

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY POLICE ASSOCIATION :
:
v. : Case No. PF-C-22-10-W
:
ALLEGHENY COUNTY :

FINAL ORDER

The Allegheny County Police Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on January 26, 2023, challenging a Proposed Decision and Order (PDO) issued on January 11, 2023. In the PDO, the Hearing Examiner concluded that Allegheny County (County) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, when it unilaterally established an Independent Police Review Board. Pursuant to an extension of time granted by the Secretary of the Board, the Association filed a brief in support of its exceptions on February 2, 2023. After an extension granted by the Secretary, the County filed a brief in response to the exceptions on March 24, 2023.

The facts of this case are summarized as follows. The Association is the exclusive bargaining representative of the bargaining unit of police officers employed by the County. (FF 3). On April 27, 2021, the Allegheny County Council passed Ordinance No. 06-21-OR (Ordinance) establishing the Independent Police Review Board, which was signed into law on April 29, 2021, and became effective January 1, 2022. (FF 7, 8). Sections 905.17 (Records) and 905.18 (Cooperation with Board; Power to Seek Court Intervention) of the Ordinance pertain to the transmission of officers' personnel records and inclusion of other records needed to investigate alleged police misconduct by the Independent Police Review Board. (FF 14, 15).

The Association filed its Charge of Unfair Labor Practices on February 9, 2022, alleging that the County violated Act 111 and Section 6(1)(a) and (e) of the PLRA by failing to bargain with the Association over the provision of confidential personnel records to the newly established Independent Police Review Board. On May 12, 2022, the Secretary of the Board issued a Complaint and Notice of Hearing, directing that a hearing be held before a Hearing Examiner. The hearing was held on August 5, 2022, at which time the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. Both parties filed post-hearing briefs.¹

¹ On June 3, 2021, the Association filed a Charge of Unfair Labor Practices, docketed at Case No. PF-C-21-48-W, concerning the same issues as alleged in the present case. On June 15, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing, directing that a hearing be held before the Hearing Examiner on September 3, 2021. A hearing was held as scheduled, during which the County argued that the Association's Charge at PF-C-21-48-W was prematurely filed as the Independent Police Review Board would not be effective until January 1, 2022. Therefore, the Association filed the

In the PDO, the Hearing Examiner concluded that the County did not violate Section 6(1)(a) or (e) of the PLRA by enacting the Ordinance, as the creation of the Independent Police Review Board was a matter of managerial prerogative, citing to FOP, Lodge No. 5 v. City of Philadelphia, 29 PPER ¶ 29000 (Final Order, 1997), aff'd sub nom. FOP, Lodge No. 5 v. PLRB, 727 A.2d 1187 (Pa. Cmwlth. 1999). The Hearing Examiner further rejected the Association's argument that the Ordinance repudiated the confidentiality provision in the parties' collective bargaining agreement (CBA), noting that a determination of repudiation required an interpretation of the meaning of "confidential," which falls under the jurisdiction of an arbitrator and not the Board. The Hearing Examiner additionally noted that, at the time of the hearing, the Independent Police Review Board had not requested any records from the County and, therefore, no demonstrable impact had occurred that could require bargaining over the release of confidential records. Accordingly, the Hearing Examiner rescinded the complaint and dismissed the Charge.

On exceptions, the Association argues that the Hearing Examiner "erred as a matter of law in determining that the County did not unlawfully repudiate the [CBA] provision requiring the confidentiality of officers' disciplinary investigations and records by enacting the Ordinance providing for the disclosure of such materials at the request of the [Independent Police Review Board]." (Association Exceptions at 5). The Association argues that the Hearing Examiner erred in relying on FOP, Lodge No. 5 because the case does "not address the disclosure of police officers' personal information and therefore has no precedential effect." (Association Exceptions at 3). Upon review, the Board's decision in FOP, Lodge No. 5 does not address the situation at hand as the issue contested by the Association is not the creation of the Independent Police Review Board but the provision of confidential personnel files. Indeed, here, the Association is not challenging the Hearing Examiner's decision that creation of the Independent Police Review Board is managerial. Rather, the Association is challenging Sections 905.17 and 905.18 of the Ordinance concerning the provision of potential confidential personnel information to the Independent Police Review Board as a violation of Act 111 and the PLRA for failure to bargain. The Association argues the only way to protect members' personal information is to bargain with the County before the information is released.

The relevant, contested provisions regarding confidentiality in this case are as follows. First, the parties' agreement addresses the confidentiality of personnel records as follows:

4. Confidentiality and Record Retention.

- a. All internal investigations shall be kept confidential except as required for continuation of the investigation.

instant Charge and requested withdrawal of its Charge at PF-C-21-48-W. On July 14, 2022, the Secretary of the Board issued a Nisi Order of Withdrawal for Case No. PF-C-21-48-W. However, the parties agreed to fully adopt the transcript and exhibits from Case No. PF-C-21-48-W into the record of Case No. PF-C-22-10-W.

- b. Only those allegations that are adjudicated as Sustained shall be included in an officer or employee's personnel file.
- c. All complaints received by the department, regardless of disposition, will be maintained in a separate confidential file by the Superintendent of Police.

(Association Exhibit 3). Whereas the Ordinance provides as follows:

Section 905.17 (Records):

Any personnel records, complaints alleging misconduct against County or municipal police officers, and information obtained from these records, which are in the possession of the Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law.

Section 905.18 (Cooperation with Board; Power to Seek Court Intervention):

a. Subject to applicable laws, the County and Municipal Police Departments shall cooperate fully with Preliminary Inquiries undertaken by the Board pursuant to Section 905.11, Formal Investigations undertaken by the Board pursuant to Section 905.12 and Formal Fact-Finding Hearing conducted by the Board pursuant to Section 905.13.

b. Subject to applicable laws, the County and Municipal Police Departments shall provide to the Board upon reasonable request such records, personnel, witnesses and other materials that the Board determines are necessary to conduct a Preliminary Inquiry, a Formal Investigation or a Formal Fact-Finding Hearing. Upon a finding by the Board that such necessary records, personnel, witnesses or other materials have not been provided, the Board may petition the Court of Common Pleas for an order compelling the production of such records, personnel, witnesses and other materials.

(FF 14, 15).

The Board exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000); Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 389 A.2d 577 (Pa. 1978). Where breach of contract is alleged, interpretation of collective bargaining agreements typically is for the arbitrator under the grievance procedure set forth in the parties' CBA. Wilkes-Barre Township v. PLRB, 878 A.2d 977 (Pa. Cmwlth. 2005). However, the Board will review an agreement to determine whether the employer clearly has repudiated its provisions because such a repudiation may constitute both an unfair labor practice and a grievance. Millcreek Education Association v. Millcreek Township School District, 22 PPER ¶ 22185 (Final Order, 1991), aff'd sub nom. Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa.

Cmwlth. 1993), appeal denied, 641 A.2d 590 (Pa. 1994); Port Authority of Allegheny County v. Amalgamated Transit Union Local #85, 27 PPER ¶ 27184 (Final Order, 1996).

Initially, the Board agrees with the Association that the contents of and access to personnel files is a mandatory subject of bargaining, and bargaining should occur before the release of an employe's confidential information. Indeed, here, consistent with Act 111 and the PLRA, the parties' disciplinary policy discusses what personnel documents are confidential and not to be voluntarily released by the County. Moreover, Section 905.18(b) of the Ordinance contemplates that there may be confidential information that the County is unable to voluntarily provide by law, contract, or due to collective bargaining.

However, there has been neither a request by the Independent Police Review Board for documents, nor has the County provided officers' confidential files to the Independent Police Review Board. Further, as astutely noted by the Hearing Examiner, had the Independent Police Review Board "[requested] documents from the Police Department, there may or may not be some demonstrable impact of the terms and conditions of employment..." which would allow for a demand for impact bargaining from the Association. (PDO at 7). Thus, when a request is made by the Independent Police Review Board, the County should seek out the Association to negotiate the release of any questionable documents from officers' personnel files that are not clearly able to be released under the parties' agreement. IAFF, Local 1803 v. City of Reading, 31 PPER ¶ 31057 (Final Order, 2000). However, on this record, in the absence of a request for information from the Independent Police Review Board, there is not substantial evidence from which the Board could find that the County clearly repudiated the CBA by voluntarily releasing confidential information or that there has been a demonstrable impact on employe wages, hours, or working conditions caused by a request for confidential information from the Independent Police Review Board.² Accordingly, the Association failed to establish that the County had yet repudiated the CBA or violated its bargaining obligation under Act 111 and Section 6(1)(a) and (e) of the PLRA.

The Association further argues on exceptions that the Hearing Examiner failed to make various findings of fact. Specifically, the Association alleges that Finding of Fact 5 should provide greater detail on the information contained in the police officers' personnel files.³ The Hearing Examiner must set forth those findings that are relevant and necessary to support the conclusion reached but need not make findings summarizing all the evidence presented. Page's Department Store v. Velardi, 346 A.2d 556 (Pa.

² Further, the Association did not except to the Hearing Examiner's decision concerning the fact that no confidential documents have been provided to the Independent Police Review Board. Therefore, the Association has waived any argument on this issue. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived.").

³ The personnel files of the officers are divided into five, confidential file types, including personnel, medical, discipline, background, and supervisory. Sensitive financial and medical information, such as Social Security numbers, officers' psychological examination results, and family members' names, is contained within these files. (N.T. 19-27).

Cmwlth. 1975). The Board finds that the Hearing Examiner made the findings that are necessary to support the proposed decision and that the Association's suggested findings of fact regarding the contents of the personnel files are not necessary or relevant to the issue of whether confidential information has been or will be provided to the Independent Police Review Board under the Ordinance.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the County has not violated Section 6(1)(a) or (e) of the PLRA when it passed the Ordinance establishing the Independent Police Review Board. Accordingly, the Board shall dismiss the Association's exceptions and make the PDO final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Allegheny County Police Association are hereby dismissed and the Proposed Decision and Order issued on January 11, 2023, shall be, and the same is, hereby made absolute and final.

SEALED, DATED, and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this fifteenth day of August, 2023. 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.