

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
SCHUYLKILL-CARBON LODGE 13 :  
v. : Case No. PF-C-14-12-E  
LEHIGHTON BOROUGH :

**PROPOSED DECISION AND ORDER**

On January 27, 2014, the Fraternal Order of Police, Schuylkill-Carbon Lodge 13 (FOP or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Lehighnton Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read *in pari materia* with Act 111 of 1968 (Act 111).

On February 6, 2014, the Secretary of the Board issued a complaint and notice of hearing in which the case was assigned to a conciliator to resolve the matter without a hearing and June 3, 2014 in Harrisburg was fixed as the time and place of hearing, if necessary. The hearing was necessary and was held as scheduled. The parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

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. Lehighnton Borough is a public employer within the meaning of Act 111. (N.T. 7)
2. Fraternal Order of Police, Schuylkill-Carbon-Lodge 13 is a labor organization within the meaning of Act 111. (N.T. 7)
3. FOP Lodge 13 is the exclusive, recognized bargaining agent for the unit of police employees consisting of police officers below the rank of Chief of Police. (N.T. 7)
4. The Borough and the FOP are parties to a collective bargaining agreement (CBA) for the period of January 1, 2013 to December 31, 2017. (N.T. 15, 16, Union Exhibit 6)
5. The CBA, at Article XXV, provides for grievance arbitration as an available forum for the adjudication of claims concerning the meaning or application of the terms and conditions of the CBA. (N.T. 15, Union Exhibit 6, p. 13)
6. The grievance arbitration procedure culminates in an arbitration panel of three arbitrators. (N.T. 15, Union Exhibit 6, p. 14)
7. By letter dated June 4, 2013, the Borough solicitor sent Neal Ebbert, Police Chief at that time, a letter informing him that the Borough Council suspended him the night before, stemming from an incident in the Borough Hall on May 22, 2013. The letter stated, in relevant part, "You are suspended without pay until you produce an evaluation from an independent licensed psychologist or psychiatrist that you are fit to return to duty as a police officer." (N.T. 10-11, Union Exhibit 2)

8. The Borough solicitor also informed Ebbert that he had the right to appeal the decision to the Borough's Civil Service Commission. (N.T. 11, Union Exhibit 2)
9. Ebbert appealed the Borough's decision to the Civil Service Commission but then the Borough argued that Ebbert did not have a right to appeal the employment action to the Civil Service Commission. (N.T. 11, Union Exhibit 2)
10. On September 4, 2013, prior to the Civil Service Commission issuing its decision, the Borough Council terminated Ebbert's employment contract. (N.T. 12-13, Union Exhibit 3)
11. Borough council voted to terminate Ebbert's contract on August 26, 2013, which became effective September 26, 2013. (N.T. 12, Union Exhibit 3)
12. On October 2, 2013, the Borough Civil Service Commission declined to accept jurisdiction of Ebbert's appeal based upon the arguments put forth by the Borough. (N.T.13, Union Exhibit 4)
13. On October 25, 2013, Ebbert filed a grievance under the CBA maintaining, *inter alia*, that the suspension was a demotion from chief to patrolman and was without just cause. (N.T. 14-15, Union Exhibit 5)
14. On November 1, 2013, the Borough responded to the grievance and raised issues of arbitrability, including the issue of jurisdiction. The Borough contended that the arbitration panel was without jurisdiction because the Borough demoted Ebbert from the position of chief of police, a position that was not covered by the CBA. (N.T. 17, Union Exhibit 7)
15. On November 13, 2013, Ebbert forwarded the grievance to the next step of the grievance procedure. On December 10, 2013, the Borough responded and again raised issues of arbitrability, including the issue of jurisdiction. (N.T. 18-19, Union Exhibits 8 and 9)
16. By letter dated December 13, 2013, the Union's attorney advised the Borough that it was proceeding to arbitration and appointed its arbitrator. The Union also requested that the Borough appoint its arbitrator. (N.T. 20, Union Exhibit 10)
17. By letter dated December 20, 2013, the Borough's solicitor informed the Union's attorney that the Borough would not appoint an arbitrator. The Borough again raised issues of arbitrability, including jurisdiction. (N.T. 20-21, Union Exhibit 11)

#### DISCUSSION

The Fraternal Order of Police, Schuylkill-Carbon Lodge 13 charges the Borough with committing unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read *in pari materia* with Act 111 when it refused to arbitrate a grievance that challenged the suspension and demotion of Neal Ebbert from the position of chief of police.

A public employer commits an unfair labor practice under sections 6(1)(a) and (e) of the when it refuses to arbitrate a grievance. **Pottstown Police Officers' Association v. PLRB**, 634 A.2d 711 (Pa. Cmwlth. 1993).

The Borough admits that it did not proceed to arbitration. It argues that it was justified in not proceeding to arbitration by contending that Ebbert's position of chief was not covered by the collective bargaining agreement and therefore, the arbitration panel had no jurisdiction over the issue.

The Borough's defense, questioning the arbitrability of the grievance, has been decided by the Supreme Court in **Township of Sugarloaf v. Bowling**, 759 A. 2d 913 (Pa. 2000). In **Bowling**, the Supreme Court relied on **Pennsylvania Labor Relations Board v. Bald Eagle**

**Area School District**, 499 Pa. 62, 451 A.2d 671 (1982), a case brought under the Public Employee Relations Act (PERA), 43 P.S. 1101.1201 et seq, and held "We now hold the issue of whether a particular matter is arbitrable pursuant to Act 111 is an issue which must be submitted first to the arbitrator, and that it is error to bring the issue of jurisdiction first to the trial court." **Id** at 914.

In light of this longstanding legal precedent, the Borough's defense to the unfair labor practice charge is not properly before the Board. The Borough's defense of arbitrability, including its claim that the arbitration panel lacks jurisdiction, should be raised to the grievance arbitration panel. The FOP has met its burden of proving that the Borough's refusal to proceed to arbitrate the grievance is an unfair labor practice in violation of section 6(1)(e) of the PLRA and a derivative violation of section 6(1)(a) of the PLRA.

#### **CONCLUSIONS**

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

1. Lehighton Borough is a public employer within the meaning of Act 111.
2. Fraternal Order of Police, Schuylkill-Carbon Lodge 13 is a labor organization within the meaning of Act 111.
3. The Board has jurisdiction over the parties.
4. The Borough has committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA.

#### **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 Borough shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA as read *in pari materia* with Act 111.
2. Cease and desist from refusing to bargain with the exclusive representative of the police employees of Lehighton Borough.
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:
  - (a) Arbitrate the grievance filed on October 25, 2013, by Neal Ebbert;
  - (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 its employees and have the same remain so posted for a period of ten (10) consecutive days; and
  - (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.

**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 (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-sixth day of January, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner