

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1813

v. : Case No. PF-C-12-40-E

CHAMBERSBURG BOROUGH

PROPOSED DECISION AND ORDER

On March 9, 2012, International Association of Fire Fighters, Local 1813 (Union or Local) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the Chambersburg Borough (Borough) alleging that the Borough violated Sections 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) as read in *pari materia* with Act 111 of 1968.

On March 5, 2012, the Union filed an amended charge. On April 16, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which June 18, 2012 in Harrisburg was assigned as the time and place of hearing.

The hearing was held as scheduled and consolidated for hearing with Case No. PF-C-11-174-E, a charge filed by the Borough against the Union.

The hearing was held as scheduled at which time all parties were afforded an opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

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 International Association of Firefighters Local 1813 is a labor organization under Act 111. It is also an affiliate organization of the International Association of Firefighters. (N.T. 13-14, Joint Stipulation 1)
2. The Local represents a bargaining unit of all full-time paid firefighters employed by the Fire Department ("Department") of the Borough. (N.T. 13-14, Joint Stipulation 2)
3. There are currently twenty-one (21) bargaining unit members. (N.T. 13-14, Joint Stipulation 3)
4. The Borough is a public employer under Act 111. (N.T. 13-14, Joint Stipulation 4)
5. The Local and the Borough are parties to a collective bargaining agreement ("CBA") whose effective dates are January 3, 2007 through the first full pay period of January, 2012. (N.T. 13-14, Joint Stipulation 5)
6. The parties are currently involved in an interest arbitration proceeding under Act 111 to secure a successor agreement. (N.T. 13-14, Joint Stipulation 6)
7. Patrick Martin is a fifteen (15) year full-time paid firefighter for the Borough and holds the position of shift captain in the Borough Fire Department. He also is the elected President of the Local. (N.T. 13-14, Joint Stipulation 7)
8. Scott McNew is the current elected Vice President of the local, and a bargaining unit employee. (N.T. 43, 96, 264)

9. The Department provides a host of emergency services, including basic life support services and fire suppression, for the Borough through its full-time paid firefighters represented by the Local. (N.T. 13-14, Joint Stipulation 8)
10. Volunteer firefighters who volunteer their services at one of four volunteer fire companies also provide some of those services. (N.T. 13-14, Joint Stipulation 9)
11. 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 membership organizations. (N.T. 13-14, Joint Stipulation 10)
12. Volunteer firefighters of 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 not paid employees of the Department. (N.T. 13-14, Joint Stipulation 11)
13. The Franklin Fire Company entered into a Mutual Aid Agreement with the Borough. The Franklin Fire Company is housed in its own building located within the Borough and owns and operates its own fire apparatus equipment. (N.T. 13-14, Joint Stipulation 12, Joint Exhibit A)
14. The Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, and the Junior Hose Truck Company No. 2 have not entered into Mutual Aid Agreements with the Borough. These companies are housed in Borough-owned stations located in the Borough. These companies utilize the Borough-owned fire apparatus equipment. (N.T. 13-14, Joint Stipulation 13)
15. The Franklin Fire Company has approximately 74 active volunteers who provide volunteer fire services. Of those, 24 are members of the IAFF. Fourteen volunteers respond to calls in the Borough. Twelve (12) of these 14 are IAFF members. (N.T. 109, 129)
16. The Cumberland Valley Hose Company has only one active volunteer who provides volunteer fire services. That one volunteer is not a member of the IAFF. (N.T. 157-158, Union Exhibit 4)
17. The Goodwill Fire Company No. 3 has six (6) active volunteers who provide volunteer fire services. None of the active volunteers at this company are members of the IAFF. (N.T. 163-164, Union Exhibit 4)
18. The Junior Hose Truck Company No. 2 has four (4) active volunteers who provide volunteer fire services. None of the active volunteers at this fire company are members of the IAFF. (N.T. 152, Union Exhibit 4)
19. Volunteer firefighters of 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 not paid employees of those volunteer fire companies for which they provide volunteer fire services. (N.T. 11, 150, 156, 161, 205, Union Exhibit 6)
20. None of those four volunteer fire companies have any paid employees. (N.T. 150, 156, 161, 205, Union Exhibit 6)
21. A person who wishes to become an active volunteer of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 must fill out an application with the Borough of Chambersburg. (N.T. 284, Borough Exhibit 16)
22. A person who wishes to become an active volunteer of the Franklin Fire Company must fill out an application with that volunteer fire company. (N.T. 284, Borough Exhibit 16)
23. Each of the four volunteer fire companies, not the Borough, decides who can become a member of their respective volunteer fire company. (N.T. 149, 156, 160, 203)

24. The members of each of the four volunteer fire companies elect the officers of their respective volunteer fire company. (N.T. 149, 156, 160, 203)
25. One does not need to be an IAFF member in order to volunteer for one of the volunteer fire companies which provide volunteer firefighting services to the Borough. (N.T. 132, 150, 146, 160)
26. Volunteer firefighters of 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 may choose not to provide volunteer fire services for any reason or no reason at all. (N.T. 56, 95)
27. On the Borough website, Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 are all mentioned as volunteer fire companies of the Chambersburg Fire Department but the Franklin Fire Company is not. (N.T. 61)
28. The Chambersburg Fire Department does not have administrative control over the volunteers of the Franklin Fire Company, but can only recommend discipline to the administration of the Franklin Fire Company. (N.T. 251, 278)
29. The Chambersburg Fire Department does have administrative control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2. The Borough may discipline an active volunteer from one of these three volunteer fire companies, and that discipline may include a written warning or suspension. (N.T. 251, 271)
30. The Chambersburg Fire Department sometimes has command and control over the active volunteers of the Franklin Fire Company, and sometimes it does not. Whether or not the Chambersburg Fire Department has command and control over the active volunteers of the Franklin Fire Company is determined by whether or not the emergency occurs in an assigned area of the Chambersburg Fire Department or the Franklin Fire Company. The assigned area of the Franklin Fire Company is the Townships of Guilford, Hamilton and Greene-all outside the Borough of Chambersburg. (N.T. 272-273, 276)
31. The Chambersburg Fire Department sometimes has command and control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 as the active volunteers are housed in one of the two stations of the Chambersburg Fire Department and are transported to emergencies on the Department's apparatus. (N.T. 269)
32. The IAFF is a voluntary membership organization, and bargaining unit employes represented by the IAFF are not obligated to join the IAFF. (N.T. 183, 220)
33. To become a member of the IAFF, a person must work as a paid fire fighter for a public or private sector employer whose employes are organized by the IAFF. He or she must also agree to join the union. (N.T. 183, 220)
34. Membership in the IAFF includes benefits and obligations. (N.T. 13-14, Joint Stipulation 14)
35. Membership in the IAFF allows the fire fighters to vote for officers of their respective unions. It also allows them to vote for officers of any state affiliate of the IAFF, such as the Pennsylvania Professional Fire Fighters Association. (N.T. 197, 220-221)
36. Membership in the IAFF also obligates the fire fighters to abide by the IAFF Constitution and Bylaws, which enumerates the benefits and obligations of members of the IAFF. (N.T. 187, 221, Union Exhibit 5)

37. Bargaining unit employees who are not members of the IAFF are still protected by the terms and conditions of employment-including salary, pension, and health care-secured through a collective bargaining agreement (or the terms set by the employer in Right to Work States) between the local union and the employer. Nor are bargaining unit employees who are not IAFF members subject to termination from their employment. (N.T. 122, 143, 169, 220)
38. Loss of membership in the IAFF does mean loss of voting rights, and the loss of incidental benefits which varies based on which local union represents the bargaining unit employees where the firefighter is employed. (N.T. 123, 145, 177, 220-221)
39. Under the IAFF Constitution and Bylaws, any member of the IAFF may file internal union charges against another IAFF member who engages in misconduct. (N.T. 266)
40. 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. (N.T. 171-172, 199-2000)
41. Article XV, Section 1(J) 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.” (N.T. 186, Union Exhibit 5, p. 50)
42. Article XV, Section 1(N) states that misconduct for an IAFF member includes “[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. (N.T. 186, Union Exhibit 5, p. 51)
43. The Local and the Borough had two negotiation sessions for a successor agreement to the CBA. At both sessions, Jeffrey Stonehill, the Borough Manager, indicated that the Borough intends to layoff some of its paid firefighters and have those services performed by volunteers firefighters. (N.T. 224-225)
44. Article 28 of the CBA states, “In the event, however, that the Borough elects to exercise this right, it will provide the Union with 9 months’ notice before implementing any Fire Department reductions. ” (N.T. 21, Borough Exhibit 6)
45. The Local and the Borough have engaged in negotiations for a successor agreement to the CBA. (N.T. 13-14, Joint Stipulation 15)
46. On July 25, 2011, William F. McLaughlin, President of Borough Council, sent a letter to President Martin 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.” (N.T. 13-14, Joint Stipulation 16, Joint Exhibit B)
47. In fact, the Borough passed a budget for fiscal year 2012 which only provides funding for its full complement of full-time, paid firefighters until July 1, 2012. The budget does not provide funding for eight of the twenty-one (21) full-time paid firefighters after July 1, 2012. (N.T. 13-14, Joint Stipulation 17)

48. On August 12, 2011, President Martin sent a letter in response to Borough Council President's July 25, 2011 letter in which he challenged the Borough's announcement of impending layoffs, as well as the sufficiency of the notice under Article 28 of the CBA. (N.T. 227, Union Exhibit 9)
49. The Executive Board determined that a letter should be sent to IAFF members informing them of their obligations under the IAFF Constitution and Bylaws. (N.T. 13-14, Joint Stipulation 18)
50. On October 24, 2011, President Martin had a "friendly" 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 states that the Local will be sending out approximately 200 letters to IAFF members who reside in Franklin County or a portion of Cumberland County. He further states:

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 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.

(N.T. 125, Borough Exhibit 9)

51. On October 26, 2011, President Martin sent a letter that notified some IAFF members that "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." (N.T. 13-14, Joint Stipulation 19, Joint Exhibit C.)
52. The letter goes on to state, "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." (N.T. 13-14, Joint Stipulation 20)
53. President Martin sent the letter to approximately 200 IAFF members who reside in Franklin County and the southern portion of Cumberland County. (N.T. 228, 230)
54. 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. (N.T. 231)
55. Twenty-four (24) IAFF members who provide volunteer fire services for the Franklin Fire Company were sent President Martin's letter. (N.T. 231)
56. 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 which is considering laying off its paid firefighters who are represented by the IAFF. (N.T. 189-190, 197-198, 232)

57. On or about November 4, 2011, David Finch, Assistant Borough Manager sent a memorandum to President Martin stating, in pertinent part, that the Borough was "currently investigating an allegation of misconduct on [his] part, 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." (N.T. 13-14, Joint Stipulation 21, Joint Exhibit D)
58. The November 4, 2011 memorandum goes on to schedule a pre-disciplinary conference for Thursday, November 10, 2011. (N.T. 13-14, Joint Stipulation 22)
59. The pre-disciplinary conference was rescheduled for November 14, 2011. Fire Chief William M. Fitzgerald, Assistant Borough manager David Finch, President Martin, and counsel for the Local were in attendance. (N.T. 13-14, Joint Stipulation 23)
60. On November 17, 2011, David Finch sent a memorandum to President Martin in which he stated that the Borough was considering terminating his employment, and notified him that the Borough Council will meet to consider such termination. (N.T. 13-14, Joint Stipulation 24, Joint Exhibit E.)
61. David Finch sent another undated letter to President Martin informing him, in pertinent part, that "a Loudermill hearing will take place on December 5, 2011 at 6:00 pm. before Town Council." (N.T. 13-14, Joint Stipulation 25, Joint Exhibit F.)
62. David Finch sent another undated letter to President Martin informing him, in pertinent part, that the December 5, 2011 meeting of Borough Council was rescheduled for January 30, 2012 at 6:00 p.m. (N.T. 13-14, Joint Stipulation 26, Joint Exhibit G.)
63. On January 30, 2012, President Martin read a prepared statement to the Borough Council. (N.T. 13-14, Joint Stipulation 28, Joint Exhibit I.)
64. 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.

(N.T. 13, 15-16, Joint Exhibit I)

65. On or about February 1, 2012, Councilman McLaughlin sent a letter to President Martin informing him that the Town Council had voted to suspend him for two hundred and forty (240) hours as a result of his October 26, 2011 letter. The letter states the statutory reasons for Mr. Martin's suspension. (N.T. 13-14, Joint Stipulation 29, Joint Exhibit J.)
66. Councilman McLaughlin specifically cites Martin's letter as the Borough's grounds for suspending him. He says the letter was:

Engaging in conduct unbecoming an officer and neglect of an official duty due to Martin's actions of:

- a. Encouraging, sanctioning, supporting, and suggesting a secondary boycott which interferes with the normal work of the department.
- b. Calling, instituting, maintaining or conducting an unlawful strike or boycott against the Borough.
- c. Neglect of duty to properly control, manage, and direct volunteer firefighters.
- d. Improper exercise of supervisory and personnel management over the subordinate volunteer firefighters.

(N.T. 13, 15-16, Joint Exhibit J)

67. On February 2, 2012, President Martin received a copy of Councilman McLaughlin's letter. (N.T. 13-14, Joint Stipulation 30)
68. On February 10, 2012, Mr. Martin appealed the Chambersburg Town Council's decision to the Borough of Chambersburg Civil Service Commission. (N.T. 13-14, Joint Stipulation 31, Joint Exhibit K.)
69. On February 27, 2012, the Chambersburg Borough Civil Service Commission held a hearing to review the discipline imposed on Mr. Martin by Chambersburg Town Council. The Commission upheld the charges in a decision dated May 25, 2012. (N.T. 13-14, Joint Stipulation 32, Joint Exhibit M.)
70. On March 1, 2012, the Local informed the Borough that it was requesting binding grievance arbitration regarding the Borough's decision to suspend Martin. A hearing has been scheduled for August 30, 2012. (N.T. 13-14, Joint Stipulation 33, Joint Exhibit N.)
71. On or around April 21, 2012, Scott McNew, Vice President of the Local and a paid firefighter within the Chambersburg Fire Department, sent letters to at least 11 members of the Franklin Fire Company who are also members of the IAFF, preferring internal IAFF charges against such members, in furtherance of Martin's October 26, 2011 letter. (N.T. 13-14, Joint Stipulation 38, Joint Exhibit Q)
72. On May 8, 2012, the Chambersburg Town Council filed for preliminary injunctive relief in the Franklin County Court of Common Pleas against the Local, Martin, and McNew, seeking the court to require the Defendants to cease encouraging, sanctioning, and supporting a secondary boycott of volunteer fire fighting services of the Chambersburg Fire Department. (N.T. 13-14, Joint Stipulation 39, Joint Exhibit R)
73. On May 8, 2012, the Honorable Richard J. Walsh granted the motion and ordered the Local, Martin, and McNew to "cease and desist from encouraging, sanctioning, and supporting a

secondary boycott of volunteer fire services in the Chambersburg Fire Department." (N.T. 13-14, Joint Stipulation 40, Joint Exhibit S)

74. On May 10, 2012, the preliminary injunction hearing was continued by joint motion of the parties with the preliminary injunction order remaining in effect. (N.T. 13-14, Joint Stipulation 41, Joint Exhibit T.)
75. The Franklin Fire Company has the only heavy rescue squad in the Borough. The squad is capable of extricating occupants from burning buildings or trapped vehicles. (N.T. 279-280)
76. On average, 14 members of the Franklin Fire Company respond to calls within the Borough and, on average, 12 of those 14 volunteers are also IAFF members. (N.T. 109)
77. The volunteer members of the Franklin Fire Company, who are IAFF members, generally are better trained than the other volunteer members of Franklin Fire Company. (N.T. 110)
78. The 12 IAFF members who are members of the Franklin Fire Company are also paid employees of fire departments at federal installations and at municipal departments in Virginia and the District of Columbia. (N.T. 110, 115)
79. Chief Trace testified that there are 74 volunteers who are actively engaged in providing fire fighting services for the Franklin Fire Company. (N.T. 128)
80. Jason Kuehler is one IAFF member who is also a member of the Franklin Fire Company. He is the assistant chief of the Franklin Fire Company. He is also a paid firefighter for the Alexandria, Virginia. He lives in Green Township, which is north and east of Chambersburg, partially surrounding it. He had been a volunteer at Franklin for ten years and wanted to continued to be a volunteer because the Franklin Fire Company is the first fire company for his house. (N.T. 138-139)

DISCUSSION

The Union's charge of unfair labor practices alleges that the Borough violated Sections 6(1)(a) and (c) the PLRA as read in *pari materia* with Act 111 when it suspended fire officer and Union President Patrick Martin for 240 hours as a result of protected activity he engaged in as president of IAFF, Local 1813. Martin, on October 26, 2011, sent a letter to volunteer firefighters in the Chambersburg area, reminding them that the IAFF by-laws to which they were bound prohibited them from volunteering in a firefighters job with the Borough if those services are detrimental to the IAFF or its locals. The Borough had recently notified the IAFF that due to budget difficulties, it decided to use volunteers to replace eight paid firefighters, over one-third of the force of 21 paid firefighters.

Section 6(1)(c) Allegation

An employer commits an unfair labor practice under Section 6(1)(c) if it discriminates against an employe for having engaged in an activity protected by the PLRA as read in *pari materia* with Act 111. **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004). If the charging party presents a *prima facie* case during its case-in-chief, a charge under Section 6(1)(c) is to be sustained unless the employer shows that it would have taken the same action even if the employe had not engaged in the protected activity. **Brentwood Borough**, 35 PPER ¶112 (Final Order 2004), *citing Perry County v. PLRB*, 634 A.2d 808 (Pa. Cmwlth. 1992). The discriminatory motivation creates the offense. *Id.* A valid non-discriminatory reason for the employer's action may rebut any inference that the employer was discriminatorily motivated. **Duryea Borough Police Department**, *supra*.

To support a charge that the Borough's suspension of Martin was discriminatory, the Union must prove that Martin engaged in activity protected by the PLRA, and that with knowledge of that activity, the employer took adverse action against the employe because of union animus. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). It is the motive for the adverse action that creates the offense under Section 6(1)(c) of the PLRA. **PLRB v. Ficon**, 434 Pa. 383, 254 A.2d 3 (1969).

The only dispute in this case is whether Martin's October 26 letter constituted protected activity, since the Borough admits that Martin's letter was the cause of the suspension.

The Borough argues that Martin's letter was not protected activity under the PLRA because it called for a prohibited and unlawful secondary activity in violation of Section 6(2)(d) of the PLRA. The Borough has filed its own unfair labor practice charge, at Case No. PF-C-11-174-E, alleging that President Martin and the IAFF had engaged in a secondary boycott. The Borough imposed discipline based on Martin's unprotected activity in calling for a secondary boycott, not because of any protected activity. The Borough contends that its discipline of Martin was a lawful use of managerial rights to punish unlawful behavior within its Fire Department that directly threatened the safety of the taxpaying public.

There are no PLRB cases directly on point with the facts of this dispute. However, in two cases the Board has held that communication between union leaders and members informing them of issues around collective bargaining and management's bargaining positions are examples of protected activity and that such communications cannot serve as the basis for discipline. **See Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania**, 41 PPER ¶33 (Final Order, 2010), *aff'd* **Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania State Police**, 620 C.D. 2010, 41 PPER ¶183 (Pa. Cmwlth, unreported, January 6, 2011) and **PSSU, Local No. 668 v. Washington County**, 23 PPER ¶23040 (Proposed Decision and Order, 1992), *aff'd* 23 PPER ¶23073 (Final Order, 1992).

The Borough contends that those cases are not dispositive because in the present case the substance of the communication is significantly different in its quality and its effect on the public safety. Martin's communication to the members was a warning that IAFF membership required the potential volunteers to withhold their services from the Borough if they wanted to maintain their membership in the IAFF. The Borough contends that the substance of the letter was not merely speech to fellow IAFF members critical of management and Borough officials. The letter was unlawful speech because it threatened them with the loss of IAFF membership and its attendant benefits. It was a call for a prohibited secondary boycott of the Fire Department, meant to cripple the Borough's ability to fight fires, all in order to gain advantage in a labor dispute. The Borough argues that the PLRA was not intended to protect such speech.

The Local makes several persuasive arguments that Martin's letter is protected activity that should not lead to discipline.

First, the Local has prevailed against the Borough's argument that Martin's letter was an illegal secondary boycott. In Case No. PF-C-11-174-E, the Borough charged that Martin's letter was not protected activity because it called withholding of volunteer services that constituted a secondary boycott in violation of section 6(2)(d) and (e) of the PLRA. In that case, I dismissed the Borough's charge and the rationale for that decision is incorporated by reference here.

Second, the Union points out that Martin's letter addressed an obvious issue of concern to the Local and the IAFF. The Local faced the prospect of seeing over one-third of its bargaining unit lose their jobs to layoffs. The Borough had indicated that it would have that work performed by volunteers, a small portion of whom were IAFF members. Given the language of the IAFF Constitution which placed limits on when and if an IAFF member may volunteer in situations which adversely affect an affiliate of the IAFF, President Martin's letter constituted not only an issue of importance to the Local and its bargaining unit but also to other IAFF members who resided in the area. Art Martynuska, the President of the Professional Fire Fighters Association, testified that the issue of volunteering was a matter of great concern for the IAFF.

The fact that Martin's letter was sent to a group of IAFF members who also were volunteer firefighters at the Franklin Fire Company does not make the communication unprotected under the PLRA. Just as the IAFF members had chosen to volunteer at the Franklin Fire Company, they also volunteered to become members of the IAFF. In doing so, they had agreed to abide by the IAFF Constitution, and, therefore, had an interest in whether they were in compliance with that document. Becoming a member of a volunteer fire company does not negate one's obligation under the IAFF Constitution.

Third, the Local points out that the Borough has overstated its claim that Martin's letter was a threat to public safety. The volunteers at the Franklin Fire Company are the ones who may be most affected by Martin's letter. The Franklin Fire Company is also the one company that has heavy rescue equipment. The IAFF members who are members of Franklin would, in theory, be the volunteers the Borough would be concerned about not responding to calls. However, there is no evidence that any volunteers at the Franklin Fire Company actually refused to provide volunteer fire services as a result of Martin's letter.

Borough Council President William McLaughlin testified that volunteers "typically outnumber the number of professional fire fighters on scene." (N.T. 83) However, it is important to analyze McLaughlin's observation in the context of the entire volunteer situation. Franklin Fire Company Chief Trace testified that there are 74 volunteers who are actively engaged in providing fire fighting services for Franklin and 24 are IAFF members. Currently, only 12 of the IAFF members respond to calls within the Borough. Even taking Trace's higher number, if every one of the IAFF members refused to respond to calls in the Borough, there would still be 50 volunteers not affected by President Martin's October 26 letter.

Fourth, even if Martin's letter was seen as a threat to public safety, NLRB case law supports the proposition that an employee is still engaged in protected activity when it requests volunteers to withhold their volunteer services. **St. Barnabas Hospital**, 334 N.L.R.B. 1000, 168 L.R.R.M. 1005 (2001). It is appropriate for the Board to look to the NLRB and federal courts for guidance in interpreting Pennsylvania collective bargaining statutes. **Millcreek Twp. School District v. PLRB**, 631 A. 2d 734, 738 n. 10 (Pa. Cmwlth. 1993), *alloc. denied* 537 Pa. 626, 641 A. 2d 5909 (1994).

Section 6(1)(a) Allegation

It is an unfair labor practice under Section 6(1)(a) of the PLRA for an employer "[t]o interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act." 43 P.S. 211.6(1)(a). A violation of Section 6(1)(a) may be independent or derivative. **Springfield Township**, 28 PPER ¶28164 (Final Order 1997). A derivative violation of Section 6(1)(a) occurs when an employer commits a violation of Section 6(1)(c). *Id.* An employer commits unfair labor practices under Section 6(1)(a) if it discriminates against its employees for having engaged in activity protected by the PLRA. **Borough of Geistown v. PLRB**, 679 A.2d 1330 (Pa. Cmwlth. 1996).

In the present case, since the Borough was found to have violated section 6(1)(c) of the PLRA, the Borough will also be found to have committed a derivative violation of section 6(1)(a) of the PLRA

In **Commonwealth of Pennsylvania, Pennsylvania State Police**, 36 PPER ¶1121 (Final Order 2005), the Board explained that an independent violation of Section 6(1)(a)

"occurs where, based on the totality of the circumstances, the employer's actions would have the tendency to coerce or interfere with the protected activities of a reasonable bargaining unit employee, regardless of whether any one particular employee was actually coerced."

Id. at n. 9. See also **Commonwealth of Pennsylvania, Pennsylvania State Police**, 41 PPER ¶133 (Final Order, 2010).

If, however, the employer presents a legitimate basis for its conduct that outweighs any coercive effect the conduct may have on employees in the exercise of a protected activity, then no violation of Section 6(1)(a) may be found. **Brookville Area School District**, 38 PPER ¶144 (Proposed Decision and Order, 2007)(construing the Public Employe Relations Act's (PERA's) counterpart to section 6(1)(a)); **Commonwealth of Pennsylvania, Department of Corrections, Graterford State Correctional Institution**, 27 PPER ¶27169 (Proposed Decision and Order 1996); **Temple University**, 23 PPER ¶23118 (Proposed Decision and Order 1992), *affirmed on another ground*, 25 PPER ¶25121 (Final Order 1994); **Philadelphia Community College**, 20 PPER ¶20194 (Proposed Decision and Order 1989).

In considering all the facts of the present case, the conclusion that must be reached is that the Borough's suspension of IAFF President Martin would have a tendency to coerce a reasonable employee in the exercise of protected rights. In the context of the present dispute, where a union officer is suspended for reminding fellow union members of the obligations of union membership, it is hard to reach any other conclusion. The Borough will be found to have committed an independent violation of Section 6(1)(a) of the PLRA.

CONCLUSIONS

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

1. The International Association of Fire Fighters, Local 1813 is a labor organization under Section 3(f) of the PLRA as read in *pari materia* with Act 111.
2. Chambersburg Borough is an employer under Section 3(c) of the PLRA as read in *pari materia* with Act 111.
3. The Board has jurisdiction over the parties.
4. Chambersburg Borough has committed unfair labor practice under Sections 6(1)(a) and (c) of the PLRA as read in *pari materia* with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in *pari materia* with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Borough shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA as read in *pari materia* with Act 111.
2. Cease and desist from discriminating against employees 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 February 1, 2012 order suspending IAFF, Local 1813 President Patrick Martin for 240 hours;
 - (b) Make President Patrick Martin whole for all wages and benefits he would have earned had he not been suspended;
 - (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 its 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

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of January, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner