

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHAMBERSBURG BOROUGH :
 :
 v. : Case No. PF-C-11-174-E
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 INTERNATIONAL ASSOCIATION OF :
 FIRE FIGHTERS, LOCAL 1813 :
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 INTERNATIONAL ASSOCIATION OF :
 FIRE FIGHTERS, LOCAL 1813 :
 :
 v. : Case No. PF-C-12-40-E
 :
 CHAMBERSBURG BOROUGH :

FINAL ORDER

Chambersburg Borough (Borough) filed timely exceptions and supporting briefs with the Pennsylvania Labor Relations Board (Board) on February 19, 2013, challenging two Proposed Decisions and Orders issued on January 30, 2013 involving the Borough and the International Association of Firefighters, Local 1813 (Local 1813).¹ In Case No. PF-C-11-174-E, the Hearing Examiner dismissed the Borough's claim that the Local 1813 engaged in an unlawful secondary boycott in violation of Section 6(2) (d) and (e) of the Pennsylvania Labor Relations Act (PLRA). In Case No. PF-C-12-40-E, the Hearing Examiner concluded that the Borough violated Section 6(1) (a) and (c) of the PLRA by suspending Patrick Martin, President of Local 1813, because he issued a letter to International Association of Firefighters (IAFF) members asking them not to volunteer in the Borough. On March 11, 2013, Local 1813 timely filed responses to the Borough's exceptions. Following extensions of time granted by the Secretary of the Board, Local 1813 timely filed briefs in response to the exceptions in both cases on April 11, 2013.² Based on stipulations, testimony and documentary evidence presented by the parties, the facts for purposes of the exceptions, as found by the Hearing Examiner, are summarized as follows.

Local 1813 is an affiliate organization of the IAFF, which represents a bargaining unit of twenty-one (21) full-time paid firefighters employed by the Borough. In addition to the Borough's Fire Department, the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2, and the Franklin Fire Company No. 4 are volunteer firefighter organizations responding to fire emergencies in the Borough. Volunteer firefighters may choose not to provide volunteer fire services for any reason or no reason at all.

On the Borough website, Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, and the Junior Hose Truck Company No. 2 are all mentioned as volunteer fire companies of the Chambersburg Fire Department. These companies are housed in Borough-owned stations located in the Borough, and utilize the Borough-owned fire apparatus equipment. None of the active volunteers at the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, or the Junior Hose Truck Company No. 2 are members of the IAFF.

The Franklin Fire Company is not listed on the Borough website. The Franklin Fire Company is housed in its own building located within the Borough and owns and operates its own fire apparatus equipment. The Franklin Fire Company has approximately 74 active

¹ The Hearing Examiner consolidated the above captioned cases for purposes of the hearing and issued separate PDOs for each case.

² Based on the arguments raised in the parties brief oral argument before the Board, as requested by the Borough, is denied.

volunteers who provide volunteer fire services, 24 of whom are members of the IAFF. Fourteen volunteers respond to calls in the Borough, twelve (12) of whom are IAFF members. The 12 IAFF members who are members of the Franklin Fire Company are also paid employees of larger municipal fire departments in Virginia or the District of Columbia, or on federal installations. The Chambersburg Fire Department does not have administrative control over the volunteers of the Franklin Fire Company. The Franklin Fire Company has the only heavy Rescue Squad (capable of extricating occupants from burning buildings or trapped vehicles) in the Borough. The Borough and the Franklin Fire Company have entered into a Mutual Aid Agreement for responding to emergencies in the Borough.

Local 1813 and the Borough are parties to a collective bargaining agreement ("CBA") effective from January 3, 2007 through the first full pay period of January, 2012. Local 1813 and the Borough had two negotiation sessions for a successor agreement to the CBA.³ At both sessions, Jeffrey Stonehill, the Borough Manager, indicated that the Borough intended to lay off some of its paid firefighters and have those services performed by volunteer firefighters. On July 25, 2011, William F. McLaughlin, President of Borough Council, sent a letter to Patrick Martin, President of Local 1813, which stated that "effective nine (9) months from the date of this notice, the Borough will either simply decrease its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to other potential fire service providers."

President Martin and the Executive Board of Local 1813 determined that a letter should be sent to IAFF members concerning the Borough's intent to layoff Borough firefighters. Membership in the IAFF is voluntary and obligates the firefighters to abide by the IAFF Constitution and Bylaws. Article XV, Section 1(J) and (N) of the IAFF Constitution states that misconduct for an IAFF member includes "[e]ngaging in conduct detrimental to the best interests of the Association or its subordinate union which places or tends to place them in disrepute with other labor organizations, employers or the public[,]" or "[w]orking a secondary job part-time, paid on call, volunteer or otherwise as a firefighter, emergency medical services worker, public safety or law enforcement officer, or as a worker in a related service, whether in the public or private sector, where such job is within the work jurisdiction of any affiliate or which adversely impacts the interest of any affiliate or the IAFF."⁴ Art Martynuska, President of the Pennsylvania Professional Fire Fighters Association (PPFFA) and President Martin testified that an IAFF member violates the IAFF Constitution if he or she provides volunteer fire services to a municipality that has laid off its paid firefighters who are represented by the IAFF.

On October 26, 2011, President Martin sent a letter to approximately 200 IAFF members who reside in Franklin County and the southern portion of Cumberland County,⁵ stating as follows:

³ At the time of these proceedings, the parties were involved in an interest arbitration proceeding under Act 111 to secure a successor agreement.

⁴ Under the IAFF Constitution and Bylaws, any member of the IAFF may file internal union charges against another IAFF member who engages in misconduct. Those charges are reviewed by three Vice Presidents of the IAFF if requested by the charged party. If the three Vice Presidents find that the charge has merit, or if the charged party does not request review of the internal union charges, then a Trial Board is impaneled by the local union where the firefighter is a member. If the internal union charges are upheld by the Trial Board, it may impose a penalty which includes a temporary or permanent suspension in membership status in the IAFF.

⁵ On October 24, 2011, President Martin had a meeting with the volunteer Fire Chief of the Franklin Fire Company, Mark Trace, about the current situation regarding proposed layoffs of the paid firefighters by the Borough. In a memorandum memorializing that meeting, Trace stated that the Local would be sending out approximately 200 letters to IAFF members who reside in Franklin County or a portion of Cumberland County. Trace's memo stated as follows:

Local 1813 will be sending out letters to roughly 200 union firefighters living in Franklin and part of Cumberland Counties REQUESTING that you do not volunteer on calls in the Boro of Chbg. This request does not concern you riding calls other than those calls inside the Boro of Chbg and is not a formal charge of any kind. Due to IAFF regulations/policies/procedures, your local union will receive a copy. Again this is a request out of respect for your union brother and not a formal charge of any type. NOW with that being said, if you continue to volunteer on runs into the Boro, Local 1813 will file formal charges with the IAFF to have disciplinary actions taken

As you know, current economic and political strife within the United States has placed great stress upon state and local governments, forcing them to find alternative means to support and provide funding for their respective infrastructures. As a direct result, municipal based public safety entities have borne the brunt of the budgetary scrutiny as has already been evidenced in the states of Wisconsin, New Jersey, and Ohio.

Regrettably, I am compelled to inform you that the Borough of Chambersburg is facing a similar reality. Recently, the Borough informed our membership that, it intends to reduce the Chambersburg Fire Department's career staffing or transfer much of the primary responsibility for fire fighting and suppression to potential fire service providers. It seems likely that the Department will achieve these goals by more heavily relying upon volunteer departments, with which it has existing relationships in the form of mutual aid agreements.

Many of you, by now, are likely experiencing circumstances similar to ours - being forced to face the realities of providing financial stability and security to your families in these uncertain economic times. Therefore, I respectfully request your support as a member of the International Association of Fire Fighters, and ask that you adhere to the Constitution and By-Laws of our great union by refraining from providing volunteer firefighting services to the Borough of Chambersburg. We are abundantly aware that such a request in some form may place stress upon you and your personal interests. Many of you currently volunteer in areas that are unable to provide adequate means of fire and public safety, and our request is in no means meant to criticize or diminish your efforts and commitment to your communities. However, collective, mutual support is fundamental to the security of all who possess membership within the IAFF, and this support is necessary to protect the jobs of our local members.

In closing, we greatly appreciate your consideration and assistance in this matter and would like to emphasize that the Greater Chambersburg Area Paid Fireman's Association, IAFF Local 1813 will pursue any avenue of action that is both necessary and legal for the continued security of our members and their families as well as yours.

Twenty-four (24) IAFF members who provide volunteer fire services for the Franklin Fire Company were sent President Martin's letter.⁶ Chief Trace received Martin's October 26, 2011 letter, and understood from the letter that if he volunteered in the Borough, union disciplinary action could be taken against him, which could result in loss of IAFF membership. He understood that if he lost IAFF membership, he would not lose his job⁷ or his health care or pension benefits.⁸ Jason Kuehler, Assistant Fire Chief of the Franklin Fire Company, is a paid firefighter in Alexandria, Virginia. He also received Martin's October 26, 2011 letter and understood the letter to mean that he could be disciplined by the IAFF, including expulsion, if he did not comply with Martin's letter. John Lenhart,

against you. I am not a lawyer or big union contract guy but I believe that the worst of those charges would be that you loose [sic] your union card.

This leaves you with a decision to make. Do you or do you not ride calls into the Boro? As the Fire Chief, I promise you that you will not receive disciplinary action from the Franklins if you choose not to respond on calls into the Boro of Chbg.

⁶ None of the volunteers at the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 received the letter because they were not IAFF members.

⁷ Trace is a paid firefighter for the Washington, D.C. fire department and is a member of IAFF Local 36.

⁸ Firefighters who are not members of the IAFF but are included in a collective bargaining unit are still protected by the terms and conditions of employment (including salary, pension, and health care) that are secured through a collective bargaining agreement between the local union and the employer. Nor are bargaining unit employes who are not IAFF members subject to termination from their employment.

also a member of the Franklin Fire Company, is a paid firefighter for Fairfax County, Virginia. Lenhart received a copy of Mr. Martin's October 26, 2011 letter and he interpreted the letter as requesting him not to volunteer in the Borough.

On or about November 4, 2011, David Finch, Assistant Borough Manager, sent a memorandum to Martin stating, in pertinent part, that the Borough was "currently investigating an allegation of misconduct ..., specifically, that on October 26, 2011, you sent a letter to volunteer firefighters in the area who are IAFF members to request that they refrain from ... providing volunteer firefighter services to the Borough of Chambersburg." On November 17, 2011, Finch sent a follow up memorandum to Martin in which he stated that the Borough was considering terminating his employment. Finch sent another letter to Martin informing him, in pertinent part, of his "Loudermill" hearing before the Borough council.

On January 30, 2012, Martin read a prepared statement to the Borough Council. Martin's letter stated, in relevant part:

We have come to the point tonight over a letter that was sent to members of the International Association of Fire Fighters, from IAFF Local 1813 under my signature as President, reminding those members of the IAFF Constitution and Bylaws requirements concerning volunteer firefighting. The letter was not written while I was on duty and was by no means meant for public consumption. It was merely an internal Union matter.

At no time did I or any other member of Local 1813 ask any non-IAFF member or for that matter any individual fire department to discontinue or limit fire service. Additionally, and despite a claim to the contrary in one of the Borough's charges, my letter was not sent to any member of the Chambersburg Fire Department. Further, my letter did not state that any person must cease volunteering within the Borough, nor do I have the authority to compel that. The choice of whether to volunteer was left entirely up to the individual.

I do regret, however, that my communication to my fellow IAFF members caused concern among the Borough Council. That was not my intent, and I apologize that my letter has caused such a commotion.

On or about February 1, 2012, Councilman McLaughlin sent a letter to Martin informing him that the Borough Council had voted to suspend him for two hundred and forty (240) hours as a result of his October 26, 2011 letter. The Borough's letter suspending Martin specifically cites Martin's letter as the grounds for the suspension.⁹

Based on the evidence presented, the Hearing Examiner held that, for police and firefighters covered under Act 111, a secondary boycott under Section 6(2) (d) of the PLRA would only arise if the actions of the union are directed against a secondary employer that is also a public employer, and that the Franklin Fire Company is not a public employer, and therefore Martin's October 26, 2011 letter could not have been an unlawful secondary boycott. The Hearing Examiner also found that there is substantial evidence that the Franklin Fire Company is allied with the Borough, such that there can be no secondary boycott. Finding no unprotected secondary boycott, the Hearing Examiner held in Case No. PF-C-12-90-E that the Borough's suspension of Martin for sending the October 26, 2011 letter was discriminatory in violation of Section 6(1)(a) and (c) of the PLRA.

PF-C-11-174-E

Section 6(2) (d) of the PLRA states:

⁹ Martin appealed the Chambersburg Borough Council's decision to the Borough of Chambersburg Civil Service Commission, which upheld the charges in a decision dated May 25, 2012. On March 1, 2012, Local 1813 requested binding grievance arbitration regarding the Borough's decision to suspend Martin.

(2) It shall be an unfair labor practice for a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employee or for employees acting in concert:

(d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services...¹⁰

As regards Chief Martin's October 26, 2011 letter, which is alleged to be a secondary boycott in this case, we note that Martin's letter merely reminded IAFF members of their obligations under the union constitution and bylaws. In **Dudek v. Pittsburgh City Fire Fighters, Local No. 1**, 425 Pa. 233, 228 A.2d 752 (1967), the Supreme Court held as follows:

It cannot be disputed that a union may require its members to cooperate in the achievement of its legitimate objectives. The success of any organization is dependent upon the cohesiveness of efforts of those who compose it... But the modus operandi in achieving the objectives must conform to the law of the land.

* * *

Nothing in this opinion is to be construed as denying to labor unions the right to discipline recalcitrant members in accordance with their constitutions and by-laws consonant with standards which meet the laws of the land. The Supreme Court of Wisconsin well said in **Local 248, U.A.A. & A. I. W. v. Wisconsin Employment Relations Board**, 11 Wis. 2d 277 (1960): "A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power. . . .

"A union must have authority to discipline its members, otherwise it will have no power to bargain effectively."

Dudek, 228 A.2d at 753, 756-757.

In accordance with **Dudek**, a union's notice of, or imposition of disciplinary sanctions on, recalcitrant members would not be a secondary boycott. Indeed, Martin's letter of October 26, 2011 was not itself coercive. The October 26, 2011 letter only advises IAFF members of their obligations under the IAFF bylaws and constitution with which they agreed to abide. Accordingly, Martin's October 26, 2011 letter would not amount to a secondary boycott under Section 6(2)(d) of the PLRA.

Further, we agree with the Hearing Examiner's pronouncement that a secondary boycott cannot be found where the third-party is not independent or unconnected with the labor dispute at issue. **SEPTA**, 30 PPER ¶30054 (Proposed Decision and Order, 1999). In this regard, the National Labor Relations Board has recognized the "ally" defense as follows:

[A]n otherwise neutral employer may lose the protection of the secondary boycott provision of the act if such employer becomes "allied" with the primary employer in such a manner that he ceases to be a "neutral" entitled to protection of the Act. Under the "Ally doctrine" an employer may lose his neutral status (a) if he performs "struck work" for the primary employer, that is work that he would not have performed "but for" the strike at the

¹⁰ The clause "or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services" was declared unconstitutional by the Pennsylvania Supreme Court in **PLRB v. Chester and Delaware Counties Bartenders, Hotel & Restaurant Employes Union**, 361 Pa. 246, 64 A.2d 834 (1949).

primary employer's facility. **General Teamsters Local 959**, 266 NLRB No. 134, or (b) if the primary and secondary are so closely integrated that they in essence constitute a single employer. **N.L.R.B. v. Local 810, Steel, Metals & Hardware Fabricators**, 460 F. 2nd 1, 5 (2nd Cir. 1972); **Drivers, Chauffeurs and Helpers Local No. 639, IBT (Poole's Warehousing, Inc.)**, 158 NLRB 1281, 1286 (1966).

Newspaper and Mail Deliverers' Union of New York and Vicinity, 271 NLRB 60, 67 (1984).

There is substantial evidence of record to support a finding that the IAFF members of the Franklin Fire Company would have provided volunteer firefighting services because of a lay off at the Borough Fire Department. Indeed, the Borough expressly advised Local 1813 of its intent to lay off some of its paid firefighters and have those services performed by volunteer firefighters. Borough Council President McLaughlin's letter of July 25, 2011, in fact gave Local 1813 notice that "effective nine (9) months from the date of this notice, the Borough will either simply decrease its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to other potential fire service providers." Chief Martin's October 26, 2011 letter was sent to request that volunteers not perform work that was previously done by Borough firefighters who may be laid off. As such the Hearing Examiner did not err in finding that the IAFF member volunteers of Franklin Fire Company were allied with the Borough with respect to providing fire fighting services for the Borough.

President Martin's letter of October 26, 2011, requesting that IAFF members of the Franklin Fire Company withhold volunteer services as replacement for laid off Borough fire fighters, in accordance with the IAFF constitution and bylaws, is not a secondary boycott under Section 6(2)(d) of the PLRA.¹¹ After a thorough review of the exceptions and all matters of record in Case No. PF-C-11-174-E, the exceptions filed by the Borough shall be dismissed, and the PDO in Case No. PF-C-11-174-E, shall be made final.

PF-C-12-40-E

On March 9, 2012, Local 1813 filed a Charge of Unfair Labor Practices alleging that the Borough violated Section 6(1)(a) and (c) of the PLRA on February 1, 2012 by suspending Martin for 240 hours because of his October 26, 2011 letter to IAFF members requesting that they cease providing volunteer firefighting services in the Borough.¹² The Borough filed an Answer in which it noted its then pending Charge of Unfair Labor Practices against Local 1813 in Case No. PF-C-11-174-E, for an unlawful secondary boycott occasioned by Martin's October 26, 2011 letter for which he was disciplined.

As held above, Chief Martin's letter of October 26, 2011 to IAFF members of the Franklin Fire Company was not a secondary boycott in violation of Section 6(2)(d) of the PLRA. The October 26, 2011 letter involved internal union matters discussing IAFF members' rights and obligations under the IAFF constitution and bylaws. Thus, Martin's October 26, 2011 letter was protected activity under the PLRA. **Pennsylvania State Police v. PLRB**, 41 PPER 183 (Pa. Cmwlth, *unreported*, 2011). The Borough does not dispute that its suspension of Chief Martin was solely because of the October 26, 2011 letter to IAFF members. Accordingly, the Borough's discipline of Martin for engaging in that protected conduct amounts to interference and discrimination under Section 6(1)(a) or (c) of the PLRA.

¹¹ The Borough takes exception to the Hearing Examiner's reliance on **PLRB v. International Brotherhood of Firemen and Oilers, Local 1201**, 16 PPER ¶16056 (Final Order, 1985), (**Pen-Del**) and Section 1201(b)(7) of the Public Employe Relations Act (PERA), to conclude that because the Franklin Fire Company is not a public employer under Act 111, there can be no unfair labor practice under Section 6(2)(d) of the PLRA. Given our holding that Martin's October 26, 2011 letter was not coercive and that the volunteer fire fighters of the Franklin Fire Company were allied with the Borough, we need not reach this issue. Likewise, we need not address the exception to the Hearing Examiner's determination that a "jurisdictional dispute" within the meaning of Section 6(2)(e) of the PLRA involves a situation of two unions vying for the assignment of the same work.

¹² The Secretary of the Board requested an amendment of the charge and preserved the date of filing. An Amended Charge of Unfair Labor Practices was timely filed by Local 1813 on April 4, 2012.

After a thorough review of the exceptions and all matters of record, the Borough's exceptions in Case No. PF-C-12-40-E to the Hearing Examiner's finding of a violation of Section 6(1)(a) and (c) of the PLRA must be dismissed. Accordingly, the PDO in Case No. PF-C-12-40-E shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Chambersburg Borough are hereby dismissed, and that the Proposed Decisions and Orders issued on January 30, 2013, in Case Nos. PF-C-11-174-E and PF-C-12-40-E are hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, James M. Darby, Member, and Robert H. Shoop, Jr, Member, this fifteenth day of October, 2013. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

MEMBER ROBERT H. SHOOP JR. DISSENTS. I would hold that Martin's letter of October 26, 2011 was coercive toward IAFF members and that the volunteers of the Franklin Fire Company were not allied with the Borough. Accordingly, I would conclude that Local 1813 engaged in a secondary boycott under Section 6(2)(d) of the PLRA. As a result, I would also hold that the Borough did not violate Section 6(1)(a) and (c) of the PLRA in disciplining Martin for the October 26, 2011 letter.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1813

v.

CHAMBERSBURG BOROUGH

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AFFIDAVIT OF COMPLIANCE

Chambersburg Borough hereby certifies that it has ceased and desisted from its violation of Section (6) (1) (a) and (c) of the Pennsylvania Labor Relations Act as read in *pari materia* with Act 111; that it has rescinded the February 1, 2012 order suspending IAFF President Patrick Martin for 240 hours; that it has made Martin whole for all wages and benefits he would have earned had he not been suspended; that it has posted a copy of the Final Order and Proposed Decision and Order as directed; and that it has served a copy of this affidavit on Local 1813.

Signature/Date

Title

SWORN AND SUBSCRIBED to before me
The day and year first aforesaid

Signature of Notary Public