

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BENSALEM TOWNSHIP POLICE
BENEVOLENT ASSOCIATION

v.

BENSALEM TOWNSHIP

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Case No. PF-C-15-11-E

PROPOSED DECISION AND ORDER

On February 11, 2015, the Bensalem Township Police Benevolent Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Bensalem Township (Township or Employer), alleging that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally invoking the Local Agency Law procedure to resolve issues concerning entitlement to Heart and Lung Act benefits without bargaining with the Association.

On February 24, 2015, 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 October 2, 2015, in Harrisburg, as the time and place of hearing, if necessary. On March 16, 2015, the Township filed an Answer to the Complaint, denying all material allegations contained in the charge. The hearing was continued once at the Township's request and without objection from the Association, and then again in anticipation of inclement weather.

The hearing was necessary and was held on March 15, 2016, 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 on May 4, 2016, while the Township filed a post-hearing brief on May 5, 2016.

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 Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 8-9)
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 9)
3. The Association is the exclusive bargaining agent for a unit of police officers employed at the Township. (Exhibit A-1)
4. The Association and Township are parties to a collective bargaining agreement (CBA), which initially had a term from 2010 to 2013, and which was extended by the creation of a consolidated CBA from 2014 to 2017, which integrates the terms and conditions of all prior and existing CBA's and Act 111 interest arbitration awards. (N.T. 22-23; Exhibit A-1)
5. The CBA provides, in Article 18(A), which is entitled "Sick Leave and Sick Leave Incentive," as follows:

Police Employees who become temporarily disabled because of a job-related injury or illness or occupational disease qualifying under the Heart & Lung Act shall be entitled to full pay and benefits...

(N.T. 24; Exhibit A-1)

6. The CBA also provides for a three-step grievance arbitration procedure in Article 23, which governs the process “[i]n the event of a dispute as to the interpretation of any of the Articles of this Agreement and any other justifiable complaint.” The procedure includes the Director of Public Safety and the Mayor at steps one and two, respectively, and culminates in arbitration at step three. (Exhibit A-1)

7. In June 2011, the Township approached the Association concerning a proposed Injury on Duty policy, which specifically addressed the Heart and Lung Act. The Township’s Director of Public Safety, Frederick Harran, handed a copy of the proposed policy to Association President, Glenn Vandegrift, for review prior to implementation. The Association did not agree to the policy. (N.T. 34-35, 74, 78, 108; Exhibit A-7)

8. The proposed policy contained the following provision, which provides in relevant part:

An employee whose claim for **Heart and Lung Act** benefits has been denied shall have the right to appeal the decision by filing a Local Agency Appeal in writing within thirty (30) days of the Township’s denial of the claim.

A Local Agency appeal will be heard by Mayor of Bensalem Township or his designee (“Mayor”).

An officer can be represented by counsel, call witnesses and introduce documents at the Local Agency appeal hearing before the Mayor.

A transcript of the appeal hearing will be made.

The hearing will be conducted in accordance with the Local Agency Law.

(Exhibit A-7)(Emphasis in original)

9. On May 15, 2012, the Township’s Director of Administration, William Cmorey, forwarded a letter to Vandegrift, which provided in pertinent part as follows:

Dear Detective Vandegrift:

If you will kindly recall, it has been almost one year since the Township had a meet and discuss session with the [Association] to receive its input on the **Heart and Lung Act Policy** the Township planned on implementing. After our meeting in June 2011, the [Association] notified the Township that its attorney had reviewed the policy and found it generally acceptable with a few minor changes. You were going to provide the Township with your attorney’s changes for consideration. However, the Township has not received any requested changes or comments from the [Association].

Since the [Association] has not provided any requested changes or comments, the Township will now move forward and implement the attached Heart and Lung Act policy effective immediately.

If you have any questions, please contact me.

(N.T. 79-80, 108-111; Exhibit T-3)(Emphasis in original)

10. The May 15, 2012 letter from Cmorey included an attached copy of the June 2011 Injury on Duty Policy, which was identical to the provision on Heart and Lung Act benefits set forth above. (N.T. 85-86; Exhibit A-7 & T-3)

11. Following receipt of the May 15, 2012 letter from Cmorey, Vandegrift contacted Harran, who reports to Cmorey, in an effort to negotiate the policy. Although the parties had numerous discussions, Cmorey never revoked, rescinded, or modified the policy in any way. (N.T. 83-85, 101-102, 111)

12. On January 30, 2013, the Association filed a grievance on behalf of Officer John Reheil, protesting the termination of his Heart and Lung Act benefits prior to a hearing before a neutral third party

labor arbitrator, and alleging a violation of Article 18(A) of the CBA. The grievance proceeded through step one and two of the grievance procedure, during which the Township maintained that the grievance did not fall under the CBA and was not arbitrable. The grievance ultimately resolved amicably, and the Township provided Reheil with his Heart and Lung Act benefits. (N.T. 36-42; Exhibit A-8 through A-11)

13. On December 18, 2014, Officer Samuel Karley submitted a claim with the Township for Heart and Lung Act benefits as a result of an alleged work injury on November 26, 2014. Cmorey denied the claim by letter dated December 22, 2014, and the Association filed a grievance on January 16, 2015, protesting the denial. Harran initially scheduled a step one meeting in accordance with the CBA, but then cancelled the meeting, asserting that Heart and Lung Act claims are not part of the CBA and must proceed under the Local Agency Law. Karley's grievance eventually resolved, and he received his Heart and Lung Act benefits for the November 2014 injury. (N.T. 24-34; Exhibit A-2 through A-6)

DISCUSSION

The Association has charged the Township with violating Section 6(1)(a) and (e) of the PLRA¹ and Act 111 by unilaterally implementing the Local Agency Law procedure to resolve issues concerning entitlement to Heart and Lung Act² benefits.³ The Township contends that the charge was untimely under the PLRA and that it was acting within its managerial prerogative when it unilaterally implemented the Local Agency Law procedure to resolve Heart and Lung Act disputes.

Section 9(e) of the PLRA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. **Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township**, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. **Harmar Township Police Wage and Policy Committee v. Harmar Township**, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive. *Id.*

In this case, the record shows that the Township provided the Association with notice of the unilateral change in terms and conditions of employment on May 15, 2012. On that date, Cmorey unequivocally indicated to Vandegrift, the Association President, that the Township was implementing the challenged policy regarding the resolution of Heart and Lung Act disputes effective immediately. As a result, the Association was on notice of the alleged unfair labor practice on May 15, 2012, which was well beyond the six weeks limitations period provided for in the PLRA. The Association contends that the challenged policy was not actually implemented on May 15, 2012 because the parties continued negotiating over the policy after that date. However, the record shows that, despite the parties' ongoing negotiations, Cmorey never revoked, rescinded, or modified the policy in any way. The Association also points to the Reheil grievance from 2013 as evidence that the policy was not yet in effect. The Association submits that the Township did not invoke the Local Agency Law procedure at that time and/or refuse to arbitrate or process the grievance. This argument also fails, however, as the record shows that the Township did, in fact, maintain that the grievance was outside the CBA and not arbitrable. Finally, the Association contends that the policy was never actually implemented because Vandegrift testified that it was not distributed to the employees or made the subject of a standing order accessible on the Township's web server. (N.T. 126-127). However, the Board has long held that the pertinent date for resolution of the

¹ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

² Section 1 of the Heart and Lung Act provides, in relevant part, that "[a]ny...policeman, fireman or park guard of any county, city, borough, town or township, who is injured in the performance of his duties...and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by...the county, township or municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury shall be paid by...such county, township or municipality." 53 P.S. § 637.

³ The Association has made it clear at both the hearing and in its post-hearing brief that it is not alleging the Township violated the PLRA by refusing to arbitrate a grievance, specifically the Karley grievance. (N.T. 19-20; Association's Brief at p.9).

timeliness issue is not the date on which all affected employees became aware of the act alleged to be the unfair practice, but rather the date on which the charging party became aware of this action. **Upper Gwynedd Township**, 32 PPER ¶ 32040 (Proposed Decision and Order, 2001), 32 PPER § 32101 (Final Order, 2001). Once again, the charging party in this case, which is the Association, became aware of the alleged unfair labor practice on May 15, 2012, but did not file its charge until February 11, 2015. Accordingly, the charge was untimely as a matter of law and must be dismissed.⁴

CONCLUSIONS

The 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 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. That the charge was not timely filed so as to meet the statute of limitations in Section 9(e) 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 charge of unfair labor practices is dismissed and the complaint is rescinded.

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 18th day of May, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

⁴ Based on my disposition of the charge, it is unnecessary to reach the merits of the Association's allegations that the Township violated the PLRA by unilaterally implementing the Local Agency Law procedure to resolve issues concerning entitlement to Heart and Lung Act benefits.