

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WEST SHORE REGIONAL POLICE :
ASSOCIATION :
 :
v. : Case No. PF-C-15-54-E
 :
LEMOYNE BOROUGH AND WORMLEYSBURG :
BOROUGH, ACTING BY AND THROUGH WEST :
SHORE REGIONAL POLICE COMMISSION :

PROPOSED DECISION AND ORDER

On July 8, 2015, the West Shore Regional Police Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Lemoyne Borough and Wormleysburg Borough, both of which are represented by the West Shore Regional Police Commission (Commission, Department or Employer), alleging that the Commission violated Section 6(1)(a),(c), and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On July 30, 2015, 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 August 31, 2015, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary. The Employer requested a continuance and, without objection, the request for a continuance was granted. A hearing was held on October 21, 2015, in Harrisburg, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. By letter dated November 2, 2015, the Hearing Examiner incorporated the transcripts and exhibits from related matters PF-C-15-49-E and PF-C-15-50-E into the record of this matter.¹ The Association submitted a post-hearing brief in support of its charge on February 12, 2016. The Commission submitted a post-hearing brief in support of its position on March 28, 2016.

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

FINDINGS OF FACT

1. Lemoyne Borough and Wormleysburg Borough, as represented by the the West Shore Regional Police Commission, are public employers and political subdivisions under Act 111 as read *in pari materia* with the PLRA. (N.T. 5).
2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 5).
3. At the Employer's place of business, the bargaining unit members have a locker room. Prior to approximately 2009, these lockers did not have locks on them. Around 2009, the bargaining unit members were issued tasers. Around 2011, Officer Rine (Rine), who is President of the Association, brought up to Chief Hope (Hope) his concern that the lockers should be secured because of the issuance of tasers. In response to Rine's concern, Hope said that the bargaining unit members should use the blue gun locks made available by the Department to secure their lockers. (N.T. 11-12, 37-38, 89-91).
4. Gun locks can be used to either lock a gun or a locker. (N.T. 61).

¹ The transcript for this matter, PF-C-15-54-E, will be referred to as "N.T." and the exhibits from this matter will be referred to as "Association Exhibit" or "Employer Exhibit". References to the transcripts and exhibits of PF-C-15-49-E and PF-C-15-50-E will include "(49-E)" or "(50-E)" in the reference as appropriate.

5. Outside the Department's locker room there is a cabinet for Department AR-15s (Long Guns) that is secured by a lock with a hasp. (N.T. 38-39).

6. It has been Departmental rule since at least September 7, 2011, that no weapons will be "placed in, left unattended or otherwise left unsafe in unsecured lockers, desks, or other areas inside the Department." Additionally, it has been Departmental rule since at least August 30, 2013, that "all the Department's Long Guns will be stored in the locker that has been placed at the entrance to the locker rooms." (N.T. 35-36, Employer Exhibits 1, 2).

7. Prior to June 25, 2015, all departmental ammunition not currently assigned to officers was stored in a separate locker room, called "the female locker room". Prior to June 25, 2015, the lockers or cabinets in the female locker room did not have locks. (N.T. 79-80).

8. On June 18, 2015, Officer Stoley placed a series of four grievances regarding overtime (the June 18th Grievances) in Hope's inbox. (N.T. 6-7 (50-E); Association Exhibit (50-E) 1).

9. On June 19, 2015, Hope and Detective Friel (Friel) went into the Department's locker room and discovered that Rine's locker was not locked. The locker contained Rine's duty belt, ammunition, and an AR-15. (N.T. 97-98).

10. When Hope cleared out Rine's locker, he put Rine's belongings, including Rine's duty belt, ammunition, and AR-15, in his office but not in a secure locker nor in a manner to sufficiently secure the material. (N.T. 112).

11. Hope was aware of the June 18th Grievances when he found Rine's locker unlocked. (N.T. (50-E) 26).

12. When Rine arrived at the station before his shift at 6:00 PM he found his locker unlocked. Rine's weapons and duty gear were not in his locker. Specifically, Rine's duty belt, ammunition and an AR-15 were missing. (N.T. (50-E) 9; N.T. 15).

13. Rine notified Hope, and shortly after this notification, Hope arrived at the department and summoned Rine to his office. As Rine entered Hope's office, he noticed that his gear was in Hope's office and that Hope already had a departmental corrective notice printed up. Hope provided Rine the departmental corrective notice for an infraction. Specifically, the departmental corrective notice was a "written reprimand with possibility of suspension." (N.T. (50-E) 10; N.T. 16-17; Association Exhibit (50-E) 2).

14. The departmental corrective notice had the following description of the infraction: "Patrol Rifle, Ammunition, Taser, Loaded Magazines and other weapons were found in your unsecured locker in Direct Violation of Departmental Directives 2011-010 (Securing of Weapons and Ammunition) and 2013-009 (Long Gun Locker)". (Association Exhibit (50-E) 2).

15. When Hope handed Rine the departmental corrective notice, Rine asked Hope if the departmental corrective notice was in retaliation for the June 18th Grievances. During this conversation, Hope said to Rine that he was going to change shifts back to eight hours, make the police officers perform written daily logs, and angrily said "You want a war, you got a fucking war." (N.T. (50-E) 11-12, 14, 31; N.T. (54-E) 19).

16. Hope viewed the June 18th Grievances as a challenge to his authority as, in his opinion, he has the authority to grant overtime. (N.T. (49-E) 31).

17. Hope stated that, after the filing of the June 18th Grievances, he was no longer going to informally negotiate with the Association on work issues but strictly comply with the collective bargaining agreement. (N.T. (49-E) 34).

18. The bargaining unit members are not currently required to complete written logs as their activity is logged on a computer. (N.T. (49-E) 13).

19. The bargaining unit members currently work twelve-hour shifts. Previously, the bargaining unit members worked eight-hour shifts and the Association negotiated to change it to twelve hours. (N.T. (49-E) 13).

20. The change was made with regard to written reports because Hope determined the substantive content of the written reports could be put on the computers and making the bargaining unit members do both was, in effect, doubling the work. (N.T. (50-E) 80).

21. Hope told Rine that he would switch them back to eight-hour shifts and make them do logs because: "I, did, because they were not performing their job duties and they came to me in regard to the twelve-hour shifts. And I gave into them and allowed them to switch to twelve-hour shifts. I tried to work with them and tried to accommodate them to make working conditions for them better." (N.T. (50-E) 72).

22. On June 23, 2015, Corporal Scalera (Scalera), a bargaining unit member, was disciplined by Hope for failure to secure his weapon and ammunition in his locker. The Association filed a grievance in response to this discipline. Hope was aware of the grievance on June 23rd. (N.T. 23, 118-119; Association Exhibit 5).

23. On June 25, 2015, Hope issued a department directive (the June 25th Directive) which stated in relevant part:

Please be advised that effective immediately previously issued Departmental Directive 2011-010 (SECURING OF WEAPONS AND AMMUNITION) has been rescinded and replaced with this Directive.

Recent events involving the safety of Departmental Personnel and Property regarding the storage of Departmental Weapons and Ammunition in unsecured areas inside the Office brings about this Directive which will require additional security and locks on lockers in the Patrol Locker Room.

Therefore, Effective immediately, NO weapons (Firearms, Magazines, Tasers, Batons, Handcuffs, etc) will be placed in, left unattended or otherwise left unsafe in unsecured lockers, desks or other areas inside the Department.

Lockers in the Locker Room that are being used to store any Departmental Property including but not necessarily limited to Weapons, Ammunition, Duty Gear and Uniforms will be required to be secured with two (2) locks and hasps installed like the equipment on the Long Gun Locker at the entrance to the Locker Room.

The Department will not be providing these locks and/or hasps and if you opt to not place these items on your assigned locker then you are REQUIRED to take all of your equipment home or to another locked/secure facility.

(N.T. 24; Association Exhibit 4).

24. Following the June 25th Directive, the Department secured the lockers in the female locker room with locks and hasps using locks and hasps provided by the department. (N.T. 114-115).

25. Prior to the June 25th Directive, bargaining unit members were allowed to keep firearms and ammunition in their lockers and were provided two gun locks by the Employer. (N.T. 32).

DISCUSSION

The Association alleges that the Employer engaged in unfair labor practices when Hope issued the June 25th Directive in retaliation for grievances filed by the Association

on June 18th and June 23rd. The Association argues that this June 25th Directive was unlawful retaliation and also an unlawful unilateral change in the terms and conditions of employment.

In a discrimination claim under Section 6(1)(a) and (c) of the PLRA, the Association has the burden of proving that an employee engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employee that was motivated by the employee engaging in that known protected activity. **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004); **FOP, Lodge 5 v. City of Philadelphia**, 38 PPER 184 (Final Order, 2007). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented, or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. **Borough of Geistown v. PLRB**, 679 A.2d 1330 (Pa. Cmwlth. 1996).

The Board will weigh several factors upon which an inference of unlawful motive may be drawn. In **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board opined that "[t]here are a number of factors the Board considers in determining whether anti-union animus was a factor." **Id.** at 380. These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employee, the effect of the employer's adverse action on other employees and protected activities, and whether the action complained of was "inherently destructive" of important employee rights. **Centre County**, 9 PPER at 380. Close timing combined with another factor can give rise to the inference of anti-union animus. **PLRB v. Berks County**, 13 PPER ¶ 13277 (Final Order 1982); **City of Philadelphia, supra**; **Teamsters Local No. 764 v. Montour County**, 35 PPER 12 (Final Order, 2004); **AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry**, 16 PPER ¶ 16020 (Final Order, 1984). Evidence that the employer has failed to adequately explain its adverse actions or that it has set forth shifting reasons for an adverse action can support an inference of anti-union animus and may be part of the union's prima facie case. **Stairways, supra**; **Teamsters Local 312 v. Upland Borough**, 25 PPER ¶ 25195 (Final Order, 1994); **Montgomery County Geriatric and Rehabilitation Center**, 13 PPER ¶ 13242 (Final Order, 1982), **aff'd, Montgomery County v. PLRB**, 15 PPER ¶ 15089 (Court of Common Pleas of Montgomery County, 1984).

In this matter, the record is clear and there is no dispute that the Association engaged in protected activity and that the Employer was aware of this activity. The Association engaged in protected activity by filing grievances on behalf of bargaining unit members on June 18th and June 23rd. Also, the record in this matter is clear that the Employer took adverse action when it issued the June 25th Directive.

The dispute thus turns to whether the Employer was motivated by anti-union animus when Hope issued the June 25th Directive. I find that the Association has carried its burden and made its *prima facie* case.

The timing of the June 25th Directive followed very closely to the June 19, 2015, conversation between the Association President Rine and Hope wherein Hope said that he was going to change shifts back to eight hours, make the police officers complete written daily logs, and angrily said "You want a war, you got a fucking war." These statements are clear expressions of Hope's anti-union animus only six days before Hope issued the June 25th Directive. He also told Rine that he was going to make the bargaining unit members complete daily written logs and switch to eight-hour shifts, two changes which would be regressions in the terms and conditions of employment for bargaining unit members. Indeed, Hope admitted that, in cooperation with the Association, he had previously stopped the written report requirement because it was unnecessary doubling of work. Further, Hope admitted he approved twelve-hour shifts to make working conditions better, but now threatened to go back to eight-hour shifts because the bargaining unit members were "not performing their job duties." These statements, taken together, show that Hope's state of mind at the relevant time was that he was at odds with the

Association and that he was taking an antagonistic and aggressive stance towards the Association.

The larger context of the Department also supports an inference of animus in this matter. The Association filed four grievances on June 18, 2015, regarding overtime. These were among the first grievances that had been filed in some time and Hope viewed these grievances as a challenge to his authority. Hope admitted that the filing of these grievances caused him to change the way he was dealing with the Association. Coupled with the statements made to Rine, discussed above, Hope's mindset on June 25, 2015, was that he was antagonistic and adverse to the Association. The June 25th Directive was partially born out of this mindset.

Notwithstanding the finding of anti-union animus in this matter, in discrimination cases, the employer has a defense even if the union proves discriminatory motive. Once the burden of a *prima facie* case has been met, the employer may rebut a *prima facie* case of discrimination by proffering a credible, nondiscriminatory reason for its actions. **Deputy Sheriffs Association of Chester County v. Chester County**, 46 PPER 22 (Final Order 2014); **see, Wright Line, Inc.**, 251 NLRB 1083, 105 LRRM 1169 (1980), **enforced**, 662 F.2d 899 (1st Cir. 1981), **cert. denied**, 455 U.S. 989, 102 S.Ct. 1612 (1982). Once the employer establishes a nondiscriminatory reason for its actions, the burden shifts back to the complainant to prove that the employer's asserted reasons were a mere pretext for the discipline imposed. **Chester County, supra**.

In this matter, I find that the Employer has not established a credible, non-discriminatory justification for the June 25th Directive. It is true that the Employer has a credible, non-discriminatory justification for reissuing the policies regarding the secure storage of weapons and ammunition. However, to the extent that the June 25th Directive is that, it is merely a restatement of already existing policy. The substantially new portion of the June 25th Directive is the section requiring bargaining unit members to provide, at their own expense, locks and hasps for their Department Lockers. The Employer did not provide a credible, non-discriminatory reason for this change. Previous to the June 25th Directive, gun locks had been provided by the Department for use by the bargaining unit members. The June 25th Directive changed this practice by declaring that the Department would no longer be providing locks and that the bargaining unit members now must provide locks and hasps. Hope did not provide credible justification as to why he changed this practice. The Employer argues that the reason Hope issued the June 25th Directive was out of concern for security. However, the Employer does not adequately explain how the requirement that bargaining unit members are to provide their own hasps and locks is in any way related to that goal, especially considering that the Department had provided locks in the past. Indeed, the Department had, after the June 25th Directive, provided and installed locks and hasps in the female locker room. Thus, it is not a question of the Department's ability to provide and install locks and hasps on lockers.

For the reasons stated above, I am compelled to conclude that the Employer has violated Section 6(1)(a) and (c) of PLRA.

The Association also charged that the Employer violated Section 6(1)(a) and (e) when it refused to bargain over the changes to the terms and conditions of employment implemented by the June 25th Directive. Since I find above that the June 25th Directive must be rescinded and revoked for violating Section 6(1)(a) and (c), I need not address the Association's Section 6(1)(a) and (e) charge.

CONCLUSIONS

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

1. Lemoyne Borough and Wormleysburg Borough, as represented by the the West Shore Regional Police Commission, are public employers and political subdivisions 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. Lemoyne Borough and Wormleysburg Borough have committed unfair labor practices in violation of Section 6(1)(a) and (c) of the PLRA.

5. The Association's charge under Section 6(1)(a) and (e) is dismissed.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Lemoyne Borough and Wormleysburg 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 discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

3. Take the following affirmative action:

(a) Revoke and rescind the Departmental Directive issued by Chief Hope on June 25, 2015;

(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 Association.

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 26th day of April, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

Lemoyne Borough and Wormleysburg Borough hereby certify that they have ceased and desisted from their violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; that they have complied with the Proposed Decision and Order as directed therein; that they have revoked and rescinded the Departmental Directive issued by Chief Hope on June 25, 2015; that they have posted a copy of the Proposed Decision and Order as directed therein; and that they have served an executed copy of this affidavit on the Association 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