COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PALMYRA BOROUGH POLICE OFFICERS ASSOCIATION	:	
v.	:	Case No. PF-C-13-65-E
PALMYRA BOROUGH	:	

PROPOSED DECISION AND ORDER

On June 26, 2013, the Palmyra Borough Police Officers Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Palmyra Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111 by issuing a series of memoranda that created new work rules and conditions following the close of the parties' Act 111 interest arbitration hearing. Specifically, the Association alleged that these memoranda created new work rules or conditions of employment without bargaining, created an unlawful quota system, and were issued out of anti-union animus.

On July 15, 2013, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating August 6, 2013, in Harrisburg as the time and place of hearing, if necessary. The hearing was subsequently continued multiple times until May 30, 2014.

The hearing was necessary and was held on May 30, 2014, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on July 28, 2014. The Borough filed a post-hearing brief in support of its position on August 29, 2014.

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

FINDINGS OF FACT

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 3)

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 3-4)

3. The Association is comprised of six full-time officers, who serve within the two-mile square Borough of approximately 4,000 people. The remainder of the police department consists of one Lieutenant and Chief of Police Stanley Jasinski. (N.T. 7)

4. The parties were subject to a Collective Bargaining Agreement (CBA) that expired on December 31, 2011. (N.T. 7)

5. The Association took steps to institute negotiations for a successor contract and began bargaining. (N.T. 7-8)

6. The Association made demands concerning the contract; specifically that they would like to maintain the status quo for wages, provide for a $0.15 increase in shift differential, and that the Borough consider a 12-hour shift schedule. (N.T. 9-10)

7. The Borough responded negatively to the demands and countered with proposed changes to the medical benefit coverage. (N.T. 10-11)

8. In response, the Association offered premium sharing on the medical benefit coverage. However, the Borough responded by simply requesting arbitration. (N.T. 10-11)

9. The parties proceeded to an Act 111 interest arbitration hearing on May 15, 2013, which was conducted at the Borough building during daylight hours of a workday. Chief Jasinski allowed the Association to use the police department conference room for meeting with their counsel and observed the Association members doing so throughout the day during the course of the hearing. (N.T. 12, 52)

10. Prior to the close of the hearing, Chief Jasinski issued a memorandum regarding "Improving Patrol/Out of Office Hours." (N.T. 12-13; Joint Exhibit 1)

11. The memorandum set forth new time limits for police activity, which never previously existed and to which the officers were expected to strictly adhere. It also demanded more detailed explanations of police activity on officers' daily logs. (N.T. 13-14, 55; Joint Exhibit 1)

12. The memorandum expressly states the following, in pertinent part:

> [i]t appears that complaints received regarding our patrol cars always sitting in our parking lot whenever they (sic) pass the Municipal Building certainly have some validity to them. During the last several weeks I have been paying special attention while off-duty to our parking lot and am quite disappointed in what I have been observing...

However, Chief Jasinski never discussed these alleged complaints with the Association members, nor did he attempt to ascertain what the officers were doing within the police department if and when the patrol cars were in the parking lot. In fact, the Association was never made aware of any alleged complaints, nor were they discussed with the Chief or the Lieutenant. (N.T. 14-15, 54; Joint Exhibit 1)

13. On the following day, Chief Jasinski issued another memorandum regarding what he referred to as a clarification for daily activity logs. (N.T. 15-16; Joint Exhibit 2)

14. The May 16, 2013 memorandum required more detailed information for daily activity logs, such as which report numbers officers had completed, the location of their lunch breaks, and the reason they were in the office at any given time, including restroom use. (N.T. 15-17; Joint Exhibit 2)

15. Chief Jasinski admitted that he had been a patrol officer or chief within the Borough for 35 years and never had to note the time or location of his restroom use. (N.T. 63-64)

16. On May 17, 2013, Chief Jasinski issued a third memorandum entitled "Enforcement of Vehicle Code-Duties at Stop Signs." (N.T. 18; Joint Exhibit 3)

17. The memorandum indicates that Chief Jasinski believes the officers are not enforcing the Vehicle Code section regarding duties at Stop Signs due to the lack of citations. The memorandum goes on to provide that enforcement will be monitored and "[i]f improvement in enforcement is not noted, additional administrative steps will be taken." (Joint Exhibit 3)

18. Chief Jasinski admitted that the warning of "administrative steps" could not be found in other memoranda regarding enforcement of vehicle code sections. (N.T. 57; Joint Exhibit 5)

19. The Association took this memorandum to mean that if officers did not write more citations for the particular code section, they would be disciplined. (N.T. 22)

20. On May 18, 2013, Chief Jasinski issued a fourth memorandum regarding the officers' patrol reporting system and the PennDOT crash reporting system within the patrol vehicles. (N.T. 23; Joint Exhibit 4)

21. Due to the detailed nature of crash reports, coupled with the time limits set forth in Joint Exhibit 1, the Association took this memorandum as a dictate that all reports, and especially crash reports, would need to be done from the patrol cars, which was a requirement not previously imposed. (N.T. 23-24)

22. Chief Jasinski admitted that the alleged complaints which gave rise to the four memoranda came in weeks and even months prior to their issuance. He provided no explanation as to why the memoranda were issued on the days and manner they were. (N.T. 66)

DISCUSSION

In its charge, the Association alleged that the Borough violated Section 6(1)(e) of the PLRA[1] and Act 111 when it failed to bargain the issuance of new work rules in the four memoranda and the impact upon bargaining unit members severable from the decision to issue the new work rules. In addition, the Association argues that the Borough has created an unlawful quota system by creating a duty upon the officers to strictly write citations, lest they receive administrative action taken against them. The Association's contentions in this regard are without merit.

Section 1 of Act 111 states that police or firefighters "have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits. 43 P.S. § 217.1. In construing this language, our courts have concluded that an issue is presumptively bargainable if it bears a rational relationship to an employe's duties. **Delaware County Lodge No. 27, Fraternal Order of Police v. PLRB**, 722 A.2d 1118 (Pa. Cmwlth. 1998) *citing* **Township of Upper Saucon v. PLRB**, 620 A.2d 71, 73 (Pa. Cmwlth. 1993). However, where a managerial policy concern substantially outweighs any impact the issue will have on employes, the issue will be deemed a managerial prerogative, rendering the issue nonbargainable. *Id.* at 1121 *citing* **Frackville Borough Police Dept. v. PLRB**, 701 A.2d 632, 634 (Pa. Cmwlth. 1997)(A subject may be a managerial prerogative which need not be bargained, even though it may affect employe wages, hours or working conditions); **City of Sharon v. Rose of Sharon Lodge No. 3**, 315 A.2d 355, 358 (Pa. Cmwlth. 1973)(Act 111 does not remove all regulation of policemen from the scope of a municipality's managerial decision-making, particularly any regulation which might be considered "essential for the proper and efficient functioning of a police force.").

In this case, the four memoranda at issue involve the assignment of duties or direction of personnel relative to improving police patrols and spending less time in the office, greater detailed explanations of police activity on officers' daily logs, enforcing the vehicle code, and report writing. As the Borough points out, however, it is well settled that the direction of personnel is a matter specifically reserved to managerial prerogative. **Shillington Borough Police Officers Ass'n v. Shillington Borough**, 21 PPER ¶ 21195 (Proposed Decision and Order, 1990), 22 PPER ¶ 22074 (Final Order, 1991). As a result, the Borough had no duty to bargain the issues contained in the four memoranda.

With regard to the Association's impact bargaining claim, the Commonwealth Court has adopted a four-part test for a prima facie cause of action when a public employe alleges a refusal to bargain over the impact of a matter of managerial prerogative. **Lackawanna County Detectives' Ass'n v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000). First, the employer must lawfully exercise its managerial prerogative. Second, there must be a

[1] Section 6(1)(e) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer...[t]o refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this Act." 43 P.S. § 211.6(e).

demonstrable impact on wages, hours, or working conditions, matters that are severable from the managerial decision. Third, the union must demand to negotiate these matters following management's implementation of its prerogative. And fourth, the public employer must refuse the union's demand. *Id.* at 794-795.

The record here shows that the Association never made a demand to negotiate any impact following management's implementation of its prerogative. Likewise, the Borough did not refuse any demand of the Association to negotiate these matters. (N.T. 49, 72). Therefore, the Association did not satisfy the four-part test for a prima facie cause of action relative to the impact bargaining claim.

The record here similarly does not support the Association's contention that the Borough created an unlawful quota system in violation of Section 6(1)(e) of the PLRA and Act 114.[2] The Commonwealth Court has held that Act 114 is violated only when a political subdivision orders, requires or suggests that a police officer issue a certain number of traffic citations in a given time period. **Delaware County Lodge No. 27, Fraternal Order of Police v. PLRB**, 722 A.2d 1118, 1122 (Pa. Cmwlth. 1998). In this case, there is no indication that the issuance of a certain number of citations was ever ordered, required, or suggested. To the contrary, the Association's primary witness, Patrolman Brandon Robert Sponaugle, acknowledged there was no language in the memorandum regarding enforcement of the vehicle code establishing an actual quota. (N.T. 43-44; Joint Exhibit 3). Likewise, Patrolman Sponaugle admitted that the alleged quota system had never been enforced and that no officer has ever been told to write a certain number of tickets each month. (N.T. 44). Indeed, Patrolman Sponaugle further conceded that no one has actually been disciplined for violating Joint Exhibit 3. (N.T. 44). The Association's contention that the Chief would not consider the number of contacts made with drivers or warnings issued is without merit, as the Chief credibly testified that he would certainly take into account the use of warnings as an enforcement mechanism in lieu of citations. (N.T. 64, 71-72). As such, the Borough has not committed unfair labor practices in contravention of Section 6(1)(e) of the PLRA.

Next, the Association alleged that the Borough violated Section 6(1)(c) of the PLRA[3] and Act 111 when it issued the four memoranda at issue here because it did so out of anti-union animus. To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employe was engaged in protected activity, the employer knew of that protected activity, and there was an adverse employment action motivated by anti-union animus. **Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, PA State Police**, 33 PPER ¶ 33011 (Final Order, 2001). It is the motive for the adverse employment action that creates the offense under Section 6(1)(c). **PLRB v. Ficon**, 254 A.2d 3 (Pa. 1969). An employer may rebut a claim of discrimination under Section 6(1)(c) of the PLRA by proving that the adverse employment action was based on valid nondiscriminatory reasons. **Duryea Borough Police Dept. v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004).

In addition, the Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. **City of Philadelphia**, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities-for example, whether leading organizers have been eliminated; the extent to which the adversely affected employes engaged in union activities; and whether the action complained of was "inherently destructive" of employe rights. **City of Philadelphia**, *supra*, *citing* **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order,

[2] Section 1 of Act 114 provides, in pertinent part, that "[n]o political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any police officer...that said police officer...shall issue a certain number of traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis." 71 P.S. § 2001.

[3] Section 6(1)(c) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer...[b]y discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization..." 43 P.S. § 211.6(c).

1978). Although close timing alone is insufficient to support a basis for discrimination, **Teamsters Local 764 v. Montour County**, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employe engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. **Berks Heim County Home**, 13 PPER ¶ 13277 (Final Order, 1982).

In this case, the first two prongs of the three-part test for discrimination under Section 6(1)(c) of the PLRA have been met. The Association engaged in protected activity by bargaining a successor contract and proceeding to an Act 111 interest arbitration hearing on May 15, 2013. Likewise, the Borough had knowledge of the protected activity as it was bargaining a successor contract with the Association and the Chief observed the Association members participating in the Act 111 interest arbitration hearing. In fact, the Borough concedes in its brief that there is no dispute over the first two elements of the three-part test. *See* Employer's Brief at p. 7-8. As a result, the issue in this case involves the third element of the test, i.e., whether the issuance of the four memoranda was motivated by anti-union animus.

The first factor from which to infer animus is the close timing of the adverse action to the date of the interest arbitration hearing. The Chief's decision to issue the four memoranda in rapid succession, starting on the date of the interest arbitration hearing and continuing for the next three consecutive days, imposed new work rules and conditions which never previously existed for the police officers. Significantly, the Chief did not even wait for the arbitration hearing to be concluded and instead posted the first of the four memoranda prior to the close of the hearing. Further, at least one of the four memoranda differed in tone from previous other memoranda, to the extent it contained a warning of "additional administrative steps," if the police officers did not improve enforcement of the vehicle code by writing citations. The timing of the Chief's action in issuing the four memoranda clearly supports an inference of unlawful motivation.

The next factor which the Association suggests as indicative of anti-union animus is the lack of an adequate explanation for the issuance of the four memoranda. The Chief testified that he issued the memos after he received complaints from the Mayor regarding patrol cars sitting in the parking lot of the municipal building. The Chief asserted that he did his own independent investigation which confirmed the complaints to be legitimate. (N.T. 68-69). However, I find that the Chief's testimony lacks credibility in this regard.

First of all, the Chief admitted that he never discussed these alleged complaints with the Association members. (N.T. 14-15, 54). What is more, the Chief claimed that the alleged complaints which gave rise to the memos came in weeks and even months prior to their issuance. (N.T. 66). Notably, the Chief provided no explanation whatsoever as to why the memoranda were issued on the days and manner they were. Further, the Chief, in describing his "independent investigation," provided no specific dates or time period for when he observed the Borough's parking lot. Nor did he attempt to ascertain what the police officers were doing in the office on the days he purportedly observed their patrol cars there. And, the Borough's Mayor, who could have provided corroborating testimony to some extent, did not appear at the hearing to actually corroborate the Chief's testimony. Based on the Chief's testimony, I cannot conclude that the alleged complaints he received were the basis for his issuance of the four memoranda. Accordingly, I reject as not credible and not persuasive the Borough's proffered reasons for the adverse action.

These factors, timing and the failure to provide an adequate explanation for the adverse action, together are sufficient to support an inference of anti-union animus. On this record, I must conclude that the Borough would not have issued the four memoranda between May 15 and 18, 2013 had it not been for the Association engaging in protected activity. Therefore, the Borough has violated Section 6(1)(a) and (c) of the PLRA.

Finally, the Association contends that the Borough has committed an independent violation of Section 6(1)(a) of the PLRA[4] and Act 111. The Board will find an independent

[4] Section 6(1)(a) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer...[t]o interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act." 43 P.S. § 211.6(a).

violation of Section 6(1)(a) of the PLRA if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown in fact to have been coerced. **Bellefonte Police Officers Ass'n v. Bellefonte Borough**, 27 PPER ¶ 27183 (Proposed Decision and Order, 1996) *citing* **Northwestern Education Ass'n v. Northwestern School District**, 16 PPER ¶ 16092 (Final Order, 1985). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 6(1)(a). **Northwestern School District**, *supra.*

The record here contains an adequate showing that the Borough's actions in retaliating against the Association by issuing four memoranda in rapid succession, beginning on the date of the interest arbitration hearing and continuing for the next three consecutive days, would have a tendency to coerce employes in the exercise of their rights. As a result, the Borough has also committed an independent violation of Section 6(1)(a) of the PLRA.

CONCLUSIONS

The 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 political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The Borough has not committed unfair labor practices in violation of Section 6(1)(e) of the PLRA.

5. The Borough has committed unfair labor practices in violation of Section 6(1)(a) and (c) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Borough shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;

2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

3. Take the following affirmative action:

   (a) Rescind the four memoranda dated May 15, 16, 17, and 18, 2013;

   (b) 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;

(c) 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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of November, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PALMYRA BOROUGH POLICE OFFICERS ASSOCIATION	:	
v.	:	Case No. PF-C-13-65-E
PALMYRA BOROUGH	:	

AFFIDAVIT OF COMPLIANCE

Palmyra Borough hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed 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