the elimination of the two full-time positions nor are there threatening indications in the statements alleged.

Although the Union did not establish a prima facie case of discrimination and the burden of proof, therefore, did not shift to the Borough, the Borough proved with substantial, credible evidence that the reasons for eliminating the full-time police force were financially motivated and not discriminatorily motivated.

The Borough has an extensive elderly population living on fixed incomes. There is little or no development occurring in the Borough that would yield a tax-base expansion. The Borough's revenues have been declining over the past five years whittling away at the Borough's surplus and its ability to provide basic expected services, such as street repairs and snow removal, with reliable trucks. The Borough's surplus on December 31, 2005 was \$200,000, yet by the end of 2009, the budget surplus was down to \$56,000, about one-quarter of the 2005 surplus. In 2010, the year-end budget surplus increased to \$121,000, due to a one-Mill tax increase passed for that year plus cost-cutting measures. One Mill brings approximately \$30,000 of revenue into the Borough. The Borough has eliminated expenditures on street repairs, charitable and library donations and the funding for the Borough's 100-year anniversary celebration. No streets were repaired in 2010.

Also in 2010, Officer Jane had been suspended by mid-July and terminated by early August and the Chief was collecting workers' compensation benefits for part of the year, which saved money for the Borough in salaries and which also contributed to the increased surplus for 2010. The Borough did increase some spending in that it promoted the Borough Secretary to Borough Manager and compensated her for the additional hours she worked. The Borough also financed a new truck that cost about \$48-50,000. (F.F. 16). Under Mr. Tillman's proposal, the part-time police force would provide the exact same police coverage as the full-time police force, i.e., 96 hours per week, and save an estimated \$17,000 per year. (F.F. 19). Given the elderly population on fixed incomes, the Borough did not want to keep raising taxes. The Borough has several expensive street repair projects on hold until it can raise more money through cuts and grants. Although the timing is suspect here, it is not enough to establish an unlawful motive, and I conclude that the Borough was motivated by economic challenges when it eliminated the two full-time police officer positions.

### **C. Restraint, Interference, Coercion**

In Manor Township Police Ass'n v. Manor Township, 43 PPER 57 (Final Order, 2011), the stated that it "will find that an independent violation of Section 6(1)(a) has occurred where, in light of the totality of the circumstances, the employer's action has a tendency to coerce a reasonable employee in the exercise of protected rights." Id. Unlawful motive need not be shown and even an inadvertent act may constitute a violation. AFSCME, District Council 85, Local 3530 v. Millcreek Township, 31 PPER ¶ 31056 (Final Order, 2000). In Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER 26155 (Final Order, 1995), the Board held that an employer does not violate Section 1201(a)(1) of PERA, which is the counterpart to Section 6(1)(a) of the PLRA, where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Id. at 360.

The Borough's financial reasons for eliminating the full-time police force, on balance, constitute a valid defense to the Union's claim that the Borough independently coerced, restrained or interfered with police employees' protected activities and rights by eliminating the two full-time positions after they formed a Union and presented bargaining demands. The totality of the circumstances in this case demonstrates that the Borough eliminated the full-time force because of increased public service responsibilities relating to street repairs and necessary capital purchases. Therefore, because the full-time force was eliminated for business reasons, such action, on balance, did not restrain, interfere or coerce employees in the exercise of their rights. However, I find that, under the totality of the circumstances, the Borough independently coerced, restrained and interfered with the rights of bargaining unit members by unilaterally changing wages and other terms and conditions of employment, including scheduling, without bargaining with the Union.

## **2. PERA-C-10-113-E**

### **A. Discrimination/Retaliation**

In its amended charge of unfair labor practices, the Union alleged that the Borough retaliated and discriminated against Officer Jane for engaging in protected activity (i.e., organizing the Union and attempting to negotiate on its behalf as well as filing unfair labor practice charges with the Board for disbanding the full-time police department) when it suspended her without pay on July 16, 2010 and terminated her at a regularly scheduled Borough Council meeting on August 2, 2010. The Union alleged that the charges of misconduct against Officer Jane are incorrect and thereby pretextual.

As previously mentioned, the Borough admits that Officer Jane was engaged in protected union organizing and negotiating activities, as well as the filing of unfair practice charges, and that the Borough was well aware of those activities. The Borough, however, contends that its decision to suspend and terminate Officer Jane was motivated by legitimate business reasons and not her Union activities. Again, having not credited the alleged anti-union statements made by certain Council members, there is only timing to suggest an anti-union motive, and timing alone is not substantial evidence sufficient to yield an inference of animus. I do not sit as an arbitrator and, therefore, I do not have the authority to determine whether the Borough's reasons constitute just cause for Officer Jane's dismissal or whether Officer Jane was properly disciplined and/or discharged for the charges alleged against her. I am only authorized to determine whether the Borough's actions were motivated by the charges against her or her Union activities. Here again, the Union did not meet its burden of establishing a prima facie case of discrimination because there is insufficient evidence from which to draw an inference of unlawful motive, and I do not find the Borough's reasons to be pretextual.

Although the burden did not shift to the Borough, I also find that the Borough met its burden of establishing that its reasons were lawfully motivated. In October 2009, Officer Jane was reprimanded for failing to notify the Comm. Center that she was on duty,

which caused the Comm. Center to report to Borough citizens that no officers were on duty in the Borough. Through a civilian complaint, it came to the Borough's attention that Officer Jane drove her police cruiser the wrong way on Clay Street which is posted as a one-way street. In early March 2010, the Borough Manager requested that Officer Jane, who was acting as Officer in Command while Chief Nicholais was on full workers' compensation, to supply the police schedule for that March. Officer Jane refused to supply the schedule either through the Mayor or directly to the Manager. As a result of an article in the local newspaper, Council members learned that Officer Jane was involved in a domestic dispute and obtained the investigation report from the District Attorney's office. As a result that report, which was corroborated by the responding officer at the hearing, the Borough learned that the domestic incident involved a gun and that Officer Jane told the responding officer from another township that she would recant everything she said that her husband did and that she would just lie. She wrote on a paper that she would not testify. As a result of this incident, Officer Jane missed a second day of police training and took a personal day, but noted "training" on her time card. As a result of this notation, she received three hours of overtime for the pay period because the Borough treats training as hours worked. The Borough does not treat a personal day as hours worked for purposes of overtime.

On May 25, 2010, Officer Jane met with Council members on the police committee to discuss the Clay Street incident and her refusal to provide the police schedule to the Borough Manager. Officer Jane arrived frustrated and aggravated and throughout the meeting showed little respect for Council members by texting during the meeting and blatantly ignoring the Council members. At the Meeting, Council Member DeFranco requested that Officer Jane produce the police schedule; she outright refused. Although Officer Jane admitted to the Clay Street incident, she was "flippant" in her response to Council members.

Council members discussed the impact on the Borough as a result of Officer Jane's publicized domestic incident, which involved a weapon as well as her commitment to lying if she had to testify against her husband. Council Member Tillman concluded that Officer Jane's dishonesty could harm the Borough's reputation as well as hamstringing the Borough's ability to utilize Officer Jane during hearings involving law enforcement matters on behalf of the Borough if her credibility was called into question by the defense in a case. The Mayor also agreed with Council members regarding the negative impact on the Borough as a result of Officer Jane's behavior, i.e., dishonesty. The Mayor and Police Committee Council members met with Officer Jane in mid-July and informed her that she was suspended pending further review by the full Council. At no time during that meeting did Officer Jane explain or apologize for her actions.

I believe that Officer Jane's misconduct, her contemptuous attitude toward Council members and the Borough's determination that immediate action was necessary to preserve the integrity of the Borough and its police department were in fact the proximate causes of Officer Jane's suspension and discharge, not unlawful union animus. Accordingly, the charge of discrimination and retaliation under both 6(1)(c) and (d) are dismissed.

#### **B. Restraint, Interference Coercion**

The Borough's business reasons of preserving the integrity of the Borough and the effectiveness of its police department by eliminating an officer for misconduct involving "immoral or illegal conduct tending to injure the reputation of the [Borough]," (F.F.5), is a legitimate defense that outweighs the Union's claim that the Borough independently coerced, restrained or interfered with police employees' protected activities and rights by terminating officer Jane. Manor Township, supra. The totality of the circumstances in this case demonstrates that the Borough suspended and terminated Officer Jane because she engaged in behaviors that negatively impacted on the reputation of the Borough and her own credibility as a police witness in criminal proceedings. She also engaged in behavior that demonstrated disrespect for Council members resulting in a refusal to cooperate with Council members and the Borough Manager; She refused to comply with expected protocols

and with the Council members' and the Mayor's expectations regarding the appropriate conduct of a police officer in the Borough. Therefore, because Officer Jane was suspended and terminated for lawful business reasons, such action did not restrain, interfere or coerce employees in the exercise of their rights.

### **C. Bargaining Violation**

The Union also alleged that the Borough committed a bargaining violation by ignoring the police department's operating procedures. However, by its express terms and the testimony of Chief Nicholais, the Policy and Procedures Manual of the police department applies only to the police department; it is not applicable to or binding upon Council members. The Disclaimer contained in the Manual provides that it is designed only to be a general guide and not to create any contractual or other legal rights. Furthermore, there is no evidence that the Council members had a past practice of investigating officers pursuant to the Manual. Accordingly, the Council members on the Police Committee were under no obligation to follow the suggested general guidelines of the Manual, which applied only to officers within the police department, and not Council members.

### **3. PERA-C-10-165-E**

#### **A. Discrimination**

The Union alleges that the Borough discriminated against Chief Nicholais by refusing to renew his employment contract at the end of 2010 because he was scheduled to testify at a hearing on behalf of the Union for two unfair labor practice charges (i.e., Case Nos. 10-58 & 10-113). The Borough also allegedly discriminated against Chief Nicholais because he pursued Act 111 interest arbitration and negotiations on behalf of the Union after Officer Jane was terminated. On this record, the Union did not establish a prima facie case of discrimination against Chief Nicholais. Although the Chief's protected activities and the Borough's knowledge of them are not in dispute, the Union did not demonstrate sufficient facts from which I can draw an inference of unlawful motive, other than timing, which alone is insufficient.

Although the burden did not shift to the Borough, it is clear that the Borough had legitimate and credible concerns over the Chief's health and his ability to perform his duties as a police officer. The Chief was employed under an employment contract, which by its terms made the Chief an at-will employe with no expectation of continued employment. On February 10, 2010, Chief Nicholais slipped and fell while on duty during a snow storm. He injured his back and right knee. He was on light duty until March 3, 2010, when he was off work on full workers' compensation, until May 25, 2010, when he returned to light duty. He remained on light duty until November 2, 2010, when he was terminated with pay until the end of his employment contract on December 31, 2010. Chief Nicholais did not return to full duty any time after his February 10, 2010 injury.

Chief Nicholais has significant knee problems. At Borough Council meetings, Chief Nicholais needed help standing and had difficulty walking. Mr. Tillman observed that the Chief was bent over and needed to hold on to the podium for balance. Chief Nicholais admits that he is unable to perform the physical and confrontational duties of a police officer on full duty and that those injuries prevent him from patrolling. Also, the Chief's physician would not permit him to patrol. In addition, sometime prior to receiving his non-renewal letter, Chief Nicholais's physician informed him that he was a candidate for knee surgery. The Chief then informed Council Member Tillman that his physician wanted him on light duty.

Mayor DeNicola has witnessed the Chief's knee give out and she almost had to catch him. The Chief told the Mayor that he was in great pain after physical therapy sessions. Just prior to November 2, 2010, the Chief told Mayor DeNicola that he would have to be out another eight or nine months depending on his doctor's advice and he may need a knee replacement. Mayor DeNicola was performing some of the Chief's duties due to his condition. The Chief often called off when his knee swelled. Although the Chief was on light duty during the fall of 2010, Mayor DeNicola discovered a backlog of mail and paperwork at the police station. The backlog of paperwork at the station was work that the Chief should have attended to while on light duty. The Mayor even discovered that there were unopened subpoenas or letters for officers to attend court for a date that had passed.

Clearly, the Chief's physical condition prevented him from performing the normal duties of a police officer either on patrol or in the office on light duty. The Borough was financially compromised to the point of eliminating its full-time police force, while maintaining the same number of patrol hours every week. This meant that the Borough needed every officer on duty to be capable of patrolling, and the Chief was not capable of patrolling. It was reasonable to inform the Chief that the Borough would not renew his contract. The Borough paid the Chief his full salary between November 2, 2010 and December 31, 2010. I credit the Borough's business reasons, i.e., the Chief's physical condition, and I find that those business reasons were the proximate cause of the Chief's non-renewal.

#### **B. Restraint, Interference Coercion**

The Borough's financial need to have on-duty officers who are capable of patrolling is a legitimate business reason that outweighs the Union's claim that the Borough independently coerced, restrained or interfered with police employees' protected activities and rights by refusing to renew Chief Nicholais's contract of employment. The totality of the circumstances in this case demonstrates that the Borough did not renew Chief Nicholais because his extensive physical injuries and incapacity prevented him from performing the duties of a police officer in the Borough. The Borough needed all of its paid officers providing full duty. The Chief was unable to perform patrol duties and frequently called off due to pain and incapacity and, in that regard, he was unable to properly perform even his light duty assignments. Therefore, because Chief Nicholais's contract was not renewed for lawful business reasons, such action did not restrain, interfere or coerce employees in the exercise of their rights.

#### **C. Bargaining Violation**

The Union designated a violation of 6(1)(e) of the PLRA in its charge. That Section prohibits an employer from refusing "to bargain collectively with the representatives of his employees." In Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control Board (LCB), 22 PPER ¶ 22009 (Final Order, 1990), the Board held that "the charging party must by way of its specification of charges put the responding party on notice regarding the precise nature of the conduct which is at issue in the charge." Id. at 24. In the LCB case, the Board quoted the following with approval:

"We are fully cognizant of due process considerations which arise out of the processing of unfair practice charges. Charges must be sufficiently detailed so as to put a respondent on notice of the specific conduct alleged to have been in violation of the Act, thereby allowing adequate opportunity to prepare and present the defense. Accordingly, a charging party is limited to the presentation of evidence as to the specific allegations contained in the charge as timely amended."

LCB, 22 PPER at 24. (quoting PLRB v. Lawrence County, 12 PPER ¶ 12312 at 469 (Final Order, 1981), aff'd, 469 A.2d 1145 (Pa. Cmwlth 1983))(citations omitted).

The Union did not allege facts in its specification of charges sufficient to establish a bargaining violation with respect to the non-renewal of the Chief nor did it argue or explain the nature of the alleged bargaining violation regarding the Chief's non-renewal in its post-hearing brief. Therefore, the claim of a bargaining violation is waived. LCB, supra.

Accordingly, the Union did not establish a prima facie case of discrimination in any of the three consolidated charges. The Borough met its burden of proving in all three cases that it possessed and acted upon legitimate business reasons for the actions claimed to be discriminatorily motivated by the Union in all three cases. The Borough, however, has engaged in unfair labor practices by violating its duty to bargain changes in terms and conditions of employment during the status-quo, post-certification period pending initial contract and/or interest award, as alleged in Case No PF-C-10-58-E and that charge is sustained.

### 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 public employer and a political subdivision of the Commonwealth within the meaning of Act 111 as read in pari materia with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Borough has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 for unilaterally changing wages and other terms and conditions of employment of part-time officers, as alleged in Case No. PF-C-10-58-E.
5. The Borough has not committed unfair labor practices within the meaning of Section 6(1)(a) or (c) of the PLRA as read in pari materia with Act 111 for discrimination, as alleged in Case No. PF-C-10-58-E.
6. The Borough has not committed unfair labor practices within the meaning of Section 6(1)(a), (c), (d) or (e) of the PLRA as read in pari materia with Act 111 as alleged in Case No. PF-C-10-113-E, as amended.
7. The Borough has not committed unfair labor practices within the meaning of Section 6(1)(a), (c), (d) or (e) of the PLRA as read in pari materia with Act 111 as alleged in Case No. PF-C-10-165-E.

### ORDER

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

### HEREBY ORDERS AND DIRECTS

That, in Case No. PF-C-10-58-E, the Borough shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.

2. Cease and desist from refusing to bargain collectively with the exclusive bargaining representative of its police employes.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111, as read in pari materia with the PLRA:

(a) Immediately reinstate part-time officers to the wages they were earning prior to January 1, 2011, the effective date of Resolution No. 395.

(b) Immediately pay part-time members of the bargaining unit and make them whole for all lost wages and benefits that they would have earned had their wages not been changed for the period from January 1, 2011 to the date such wages and benefits are repaid;

(c) Immediately pay part-time members of the bargaining unit interest at the rate of six percent per annum on any and all backpay owed. Interest shall be computed from January 1, 2011 until the date of actual payment;

(d) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(e) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

That the charges at Case Nos. PF-C-10-113-E and PF-C-10-165-E are dismissed and the complaints issued thereon are rescinded

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

That in the absence of any exceptions to any of the above cases filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of November, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

---

Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ROSETO POLICE ASSOCIATION :  
: :  
: :  
v. : Case Nos. PF-C-10-58-E  
: :  
ROSETO BOROUGH :

**AFFIDAVIT OF COMPLIANCE**

Roseto Borough hereby certifies that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and from refusing to bargain collectively with the exclusive bargaining representative of its police employes; that it has reinstated part-time officers to the wages they were earning prior to January 1, 2011, the effective date of Resolution No. 395; that it has paid part-time members of the bargaining unit and made them whole for all lost wages and benefits that they would have earned from January 1, 2011 to the date such wages and benefits are repaid; that it has paid part-time members of the bargaining unit interest at the rate of six percent per annum on any and all backpay owed from January 1, 2011 until the date of actual payment; and that it has posted a copy of this decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public