

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PF-C-14-53-W
 :
 SOMERSET BOROUGH :

PROPOSED DECISION AND ORDER

On May 22, 2014, Teamsters Local 205 (Union or Local 205) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Somerset Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA)¹ by refusing to process a grievance to arbitration.

On June 20, 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 October 16, 2014, in Harrisburg as the time and place of hearing, if necessary.

The parties subsequently agreed to submit factual stipulations in lieu of participating in a hearing. On October 14, 2014, the Board received the jointly executed stipulations of fact between the parties, as well as several joint exhibits submitted in support thereof. On or about November 17, 2014, the parties filed briefs in support of their respective positions. The Borough subsequently filed a reply brief in accordance with the approved briefing schedule, which the Board received on December 2, 2014.

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

FINDINGS OF FACT

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. Officer Eric Grus served as a part-time police officer within the Somerset Borough police department working multiple shifts each week. (Joint Exhibit 8)
4. Officer Grus was a member of the Union at the time he was removed from the schedule. He has remained a member of the Union since that time. (Joint Exhibit 8)
5. Local 205 and the Borough are subject to a Collective Bargaining Agreement (CBA). However, the parties dispute whether Grus has access to the grievance procedure set forth therein. (Joint Exhibits 1 & 8).
6. The Board has jurisdiction over this complaint and the parties herein. (Joint Exhibit 8)
7. Following an incident in which Officer Grus was accused of using excessive force, the Borough removed Grus from his scheduled police duty shifts and stopped scheduling him for any additional shifts. (Joint Exhibit 8)
8. Local 205 filed a grievance with the Borough on March 21, 2014, which provides in pertinent part as follows:

¹ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) [t]o interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act...(e) [t]o refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

Officer Grus has been removed from the work schedule without just cause, therefore the Borough is in violation of Article 19, Section I of the CBA. This situation is being viewed as a suspension or discharge. In addition, Officer Grus has been denied his due process rights. The Union and Officer Grus are requesting he be reinstated to his former position and made whole for all lost wages, benefits and job opportunities.

(Joint Exhibits 2 & 8)

9. The Borough responded that the grievance was rejected and denied by letter dated April 1, 2014, which the Union received on April 3, 2014. The Borough's response set forth its position for rejection and denial as follows:
 - a. The scheduling of Mr. Grus for work as a part-time officer is purely and strictly a prerogative of management and is not regulated in any way by the Collective Bargaining Agreement and is not grievable. No violation of the Collective Bargaining Agreement has occurred.
 - b. Mr. Grus has been neither suspended nor discharged, but rather remains on the roster of persons approved for use as part-time police officers as may be determined from time to time by the Mayor exercising the Mayor's authority under the Borough Code of Pennsylvania and the Ordinances of the Borough of Somerset.
 - c. Mr. Grus' position on the part-time roster is strictly an at-will position carrying no expectation of continuing engagement under the Collective Bargaining Agreement or otherwise.
 - d. The Collective Bargaining Agreement provisions dealing with terms and provisions of engagement for part-time officers applies if and when such part-time officers are on the job, but does not assure any particular amount of work.
 - e. None of Mr. Grus' due process rights have been violated nor was Mr. Grus entitled to any prior notice and/or hearing prior to any changes in his work schedule.

(Joint Exhibits 3 & 8)

10. The Union sent a letter moving the case to the next step in the grievance procedure on April 4, 2014. (Joint Exhibits 4 & 8)
11. The Borough sent a letter dated April 8, 2014, which the Union received on April 10, 2014, again rejecting and denying the grievance, and reiterating the above reasons. (Joint Exhibits 5 & 8)
12. The Union, by letter dated April 11, 2014, informed the Borough that it was proceeding to the next step, which was arbitration, after having been denied a meeting. (Joint Exhibits 6 & 8)
13. By letter dated April 22, 2014, the Union noted the Borough's lack of response to the April 11, 2014 letter and made a formal demand for arbitration. (Joint Exhibits 7 & 8)
14. On May 8, 2014, Jack Dirienzo, Jr., Esquire, Solicitor for the Borough, informed the Union's counsel, R. Anthony DeLuca, that the Borough would not participate in the arbitration process. Dirienzo cited the Borough's position that Grus was an at-will employe with no reasonable expectation of any particular amount of work. DeLuca indicated to Dirienzo that, in his opinion, there was authority to demonstrate Grus was not an at-will employe. Dirienzo indicated that he would review any authority sent to him, and if convincing, would be willing to change his opinion. (Joint Exhibit 8)

15. On May 16, 2014, DeLuca sent Dirienzo an arbitration decision on the issue. (Joint Exhibit 8)
16. On May 21, 2014, Dirienzo informed DeLuca by teleconference that the decision was not persuasive and the Borough would not participate in the grievance process. (Joint Exhibit 8)
17. The Union filed the instant charge of unfair labor practices on May 22, 2014. (Joint Exhibit 8)

DISCUSSION

In its charge, the Union alleged that the Borough violated Section 6(1)(a) and (e) of the PLRA by refusing to allow Grus access to the next step in the grievance procedure, which is arbitration. The Borough, on the other hand, contends in its post-hearing brief that it did not violate the PLRA or Act 111 because the Mayor is a separately elected public official who is not a party to the CBA and over whom the Borough has no control. Likewise, the Borough maintains that Grus is an at-will employe with no expectation of continued employment under the CBA or otherwise. Further, the Borough asserts that scheduling of part-time officers is strictly a managerial prerogative which is beyond the scope of bargaining.

It is well settled that, pursuant to Act 111, an arbitrator has jurisdiction to make the initial determination of whether an issue is arbitrable. **Township of Sugarloaf v. Bowling**, 759 A.2d 913 (Pa. 2000) (noting that this holding is in accord with the Pennsylvania Supreme Court's pronouncements in answering the same issue in the context of a dispute arising under the Public Employe Relations Act).² In **Monroeville Police Wage Policy Committee v. Municipality of Monroeville**, 34 PPER ¶ 119 (Proposed Decision and Order, 2003), the Hearing Examiner noted that the Supreme Court in **Sugarloaf** declined to address the employer's argument that the grievant lacked standing to invoke the contractual grievance procedure due to his status as a probationary employe. The Examiner went on to find that **Sugarloaf** stands for the proposition that regardless of the basis for an employer's claim that a grievance is not arbitrable, the employer may not refuse to permit an arbitrator to make the initial determination regarding arbitrability. Instead, the employer is required to proceed to arbitration and raise its arguments regarding arbitrability to the arbitrator in the first instance. **Monroeville**, citing **Greene County**, 20 PPER ¶ 20137 (Proposed Decision and Order, 1989); **Municipality of Penn Hills**, 29 PPER ¶ 29105 (Proposed Decision and Order, 1998).

On these facts, the Union has sustained its burden of proving that the Borough violated the PLRA and Act 111. The record clearly shows that the Borough has refused to participate in the arbitration process with regard to the grievance, which the Union filed on behalf of Officer Grus. Although the Borough has advanced several arguments in support of its position here, it is well settled and beyond dispute that the Borough must present those arguments to the arbitrator in the first instance. The Borough cannot refuse to process a grievance to arbitration and expect this Board to delve into the reasons and/or merits for its refusal. In reality, the Borough has simply argued that the grievance is not arbitrable. As the case law clearly spells out, however, the determination regarding arbitrability of the dispute is for the arbitrator to decide, and not the Borough. As such, the Borough has committed unfair labor practices in contravention of Section 6(1)(a) and (e) of PLRA and Act 111.

CONCLUSIONS

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

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

² See **PLRB v. Bald Eagle Area School District**, 451 A.2d 671 (Pa. 1982).

2. The Union 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 Borough has committed unfair labor practices in violation of Section 6(1) (a) and (e) of PLRA.

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 Borough shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;
2. Cease and desist from refusing to bargain collectively with the representative of its employes;
3. Take the following affirmative action:
 - (a) Immediately process the Union's grievance filed on behalf of Officer Grus through the parties' contractual grievance procedure up to and including arbitration;
 - (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 employes 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 fourth day of March, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205

v.

SOMERSET BOROUGH

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AFFIDAVIT OF COMPLIANCE

Somerset Borough hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) 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.

Signature of Notary Public