

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PF-C-10-160-W
 :
 PETERS TOWNSHIP :

PROPOSED DECISION AND ORDER

On October 28, 2010, Teamsters Local No. 205 (Local 205) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Peters Township (Township) violated sections 6(1)(a), (c), (d) and (e)¹ of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to comply with the terms of a settlement agreement the parties entered into to resolve a charge filed at Case No. PF-C-10-44-W.

On November 18, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on March 18, 2011, before Donald A. Wallace, Esquire, a hearing examiner of the Board, if conciliation did not resolve the charge by then. On March 3, 2011, the hearing examiner, upon the request of Local 205 and over the objection of the Township, continued the hearing. On June 1 and 22, 2011, the hearing examiner, upon the request of the Township and without objection by Local 205, continued the hearing twice more. On September 20, 2011, the hearing examiner held the hearing and afforded the parties a full opportunity to present testimony and to cross-examine witnesses.

On January 17, 2012, Local 205 filed a brief. On February 2, 2012, the Township filed a brief.

On March 5, 2012, the case was assigned to Thomas P. Leonard, Esquire upon the retirement of Hearing Examiner Wallace.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On July 10, 2003, the Board certified Local 205 as the exclusive representative of a bargaining unit that includes police officers employed by the Township. (Case No. PF-R-03-49-W)

2. On March 15, 2010, Local 205 filed a charge of unfair labor practices against the Township at Case No. PF-C-10-44-W alleging that the Township discriminated against police officers Jay Griffith and Jay Davis when it promoted police officer Matthew Collins to sergeant when Griffith and Davis had higher scores on a written promotion test. (N.T. 79-80, Case No. PF-C-10-44-W)

¹ Local 205 introduced no evidence to support a charge that the Township violated section 6(1)(c) or (d) of the PLRA. Therefore, these charges are dismissed.

3. On September 17, 2010, at a hearing on that charge, the parties agreed to a settlement, that stated in relevant part that

"a panel of four individuals, comprised of the Police Chief of Findlay, the Police Chief of Bethel Park, the Police Chief of Scott Township and Chief [Harry Fruecht], the Police Chief of Peters Township, [will] conduct an oral interview, score the applicants - the applicants being Mr. Collins, Mr. Davis and Mr. Griffith - and having scored those applicants for promotion, combining that score with a written score and with any other relevant factor, they will make a selection from those three persons as to who will be sergeant."

They also agreed that

"[i]n the event that the top scoring person is not picked, the panel will provide its rationalization for not picking the top scoring person. The union and/or either person not selected can file a grievance. The arbitrator, if there is an arbitrator that is used to resolve that grievance, would be limited to modifying the decision only through a finding that the decision was made arbitrarily and capriciously."

They further agreed that

"each candidate will have the opportunity to make a statement about their qualifications and why they believe they should receive the job, as well as a chance, if they so choose, to address their prior discipline."

(N.T. 79-80, Case No. PF-C-09-44-W at N.T. 8-10)

4. On October 12, 2010, Peters Township Chief Harry Fruecht, Findlay Township Chief Jesse J. Lesko, Jr., Scott Township Chief James B. Secreet and Bethel Park Chief John W. Mackey, met as a panel to interview the candidates for promotion. At the outset of the interviews, Chief Fruecht explained to the other members of the panel that at the conclusion of the interviews he would tally the scores from the interviews and ask the members of the panel which candidate they would want representing their own police departments, provide the members of the panel with the combined oral and written scores of the candidates, have the members of the panel discuss the candidates' performance and disciplinary records and again ask the members of the panel which candidate they would want representing their own police departments. The panel interviewed Officer Davis first. Officer Davis said that he had disciplinary issues in the past and that other officers with disciplinary issues had been promoted. Chief Mackey told him that that the panel did not want to hear about the other officers. The panel interviewed Officer Griffith next and Officer Collins last. Officer Griffith said that he had not been disciplined. Officer Collins said that he had been disciplined. (N.T. 8-9, 10-17, 23, 29-30, 35-37, 48-53, 58; Township Exhibits 1-2)

5. At the conclusion of the interviews, Chief Fruecht tallied the scores from the interviews and provided the members of the panel with the combined interview and written test scores of the candidates. The combined score for Officer Davis was 81.20%, for Officer Griffith 78.40% and for Officer Collins 77.73%. After discussing the candidates' performance and disciplinary records, Chief Lesko and Chief Secreet ranked Officer Collins

first for promotion. Based solely on Officer Davis' interviews, neither Chief Lesko nor Chief Seccret would consider Officer Davis for promotion. (N.T. 17-20, 25-26, 38-45, 49, 53-54, 58-62, 64-67, 69-71, 75-76; Township Exhibit 1)

6. The written test score for Officer Davis was 82, for Officer Griffith 73 and for Officer Collins 70. (N.T. 74, 80-81)

7. On October 14, 2010, Chief Mackey, wrote a memorandum to Township Manager Michael A. Silvestri, that it was the consensus of the Board that Sgt. Collins was ranked number one. Chief Mackey's memorandum stated, in relevant parts:

CONCLUSIONS

Once Sgt. Collins had left the room Chief Fruecht indicated that he would be tallying the scores. After which he would return and although each candidate had discussed their disciplinary record he would still like the opinion of the board based solely on what they had witnessed during the interview process. The Board's response was to that question was that Matthew Collins was the officer of choice. Chief Fruecht asked: Why? From the moment he entered the room he exhibited a command presence unlike any other candidates. that presence coupled with his confidence and ability to articulate what he was thinking would instill confidence in the citizenry and the officers under his command.

...

During the interview Officer Griffith did make one statement that does need to be addressed. In answering one of the questions he stated, "I don't handle disappointment well." Chief Fruecht indicated that whenever Officer Griffith does not get what he expects he broods. He indicated that behavior can last anywhere from a few months to as long as eight months. During these periods it is difficult to communicate with Officer Griffith which would only further be complicated by promoting him to a supervisor position.

...

At the conclusion of this discussion the panel was again asked who they felt was the best candidate out of the three. It was the consensus of the Board that Sgt. Collins was ranked number one with Officer Griffith coming in second. The panel indicated that Officer Jay Davis should not be considered. The board felt his behavior during the process and his disciplinary and performance records left a great deal to be desired."

(N.T. 20, 24-25, 28-29, 41, 57-58; Township Exhibit 1)

8. Chief Lesko confirmed the accuracy of Chief Mackey's memorandum and Chief Seccret also agreed with it. (N.T. 25, 57-58)

9. The Township promoted Officer Collins to sergeant. (N.T. 54)

DISCUSSION

Local 205 contends that the Township has committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to comply with the terms of an agreement they entered into in settlement of a charge at Case No. PF-C-10-44-W. Local 205 alleges that the Township "manipulated a mutually agreed upon process in an attempt to promote the least qualified candidate...Officer Matthew Collins" to the rank of sergeant. Local 205 contends that either officer Jay Griffith or Officer Jay Davis, who both scored higher than Officer Collins on the combined oral and written tests, should have been promoted.

Under the settlement agreement, a panel comprised of four chiefs of police was to conduct oral interviews of three applicants for promotion to sergeant, allow the applicants to address their prior discipline, "having scored those applicants for promotion, combining that score with a written score and with any other relevant factor, [] make a selection from those three persons as to who will be sergeant" and was to "provide its rationalization for not picking the top scoring person."

According to Local 205, the Township violated the settlement agreement by not following the process set forth in the agreement. Specifically, Local 205 contends that the Township Chief of Police Fruecht failed to tell the other chiefs on the interview panel that they were to give an opinion as to who should be promoted based on all factors, including the written scores and work history. Local 205 contends that the Township only told them that they were to score the oral interview and given their opinion on the best candidate considering only the oral interview.

The Township seeks dismissal of the charge, contending it has fully complied with the terms of the 2010 settlement agreement. Also, the Township contends the Union's allegations are not an accurate portrayal of what occurred in the interview process. Finally, the Township contends that even if the allegations were accurate, they would not constitute a violation of the agreement because the clear, unambiguous terms of the agreement required that the panelists administer and score an oral examination, be presented with combined test scores and other relevant information including discipline and performance measures and then to make a selection for promotion from the candidates and that if the selection was not the highest scorer, they were to "provide a rationalization for not picking the top scoring person."

An employer violates sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 if it refuses to comply with the provisions of an agreement in settlement of a charge of unfair labor practices. **Springfield Township**, 42 PPER 20 (Final Order, 2011), citing **Avery v. PLRB**, 509 A.2d 888 (Pa. Cmwlth. 1986).

A review of the notes of testimony and exhibits shows that after the parties entered into the settlement agreement a panel comprised of four chiefs of police conducted oral interviews of three candidates for promotion to sergeant, allowed the candidates to address their prior discipline and scored the applicants for promotion. Local 205 called the only two witnesses in the present proceeding, Chief Lesko and Chief Secret. Both testified that they believed they were only to evaluate the oral interviews and then rank the applicants. However, on cross examination, they also said that they considered other factors. Therefore, on Local 205's theory of the case,

their testimony was not persuasive. However, more important to this proceeding, they agreed with the accuracy of Chief Mackey's memorandum that summarized the meeting, that stated the panel's consensus pick was Officer Collins and the parts of the memorandum that stated a "rationalization" for not picking the top scoring officers.

Local 205 objected on hearsay grounds to Hearing Examiner Wallace's admission into evidence of Chief Mackey's memorandum (Township Exhibit 1). Mackey's memo is probative on two fronts: it explained the process that the panel followed, and it provided the "rationalization for why the top scorer was not picked," discussing the problems that the panel had with the two unsuccessful applicants. Chief Mackey was not present at the unfair labor practice hearing to testify to the truthfulness of the memorandum.

However, Chief Lesko testified that Chief Mackey's memorandum was accurate and Chief Seccret testified that he agreed with the memorandum. These two chiefs' testimony provides the corroboration necessary to make a finding of fact from a memorandum that would otherwise be hearsay evidence. Accordingly, it was not error to admit the memorandum and it is appropriate to make findings of fact as to what happened in the October 12, 2010 meeting and the "rationalization" for not picking the top scorer. **Kaolin Mushroom Farms, Inc. v. PLRB**, 702 A.2d 1110 (Pa.Cmwlth. 1997), citing **Walker v. Unemployment Compensation Board of Review**, 367 A.2d 366 (Pa. Cmwlth. 1976).

The difficulty with Local 205's argument is that the agreement allowed the panel to recommend promotion a candidate who was not the top scorer, as long as the panel provided a "rationalization" for its choice. That is what happened. The Township has complied with the settlement agreement.

CONCLUSIONS

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

1. The Township is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. Local 205 is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The Township has not committed unfair labor practices under sections 6(1)(a), (c), (d) and (e) of the PLRA as read in pari materia with Act 111.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-sixth day of October, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner