

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

KENNEY J. CALCAGNI :
MICHAEL DIMARIA :
v. : Case No. PF-C-12-11-E
OLEY TOWNSHIP :

PROPOSED DECISION AND ORDER

On January 13, 2012, Kenney J. Calcagni and Michael DiMaria (collectively "Complainants") filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Oley Township (Township) violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Complainants specifically alleged that the Township furloughed them because of their protected union activities.

On February 6, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 23, 2012, in Harrisburg. After several granted continuance requests, a hearing was held on September 13, 2012. During the hearing on that date, both the Complainants and the Township were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Township is a political subdivision and a public employer under Act 111, as read with the PLRA. (N.T. 8)
2. The Union is a labor organization under the PLRA, as read with Act 111. (N.T. 8)
3. The Township employed Kenney Calcagni as a police officer from June 2005 until December 2011. At some point, the Township promoted officer Calcagni to the rank of Corporal. The Township employed Michael DiMaria as a police officer for approximately five-and-one-half years. (N.T. 12, 155)
4. The Township Board of Supervisors has three members. Jeffrey A. Spatz is the Chairman of the Township Board of Supervisors. He has been a Township Supervisor for approximately 12 years, and he is the Supervisor overseeing the police department. The remaining two Supervisors, at all relevant times, were Craig Conrad and David Kessler. Mr. Kessler has left, and he was also the Township Roadmaster. (N.T. 72-73)
5. Calcagni and DiMaria were active in the Union. They negotiated for a collective bargaining agreement on behalf of the Union in 2009 and 2010. In 2010, the Union and the Township reached impasse and scheduled an interest arbitration in March 2010. The parties came to a verbal agreement in March 2010, before arbitration. (N.T. 14-16, 21-23, 26-27, 156)
6. The testimony of Supervisor Spatz was very credible and reliable. Once a verbal agreement was reached, the Township's solicitor prepared the written draft of the collective bargaining agreement. The Township presented three versions, but the language in each draft did not comport with the verbal agreement. These drafts changed and deleted medical benefits. Calcagni and DiMaria would not sign these drafts. Supervisor Spatz agreed that the written drafts contained mistakes and advised the solicitor to change the writings to match the verbal agreement. Supervisor Spatz was embarrassed and disappointed in the solicitor

for making those drafting errors. The Township eventually produced a written contract that matched the verbal agreement. (N.T. 16-17, 26-27, 100-101)

7. Calcagni met with the Township Supervisors regarding the language discrepancies, and the parties renegotiated the language in the agreement. Supervisor Spatz credibly testified that he did not direct any officers to sign a written draft that did not match the verbal agreement. Supervisor Spatz did not ever direct the Township solicitor or any employe to make changes to the written draft to deviate from the verbal agreement with the officers. Supervisor Spatz did not make threats leading up to the signing of the collective bargaining agreement on September 23, 2010 and he did not direct Calcagni and DiMaria to sign a contract. (N.T. 18, 26-27, 101-102)
8. Supervisor Spatz did not threaten layoffs if Calcagni and DiMaria did not sign a contract. Supervisor Spatz openly stated that the Township could not sustain the financial burden of an interest arbitration award granting 10% or 15% or 20% increases to the police officers and that the Township would resort to layoffs under those circumstances. (N.T. 102-103)¹.
9. On March 8, 2010, the Chief issued a letter of commendation to Calcagni. On that same date, the Chief gave recognition letters to Officers Lentz and Verno. (N.T. 45; Complainant Exhibit 2; Respondent Exhibit 15)
10. All the officers signed the collective bargaining agreement by September 25, 2010, which was effective from January 1, 2010 through December 31, 2012. Calcagni and DiMaria initialed each page. (N.T. 19-23; Complainant Exhibit 1)
11. A Township citizen named Kristen Gumeniski called Supervisor Spatz at his home and complained about Calcagni's behavior at her home on March 17, 2011. She had called 911 regarding juveniles who were harassing her seven year-old son who has spina bifida. The juveniles allegedly cursed at her and her mother-in-law and made fun of her son who was playing outside. Calcagni responded to the 911 call. Ms. Gumeniski reacted emotionally towards the juvenile harassers and admitted to yelling and cursing at them. Calcagni was reportedly abusive towards Ms. Gumeniski. He did not charge the juveniles but he charged Ms. Gumeniski with disorderly conduct. (N.T. 28-29, 103-104; Complainant Exhibit 3)
12. Ms. Gumeniski was incredulous that she was charged because she perceived herself as the victim. The harassment thereafter continued and she feared calling 911 because she was afraid that Calcagni would respond. She relayed all this while sobbing when she called Supervisor Spatz at his home. Supervisor Spatz advised her that the procedure was to file a formal complaint and that he would present the complaint to the Chief of Police. (N.T. 105)
13. On March 24, 2011, Supervisor Spatz emailed Chief White and directed him to investigate Ms. Gumeniski's complaint against Calcagni. Supervisor Spatz did not conduct any part of the investigation and he did not direct any conclusion or discipline. Citizen complaints are always investigated and if founded, discipline should ensue. This occurred six months after the collective bargaining agreement was signed. (N.T. 28-33, 47-48; Complainant Exhibit 3).
14. The March 24, 2011, email provided as follows:

I am in possession of a copy of a formal complaint filed by Kristen M. Gumeniski of 2 Legion Drive, Oley. The complaint is in regard to the alleged actions of Corporal Calcagni at the home of Ms. Gumeniski on March 17, 2011 and the subsequent indication by

¹ I do not credit the conflicting testimony of the Complainants regarding conversations about signing a new contract or threatening layoffs.

Corporal Calcagni that he would be issuing Ms. Gumeniski a citation for disorderly conduct.

After speaking with Ms. Gumeniski, I am of the opinion that the complaint warrants your investigation. A copy of the complaint has been delivered to your office. You are directed to conduct an immediate and thorough investigation of the complaint and respond to the Board of Supervisors with your findings no later than 1700 hours on Friday, April 1, 2011.

(Complainant Exhibit 3)

15. The Chief investigated and issued a reprimand to Calcagni. Calcagni grieved the discipline resulting in grievance meetings with Township Supervisors. The Township rescinded the written reprimand and removed it from Calcagni's file. (N.T. 33, 51, 53-54, 61-65, 106)

16. The Chief's written reprimand provides, in relevant part, as follows:

After going over my investigation of the complaints filed, I was directed by the Oley Township Board of Supervisors to give Cpl. Kenney Calcagni a written reprimand as discipline for his actions.

Oley Township Police Department Policy and Procedures.

This letter shall serve as a written reprimand to Cpl. Kenney Calcagni of the Oley Township Police Department for violation of the Oley Township Police Department, Policy and procedures.

426.0/426.1 Courtesy

Officers shall be courteous to the public. Officers shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, officers shall not use course, violent, profane or insolent language or gestures, and shall not express any prejudice concerning gender, race, religion, politics, national origin, lifestyle or similar personal characteristics. In the performance of their duties, officers must maintain a neutral and detached attitude without indicating disinterest or that a matter is petty or insignificant, including verbiage use in radio transmissions.

(Complainant Exhibit 6)

17. Sometime after the Township rescinded Calcagni's reprimand, the Supervisors contemplated laying off police officers or disbanding the police department entirely. (N.T. 33-34, 106).

18. The Supervisors consulted with the Township solicitor and special labor counsel regarding the implementation of furloughs. The two attorneys advised that the least senior officer should be furloughed and directed staff to provide names of the two least senior officers. DiMaria was hired last as a part-timer in June 2006. The Township meeting minutes show that the Supervisors moved to hire Michael Lentz, Kenny Calcagni and William James in that order on the same day. Lentz scored higher on the civil service testing and has military service. On November 29, 2011, the Township's Solicitor sent Calcagni a notice of

"Termination From Employment" furloughing Calcagni with recall rights should the Township expand the police department. (N.T. 34, 54-55, 133-135, 137; Complainant Exhibit 5; Respondent Exhibits 2, 13 & 14)

19. The termination notice provided, in relevant part, as follows:

This is to advise you that the Supervisors of Oley Township have decided to reduce the Oley Township Police Department by two (2) officers, effective January 1, 2012. In accordance with the provisions of the Police Tenure Act, the Township is required to institute furloughs in order of reverse seniority, with the least senior Officers being furloughed first. The Chief of Police has advised the Board of Supervisors that, as a result of your date of hire, you are among the two least senior members of the Department. Consequently, you will be furloughed effective January 1, 2012, with your last date of employment being December 31, 2011.

As of January 1, 2012, and until further notice, you will no longer be responsible for discharging your duties as a Police Officer. Accordingly, you will no longer have any police power or authority, may no longer hold yourself out or otherwise identify yourself as a Police Officer with the Oley Township Police Department. If, following the effective date of your furlough, you are subpoenaed for a Court case which resulted from the discharge of your duties as a Oley Township Police Officer, you must obey the Subpoena and attend the Court proceeding. The Department will compensate you for your time spent at the Court proceeding.

In the event the Township decides to increase the size of its Police Department in the future, you would retain the recall rights set forth under the Police Tenure Act. In addition, pursuant to Article 7, Section 4 of the current Police Contract, you will be compensated for any unused vacation standing to your credit as of December 31, 2011, up to a maximum of eighty (80) hours of pay.

(Complainant Exhibit 5)

20. Calcagni grieved his termination letter. During a grievance meeting, the Township initially posited that Officer Lentz had seniority because he had military service. Calcagni requested documents and statutes proving that Lentz had military service and that such service gave him seniority. Calcagni did not receive those requested materials. Subsequently, the Township provided documents establishing that the Board of Supervisors hired Lentz moments before they hired Calcagni at a Township public meeting on June 6, 2005. (N.T. 36, 38-39; Respondent Exhibit 2)
21. Calcagni has not served in the military. Lentz has served in the military. (N.T. 59)
22. The Township SOPs contain seniority rules that provide, in relevant part, as follows:

Seniority between or among officers of the same rank shall be determined according to the date of appointment to that rank unless otherwise ordered by the chief. When two or more officers of the same rank are on duty at the same time and no superior officer is on duty or available, a senior officer is in command and will be held responsible.

(N.T. 68-69).

23. In preparing the 2012 budget the Township was projecting a revenue decrease resulting in a budget deficit of \$110,000, with no layoffs. The Township still projected a deficit after calculating the budget with only one layoff. In December 2011, the three Township Supervisors voted for a 2012 budget that included the layoff of two police officers. Only the police officers are unionized in the Township, and only Calcagni and DiMaria were furloughed as a result of the 2012 budget. (N.T. 73-74, 110-111, 113-115; Respondent Exhibits 6 & 8)
24. The Township Budget for 2012 reflects a \$5000 increase for legal services, because the solicitor raised his rates, and an increase from \$4,800 for clerical staff to \$20,000. General government operating expenses increased from \$48,720 to \$63,370 in 2012. In 2011, the Township budgeted nothing for part-timers and in 2012, it budgeted \$17, 680 for part-timers. (N.T. 77-81, 120)
25. In 2011, the Roadmaster's salary was \$19,785.09. In 2012, that salary was increased to \$27,000. The increase was funded by liquid fuels money. Liquid fuels money is received from the Commonwealth due to the use of Township roads by commercial vehicles. The Commonwealth limits the Township's use and appropriation of liquid fuels money. Liquid fuels money cannot be used to pay police officers, but it can be used to pay road crew wages. The Township also increased the salary of the Assistant Roadmaster from \$15,760 to \$21,000, which was also funded from liquid fuels money. The remaining road crew employe's salary was increased from \$15,760 to \$21,000. The total increase in road crew salaries went from \$57, 455 to \$71,500 for an increase of \$13,000. (N.T. 80-81, 110-112, 123; Complainant Exhibit 7)
26. The road crew does work for the municipal authority. The Authority pays part of the road crew's salaries. There are three sources for the Road Crew's salaries: Liquid fuels, general fund, and municipal authority. All three sources are reflected in the general fund. (N.T. 146-149)
27. The Chief of police received no raise in 2011. The Supervisors voted to give him a 4% raise in 2012. (N.T. 111-112)
28. The 2012 budget reflected a \$23,000 reduction in healthcare costs to the Township as a result of the two furloughed officers. (N.T. 83)
29. The final budget that was agreed upon and adopted contained a deficit after laying off two officers so the Board of Supervisors voted to eliminate their own salaries and the library contribution. The Township budgeted for part-time officers in 2012 but did not hire any. (N.T. 119-121; Complainant Exhibit 7)
30. The Township has money that is not reflected in its operating budget. It has approximately \$1 million in an account from the sale of land. The Township has used land account money for capital expenditures, such as fixing a roof on a Township building, and non-capital expenditures, such as library contributions. The Township does not use the money in the land account for operating expenses. It is a savings account for special expenditures. (N.T. 39, 84-85, 87-90, 125-127, 142-143)
31. Since the 2012 layoff of two officers, the Township hired a clerical secretary and a new road crew person. The Township held off on hiring the secretary for five years. The Township solicitor recommended hiring a Township manager because the Secretary-Treasurer is overwhelmed. The Township did not accept his recommendation and only in August decided to hire a clerical person to help with police administration and to help the Secretary-Treasurer. (N.T. 95-96, 122)

32. The Pennsylvania State Police provide supplemental police coverage in the Township without charge. The Township has three road crew employes that it cannot layoff because it needs all three to plow and repair Township roads. The Commonwealth does not provide supplemental coverage for road crew services as it does with police services. (N.T. 127-129)
33. The Township is unable to layoff the Township Secretary-Treasurer because she runs the Township. There are no other employes to layoff but the police employes. (N.T. 129-130)
34. The Township Board of Supervisors discussed various options including raising taxes and cutting expenditures and accessing the land fund savings account in order to avoid layoffs. (N.T. 130-133)

DISCUSSION

The Union contends that the Township retaliated against Calcagni and DiMaria for engaging in Union and protected activities when they furloughed them effective January 1, 2012. The Union specifically maintains that the Township's purported economic reasons for furloughing the two officers are pretextual because it had a million dollar interest-bearing land account and it increased budgeted expenditures for legal services, the Chief's salary, a part-time officer, a part-time secretary and salary increases for the road crew. The Union argues that the police department was the only Township department that lost personnel because it is the only department that collectively bargains. The Union further contends that Township Supervisors made anti-union statements that evidence the retaliatory nature of the furloughs.

Finally, maintains the Union, although there is no issue regarding the seniority of DiMaria, the Township presented shifting reasons for establishing that Calcagni had less seniority than Lentz. Originally, claims the Union, the Township asserted that Lentz was more senior because he received credit for his military service. Subsequently, the Supervisors based their decision on the fact that Lentz's name was mentioned first at the Township meeting when they hired both Lentz and Calcagni on the same evening. Finally, the Union argues that the timing of the furloughs is suspect because 2012 was a contract negotiation year and the Supervisors did not want to negotiate with Calcagni or DiMaria.

In a discrimination claim under Section 6(1)(c) of the PLRA as read with Act 111, the complainant has the burden of establishing that the employee engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employee that was motivated by the employee'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). As stated in **FOP, Lodge No. 7 v. City of Erie**, 39 PPER 60 (Proposed Decision and Order, 2008):

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 employee, 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 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 record is clear that the Township's Chief and Board of Supervisors knew that Calcagni and DiMaria were engaged in protected activities when they negotiated the 2010 collective bargaining agreement on behalf of the Union and when Calcagni grieved his March 2011 discipline. The question is whether the Township furloughed Calcagni and DiMaria because of those activities or financial concerns.

After reviewing the entire record, I conclude that that the Union did not present substantial, credible evidence of unlawful motive and, therefore, did not establish a *prima facie* case of discrimination. The reason that the Union did not establish the requisite motive in this case is that I have credited the testimony of Supervisor Spatz over that of DiMaria and Calcagni where there is conflict regarding threats over furloughs and signing draft agreements that did not align with the verbal agreements between the Union and the Township. I conclude that no such threats were made and that discrepancies in draft agreements were accidental and not intentional. Additionally, I credit the Township's case that the Township furloughed Calcagni and DiMaria because it suffered a severe decrease in revenues generating a considerable deficit in its operating budget and not because of their Union activities. The Township would have furloughed Calcagni and DiMaria even if they had not engaged in protected activities.

In 2009 and 2010, Calcagni and DiMaria negotiated with the Township for a new collective bargaining agreement. Negotiations resulted in impasse and the parties were scheduled to resolve the impasse at interest arbitration in March 2010. However, the

parties reached a verbal agreement before the interest arbitration hearing. The Township's solicitor was tasked with drafting a written agreement. However, the solicitor prepared several drafts each of which did not align with the verbal agreement between the parties. Even though other officers were willing to sign these agreements containing errors in health care, Calcagni and DiMaria complained to Supervisor Spatz that the drafts needed to be changed to comport with the verbal agreement. Supervisor Spatz agreed with Calcagni and DiMaria that the agreements contained mistakes and directed the Solicitor to correct them. He felt embarrassed about the mistakes. Supervisor Spatz did not ever direct the solicitor or anyone else to change the writings to deviate from the parties' verbal agreement. He did not make any threats leading to the signing of the agreement in September 2010, and he did not direct Calcagni or DiMaria to sign any agreement.

Also, Supervisor Spatz did not threaten layoffs if Calcagni or DiMaria did not sign a contract, contrary to the Complainants' testimony. He openly stated that the Township could not sustain the financial burden of an arbitration award that awarded 10%-20% in wage increases and, if that were the case, there may be layoffs under those circumstances. A public employer has a responsibility to be open about the status of negotiations. 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 costs 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 Easton, 9 PPER at 229.

The statements attributed to Mr. Spatz, regarding the possibility of layoffs if an arbitrator awarded excessive wage increases, are non-threatening and reflect the public official's expressions that Union demands present economic challenges for the Borough.

Similarly, here, there is a nexus between the elimination of the two full-time police officers and the dire economic circumstances confronting the Township. Additionally, there is no substantial credible evidence of any threats or animus towards the Union, Calcagni or DiMaria. Indeed, the Supervisors reached an agreement with Calcagni and DiMaria without interest arbitration to resolve their differences. On this record, the negotiation of the 2010 contract was cooperative and productive and not hostile or venomous. In this regard, I dismiss the Union's argument that the Township Supervisors demonstrated any animus toward the Complainants because of their bargaining activities, and therefore dismiss the argument that the timing of the layoffs was suspect because 2012 was a bargaining year for a new contract. The record shows that the Complainants and the Supervisors experienced a normal, productive bargaining relationship and that the Supervisors would have no apprehension about negotiating with the Complainants in 2012.

Moreover, not only were contract negotiations cooperative and productive, resulting in an agreement without arbitration, but also Calcagni received a written commendation in March 2011, only six months after agreement was signed. The Union attempted to portray that Supervisor Spatz was motivated by animus when, shortly after Calcagni's

commendation, he purportedly initiated an investigation and subsequent discipline of Calcagni. However, the record does not support that portrayal.

Supervisor Spatz was merely following protocol after having received a desperate citizen's complaint at his home. Kristen Gumeniski told Supervisor Spatz while sobbing that a group of juveniles were harassing her son, who has spina bifida, while he was playing outside. After she called 911 for help, Corporal Calcagni arrived and told her that he was issuing her a citation for disorderly conduct after she admitted to yelling and cursing at the juveniles, but the juveniles were not charged. Thereafter, even though the harassment continued, she was afraid to call 911 in fear that Corporal Calcagni would respond. Supervisor Spatz advised Ms. Gumeniski that the proper procedure was to file a formal complaint against Corporal Calcagni, which she did.

The Oley Township Police Department protocol for responding to a formal complaint against an officer is to conduct an internal investigation. Supervisor Spatz did not initiate an investigation out of animus towards Calcagni. He properly followed established protocols in response to a citizen complaint against Calcagni. When Supervisor Spatz directed the Chief to investigate, he removed himself from both the investigation and its conclusions. He did not at any time direct the Chief towards a particular conclusion or discipline. After the Chief concluded that Ms. Gumeniski's complaint was founded, the Chief recommended a written reprimand to the Board of Supervisors, to which they assented. There is no evidence of animus involving the investigation or discipline of Calcagni for his behavior towards Ms. Gumeniski. Furthermore, after Calcagni grieved his discipline, he met with the Supervisors and they decided to rescind the discipline and have it removed from his file. The record evidence demonstrates a functional, cooperative bargaining relationship without animus or retaliation of any kind

In preparing for the 2012 budget during the fall of 2011, the Township contemplated its options for tackling a projected budget deficit in 2012 including the laying off of officers or the disbanding of the entire police department. These were purely economic considerations and were not motivated by anyone's protected activities. In determining which officers to furlough, the Supervisors removed themselves from the determination and sought the counsel of their solicitor and special labor counsel. The Supervisors merely followed the recommendation of their lawyers who both recommended furloughing Calcagni and DiMaria because they were the least senior officers and the Police Tenure Act required that furloughs be conducted according to reverse seniority. Neither the Supervisors nor their attorneys, out of animus, targeted Calcagni or DiMaria.

There is no question that DiMaria was the least senior officer on the roster. However, the Union claims that the Township gave shifting reasons for determining that Calcagni was less senior than Lentz, demonstrating that the Township went out of its way to construct a way to conclude that Calcagni was less senior than Lentz. When three officers are hired the same day and seniority must be determined for purposes of furloughing officers, it is reasonable to do what the Township did here, which is to identify the order in which officers were mentioned at the same public meeting during which they were all hired. Moreover, the record shows that Lentz did have military experience and that he scored higher on the examination than Calcagni. Although the Township may have initially identified Lentz's military service as contributing to his seniority, it became unnecessary to rely on that time served, given that the Township's two different attorneys independently concluded that Lentz was more senior than Calcagni based on the order in which they were hired at the same public meeting. Although the Union points to the fact that the Township did not provide Calcagni with requested documents to process his termination grievance to support its initial position that Lentz's military service supported his more senior status, the Township did not rely on that position and it did provide Calcagni with the documents that supported the basis of its determination that Calcagni was less senior than Lentz.

The fact that the SOPs contain a seniority provision establishing that ranking officers are more senior for purposes of shift or field command does not have any application to determining seniority for purposes of furlough. Although Corporal Calcagni would have more seniority, and accordingly more command responsibility and authority, as

a Corporal than Officer Lentz on a given shift under the SOPs, this provision, by its own terms, simply has no application to determining seniority for furloughs. Therefore, there is no evidence that the Township violated its SOPs and the non-existent violation cannot support a finding of animus to target Calcagni.

Accordingly, the Union has not established a *prima facie* case of discriminatory furlough of Calcagni or DiMaria by the Township.

Moreover, the Township established with substantial, credible evidence that it was motivated by legitimate financial interests to furlough two of the least senior police officers who also happened to be Union negotiators and grievants.

In the fall of 2011, the Township was facing a 2012 budget deficit of over \$100,000. The Township calculated the 2012 budget under various scenarios including the layoff of only one instead of two officers. The Township did increase spending on certain line items in the 2012 budget but they were deemed reasonable and necessary expenses, some of which were funded by external resources. For example, the Supervisors voted to increase expenditures for legal services because the Township's solicitor had raised his rates. The Township also increased expenditures for a clerical secretary to help the Secretary-Treasurer and part-time police officers.

The Supervisors voted to increase the salaries of all three road crew employees for a total increase of \$14,000, which was funded by liquid fuels money received from the Commonwealth. Liquid fuels money cannot be used to pay police officers, but it can be used to pay road crew wages. The road crew also does work for the municipal authority, which also pays part of the road crew's salaries. Additionally, the Chief of police received no raise in 2011. Therefore, the Supervisors voted to give him a 4% raise in 2012.

Significantly, even though the furlough of two police officers resulted in a \$23,000 reduction in healthcare cost savings to the Township, the final budget still contained a deficit. Accordingly, the Board of Supervisors voted to eliminate its own salaries and the library contribution. And, although the Township budgeted for part-time officers in 2012, it did not hire any. Since the 2012 layoff of two officers, the Township hired a secretary. The Township held off on hiring the secretary for five years. The Township solicitor recommended hiring a Township manager because the Secretary-Treasurer is overwhelmed, but the Supervisors did not accept his recommendation and only in August decided to hire a clerical person to help with police administration and to help the Secretary-Treasurer. Clearly, the Supervisors were acting in the best financial interest of the Township by making the reasonable and necessary increases in expenditures where they were funded by state funding, where the Chief was overdue for a raise and where hiring a clerical secretary to help the overloaded Secretary-Treasurer was long overdue and necessary.

Although the Union emphasizes that the Township furloughed two employees from the only Township department that was unionized, the Union overlooks the fact that the police department and the road crew are the only two departments. The Pennsylvania State Police provide supplemental police coverage in the Township without charge. The Township has three road crew employees that it cannot layoff because it needs all three to plow and repair Township roads. The Commonwealth does not provide supplemental coverage for road crew services as it does with police services. The Township is unable to layoff the Township Secretary-Treasurer because she runs the Township. Therefore, there are no other employees to layoff but the police employees.

Although the Township has approximately \$1 million in an account from the sale of land, it has limited use of that money for capital expenditures, such as fixing a roof on a Township building, and non-capital expenditures, such as library contributions. The Township does not use the money in the land account for operating expenses. It is a savings account for special expenditures, not for daily operating expenses. The Township Board of Supervisors discussed various options including raising taxes and cutting expenditures and accessing the land fund savings account in order to avoid layoffs, but ultimately decided that those options were not best suited for the Township or its

citizens. It is not an unfair practice or evidence of unlawful motive to make managerial choices about finances and budgets in a manner that results in furloughs.

The Township Supervisors have made a legitimate decision to maintain the land account money as a savings account and not to include that money in the general fund to use that money for payroll and other daily operating expenses. The Supervisors also made a legitimate political decision not to raise taxes for its citizens. There is no negative inference to be drawn against the Township for those managerial decisions. And while they approved certain increases in expenditures, they voted to relinquish their own salaries as Supervisors, thereby feeling the pain of the budget constraints themselves. The record is clear that furloughing Calcagni and DiMaria was not an easy decision for the Supervisors and they weighed many options to avoid the layoffs through other alternatives and considerations, but they ultimately decided that the layoffs were best for the Township. Significantly, Calcagni and DiMaria were both informed that they were not terminated; they were furloughed with recall rights should the financial condition of the Township improve and the police department expanded.

The Township, therefore, established with substantial, credible evidence that it furloughed Calcagni and DiMaria because of legitimate financial concerns and revenue decreases and not because of union animus. Accordingly, the charge is dismissed.

CONCLUSIONS

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

1. The Township is a public employer 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 Act 111 as read in *pari materia* with PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The Township has **not** committed unfair labor practices within the meaning of Section 6(1) (a) and (c) 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 and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded and 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 final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this ninth day of October, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner