

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GREATER HANOVER PROFESSIONAL :
FIREFIGHTERS ASSOCIATION LOCAL 2045 :
 :
v. : Case No. PF-C-17-7-E
 :
PENN TOWNSHIP :

PROPOSED DECISION AND ORDER

On January 23, 2017, the Greater Hanover Professional Firefighters Association Local 2045 (Association) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Penn 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.

On February 7, 2017, 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 May 10, 2017, in Harrisburg, as the time and place of hearing, if necessary, before the undersigned Hearing Examiner.

The hearing was necessary. The hearing was continued multiple times at the request of the parties. A hearing was held on September 28, 2017, in Harrisburg, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association submitted a post-hearing brief on December 14, 2017. The Township submitted a post-hearing brief on January 12, 2018.

The Hearing Examiner, based on all matters of record, makes the following:

FINDINGS OF FACT

1. The Township a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 4).
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 4).
3. The Association represents firefighters employed by the Township. (N.T. 10).
4. The Township employs 15 firefighters, all of whom are members of the bargaining unit. (N.T. 9).
5. The Township has one fire station. It is a large facility which includes living quarters. (N.T. 10).
6. Five firefighters are assigned to one of three regular shifts (15 firefighters total over 3 shifts). One of the five

firefighters on each shift is a supervisor, the shift captain. (N.T. 9).

7. The normal work schedule is a regular rotating shift with a cycle of 24 hours on duty and 24 hours off duty. Each of the three shifts is scheduled to work on this 24 hour schedule on alternating days until the shift has worked 72 hours, at which time the shift gets a four day break. The schedule follows a set rotation among the three separate shifts. The firefighters live at the fire station during their 24 hour shift. The duty day runs from 7:00 am to 10:00 pm. Barring any emergency calls, firefighters are permitted to go to bed at 10:00 pm. The next shift starts at 7:00 am the next day. (N.T. 9, 11-14, 16; Township Exhibit 1).

8. A mutual exchange of duty is an exchange of shifts between two firefighters on different shifts. For example, a new firefighter with no vacation time could work a 24-hour shift for a firefighter on another shift and that firefighter would then work the new firefighters shift so the new firefighter could take a vacation. The ability to engage in mutual exchanges of duty by the firefighters was collectively bargained and included in the collective bargaining agreement. Exchanges have always been granted when requested. (N.T. 15, 43; Township Exhibit 1, page 4).

9. On January 10, 2017, the Township issued a policy regarding consecutive hours worked. The policy states in relevant part:

Purpose: To establish a policy that limits the amount of consecutive hours worked by firefighters, EMT's, and Paramedics to avoid fatigue, decrease the risk of on-duty injuries, and decrease the risk of accidents and errors in judgement that could result from excessive consecutive hours worked.

Scope: This policy shall apply to the career firefighters of Penn Township

Section 1 General Information

A. There are many research papers written that address the believed risk factors for firefighters and EMS employees who work consecutive hours. Among these risk factors are reduced quality of sleep, increased cardiovascular strain, increase in illness, decreased work performance, increased risk of injury, and poor health behaviors.

. . .

C. It is the goal of the Department to reduce the risk of any line-of-duty injuries, errors in judgement, overall fatigue, illness, health problems, or poor health behaviors by limiting the consecutive hours worked by firefighters and EMS providers.

Section 2 Consecutive Hours Worked

A. Firefighters . . . are limited to working more than forty-eight (48) consecutive hours without a minimum of eight (8) hours of rest, off-duty unless:

1) They are already operating at an emergency incident or scene.

2) The Fire Chief's Office approves working longer than forty-eight (48) hours due to extenuating circumstances.

B. Consecutive hours worked applies to any accumulated hours worked on regular shift time, swap/switch/exchange time, overtime hours worked.

C. Employees will not be mandated for overtime if the mandation will violate the consecutive hours permitted to work in this policy. They may be mandated up to the limit of the consecutive hours worked.

. . .

(Association's Exhibit 1).

10. Prior to the Township's policy change on January 10, 2017, firefighters could work more than two consecutive 24 hour shifts. This would occur if there was overtime or if there was a mutual exchange of duty with another firefighter, or if there was a disaster or emergency that dictated the firefighter had to stay on duty. (N.T. 15, 36, 65).

11. Under the consecutive shift policy, a firefighter is subject to new limitations on the shifts he or she could swap with another firefighter. Additionally, under the consecutive shift policy, a firefighter is subject to new limitations on his or her ability to take voluntary overtime shifts when available. Furthermore, a senior firefighter may be subject to new requirements to work mandatory overtime shifts that, prior to the policy, would have been covered by a junior firefighter based on seniority rules. (N.T. 32-33, 41-43).

12. The implementation of the consecutive shift policy was an implementation of a new work rule. (N.T. 66; Township's Answer, ¶ 4).

13. The Association did not agree to the implementation of the consecutive shift policy. (N.T. 18-19).

DISCUSSION

The Association alleges that the Township violated Section 6(1)(a) and (e) of the PLRA and Act 111 when the Township unilaterally implemented a work rule which limited the number of shifts a firefighter could consecutively work to two shifts or 48 hours total. The record in this matter shows that, previous to the policy change on January 10, 2017, a firefighter had no such restrictions on the number of shifts he or she could consecutively work and was free to utilize bargained-for 'mutual exchange of duty' shift changes and work overtime shifts without meaningful restriction. Under the policy imposed by the Township on January 10, 2017, a firefighter is subject to new limitations on the shifts he or she could swap with another firefighter. Additionally, under the consecutive shift policy, a

firefighter is subject to new limitations on his or her ability to work voluntary overtime shifts when available. Furthermore, a senior firefighter may be subject to new requirements to work mandatory overtime shifts that, prior to the policy, would have been covered by a junior firefighter based on seniority rules. Thus, the policy implemented by the Township on January 10, 2017, effected a fundamental and system-wide change in the shift system for firefighters. It has long been decided by the Board and Commonwealth Court that system-wide changes to the general framework of shifts that apply to all employees in a bargaining unit is a mandatory subject of bargaining. Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997); Twp. of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993); Northern Berks Regional Police Association v. Nazareth Borough, 40 PPER 51 (Final Order, 2009); Town of McCandless v. McCandless Police Officers Association, 952 A.2d 1193 (Pa. Cmwlth. 2008). Under the PLRA and Act 111, mandatory subjects of bargaining must be bargained before they are changed. S. Park Twp. Police Ass'n v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002). Pursuant to the PLRA, an employer commits an unfair labor practice if the employer refuses to bargain collectively with the representatives of its employees. 43 P.S. § 211.6(1)(e). In this matter, the record shows that the Township did not bargain with the Association regarding the policy implemented on January 10, 2017. Therefore, the Township has violated Section 6(1)(a) and (e) of the PLRA and Act 111.

CONCLUSIONS

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. Penn Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Greater Hanover Professional Firefighters Association Local 2045 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. Penn Township has committed an unfair labor practice in violation of Section 6(1)(a) and (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 Hearing Examiner

HEREBY ORDERS AND DIRECTS

that Penn Township 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 refusing to bargain collectively with the representatives of its employees.

3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Revoke and rescind its policy issued January 10, 2017, concerning consecutive hours worked;

(b) Immediately return to the *status quo ante* that existed prior to the issuance of the policy on January 10, 2017, concerning consecutive hours worked;

(c) 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;

(d) 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

(e) Serve a copy of the attached Affidavit of Compliance upon the Association.

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 sixteenth day of February, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

Penn Township hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act and Act 111 ; that it has complied with the Proposed Decision and Order as directed therein; that it has revoked and rescinded its policy issued January 10, 2017, concerning consecutive hours worked; that it has immediately returned to the *status quo ante* that existed prior to the issuance of the policy on January 10, 2017, concerning consecutive hours worked; 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