

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 29 :  
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v. : Case No. PF-C-18-4-E  
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CITY OF WILLIAMSPORT : PF-C-18-16-E  
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**PROPOSED DECISION AND ORDER**

On January 5, 2018, the Fraternal Order of Police Lodge 29 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Williamsport (City or Employer), alleging that the City violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by giving Lieutenant Steve Helm a negative Employee Performance Review in retaliation for his protected activity. The charge was docketed at PF-C-18-4-E. On January 31, 2018, 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 April 16, 2018, in Harrisburg, as the time and place of hearing, if necessary.

On February 2, 2018, the FOP filed another charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (c) of the PLRA by reassigning Helm from the position of Patrol Division Lieutenant to the position of Support Services Lieutenant in retaliation for his protected activity. The charge was docketed at PF-C-18-16-E. On February 27, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on April 16, 2018.

The hearing was necessary and was held on April 16, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The FOP filed a post-hearing brief on June 19, 2018. The City filed a post-hearing brief on June 21, 2018.

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 City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 6)
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 6)
3. The FOP is the exclusive bargaining representative for police employees at the City. (Joint Exhibit 1)
4. The FOP and the City are parties to a collective bargaining agreement, which is effective from January 1, 2017 to December 31, 2020. (Joint Exhibit 1)

5. Lieutenant Steve Helm has been employed as a City police officer for nearly 25 years and has served as FOP president since 2008. (N.T. 9-10)

6. As FOP president, Helm is responsible for contract negotiations, processing grievances and unfair labor practice charges, sitting as union representative in disciplinary interviews, attending labor-management meetings, and serving as an ad hoc member of the FOP grievance committee. (N.T. 9-12)

7. Helm was personally involved with filing, processing, and/or serving a number of grievances on behalf of the FOP in 2017. (N.T. 16-22)

8. In April 2017, Helm became the Police Patrol Lieutenant, which granted him authority over all patrol functions within the department, as well as supervisory authority over two sergeants and the subordinate corporals and patrol officers. (N.T. 42-43; FOP Exhibit 2)

9. David Young has been the City Chief of Police since 2016. His prior law enforcement experience includes 26 years with the Pennsylvania State Police. He has been a supervisor since 1995. (N.T. 259-260)

10. Captain Jody Miller has been employed as a City police officer for 19 years, during which time he served as a patrol officer, corporal, and sergeant. Miller was promoted to captain in 2015 and serves as Helm's direct supervisor. (N.T. 169-170)

11. On December 20, 2017, Helm received an Annual Employee Performance Review (EPR) for the period of January 1, 2017 to December 31, 2017 from Miller, who is not part of the bargaining unit. The EPR consisted of an analysis of seven job factors, including job knowledge/skills, work results, communications, initiative/problem solving, interpersonal relations/equal employment opportunity, work habits, and supervision/management. (FOP Exhibit 1)

12. Miller rated Helm as satisfactory for each of the job factors, except for communications, interpersonal relations/equal employment opportunity, and supervision/management, where he rated Helm as "needs improvement."<sup>1</sup> (FOP Exhibit 1)

13. In the communications section, Miller included a narrative, which provides, as follows:

Communication with other members of the agency is fine. Communication between me (sic) and Lt (sic) Helm is tenuous at times. Lt (sic) Helm has kept his door open the last quarter of the year which has made communication better. I still find however that some issues that should be brought to my attention quickly and resolved are not because Lt (sic) Helm wants to discuss them in a (sic) FOP capacity.

(FOP Exhibit 1)

14. In the initiative/problem solving section, Miller commented as follows:

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<sup>1</sup> The potential ratings for each job factor are unsatisfactory, needs improvement, satisfactory, commendable, and outstanding. (FOP Exhibit 1).

Lt (sic) Helm doesn't come to me as much as I would prefer to discuss issues or problems. Due to his voluntary role as FOP union president he wants to handle some issues through that forum and not via the chain of command. In turn that allows some issues to potentially get worse or not be resolved at all.

(FOP Exhibit 1)

15. In the supervision/management section, Miller indicated as follows:

Lt (sic) Helm has voluntarily assumed the role of FOP union president. That is fine, but those duties, at times, are in direct conflict with the mission of this agency. In his role as Lieutenant the police administration needs to have faith and confidence that his position will support our positions on policy, vision and application of objectives that move this agency forward. Lt (sic) Helm puts his personal thoughts before that of the agency then will challenges (sic) to (sic) that from the union perspective. An example of this would be to openly challenge the confidentiality agreement to all the members in direct conflict of the wishes of the administration.

(FOP Exhibit 1)

16. Miller rated Helm as satisfactory overall and commented as follows:

Overall Lt (sic) Helm has a satisfactory level of performance, however he borders on needing improvement based upon his allegiance to the union.

(FOP Exhibit 1)

17. By email dated December 27, 2017, Young notified Helm and the department's other lieutenant, Brian Womer, that he had made several changes to each of their respective positions and responsibilities. Womer was now the Special Services Lieutenant<sup>2</sup>, responsible for internal investigations, daily supervision of the department's agents or detectives, assisting with supervision of property, evidence, and forensics, along with various federal task forces, and serving as commander of the special response team or tactical unit. Helm was now the Support Services Lieutenant, responsible for daily vehicle maintenance, municipal bidding, pursuit after action reviews, procurement of supplies, impound yard/garage, abandoned vehicles, the ballistic vest program, and the AFIS ten printer. (N.T. 43-44; FOP Exhibit 3)

18. Young indicated in the December 27, 2017 email that "[t]hese changes were made in an effort to streamline the work product and reduce duplication of work within both sections. (FOP Exhibit 3)

19. Young also attached a new organizational chart to the December 27, 2017 email, which indicated that Helm no longer had supervisory authority over the patrol sergeants, corporals, and patrol officers, while Womer still

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<sup>2</sup> Womer was previously the Lieutenant of Investigative Division. (N.T. 47)

retained supervisory authority over the detectives, property and evidence officers, as well as the tactical unit. (N.T. 43-44, 68; FOP Exhibit 3, 4)

20. Following the reorganization, Helm attended a meeting with Captain Don Mayes, who is Womer's direct supervisor according to the City's organizational chart, and discussed some of his new duties. During that conversation, Mayes stated to Helm: "you're just a warehouse manager." (N.T. 161-162)

#### DISCUSSION

The FOP has alleged that the City violated Section 6(1)(a) and (c) of the PLRA<sup>3</sup> and Act 111 by giving Helm a negative EPR and reassigning Helm to the position of Support Services Lieutenant in retaliation for his protected activity. The City, on the other hand, contends that it did not violate the PLRA or Act 111, and the charge should be dismissed, because the City had legitimate nondiscriminatory reasons for its actions.

To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employee 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 employees engaged in union activities; and whether the action complained of was "inherently destructive" of employee rights. City of Philadelphia, supra, citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 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 employee 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).

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<sup>3</sup> 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...(c) By 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.

In this case, there is no dispute that Helm engaged in numerous protected activities by serving as FOP president, including the filing and processing of at least several grievances. Likewise, there is no dispute that the City was aware of Helm's protected activity in this regard. As a result, the issue depends on whether the City was motivated by anti-union animus when it gave Helm his 2017 EPR and reassigned him to the position of Support Services Lieutenant in late 2017.

On this record, I must conclude that the FOP has sustained its burden of proving that the City was unlawfully motivated when it gave Helm his 2017 EPR and reassigned him to the Support Services Lieutenant position. First of all, Helm's 2017 EPR was replete with critical references to his FOP activity and allegiance to the Union. Miller tried to explain this by testifying that Helm had performance and communication issues. (N.T. 231-232, 251-253, 258). However, this testimony is rejected as not credible and not persuasive. Miller's disdain for the Union was clearly evident from his remarks on the EPR as well as his demeanor at the hearing. Likewise, the record shows that Mayes, who is not even Helm's direct supervisor, derided Helm in his new position as "just a warehouse manager" following the reorganization, which also supports an inference of unlawful motive.

Further, the City's proffered reasons for the reassignment are pretextual and lacking credibility. The City argues that it reassigned Helm to a new position in an effort to streamline the work product and reduce duplication of work within the department. Specifically, Miller described at length how patrol officers were having trouble getting work done and that Helm could assist because of his rank. (N.T. 191-194). Miller testified that Helm could do so by overseeing the patrol division and simply issuing orders to accomplish these various tasks. (N.T. 197, 213-214). However, the City's explanation is belied by its own reorganization chart, which stripped Helm of his supervisory responsibilities over the patrol division. (FOP Exhibit 4).<sup>4</sup> Indeed, Miller readily conceded this critical fact during his testimony at the hearing. (N.T. 225-226). As such, it must be concluded that the City used the purported reorganization of the department to mask its true unlawful intentions and retaliated against Helm when it reassigned Helm in late 2017. Accordingly, the City has committed unfair labor practices in violation of Section 6(1)(c) of the PLRA.

Finally, the FOP contends that the City has committed an independent violation of Section 6(1)(a) of the PLRA in both charges. The Board will find an independent 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 employees 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*. However, an employer does not violate the PLRA where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and

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<sup>4</sup> The record shows that both Miller and Mayes were extensively involved with the reorganization. (N.T. 180-182, 190-194, 197-198, 213-214; FOP Exhibits 5, 6, 7).

Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

There is little doubt that the City has committed an independent violation of Section 6(1)(a) of the PLRA by criticizing Helm's FOP activities and allegiance to the Union in his EPR. Indeed, this would undoubtedly tend to coerce employees in the exercise of their rights. Similarly, the record contains an adequate showing that the City also committed an independent violation of Section 6(1)(a) by reassigning Helm to a new position and stripping him of his supervisory responsibilities immediately following his EPR, which mentioned his protected activity. Such conduct is inimical to the purposes of the PLRA and Act 111 and tends to coerce employees. As a result, the City has committed unfair labor practices in 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 City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The FOP 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 City 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 City shall

1. Cease and desist from interfering with, restraining or coercing employees 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 which the Examiner finds necessary to effectuate the policies of the PLRA and Act 111:
  - (a) Immediately rescind the December 20, 2017 EPR in its entirety and the December 27, 2017 reassignment of Helm to the Support Services Lieutenant position;

(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 employees 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 12<sup>th</sup> day of September, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

The City of Williamsport 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 by immediately rescinding the December 20, 2017 EPR in its entirety and the December 27, 2017 reassignment of Helm to the Support Services Lieutenant position; 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.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public