

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

GREATER HANOVER PROFESSIONAL :  
FIREFIGHTERS ASSOCIATION LOCAL 2045 :  
 : Case No. PF-C-14-120-E  
v. :  
 :  
PENN TOWNSHIP<sup>1</sup> :

**PROPOSED DECISION AND ORDER**

On November 13, 2014, the Greater Hanover Professional Firefighters Association Local 2045 (Association or Union) 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) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by issuing a memorandum on October 8, 2014, which was designed to intimidate, coerce and restrain employees in the exercise of their protected rights.

On November 24, 2014, 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 June 19, 2015, in Harrisburg, as the time and place of hearing, if necessary. On December 9, 2014, the Township filed an Answer denying the averments contained in the specification of charges.

The hearing was necessary and was held on June 19, 2015 before the undersigned Hearing Examiner, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties submitted arguments on the record at the conclusion of the hearing in lieu of filing post-hearing briefs. The Board received the notes of testimony on July 14, 2015.

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 Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 7)
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 7)
3. In October 2014, the Association and Township were parties to a collective bargaining agreement (CBA), which contained a minimum manning clause, providing as follows:

ARTICLE 34-STAFFING

- A. To provide for the safety of firefighters on duty, a minimum staffing of four (4) firefighters shall be on duty per shift.
- B. In the event that, due to retirement, dismissal, or any other reasons causing an unexpected permanent vacancy, staffing shall not fall below three (3) firefighters on duty at all times for a period of up to six (6) months from the time the vacancy was created. This will apply only to the shift on which the permanent vacancy has occurred. Staffing levels on the other shifts shall remain at the four (4) firefighter minimum at all times. If the

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<sup>1</sup> The caption appears as amended by the Hearing Examiner after the parties agreed to dismiss Hanover Borough as a Respondent at the hearing. (N.T. 8)

vacancy has not been filled during the six (6) month grace period, staffing levels shall revert back to the four (4) firefighter minimum at all times.

C. For purposes of calculating minimum staffing under this article, a firefighter will be considered on duty if they (sic) are participating in training and/or attending the fire academy.

(N.T. 13-14; Association Exhibit 1)

4. Jeffry Parks has been employed as a Firefighter for the Township for approximately 15 years. He has also been the vice president of the Union for over three years. On October 7, 2014, Parks began working a 24-hour shift at 7:00 am, which concluded on October 8, 2014 at 7:00 am. (N.T. 13-16)
5. During his shift on October 7, 2014, Parks responded to a suspicious vehicle fire in the afternoon. At that time, the shift had fallen below the four-person minimum requirement set forth in the CBA. However, the Fire Captain was at a training exercise in another location and was considered on duty according to the terms of the CBA. (N.T. 16-19, 43)
6. The Fire Chief is the lead investigator for all fires in the Borough and has the authority to impound a vehicle if further inquiry is needed. Parks had Chief Jan Cromer paged after responding to the vehicle fire on October 7, 2014 due to the suspicious nature of the fire. When the Chief showed up, he asked Parks where the Captain was and Parks replied that the Captain was at training. The Chief approves all training requests. (N.T. 18-20, 42)
7. During shift change at 7:00 am on October 8, 2014, where there is typically an exchange of information between the outgoing and incoming shifts, the Chief asked Parks why they were below the minimum manning requirement during the vehicle fire call the day before. The Chief also asked why the Association allows this to happen sometimes, but not others. Parks attempted to explain the reason, and he and the Chief had a verbal exchange. (N.T. 18-19, 25, 45-46)
8. If the Township is below the minimum manning requirement, an off-duty firefighter is typically offered overtime to fill the shift, which is something the Association covets because there are not many overtime opportunities available. (N.T. 26)
9. During their verbal exchange on October 8, 2014, the Chief indicated that he was not pleased about being below the minimum manning requirement on the day before, and Parks responded there was no contract violation, but he could file a grievance if the Chief would like. (N.T. 31, 45-46)
10. Shortly after the verbal exchange, the Chief issued a memorandum to Parks which provided in relevant part as follows:

Today at shift change I asked a question regarding being below minimum manning as outlined in the contract. I specifically asked who allowed this as (sic) why sometimes we can go below and sometimes we can't. I asked this as I only allowed us to go below minimum manning for training if the firefighter was within reasonable distance to respond to a working fire. You asked me why I had to be so smart asking a question. I replied I was not being smart and I have the right as Department Chief to ask any question I wish regarding firefighting. You than (sic) stated we can file a grievance right now. The discussion turned quite negative. You also all but questioned me that I was not telling the truth when I said I was unaware this was happening.

Unfortunately there were several other firefighters and EMS present at the time. I did apologize to those that I could remember being present. My apology was not based on the question but the response and continuance of the discussion in front of them when I should possibly had (sic) spoken to you in private.

Putting this in perspective I will apologize to you for not continuing this discussion in private but will not apologize for my questioning. I also will inform you that your response both to the "being smart (sic) and threatening a grievance was disrespectful towards me in front of other employees and will not be tolerated in the future.

(Union Exhibit 4)

11. After Parks received the memorandum when he returned for his next shift several days later, the Chief told him he placed the memorandum in the Chief's own correspondence file, and not in Parks' personnel file. (N.T. 33, 38, 60)

#### DISCUSSION

The Association has alleged that the Township violated Section 6(1)(a) of the PLRA<sup>2</sup> and Act 111 by issuing a memorandum on October 8, 2014 which was designed to intimidate, coerce and restrain employes in the exercise of their protected rights. The Township contends that the Association has not sustained its burden of proving an unfair labor practice, and therefore, the charge should be dismissed.

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 employes 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*.

The Association has sustained its burden of proving that the Township violated Section 6(1)(a) of the PLRA. During shift change on October 8, 2014, the Chief had a verbal exchange with Parks, during which Parks mentioned that he could file a grievance over the minimum manning requirement. In response, the Chief issued a memorandum to Parks on October 8, 2014, which expressly provided, in pertinent part, as follows:

Putting this in perspective I will apologize to you for not continuing this discussion in private but will not apologize for my questioning. I also will inform you that your response **both** to the "being smart (sic) and **threatening a grievance was disrespectful towards me in front of other employees and will not be tolerated in the future.** (Emphasis added).

The record shows that Parks did not refer to the Chief in a derogatory or disrespectful manner, use profanity, or threaten the Chief with anything other than a grievance during their verbal exchange. (N.T. 31, 45). Likewise, the record also shows that the Chief warned Parks that "threatening a grievance...will not be tolerated in the future." This reflects an unequivocal warning that bargaining unit members proceed at their own peril if they indicate an intent to file a grievance in the future. This would clearly have a tendency to coerce employes in the exercise of their statutory right to present grievances to their employer. See **Dormont Police Ass'n v. Dormont Borough**, 32 PPER ¶ 32119 (Proposed Decision and Order, 2001). Accordingly, the Township has committed unfair labor practices violation of Section 6(1)(a) of the PLRA.

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<sup>2</sup> Section 6(1)(a) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer...[t]o interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act." 43 P.S. § 211.6(a).

**CONCLUSIONS**

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

1. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Association 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 Township has committed unfair labor practices in violation of Section 6(1)(a) 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 Examiner

**HEREBY ORDERS AND DIRECTS**

that the 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. Take the following affirmative action:
  - (a) Immediately remove the October 8, 2014 memorandum from all files;
  - (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 thirteenth day of August, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
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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) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; 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.

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Signature of Notary Public