

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FAIRVIEW TOWNSHIP :  
POLICE ASSOCIATION :  
v. : Case No. PF-C-15-10-E  
FAIRVIEW TOWNSHIP :

**PROPOSED DECISION AND ORDER**

On February 9, 2015, the Fairview Township Police Association (Union or Association), filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Fairview Township (Township) violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that the Township engaged in discriminatory conduct and violated its bargaining obligation when it ordered the Chief to change patrol officers' shifts from 8-hour-and-32-minute shifts to 8-hour shifts and by requiring the officers to complete timesheets in lieu of the shift summaries provided to the Township administration by the Chief.

On March 13, 2015, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on April 3, 2015, in Harrisburg. The hearing was continued at the request of the Respondent and rescheduled for August 10, 2015. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On November 9, 2015, the Association filed its post-hearing brief. In its post-hearing brief, the Association withdrew its cause of action under Section 6(1)(e) recognizing that arguably the defense of contractual privilege was available to the Township for unilaterally changing the shift schedule. (Union's Post-hearing Brief at 7). On December 21, 2015, the Township filed its post-hearing brief.

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. 7)
2. The Union is a labor organization under Act 111 as read with the PLRA. (N.T. 7)
3. The parties stipulated and agreed that the Township knew that the officers have engaged in protected activity. (N.T. 11)
4. Jason Loper is the Township Chief of Police (Chief or Chief Loper). (N.T. 99-100)
5. Robert Stanley is the Chairman of the Township Board of Supervisors. (N.T. 46-47, 148)
6. Mario Pirritano is a member of the Township Board of Supervisors. (N.T. 55-58)
7. At the end of 2009, the Union agreed to participate, with the other Township employees, in a change to health care to save the Township approximately \$240,000. (N.T. 240-241)
8. Also at the end of 2009, the Township budgeted for and employed 17 officers. Presently, the Township employs 13 officers. In December 2010, the Township budgeted for 17 officers but then-Chairman, Perry Albert, requested that the Union agree to salary freezes or suffer layoffs. The Union agreed to the wage freeze and relinquished longevity increases for all of 2011. Thereafter,

officers resigned and retired and those positions were not refilled. In 2012, the Township raised taxes by 47%. In 2013 and 2014, the Township budgeted for 16 officers, but did not have 16 officers. At the end of 2014, the Township budgeted for 13 officers which is the current complement. (N.T. 70, 85, 91-93, 102, 131-133, 183-184, 212-215, 223-225, 240-241; Union Exhibit 2)

9. Between 1999 and 2012, all police contracts with the Township were negotiated. In August 2011, the Township and the Association began negotiations for a new contract. Supervisors Pirritano and Minito were the Township negotiators. At negotiations, the Supervisors wanted to discuss information regarding certain behaviors of a lieutenant.<sup>1</sup> The Supervisors assured the Union team that the information would remain confidential and that there would be no retaliation. The information was indeed shared with that lieutenant and he retaliated against the three Union negotiators. Previously, at the July 2011 board meeting, the supervisors had voted for the lieutenant to be promoted to chief effective in March 2012, when the then-current chief retired. He was in fact promoted in March 2012, and the matter interfered with negotiations and began bad relations between the Supervisors and the Union. (N.T. 213-215, 238-239)
10. On February 13, 2012, the parties participated in an interest arbitration hearing to resolve disputed issues, with John Skonier as the chosen neutral interest arbitration panel member. Mr. Skonier issued the interest award on May 13, 2013, effective from January 1, 2012 through December, 2014. By the summer of 2013, the former chief had been terminated and the Union approached the Township a year early to negotiate a five-year contract because the former chief was campaigning for a position as Township Supervisor. (N.T. 62, 215-216; Employer Exhibit 11)
11. The Union's five-year proposal included a list of concessions including the relinquishment of post-retirement medical, retirement for new hires, different medical for new hires, a new salary system and all officers would increase pay towards their pensions. The offer would have saved the Township hundreds of thousands of dollars over the course of twenty-five years. The Township rejected the offer. (N.T. 216-217)
12. The Township's financial difficulties are primarily due to debt incurred as a result of a sewer system project combined with stagnating real estate development that has prevented tax-base expansion through real estate taxes, which are the primary source of revenue for the Township. Approximately \$800,000 were removed from the Police Department budget preventing the replacement of police officers. (N.T. 131-133, 180; Employer Exhibit 4)
13. By letter dated October 22, 2013, and effective January 1, 2014, the Township discontinued dental insurance coverage for the police officers. Dental insurance was provided for in the parties 2007-2011 collective bargaining agreement. Dental benefits were not at any time one of the issues in dispute to be resolved at interest arbitration. (N.T. 19-21, 202, 150-153, 216-218; Union Exhibit 2; Employer Exhibit 1)
14. At the Township reorganization meeting in January 2014, Robert Stanley became the Chairman of the Township Board of Supervisors. Also in January 2014, the Township hired two police officers and unilaterally set a new starting salary of \$50,000 per year. (N.T. 19-21, 50-51, 148, 150-153, 202, 216-218; Union Exhibit 2; Employer Exhibit 1)
15. The Skonier Award does not mention dental benefits or starting salaries and expressly provides that "[a]ll other provisions of the parties' Collective Bargaining Agreement not specifically changed herein shall remain as is." (Employer Exhibit 11)

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<sup>1</sup> This person was not Chief Jason Loper.

16. On January 8, 2014, the Union filed a grievance seeking reinstatement of dental benefits and an increase in the starting salaries for the new officers to the 2011 frozen starting salary amount of \$58,229. (N.T. 154-155, 160; Union Exhibit 2)
17. In response to the grievance, the Township raised the starting salary, retroactive to January 1, 2014, to \$55,989.43, which was the starting salary specified for 2010. (Union Exhibit 2)
18. On June 28, 2014, Chairman Stanley sent an email to all members of the Township Board of Supervisors outlining the goals and objectives for 2014, and inviting input and comments from the board members. (N.T. 46-47, 78; Employer Exhibit 1)
19. On the list of seven goals and objectives for 2014, Mr. Stanley included as goals changing the police shifts from 8 hours and 32 minutes to 8 hours and implementing police timesheets. (Employer Exhibit 1)
20. On August 4, 2014, the Township and the Union participated in a grievance arbitration hearing before Arbitrator Kinard Lang regarding the discontinuation of dental benefits and the decrease in starting salaries for new officers. (Union Exhibit 2)
21. The Board of Supervisors did not vote on the police shift change or timesheet implementation at the board meetings in July, August, September or October 2014. (N.T. 49-50, 78)
22. On October 13, 2014, Arbitrator Lang issued an award reinstating dental insurance coverage for police officers and raising the starting salary for new officers to \$57,669.11. (N.T. 22, 67; Union Exhibit 2)
23. The Township Board of Supervisors held a public meeting on October 27, 2014. The board members were aware of the Lang Award prior to this meeting. Mario Pirritano chaired the October 27, 2014 meeting because Mr. Stanley was away seeking medical attention. The Supervisors knew that the police officers organized the appearance of Township residents at the October 27, 2014 meeting to request more officers. (N.T. 14-18, 55-58, 67-69, 86, 95-96, 160-161; Union Exhibit 1)
24. Also attending the October 27, 2014 public meeting was an unusually large crowd of Township residents. Approximately 16 residents spoke at the meeting before Chief Loper spoke. Chief Loper and the residents were requesting that the board approve the hiring of more police officers. When Officer Picciuro resigned in April or May 2014, the Township Police Department became stressed by understaffing. (N.T. 67-69, 71-72, 86, 88-89, 104-105, 134-135, 191-192)
25. The 8-hour-and-32-minute shift schedule had been in effect since 1993 before it was changed. Neither during the October 27<sup>th</sup> meeting, nor at any time before, was the Chief asked about scheduling or the impact of moving to an 8-hour shift. Most of the board members believed that moving from the 8-hour-32-minute shift to an 8-hour shift would yield additional patrol hours. (N.T. 31-32, 83-84, 105-109, 114-115, 140)
26. None of the board members or the Township Manager had ever expressed dissatisfaction with the 8-hour-and-32-minute shift schedule during the almost-two years that Chief Loper was Chief and Acting Chief. The new timesheets provide information about which officers are on duty on a given shift. (N.T. 91, 108, 143)
27. On October 30, 2014, the Township Manager, Assistant Manager and board members met with Chief Loper and ordered him to develop 8-hour shifts and timesheets for presentation to the Board. Chief Loper was not in favor of the 8-hour shift

and suggested evaluating 12-hour shifts. The Chief posited that 12-hour shifts provide better coverage than 8-hour shifts and would improve officer morale. 12-hour shifts are standard in other police departments. None of the 8-hour shift scenarios provided as much coverage as a 12-hour shift schedule. Chairman Stanley expressed concerns about officer fatigue on the 12-hour shift. The Chief did not have an opportunity to make any presentations on either the 8 or the 12-hour shift. (N.T. 109-113, 135, 142-145, 173, 192-193)

28. In November, 2014, Township officials participated in meetings pursuant to a feasibility study to join the police department of Lower Allen Township to form the Cumberland York Metro Regional Police Department. The study provided that "[b]oth Police Departments work traditional shift schedules and perform patrol and investigative duties." (Employer Exhibit 9 at 1 & 9)
29. The feasibility study acknowledges that there are many differences between the two police departments that would need to be reconciled upon forming a regional department. There are two separate labor agreements in place, one for each township police department. The terms and conditions of employment, after the formation of the regional and the expiration of the two agreements, would need to be bargained and reconciled. (N.T. 159, 170, 185; Employer Exhibit 9 at 45-46)
30. The study recognizes a disparity in compensation among staff between the two departments and the need to decide which county 911 call center would be responsible for dispatching the officers of the regional police department. (Employer Exhibit 9 at 45-46)
31. At a January 2015 meeting with Chairman Stanley, the Township Manager and Assistant Manager, the Chief was directed to submit an 8-hour shift schedule and to direct officers to fill out timesheets. The Chief reiterated that 8-hour shifts would not add another officer to the rotation and that 8-hour shifts were a bad idea. At this meeting, Chairman Stanley did not express concern over officer fatigue regarding 12-hour shifts. His only concern in January was that officers would have too much time off on the 12-hour shift schedule, and may use that time for part-time employment. (N.T. 118-119, 144-145)
32. By letter dated January 28, 2015, the Chief was ordered to implement the 8-hour schedule. Due to the fact that scheduling was already in place for the year and that vacations were already approved, the 8-hour schedule was not implemented until March 8, 2015. (N.T. 120, 125-126)
33. The change to the 8-hour shift converted paid time off to patrol time, potentially resulting in increased patrol hours of approximately 14%. The switch to the 8-hour shift schedule caused more officers to take leave, which resulted in a deficit in patrol hours that offset the potential increase. There was a 22% increase in scheduled leave time and a 30% increase in sick leave. One of the police department's best officers is preparing to resign because the new schedule interferes with his child custody obligations. (N.T. 128-130, 248-250)
34. As of the date of the hearing, the 8-hour shift schedule had been in place for 5 months. In those 5 months since its inception, neither the Township Manager nor any of the board members had checked with Chief Loper to ascertain how well the new 8-hour shifts had been affecting coverage and the officers.

#### DISCUSSION

In its discrimination claims under Section 6(1)(c) of the PLRA, the Union has the burden of proving that the employes engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employes that was motivated by the employes' 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).

Consequently, the Board will weigh 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." *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 employees and protected activities, and whether the action complained of was "inherently destructive" of important employe rights. **Centre County**, 9 PPER at 380. Close timing combined with another factor 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).

Where the union establishes a *prima facie* case, the employer may rebut the union's 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 Educ. Ass'n v. West Shore Sch. Dist.**, 23 PPER ¶ 23031 (Final Order, 1992); **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 the complainant's *prima facie* case, may establish 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).

In this case, the employer stipulated and agreed that the Township Supervisors and Manager knew that the police officers engaged in protected activity by negotiating contracts, pursuing interest arbitration, filing a grievance, pursuing grievance arbitration and supporting an increased officer complement. The remaining issue, therefore, is whether those activities motivated the Township to change the 8-hour-and-32-minute shift schedule to an 8-hour shift schedule and to require officers to complete and submit time sheets as a change from the Chief's summary sheets, shift schedules and redacted police logs.<sup>2</sup>

This is a dual motive case, and the question has become which motive proximately caused the Township to change the police shifts to 8-hour shifts instead of 12-hour shifts and require the timesheets. In that regard, the Union has established a *prima facie* case of discrimination, and I have discredited the Township's rebuttal case.

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<sup>2</sup> This Board does not excuse statutory violations as *de minimis*. **Middletown Township**, 24 PPER ¶24167 (Final Order, 1993); **City of Bethlehem**, 23 PPER ¶23058 (Final Order, 1992). The Board has consistently rejected sanctioning statutory violations by characterizing them as miniscule. The statute does not authorize the Board to excuse any statutory violation and a *de minimis* standard requires the Board to recognize and sanction such a violation. Moreover, determining whether a violation is miniscule would lead to unpredictable, inconsistent results subject to the subjective determinations of hearing examiners and the Board.

Clearly, the Township was having financial troubles. Simultaneously, the Township residents were clamoring for more officers while the Township was removing \$800,000 from the Police Department. The Chief understood that no more officers would be hired. Generally, the Board does not determine whether management's actions were the best measures to take under the circumstances as long as those measures were not unlawfully motivated. It is the prerogative of management, and not the Union or this Board, to determine the proper manner by which it operates its enterprise. Neither this Board nor the Union is a partner with management in making managerial decisions. However, the Township's decision here was made in a manner that punished employees for exercising protected rights, while more effective and desirable options were presented and available. Moreover, the changes were coupled with a series of other retaliatory activities. To rule otherwise would permit employers to hide behind any so-called "legitimate" managerial or financial decision where, as here, its true motives were unlawful, retaliatory and spiteful. Although the Township established that it suffered financial stagnation in the face of rising sewer costs and inflation and that they wanted to respond to public pressure for more officers, I do not credit those reasons for motivating the Township to change to an 8-hour shift (instead of a 12-hour shift) and require timesheets. The Township, therefore, did not rebut the Union's prima facie case of discrimination.

The entire background of this case yields the inference and "tends to demonstrate" that the Township was unlawfully motivated when it changed the police officers' shift schedule to 8-hour shifts. The Township historically negotiated its collective bargaining agreements with the Union amicably and voluntarily. The Union made every attempt to cooperate with the Township throughout the vicissitudes of its financial condition. The Union agreed to change its health care plan when the Township asked the Union to join the Township-wide health care plan, which saved the Township approximately \$240,000. The Township and the Union amicably negotiated freezes on wages and longevity increases for 2011, when the Township considered layoffs. There was an amicable and cooperative collective bargaining relationship between the parties.

Then the problems began. The Supervisors on the Township negotiating team in 2011 utilized bargaining sessions to obtain information about its newly appointed chief of police, who remained a lieutenant until March 2012. The officers on the Union negotiating team insisted on, and the Township negotiators agreed to, confidentiality and secrecy to protect the officers from retaliation. Contrary to their agreement, the Supervisors informed the soon-to-be chief about what the officers had said about him. This created a hostile work environment, finger pointing and thereafter interfered with productive cooperative bargaining. The parties then proceeded to interest arbitration, with Neutral Arbitrator John Skonier, for the first time in many years, which further escalated tensions. The Skonier Award was issued in May 2013.

Soon after the issuance of the Skonier Award, the Union approached the Township for early bargaining for a five year contract because the Union had concerns over the potential election of the former chief to the Board of Supervisors.<sup>3</sup> The Union offered many concessions that could have saved the Township hundreds of thousands of dollars over the coming years, but the Township inexplicably rejected the offer with no counterproposal. Although the Township did not have an obligation to bargain at that time, its refusal to work with the Union or even take advantage of the concessions it offered without any consideration yields a strong inference of hostility toward the Union during the post-Skonier-Award period. Evidence of its displeasure with the results of the Skonier Award, the Township also dismissed its labor counsel.<sup>4</sup> (N.T. 63).

Then, in late 2013, effective January 2014, the Township, further manifested its displeasure with the police officers for benefiting from interest arbitration by unilaterally eliminating dental benefits. The Township's justification for this unilateral change was that the Skonier Award did not mention dental benefits, **even though dental was never an issue in interest arbitration and the Skonier Award expressly**

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<sup>3</sup> The newly appointed chief had been fired by this time.

<sup>4</sup> I do not credit the proffered reason that the Township's attorney was dismissed because he was moving to Pittsburgh. The Township's attorney had already lived in the Pittsburgh area at the time.

**provides that "[a]ll other provisions of the parties' Collective Bargaining Agreement not specifically changed herein shall remain as is."**

Also, in January 2014, the Township hired two new police officers. In doing so, the Township inexplicably and unilaterally set the starting salary for the officers approximately \$7,000 lower than the starting salary of the last effective agreement. Again, the Township inexplicably claimed that the Skonier Award did not mention starting salary so it was justified in unilaterally setting those wages, which they knew constituted a mandatory subject of bargaining under Act 111 and the PLRA. The unlawful elimination of dental insurance and decrease in starting salaries initiated a pattern of retaliation against the officers and demonstrated the significant retaliatory measures the Township was willing to take in response to contentious bargaining and interest arbitration.

The Union pursued grievance arbitration to restore dental insurance and starting salaries. Although the Township agreed to partially increase the starting salary in response to the grievance, it pursued the grievance to arbitration and lost on both issues.<sup>5</sup> In June 2014, during the time period that the grievance was pending arbitration in the post-Skonier Award period, Chairman Stanley developed a list of objectives which included changing the police shift schedule to 8 hours. Significantly, neither the Supervisors nor the Township Manager ever approached the Chief about changing the shifts before this time. The Supervisors received the Lang Award in October 2014, before the October 2014 public meeting, where approximately 16 residents spoke out for increasing the police complement. The Chief also requested the hiring of more officers at that meeting. The Supervisors knew that the exceptionally large public attendance and outcry at the October 2014 meeting resulted from police organizing efforts to get the public involved with seeking more officers. In response, at the end of 2014, the Supervisors reduced the police budget and requested Chief Loper to develop an 8-hour shift schedule.

Chief Loper informed the Supervisors that a 12-hour shift schedule would serve two beneficial purposes: (1) it would provide more police coverage; and (2) it would elevate officer moral because the officers could enjoy consecutive days off. Knowing that Chief Loper and the officers preferred the 12-hour shift and that it provided better police coverage than the 8-hour shift schedule, the Township ordered the Chief to implement the 8-hour shift schedule.

The Township is not required to hire police officers, and it is entitled to implement new ways to maximize its police coverage. However, I reject as not credible the Township's proffered reasons for imposing the 8-hour shift schedule. The Township engaged in multiple harassing, retaliatory and unjustifiable actions since the Skonier Award. The culmination of the grievance in the Lang Award on October 13, 2014, and the public demands for more officers at the October 27, 2014 meeting, **organized by the officers**, caused the Supervisors to change the officers' shift schedule to 8 hours without investigating the impact on coverage and officers of the 8-hour shift schedule, as compared to other shift scheduling scenarios. The Chief attempted on multiple occasions to present to the Supervisors a 12-hour shift schedule that would provide **better coverage** and **improve family time** for the officers, thereby increasing morale. However, the Supervisors did not allow him to make that presentation. I, therefore, draw the inference that the implementation of the 8-hour shift was discriminatory, especially since it was not the better alternative to increase coverage for the same money.

The Township explained that the 12-hour shift would cause officer fatigue and give them too much time off for part-time jobs. The Township however did not establish the likelihood of either concern. The record **does** establish that 12-hour shifts are standard shifts utilized in many other police departments and no factual or historical instances of officer fatigue were presented on this record as resulting from that very common practice. The issue of fatigue is speculative on this record and, if it were a practical concern in other departments, it would not likely be such a common shift schedule. Also, whether officers suffer fatigue seemingly has more to do with the amount and type of

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<sup>5</sup> Arbitrator Kinard Lang concluded that the Township did not raise the starting salary to the proper amount and that the Township wrongfully eliminated dental benefits.

activities during a given shift than the length of a shift alone. In this regard, 4 hours could be as fatiguing as 8 or 12 hours.

Moreover, the Township had presented shifting reasons for imposing the 8-hour shift. First, Chairman Stanley stated that he was concerned about fatigue on the 12-hour shift, but he later stated that he was concerned about officers obtaining part-time work, without mentioning fatigue. Also, the Township offered no support for the bald assertion that officers would obtain part-time work attracting attention away from their police duties. Contrarily, the record shows that the officers expressed their desires to be with their families and not obtain part-time work. The Union established that the officers wanted consecutive days off for family time and obligations. One officer has child custody arrangements that require him to have consecutive days, and some weekends, off. Another officer has coaching obligations, also making consecutive days, and some weekends, off desirable.

The Township also offered that the Lower Allen Township Police Department, with which the Township is considering forming a regional department, works 8-hour shifts and it would be easier to combine departments in that regard. However, the feasibility study concluded that the consolidation of the two departments with two separate collective bargaining agreements would require the new regional department to reconcile a vast array of terms and conditions of employment. The reconciliation of the two departments' terms of employment does not necessarily translate into adopting the shift schedule or any other term of employment presently in place in Lower Allen Township. Conceivably, the Lower Allen officers and the management of the regional may prefer the 12-hour shift schedule, because it provides more coverage and consecutive days off, or some other alternative. The Township's proffered reason, therefore, does not account for the fact that the shift schedule of the consolidated regional department may not be either shift schedule that currently exists in the two separate departments.

Since the Skonier Award and the rift over the former chief, the Township has not worked cooperatively with the Union and has harassed the officers with multiple changes to terms and conditions of employment, pressing the Union financially to restore those changes. It provided shifting reasons for imposing the 8-hour shift schedule. It ignored officer desires, the Chief's recommendations, the subsequent negative impact of the 8-hour shift (including a coverage deficits and low officer morale), and ignored the Chief's expertise in recommending a different shift schedule. The entire background of the case and the record as a whole supports the conclusion that the Township's proffered reasons were pretextual, thereby further supporting the inference of unlawful motive and the Union's discrimination claim. The Township has demonstrated a consistent ability to invent some reason for its adverse actions against the officers. However, those actions have been consistently exposed as the pretextual, calculated disguises for animus that they really are. The rights to proceed to interest and grievance arbitration are some of the most protected revered rights under Act 111 and the PLRA. The repeated harassment for exercising those rights is "inherently destructive" to the officers.

Similarly, the Township has a managerial prerogative, as an administrative tool in effectuating payroll and tracking leave accrued and taken, to require that officers complete timesheets. However, it may not impose the timesheet requirement for discriminatory reasons. **Palmyra Borough Police Officers Ass'n v. Palmyra Borough**, 46 PPER 72 (Final Order, 2015) (holding that an employer's "statutory obligation to refrain from retaliating against employes for engaging in protected activity is not obviated by the fact that the work rules may have involved subjects that ordinarily need not be bargained"). The Township imposed the timesheet requirement as part of its anti-union campaign against officers for successfully challenging the Township in interest and grievance arbitration and organizing public pressure to hire more officers. Accordingly, the Township did not commit a bargaining violation under Section 6(1)(e) of the PLRA and Act 111, by imposing the timesheet requirement, however, such action was discriminatory under Section 6(1)(c) of the PLRA and Act 111.

## 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. The Borough has committed unfair labor practices in violation of Section 6(1)(a) and (c) of the PLRA and Act 111.
5. The Township has **not** committed unfair labor practices in violation of Section 6(1)(e) of the PLRA and Act 111

## 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 Township 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) Immediately rescind the directive and policy requiring officers to work 8-hour shift schedules;
  - (b) Immediately restore the shift schedules to the 8-hour-and-32-minute shift schedules;
  - (c) Immediately rescind the directive and policy requiring officers to complete and submit timesheets in addition to their daily logs, shift schedules and Chief summaries;
  - (d) 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;
  - (e) 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
  - (f) 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 twelfth day of February, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FAIRVIEW TOWNSHIP  
POLICE ASSOCIATION

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v.

Case No. PF-C-15-10-E

FAIRVIEW TOWNSHIP

AFFIDAVIT OF COMPLIANCE

Fairview Township hereby certifies that it has: ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; immediately rescinded the requirement that officers work 8-hour shift schedules; immediately restored the shift schedules to the 8-hour-and-32-minute shift schedules; immediately rescinded the requirement that officers complete timesheets; posted a copy of the Proposed Decision and Order within five (5) days from its effective date in a conspicuous place readily accessible to the bargaining unit employees and had the same remain so posted for a period of ten (10) consecutive days; 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.

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Signature of Notary Public