

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
WASHINGTON LODGE NO. 17 :
 :
v. : CASE NO. PF-C-20-36-E
 :
CITY OF EASTON :

PROPOSED DECISION AND ORDER

On June 15, 2020, the Fraternal Order of Police, Washington Lodge No. 17 (Union or FOP) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Easton (City) violated Section 6(1)(a), (b), (c) and (e) of the Pennsylvania Labor Relations Act (Act or PLRA), as read with Act 111. The Union specifically alleged that the City retaliated against Officer Eric Campbell for his Union activities when Captain Lohenitz of the City's Police Department (Department) instructed him to return to his light-duty assignment after staying home for over a month as a result of the COVID pandemic. Officer Matthew Rush, who was also home from his light-duty assignment during COVID, was not directed to return.

On October 21, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of Friday, March 26, 2021, in Harrisburg. Due to the closure of Commonwealth property to the public as a result of the COVID pandemic, the parties agreed to conduct the hearing on a video platform. During the video hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On July 16, 2021, the Union filed its post-hearing brief. On August 12, 2021, the City filed its post-hearing brief.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer and political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 6-7)
2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA. (N.T. 6-7)
3. Carl Scalzo is the Department's Chief of Police. (N.T. 83-84)
4. Luis Campos is the City's Chief Administrator. He reports directly to the Mayor. Stefanie Weber is the City's Human Resources Director. (N.T. 18-19, 22, 157; Union Exhibit 2)
5. Eric Campbell has been a patrolman with the City since February 24, 2006, and he has been the Union Secretary since January 2018. On July 29, 2019, Officer Campbell was injured while assisting the City Fire Department, for which he received Heart and Lung benefits. As a result of his injury, Officer Campbell was off work until he returned to a light-duty assignment on January 27, 2020. (N.T. 8-11, 90)

6. Matthew Rush has been a police officer with the City's Department since February 2006. He has been the Union Treasurer since January 2009. He has served as one of the lead contract negotiators for the past 4 collective bargaining agreements. He is the Union representative to the Police Pension Board, and he has been involved in grievance processing. Officer Rush sustained a work-related injury for which he received full salary through Heart and Lung Benefits while he was off work. Officer Rush has had 5 surgeries, the fourth of which occurred in January 2019. He was cleared to return to light duty in April 2019, and he remained on light duty until March 20, 2020. (N.T. 61-64)

7. Some of Officer Campbell's light-duty responsibilities included the following: taking online classes required by the Department; taking annually required MPOETC training for two weeks; performing duties related to traffic enforcement and records; investigating missing incident reports; compiling and documenting files for arrests and warrants, based on the National Database for Wanted and Missing People; checking for stolen vehicles and stolen firearms. (N.T. 11-12, 90-91)

8. On February 14, 2020, Officer Campbell filed a grievance on behalf of himself and Officer Chaney. The grievance was directed to Chief Scalzo on February 26, 2020. (N.T. 108-109; City Exhibit 5)

9. The grievance complained of the following:

That Officers Campbell and Chaney were injured performing work related duties respectively in July and August 2019. That both Officers were receiving Heart and Lung Benefits the remaining [sic] of the year 2019. That Captain Lohenitz advised that "you will be able to carry over 560 hours of vacation time, but anything else like personal or holidays can not [sic] be rolled over." That Officers Campbell and Chaney have lost accrued un-bankable time allotted by the contract including vacation, holiday, personal and Kelly time.

(City Exhibit 5)

10. On March 12, 2020, Officer Campbell notified the City of the Union's intent to begin collective bargaining for a new collective bargaining agreement to become effective January 1, 2021. The agreement in effect at the time would expire December 31, 2020. (N.T. 14-15; Union Exhibit 1)

11. On or about March 19, 2020, Officers Campbell and Rush met with Chief Scalzo in their capacity as Union officers and discussed concerns over COVID spreading throughout the Department. During the meeting, Chief Scalzo instructed both Officers to finish their current light-duty work and then stay home to help prevent any serious outbreak of COVID within the Department. March 20, 2020 was the last day that Officer Campbell worked light duty until his return on May 5, 2020. He did not work from home during this time. (N.T. 16-17, 40-41, 64, 100, 104)

12. The Chief told officers Campbell and Rush during the meeting that, because they were recovering from injuries, he did not want them to get COVID while recovering from those injuries. He wanted them to be home until the Department could safely resume normal operations. The Union agreed. After the meeting, Officer Rush expressed his encouragement to the Chief for

implementing safety protocols to deal with COVID. Officer Rush also informed the Chief that he was having another surgery. (N.T. 88-89)

13. Also on March 19, 2020, Chief Scalzo implemented "SPECIAL ORDER 2020-1." The 7-page policy was implemented to provide procedures for dealing with the COVID pandemic. Under this policy, officers could work from home to reduce the number of officers congregating in the station and possibly transmitting COVID after exposures resulting from a call or incident. It was an effort to "thin out" the Department to prevent the spread of COVID. Officers working from home were required to respond to a call from the Department within 20 minutes when requested. The Department has a minimum manning requirement of 5 officers per squad. Extra officers could stay home and remain on call in case of major events or high call volume. The officers were paid to stay home. (N.T. 40-41, 50-51, 55-56, 87-88; City Exhibit 1)

14. Monday, March 23, 2020, was the first day that Officers Campbell and Rush stayed home. Squads A, B, and D started staying at home on March 30, 2020. Squad C started staying home on March 31, 2020. The Crime Squad started staying home on March 27, 2020. The Vice Detectives started staying home on March 28, 2020, and the Circle Division started on March 30, 2020. (N.T. 96, 104; City Exhibit 2)

15. On April 5, 2020, all civilians working in the Department were furloughed. During the month of April 2020, the Department scrambled to protect itself against COVID dangers. Command staff obtained hand sanitizer, masks, shields and evaluated the effectiveness of new protocols. Also during April, the station lobby was closed to the public, and the Department was not enforcing traffic/parking violations as much without the civilians. (N.T. 52-53, 96-98)

16. The decision to furlough the civilians and the date they were returned to work was negotiated by Mr. Campos in an MOU between the City and AFSCME Local 447, which represents those employees. The Chief was not involved in those discussions or decisions. (N.T. 52-53, 105-106, 161)

17. As a result of the COVID shutdown of the economy in March 2020, the City experienced a loss of revenue and reduced its workforce by approximately 30% due to a projected 15-20% revenue decrease. The budget deficit was \$5.5 million, and the amount of \$1.6 million was returned to the budget with the layoffs. The furloughed civilians in the Department were not paid by the City. (N.T. 159-161, 183)

18. Also during April 2020, paperwork accumulated thereby generating a backlog of incident and accident reports and Right-To-Know requests. The command staff decided that the Department needed to bring officers back to handle the backlog of paperwork by the end of April. Also, call volume and crime began to increase. (N.T. 96-98)

19. Chief Scalzo instructed his lieutenants to manage the return of officers and civilians. Lieutenants were tasked with informing officers and civilians in their respective squads that staying at home was going to end, and the Chief instructed his Captain to return the light-duty officers. The work from home policy for officers was never meant to be a long-term condition. It was a temporary plan designed to give the Department a chance to figure out how to put safety protocols in place and move forward in a safe manner. (N.T. 98, 107)

20. Chief Scalzo contacted Human Resources about Officer Rush's upcoming surgery. Human Resources informed him that Officer Rush had not yet had his surgery, so the Chief decided not to bring back Officer Rush. The Chief did not want to expose Officer Rush to COVID before his fifth surgery in 5 years. The Chief did believe it was safe to bring back Officer Campbell to work light duty in the lobby area to help with traffic records. Officer Campbell and Officer Rush had been instrumental in helping out with records and there was a need to bring at least Officer Campbell back to help out with the accumulating backlog of records and reports. (N.T. 98-100)

21. The City was facing budgetary constraints pre-COVID. Rather than seeking to layoff employes, Mr. Campos explored early retirement for some employes and not re-filling the positions vacated by those retirees. The City explored early retirement incentives to save money on salaries across the City. When the economy closed due to COVID, the City suffered greater revenue shortfalls. Mr. Campos engaged the City's department heads to develop more aggressive incentive strategies to encourage employes to retire and to save the City money. (N.T. 115, 164-167, 183)

22. Chief Scalzo developed a retirement incentive plan for Mr. Campos for officers in the Department. Chief Scalzo spoke to approximately 18 officers who could qualify for the early retirement to obtain and provide realistic financial data for Mr. Campos. The Chief expected Mr. Campos to present any retirement package, that he may have later developed, to the Union. The Chief asked those officers if the early retirement was something in which they would be interested. The Chief received different answers and reflected the numbers in a report that he submitted to Mr. Campos. The Chief was interested in the early retirement because he did not want junior officers furloughed forcing them to take their City provided training somewhere else. (N.T. 111-113, 141, 165-167)

23. On April 29, 2020, at 10:33 a.m., Officer Campbell sent an email to Mr. Campos and Ms. Weber objecting to Chief Scalzo speaking to officers about a possible retirement incentive or buyout. (N.T. 18-19; Union Exhibit 2)

24. Officer Campbell's April 29, 2020 email provides, in relevant part, as follows:

It has been brought to the attention of the FOP board that Chief Scalzo is speaking to some officers about a buyout of some type. . . This raises huge concerns with the [U]nion since individual officers cannot, nor can the Police Administration, negotiate on their own and any buyout would have to be universal to all not just a select few. . . . As you are aware it would also need to be brought to the pension board for approval since an actuarial study would need to be performed to see if the fund could sustain a large buyout if any offer would alter the current structure of the Pension Ordinance.

. . . .

(Union Exhibit 2)

25. Chief Scalzo has never seen a copy of Officer Campbell's April 29, 2020 email to Mr. Campos and Ms. Weber, and the City has not specifically responded to the Union about the email. The Chief is not involved in

collective bargaining negotiations, and Officer Campbell does not discuss negotiations with the Chief. Officer Campbell did not discuss with the Chief his communication with Mr. Campos about the retirement incentive and pension changes. Mr. Campos did contact the Chief to tell him to stop talking about retirement incentives or buyouts with the officers. Thereafter, whenever an officer asked the Chief about the early retirement incentive, the Chief told them that he could no longer discuss it. (N.T. 21, 30, 55-56, 109-110, 113-114, 145, 163, 168, 173-174)

26. The first bargaining session held between the City and the Union was in the afternoon of April 29, 2020, at 4:30 p.m., after the morning email, during which the parties discussed mostly ground rules and exchanged first proposals. The Union also raised an objection to the Chief's discussion with officers about early retirement incentives or buyouts. That conversation became a little heated. The Chief was not in attendance. (N.T. 17, 22-25, 71)

27. During negotiations, the City had proposed contract language changes to the Heart and Lung Policy. On April 30, 2020, Officer Campbell emailed Mr. Campos and Ms. Weber informing them that the Union does not agree to the proposed contract language changes and that, "since this is a mandatory subject of bargaining," the Union looks forward to addressing the matter during upcoming negotiations. Approximately 10 minutes later, Officer Campbell emailed Mr. Campos and Ms. Weber requesting certain detailed information for upcoming negotiations. Also on April 30, 2020, Union Counsel sent a letter to the American Arbitration Association requesting a list of arbitrators for the Campbell-Chaney grievance, filed in February 2020. (N.T. 22, 31-33; Union Exhibits 3, 4 & 5)

28. On May 1, 2020, Captain Lohenitz contacted Officer Campbell and directed him to return to light duty work on Monday, May 4, 2020. Officer Campbell had a pre-scheduled vacation and a conflict that day and reported to work on Tuesday, May 5, 2020. Chief Scalzo credibly testified that the Union's demand of Mr. Campos, that the Chief stop talking to officers about early retirement incentives, had no relationship to directing Officer Campbell to return to light duty on May 5, 2020. The Chief credibly testified that he had no control over the return of the civilians in the Department, who were still furloughed and who did not return until June 2020. (N.T. 34-37, 41-42, 52-53, 100, 104, 117)

29. Chief Scalzo needed to resume normal operations because he was facing an increasing backlog. The Chief reached out to Mr. Campos to bring back the civilians in the Department because he could not resume normal operations without the manpower. Mr. Campos was not prepared to return the civilians due to financial constraints and safety, so the Chief had to call Officer Campbell in to return to his light-duty assignment to handle the work. Mr. Campos was not ready to return the civilians sooner than June 2020, because of the impact it would have had on the budget. (N.T. 117, 134-136, 183)

30. When he returned, Officer Campbell was again assigned to records and traffic work, including the filing and scanning of vehicle sheets and accident reports, as well as responding to right-to-know requests. The lobby at this time was still closed. Officer Campbell told the Chief that he was thrilled to be back and that he was going crazy at home. The Chief observed that Officer Campbell seemed happy to be back at work. (N.T. 35-37, 100)

31. The City did return some civilian employees in other departments earlier than the civilians in the Department. Those decisions were based on operational necessities and seniority. In this regard, the City returned the Code Enforcement Officer, Motor Mechanics and Sewer Plant employees before the Department civilians. Similarly, Captain Lohenitz returned Officer Campbell in early May 2020 because of the Department's need to process the backlog of legacy and new paperwork. The civilian employees in the Department were returned in mid-to-late June. (N.T. 46-47, 185-186)

DISCUSSION

The record does not contain substantial evidence that the City violated Section 6(1)(b) of the PLRA, as read with Act 111. Section 6(1)(b) of the PLRA, like Section 1201(a)(2) of the Public Employee Relations Act, prohibits an employer from dominating or interfering with a union to the point where the union can be deemed a "company union." PLRB v. Commonwealth (Department of Educ.), 14 PPER ¶ 14069 (PDO, 1983) (addressing the same statutory cause of action under the Public Employee Relations Act (PERA)), aff'd, 14 PPER ¶ 14135 (Final Order, 1983). The PLRB will find an employer in violation of Section 6(1)(b) of the PLRA if the employer compromises the integrity of a labor organization to the point that the labor organization is no longer independent of the employer. Port Vue Police Wage and Policy Unit v. Port Vue Borough, 30 PPER ¶ 30189 (PDO, 1999). To prove such a violation, the union must show that the employer is "dominating or interfering with the employe organization by placing managerial employes in the hierarchy of the employe organization or by providing financial or other aid to the employe organization to the point that it is employer controlled and no longer represents the wishes of the bargaining unit. Pennsylvania Department of Labor and Industry, 15 PPER ¶ 15025 (PDO, 1984) (addressing the same statutory provision under PERA).

The record in this case does not establish that the City placed managerial employes in the hierarchy of the Union, that the City gave financial support to the Union or that it, in any way, influenced Union decisions or operations. The specification of charges does not contain any allegations related to financial support or influence or management's alleged interference with Union operations and decisions. Also, the record contains no evidence that the Chief or the City controls the Union such that the Union no longer represents the wishes of the bargaining unit. Although the record shows that Chief Scalzo spoke to officers about their interest in an early retirement incentive, it does not show that he supported the Union to the point that its independence as a labor organization can be questioned. Accordingly, the charge specifying a cause of action under Section 6(1)(b) of the PLRA as read with Act 111 is dismissed as unfounded.

The Union argues that management directed Officer Campbell to return to light duty before other officers and the civilians in the Department in retaliation for his known protected activities. The Union emphasizes that Officer Campbell filed grievances including one in February 2020, on behalf of himself and Officer Chaney, for lost contractually allotted leave while receiving Heart and Lung benefits. He emailed Mr. Campos on the morning of April 29, 2020, requesting that the Chief stop talking to officers about an early retirement incentive. That same afternoon, Officer Campbell engaged in collective bargaining negotiations with the City, which became heated over Chief's discussions with officers about the early retirement incentive. The parties also discussed the City's proposed changes to the Heart and Lung

policy. The Union further notes that, on April 30, 2020, Officer Campbell sent a follow-up letter to Mr. Campos objecting to the City's Heart and Lung proposal and demanding bargaining over the same. The Union contends that the following day, on May 1, 2020, Captain Lohenitz directed Officer Campbell to return to work, for which there allegedly was no urgency and while the lobby of the station was still closed, in retaliation for his Union activities, where civilians could have been brought back instead. The Union maintains that the close timing between Officer Campbell's Union activities and his return to work, as well as the record as a whole, support an inference that the City/Department unlawfully retaliated against Officer Campbell in ordering him back to work before anyone else.

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, 434 Pa. 383, 254 A.2d 3 (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. Cmwltth 2004).

The Board has also 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 (PDO, 1995). The factors which the Board considers are the following: 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 employes 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).

The City does not dispute that Chief Scalzo and Mr. Campos were well aware of Officer Campbell's Union activities. (City Brief at 6). Also, the record indeed supports the conclusion that the City was aware of Officer Campbell's Union activities. The question is whether the City and/or Department management retaliated against Officer Campbell for those activities when Captain Lohenitz directed Officer Campbell to return to his light duty assignment beginning on May 5, 2020. The answer is no. The Union did not establish a prima facie case of discrimination because the record lacks substantial, competent evidence that the City was unlawfully motivated or that Officer Campbell suffered adverse employment action. Close timing exists between Officer Campbell's protected activities and the act of returning Officer Campbell to his light-duty assignment on May 5, 2020, before the civilians. However, timing alone is insufficient to yield an inference of animus, and close timing is all that exists in this case. There

are no statements from anyone in the Department or the City administration tending to show an unlawful state of mind. There is no disparate treatment of Officer Campbell as compared to officers who have not engaged in protected activities, and the City's reasons for returning Officer Campbell on May 5, 2020 are legitimate and credible; they are not pretextual or shifting.

Moreover, I credit the City's reasons for returning Officer Campbell to his light-duty assignment before returning Officer Rush to his light-duty assignment, and before the Department civilians. Due to the COVID pandemic and the shutdown of the economy, the City suffered drastic losses in revenue and a budget shortfall of \$5.5 million. Consequently, the City decided to furlough 30% of its workforce to return \$1.6 million back into the budget. In this context, City administrators negotiated a furlough plan with AFSCME, which represented its civilian employees. However, the City believed it should not furlough police officers for security and safety reasons so it permitted officers to work from home to limit the risk of spreading COVID. The work-from-home plan was always intended to be temporary until the Department could figure out how to operate safely under the threat of COVID. The Chief had always contemplated that the Department would return officers to work after a short period of time.

Light duty Officers Campbell and Rush were not required to work from home. The Department temporarily suspended their light-duty assignments, and the City paid them while they remained at home, without being on call. Officers Rush and Campbell began staying at home on March 23, 2020, and the station lobby was closed to the public. The other officers began working from home soon thereafter. The City furloughed the Civilian employees on April 5, 2020, pursuant to an MOU with AFSCME. However, the legacy work generated before the closure accumulated throughout March and April 2020 and, even though parking enforcement was not being conducted at normal levels, new parking and traffic enforcement cases were building. The City was not paying the civilians, but it was paying the officers during this time. The light-duty work done by Officers Rush and Campbell was backing up and needed to be done. The City wanted to return Officer Campbell, who was still being paid by the City, without placing civilians back on the City payroll because revenues were still low. The City and the Department decided to return Officer Campbell, who had not been working, at no extra cost and for good reason.

The Chief credibly testified that he did not want to bring back Officer Rush to light duty because he was going to have surgery in the near future, and he did not want to compromise Officer Rush's health before surgery by exposing him to COVID. In this manner, Officer Rush was not similarly situated to Officer Campbell, and the City did not engage in disparate treatment of Officer Campbell. Moreover, Officer Rush also engaged in protected Union activities at a level equivalent to that of Officer Campbell. If the City was taking retaliatory adverse employment action against Officer Campbell, it seemingly would have done the same to Officer Rush. But the City retaliated against neither Officer. The Chief also credibly testified that, contrary to the Union's position, Officer Campbell was not brought back before the other officers in the Department. Rather, due to varying shift assignments, officers were brought back from their work-from-home assignments based on shift rotations, which meant some officers did not return for several days after Officer Campbell.

Although civilians in other City departments were returned earlier than the civilians in the Police Department, those decisions were based on the needs of the City for the skills of those employees. For example, sewer

department civilians were returned because the disposal and treatment of wastewater could not be postponed. The City similarly needed to return the civilians working as motor mechanics and the Code Enforcement Officer. The civilian work in the Department, which overlapped Officer Campbell's light-duty assignment (such as parking, traffic, warrants, right-to-know requests and stolen property) accumulated until it became necessary to tackle. In this context and with this understanding, the City reasonably returned Officer Campbell to reduce the mountain of accumulated work before placing civilians on the City payroll. Catching up on the processing of parking and traffic enforcement was also necessary to bring revenue into the City. In fact, Officer Campbell told the Chief that he was thrilled to be back and that he was going crazy at home; he seemed happy to be back to work. In this regard, returning Officer Campbell to his light-duty assignment on May 5, 2020, did not constitute adverse employment action. Absent both unlawful motive and adverse employment action, there can be no violation of Section 6(1)(c), as a matter of law.

The Union also alleged a violation of Section 6(1)(e) of the PLRA as read with Act 111. The specification of charges does not expressly complain of direct dealing as a separate and distinct cause of action. The charge alludes to the Chief's conversations with officers about retirement incentives. During the hearing, the Union indicated that direct dealing was not the primary thrust of their charge and that the Union was complaining more about the alleged repercussions to Officer Campbell for complaining about the Chief's alleged direct dealing. However, the Union did not at any time complain of any other bargaining violations, and it did not withdraw its cause of action under Section 6(1)(e). Therefore, I will address the bargaining violation for alleged direct dealing.

An employer is not precluded from communicating, in noncoercive terms, with employees, so long as such communications are not an attempt to negotiate directly with bargaining unit members. Somerset Area Education Association v. Somerset Area School District, 35 PPER 158 (PDO, 2005) (citing PLRB v. Bethlehem Area School District, 3 PPER 108 (Nisi Decision and Order, 1973)). However, an employer's expression may not include actual or veiled threats of reprisal or promise of benefit directed to the employees for their participation in protected activities and may not constitute an attempt to circumvent the bargaining representative and negotiate directly with employees. PLRB v. Williamsport School District, 6 PPER 57 (Nisi Decision and Order, 1975). Additionally, a party to collective bargaining negotiations is precluded from deliberately misrepresenting the position of its bargaining counterpart to gain an advantage in the bargaining process. Chester County Intermediate Unit No. 24 Education Association v. Chester County Intermediate Unit No. 24, 35 PPER 110 (Final Order, 2004).

In this case, the City was facing budgetary constraints pre-COVID. Rather than seeking to layoff employees, Mr. Campos explored early retirement for some employees and not re-filling the positions vacated by those retirees. The City explored early retirement incentives to save money on salaries across the City. When the economy closed due to COVID, the City suffered greater revenue shortfalls. Mr. Campos engaged the City's department heads to develop more aggressive incentive strategies to encourage employees to retire and save the City money. As one of those department heads, Chief Scalzo developed a retirement incentive plan for Mr. Campos for the potentially eligible officers in the Department. Chief Scalzo spoke to approximately 18 officers who could qualify for the early retirement so he could survey the level of interest in such a plan and provide realistic financial data to Mr.

Campos. The Chief credibly testified that he expected Mr. Campos to present any developed retirement package to the Union for negotiation. The Chief asked those officers if the early retirement was something in which they would be interested. The Chief received different answers and reflected the data in a report that he submitted to Mr. Campos. The Chief was interested in the early retirement because he did not want to see junior officers furloughed, thereby forcing them to take their City provided training somewhere else.

The Chief did not, at any time, threaten a reprisal or promise a benefit to any officers with respect to accepting or not accepting early retirement incentive. He simply communicated to the officers that the City was exploring the option. He did not negotiate with officers or make any misrepresentations or deals with any officers. He surveyed potentially eligible officers as a fact-finding endeavor to provide and report financial data back to Mr. Campos, who would further explore the matter. The Chief's understanding was that, if Mr. Campos developed a concrete plan for early retirement, he would present it to the Union and the pension board. The Chief's communications, therefore, only sought information, which did not constitute direct dealing.

The Union alternatively argues that, even if there is a lack of unlawful motive in this case, returning Officer Campbell to light duty on May 5, 2020, constitutes an independent violation of Section 6(1)(a). The allegations in Paragraph 21 of the Union's specification of charges adequately preserved an independent cause of action under Section 6(1)(a).

In Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER 121 (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 employe, regardless of whether any one particular employe was actually coerced." Id. at n. 9. If, however, the employer presents a legitimate basis for its conduct that outweighs any coercive effect the conduct may have on employes in the exercise of a protected activity, then no violation of section 6(1)(a) may be found. Brookville Area School District, 38 PPER 44 (PDO, 2007) (construing the Public Employe Relations Act's (PERA's) counterpart to section 6(1)(a)). Nor may a violation of section 6(1)(a) be found if the employer acts in conformity with a provision in the parties' collective bargaining agreement.

Under the totality of the circumstances in this case, a reasonable bargaining unit police officer would not have been coerced in the exercise of protected activities when the City/Department returned Officer Campbell to light duty on May 5, 2020. Management directed Officer Campbell to return to light duty at the same time that all officers were returned from their work-from-home duties. The Department needed Officer Campbell to perform his light duty functions at that time because work was mounting and the City could not yet afford to return the civilians in the Department to perform those functions. A reasonable bargaining unit officer would not be coerced because there is no nexus between Officer Campbell's Union activities and the City's legitimate need to have Office Campbell perform his job duties which no one had attended to in over a month. Additionally, the City's legitimate, credible reasons for returning Officer Campbell outweigh any coercive effect that his return may have had on reasonable bargaining unit employes.

Accordingly, the City did not unlawfully dominate or control the management or hierarchy of the Union; it did not engage in unlawful direct dealing with Department officers, it did not unlawfully retaliate against Officer Campbell by returning him to his light-duty assignment on May 5, 2020, and it did not independently coerce employees with regard to their ability to engage in protected activities.

CONCLUSIONS

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

1. The City of Easton is a public employer and political subdivision pursuant to Act 111, as read with the PLRA.

2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The City has not committed unfair labor practices within the meaning of Section 6(1)(a), (b), (c) or (e) of the PLRA, as read with 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, the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of September 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO
Hearing Examiner