

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

HAMPDEN TOWNSHIP POLICE ASSOCIATION :  
v. : Case No. PF-C-18-84-E  
HAMPDEN TOWNSHIP :

**PROPOSED DECISION AND ORDER**

On August 8, 2018, the Hampden Township Police Association (Association) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Hampden Township (Township or Employer) alleging that the Township violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On August 30, 2018, 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 November 28, 2018, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was held on November 28, 2018, 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. The Association submitted a post-hearing brief on April 18, 2019. The Township submitted a post-hearing brief on May 31, 2019.

The Hearing Examiner, based on all matters 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. 4).

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 4).

3. Joshua Pressel is a Senior Patrolman and member of the bargaining unit. He has been a police officer in Hampden Township for over eight years. He has been President of the Association since September 27, 2017. He was the grievance officer prior to being President. (N.T. 6-8).

4. On September 21, 2017, Pressel was assigned as officer-in-charge (OIC) of Platoon A. Platoon A is one of the Township's four platoons. Pressel was replacing Sergeant Thomas Speck, who had been off duty for several months on medical leave. Pressel was later assigned as OIC for Platoon D in June, 2018, due to two officers leaving the department. (N.T. 9-10, 26-26, 49, 121).

5. On October 17, 2017, Pressel completed and submitted a grievance on behalf of Speck alleging that the Township had wrongfully terminated Speck's Heart and Lung benefits. (N.T. 11; Association Exhibit 2).

6. On January 11, 2018, Pressel completed and submitted a grievance regarding the attendance of bargaining-unit members at interest arbitration sessions. The grievance was resolved between Pressel and Chief Junkin at an early stage. (N.T. 11, 35-37; Township 3).

7. On January 16, 2018, the Association and the Township began an interest arbitration hearing. (N.T. 13).

8. Pursuant to the parties' CBA as it existed at the time of interest arbitration an OIC was entitled to additional backpay after six months of service. Pressel would have been eligible for OIC backpay in March, 2018. (N.T. 14).

9. Pressel was paid retroactive backpay of 4% (4% of his normal salary) by the Township for his time as OIC. (N.T. 15).

10. Pressel believed that he was entitled to an OIC bonus of 6% pursuant to the CBA and completed and submitted a grievance on April 18, 2018, alleging that he had not received the appropriate amount of retroactive backpay pursuant to the CBA.

11. On May 17, 2018, Arbitrator Timothy Tietze issued a interest arbitration award binding on the parties. (N.T. 18; Association Exhibit 6).

12. On May 31, 2018, Pressel had a third-step grievance meeting over the OIC pay issue with the Township Board of Commissioners. (N.T. 19-22).

13. In response to the third-step grievance meeting, the Township Commissioners issued a memorandum to Pressel and the Association denying Pressel's grievance. (N.T. 23; Association Exhibit 7).

14. On June 9, 2018, the Association demanded that Pressel's grievance over OIC retroactive pay proceed to arbitration. (N.T. 23; Association Exhibit 8).

15. On July 4, 2018, Pressel came to work for his 6:00 p.m. shift. Lieutenant Felty at that time informed Pressel that he was no longer OIC. Pressel had been OIC up to that time. Subsequently, the Chief issued a personnel order replacing Pressel as OIC for Platoon D with Officer Grunden. Felty told Pressel that "Sergeant Speck is going to be out a lot longer than they expected, and they were going to make some manpower changes, and they are going to be relieving [Pressel] of OIC." (N.T. 24-26, 53; Association Exhibit 9).

16. When Pressel was initially appointed by Chief Junkin, Junkin had assumed that Speck would be back to full-time service by January 2018. Junkin therefore initially expected Pressel to only serve as OIC until January, 2018. However, it became clear to Junkin that Speck was going to be off duty for far longer than he initially

thought. Junkin decided it would be best to rotate different people into the OIC position left open by Speck. When he decided to remove Pressel from the OIC position, Junkin also considered that it was the best time to make a manpower transition because the Township had hired four new patrolmen for August, 2018. Junkin was concerned with making sure those new hires fit in and that all the platoons were balanced with skill set and schedules. (N.T. 100-102, 120-121).

17. When Junkin removed Pressel from the OIC position he also considered an email exchange between Pressel and Lieutenant Nulty. Junkin considered Pressel's emails to be incredibly inappropriate in tone and blame shifting. Pressel was not formally disciplined for the email exchange, but Junkin did consider it a performance issue which informed his decision to remove Pressel from the OIC position. (105-107; Township Exhibit 8).

18. No one with the Township asked Junkin to remove Pressel from OIC because Pressel had engaged in union related activities. Chief Junkin did not consider Pressel's union activities when he removed Pressel from his OIC position. (N.T. 102-103).

19. The Township did hire four new partolmen effective August 2018. Prior to August 2018, the Township's police department had approximately twenty-six employes including bargaining-unit members, staff, two lieutenants and the chief. (N.T. 51, 95).

#### **DISCUSSION**

The Association alleges in its charge that the Township's removal of Pressel from the OIC position was a violation of Section 6(1)(c) under the PLRA, as the removal was in direct retaliation for Pressel's protected activities as Association president and the result of anti-union animus.

To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employe was engaged in protected activity, the employer knew of that protected activity, and there was an adverse employment action motivated by anti-union animus. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, PA State Police, 33 PPER ¶ 33011 (Final Order, 2001). It is the motive for the adverse employment action that creates the offense under Section 6(1)(c). PLRB v. Ficon, 254 A.2d 3 (Pa. 1969). An employer may rebut a claim of discrimination under Section 6(1)(c) of the PLRA by proving that the adverse employment action was based on valid nondiscriminatory reasons. Duryea Borough Police Dept. v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004).

In addition, the Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. City of Philadelphia, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities-for example, whether leading organizers have been eliminated; the extent to which the adversely

affected employees engaged in union activities; and whether the action complained of was "inherently destructive" of employe rights. City of Philadelphia, supra, citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing alone is insufficient to support a basis for discrimination, Teamsters Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employe engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. Berks Heim County Home, 13 PPER ¶ 13277 (Final Order, 1982).

Turning to this case, the record is clear that Pressel engaged in protected activities and that the Township was aware of Pressel's protected activities. Pressel has been president of the Association since September 2017. Pressel submitted and pursued multiple grievances and represented the Association in interest arbitration proceedings, and the Township does not contest that it was aware of Pressel's union activities. Additionally, the record is clear that there was an adverse employment action against Pressel when Chief Junkin removed Pressel from the OIC position in July, 2018.

There is no direct evidence of anti-union animus on this record and, in its brief, the Association does not argue the record supports a finding of any direct evidence of anti-union animus. Therefore, anti-union animus must be inferred from the record. The Association argues that the "most obvious element present in this case is timing." (Association's Brief at 7). The Association argues:

While Pressel had initiated three (3) grievances as of the time he was removed, it was only the last - his own - that had been submitted to arbitration. It was that decision to arbitrate which triggered [his] removal:

April 19, 2018	Pressel Grievance filed
May 17, 2018	Act 111 Award Issued
May 31, 2018	3 <sup>rd</sup> Step Meeting on Pressel Grievance
June 5, 2018	3 <sup>rd</sup> Step Denial on Pressel Grievance issued
June 9, 2018	Demand for Arbitration on Pressel Grievance
June 28, 2018	Board of Commissioners Meeting
July 5 or 6, 2018	Meeting between Felty and Pressel about being removed
July 10, 2018	Order Removing [Pressel] from OIC 'per strategic plan'

(Association's Brief at 7) (emphasis removed). I agree with the Association that the close timing between Pressel's engagement in

protected activities and his removal from OIC supports an inference of anti-union animus.

However, close timing alone is insufficient to support a basis of discrimination, Teamsters Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), and the analysis of this case turns to whether the record in this matter supports a finding of an additional element of anti-union animus. The Association argues that an additional element of anti-union animus may be inferred from "differing reasons advanced for [Pressel's] removal." (Association's Brief at 8). In essence, the Association argues that the Chief's reasons for removing Pressel were pretextual. The Association argues that pretext should be found because differing reasons for Pressel's removal were advanced by the Township at different times. Thus, this case hinges on the interpretation of the Chief's reasons for demoting Pressel from OIC.

I have thoroughly considered the Association's argument for pretext and I conclude that the record in this matter does not support a finding of pretext. I find that the record supports a finding that the decision to remove Pressel from the OIC position was made for reasons that do not include anti-union animus. In so finding I rely on Chief Junkin's testimony which I find to be credible due to his demeanor on the stand. I carefully observed Chief Junkin's testimony and his answers to questions were prompt and confident and did not evidence any tendency to dissemble or dissimulate. Pursuant to Chief Junkin's testimony, which I credit, the reasons for removing Pressel from the OIC position were: Chief Junkin deciding that it would be best to rotate different people into the OIC position left open by Speck far longer than initially assumed; Chief Junkin deciding that July was the best time to make a manpower transition as the Township had hired four new patrolmen for August, 2018; and, the email exchange between Pressel and Lieutenant Nulty which Chief Junkin considered to be incredibly inappropriate. None of these reasons support an inference of anti-union animus. There are consistent, non-animus reasons for removing Pressel from the OIC position that were communicated to Pressel at the time he was removed and also by Chief Junkin in credible testimony on the stand.

For the above reasons, I therefore find that the Association's allegation of pretext in this matter is not supported by the record, and the charges against the Township will be dismissed and the complaint rescinded.

#### CONCLUSIONS

The Hearing 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 **not** committed an unfair labor practice in violation of Section 6(1)(a) and (c) 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 Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the charge is dismissed and the complaint rescinded.

**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 twentieth day of June, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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Stephen A. Helmerich, Hearing Examiner