

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 110 :
 :
 v. : Case No. PF-C-20-19-W
 :
 REYNOLDSVILLE BOROUGH :

PROPOSED DECISION AND ORDER

On March 24, 2020, Teamsters Local Union No. 110, affiliated with the International Brotherhood of Teamsters (Teamsters or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Reynoldsville Borough (Borough or Employer) alleging that the Borough violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111, when it demoted Officer Tammy Murray to part-time status and limited her hours to 10 hours per week after Murray engaged in protected activity.

On June 17, 2020, the Secretary 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 September 4, 2020, in Pittsburgh, as the time and place of hearing, if necessary.

The September 4, 2020, hearing date was continued at the request of the Union. A hearing date scheduled for December 12, 2020 was continued by the Hearing Examiner. The first day of hearing was held on February 26, 2021, via Microsoft TEAMS, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. A second day of hearing was held on March 23, 2021 also via Microsoft TEAMS. The Union submitted a post-hearing brief on June 6, 2021. The Borough submitted a post-hearing brief on July 28, 2021.

The Hearing 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. (N.T. 6-7).
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 6-7).
3. The Union represents a bargaining unit of two police officers employed by the Borough. The two bargaining-unit members are Chief Troy Bell and Sergeant Tammy Murray. (N.T. 19-22).
4. Troy Bell is the Chief of Police of the Reynoldsville Police Department. He has been employed by the Borough since 2011 and Chief of Police since 2014. (N.T. 18-19).

5. Tammy Murray has been working as a Police Officer for the Borough since 2015. She was moved to full-time status in November 2017. She was promoted to Sergeant in June 2018. (N.T. 98).

6. Louie "Peach" Caltagarone has been Mayor for the past fifteen years. He is referred to as "the Mayor." His general duties include running the Police Department pursuant to Borough Code. Previous to 2020, the Mayor did not have much involvement with the Police Department due to his conflicts with Borough Council. (N.T. 189-190).

7. Prior to February, 2020, the normal schedule the officers worked on weekdays was Bell worked either 6:00 AM to 2:00 PM or 8:00 AM to 4:00 PM and Murray worked 2:00 PM to 10:00 PM. While this schedule was not typed up or posted, it was the schedule Bell and Murray had followed for years. The Mayor had not normally been involved in scheduling. Bell felt that this coverage was appropriate because most calls for service came on first and second shift on weekdays (i.e., between 6:00 AM and 10:00 PM). Bell and Murray also worked weekend shifts from time to time as needed. (N.T. 50-62, 92-93, 99, 305).

8. The Union and Borough engaged in collective bargaining negotiations in 2019 which led to a collective bargaining agreement (CBA) which was executed in July 2019 and approved by the Borough Council. Bell, Murray and Union Representative Rick Keller participated in the negotiations on behalf of the Union. Borough Council members Sue Ellen Wells and T.J. Sliwinski participated on behalf of the Borough. The CBA has the effective date of January 1, 2020 through December 31, 2024. Wells and Sliwinski were not on the Borough Council in 2020. (N.T. 19, 69-70, 99, 229, 287-289; Union Exhibit 1).

9. The Mayor did not participate in the CBA negotiations. After the CBA had been agreed upon, Bell took the CBA to the Mayor for his signature. The Mayor was upset that he was not part of the negotiations and said he was busy and did not sign it. (N.T. 69-70, 219, 226).

10. The Borough passed a budget for 2020 in December 2019 which is marked as Union Exhibit 6. The total expenses in this budget were \$880,670. In this budget, there are lines for two full-time officers: Bell and Murray. In this budget, Murray's full-time wages were \$43,160. Bell's full-time wages were \$45,240. The budget for part-time police officers in this approved budget was \$20,000. The budget for police overtime was \$5,000. (Union Exhibit 6).

11. There was no discussion in 2019 about changing a full-time police officer to part-time in 2020. (N.T. 102-103).

12. The 2020-2024 CBA went into effect on January 1, 2020. The Borough implemented the contractual wage increases due to take effect on that date and the Borough did nothing to contest the validity of the CBA in any way. (N.T. 21, 289-290).

13. Bill Cebulskie was the Council president in the beginning of 2020 after winning an election in 2019. He ran for Council due to what he perceived as a problem with a group of four council members who were "doing whatever they wanted and nobody else could comment or make a statement." (There are seven council members, so a majority of four could control the Council). In Cebulskie's opinion, he and the town were fed up with the 2019 Council. Most of the Council was replaced in the election and Cebulskie

believed that the new Council came in with a different direction. At the end of 2019 Cebulskie reviewed the budget and on January 9, 2020, he and the new Council determined they had to reopen the budget for 2020. The specific problem was the per capita tax had been advertised improperly and overcharged. The Borough was aware they had until February 15, 2020, to pass a budget per Borough Code. (N.T. 329-337; Borough Exhibit 5, 6).

14. On January 13, 2020, the Borough continued its budget meeting (which started on January 9). The purpose of this meeting was, in part, to go through the budget line by line. The minutes from this meeting contain the following entry: "After a lengthy review of the 2020 budget, a motion was made . . . to approve the advertising of the 2020 budget, as well as the Occupational Assessment Tax and Real Estate Millage Ordinances, for passage at February's meeting." The Council also discussed the need for additional part-time police assistance. (N.T. 337-341; Borough Exhibit 7).

15. On January 14, 2020, the Mayor issued three Directives in memo form to the Police Department. The Chief of Police reports to the Mayor. This is the first time the Mayor had issued similar Directives to the Police Department. The Mayor gave these Directives to Bell on January 14, 2020. When Bell received the Directives from the Mayor, he posted them on the Department bulletin board and put copies of them on Murray's desk. (N.T. 23-30, 145, 247; Union Exhibits 2, 3, 4).

16. On January 14, 2020 Bell discussed the Memos with Murray. Murray had concerns with the third Directive concerning police vehicles and specifically issues regarding being on-call. Bell and Murray discussed that on-call status was not covered by the CBA. Bell and Murray discussed how on-call may work. Murray brought up concerns about safety, specifically about increasing response time to officer assistance calls. Bell suggested they call the Mayor for clarification on his Directives. Bell called the Mayor and the Mayor came over to the Police Department. (N.T. 30-32, 104-105).

17. At this meeting on January 14, 2020, in the Police Department the only people present were Bell, Murray and the Mayor. The topic of conversation was almost exclusively the third Directive regarding vehicle usage. The meeting lasted about thirty minutes. Bell and Murray brought up issues regarding the definition of emergency for on-call service and the fact that on-call work is not defined or covered in the CBA. Murray brought up concerns about safety specifically about increasing response time to officer assistance calls. The discussion started off normally with pleasant demeanors. As the conversation went on, the Mayor and Murray became more heated and at one point Bell interjected and asked everyone to calm down. (N.T. 32-36, 107-115, 206-219, 247-251).

18. At one point during the discussion of what an emergency is with respect to on-call service, the Mayor said, "You know what an emergency is." At one point, Murray said, "On-call is not part of the [CBA], and if that is something [the Borough] wants, then that's something that would have to go through the Union and be negotiated." In response to this statement, the Mayor got mad. Murray continued to say, "[the Directive] covers on-call and if we get called out for a barking dog say at 2:00 in the morning then that would be a 'call out' according to [the CBA and we get 'call out' at two hours of time and a half. If every time our phone rings, we get two hours of time and a half that's going to be expensive]"¹ The Mayor got mad and

¹ This quote from Murray from N.T. 110 was edited for clarity.

responded, "Then leave the cars here." Murray asked the Mayor, "Could you word the Directives to be more specific about what [the Borough] wanted from them?" The Mayor then stood right next to Murray's desk and yelled at her, "I am not changing it to meet your needs." Murray was sitting at her desk and the Mayor stood over top of her. Murray responded, "I am not asking you to change anything. I am just asking you to be more specific about what you meant by it." The Mayor responded, "The Union should have checked with me before they put anything in [the CBA] because I run this department. Not you and not the Union." The Mayor responded, "Every time I try and do something, every time I try and do something with the Police Department, make a change, a directive for example, you are just going to run to the Union?" The Mayor also told Murray, "If you are not going to sign the Directive, punch out." Murray responded, "Is that really what you want me to do because you are going to pay me to stay at home and I haven't done anything wrong." The Mayor responded, "Why? Because you are going to call the Union? So, you are going to nitpick everything I do and when you don't get your way, you are going to involve the Union." The two argued back and forth and Murray insisted she was going to take the Directives to the Union before she signed and this continued to make the Mayor mad. Murray did not end up leaving and signed the Directives. After Murray signed the Directives, the Mayor calmed down. (N.T. 35-37, 83-84, 107-115, 206-219, 247-251).

18. After the meeting, Murray called Keller and discussed the meeting with him. Keller then called the Mayor. When the Mayor answered the phone, the first thing he said to Keller was, "Let me guess, she called you?" Keller recognized that the Mayor was referring to Murray and said that Murray had every right to call her Union representative. (N.T. 291-292).

19. The next day, on January 15, 2020, the Borough Council continued its budget meeting. At the January 15, 2020 meeting the Borough discussed the possibility of regionalization of the Police Department. The minutes contain an entry which states: "Cebulskie [Junior, the son of President Cebulskie] explained that he would like to review the possibility of Regionalization of the Police forces. With half hour to one hour response time from PSP, he feels it is necessary to look into this possibility. [The Mayor] states that he feels that the Borough should contact Sykesville Borough first." (N.T. 346-347; Borough Exhibit 8).

20. A couple of weeks later the Borough Council had a special meeting on January 29, 2020, with the purpose of finalizing a new budget by mid-February pursuant to Borough Code. Council had identified an issue with the previous budget for 2020 in how the per capita tax had been calculated incorrectly. In executive session, the Council discussed changing personnel in the Police Department. The Council discussed wanting to reduce one of the positions to part-time. The Minutes for the special meeting contain the following line: "Motion by Popson seconded by Burkett to modify the Police Budget, due to the police contract being invalid, and renegotiate said police contract accordingly. . . . Motion carried on unanimous vote." (N.T. 38, 118, 251-257, 348-351; Union Exhibit 5; Borough Exhibit 11).

21. On January 29, 2020, immediately after the Council meeting, the Mayor called Bell and wanted to talk about the CBA. The Mayor said that the Borough wanted to renegotiate the CBA because it was not "a legal agreement" and that the Police Department might be going to one full-time and one part-time officer. The Council had not voted to demote Murray to part-time at this time, however. At that time the Department had two full-time employees: Bell and Murray. It was not stated who would go to part-time but Bell has

seniority over Murray. Bell asked, "If we do not renegotiate what is going to happen?" and the Mayor responded, "The Police Department would be disbanded if the contract could not be agreed upon and the State Police would assume coverage." (N.T. 40-42, 118-119, 238-242, 257-258).

22. After the phone call with the Mayor, Bell tried to call Keller but could not reach him. He then contacted Murray to advise her of what the Mayor had said. Bell then talked to Keller who had called him back. Bell told Keller that the Council was claiming the CBA was invalid and if the Union did not renegotiate it, the Borough would disband the Police Department. This was the first time Keller had heard that the Borough had any issue with the validity of the CBA. (N.T. 42-44, 295).

23. Prior to the February 6, 2020 meeting, Murray obtained the proposed budget from the Borough. The total of the expenses in this budget was \$880,670. In this budget, there are lines for two full-time officers: Bell and Murray. In this budget, Murray's full-time wages were \$43,160. Bell's full-time wages were \$45,240. The budget for part-time police officers in this budget was \$13,500. The budget for police overtime was \$2,500. (N.T. 45-46, 133-134; Union Exhibit 7, 17).

24. On February 6, 2020, the Union and the Borough had a meeting. Present for the Union were Bell, Murray and Keller. Present for the Borough were Council member John Burkett, Council President Bill Cebulskie and the Mayor. Miller and Cebulskie were Council members. The meeting began with a discussion about the CBA. The Union expressed that the CBA was valid and that they were not going to reopen a valid CBA. Cebulski said, "The [CBA] is invalid because the Mayor didn't sign it, the police officers didn't sign it, and the president of Council who signed it was not president when it took effect." Keller responded, "It is a valid [CBA], and we aren't going to open it and renegotiate it but let us know what you need out of the [CBA]." Cebulski got mad at this point, stood up, slammed his folder on the table and said, "We are done here. We are going to let the Labor Board handle it. If you are not willing to open the contract or renegotiate then we will just abolish the Department and start over in two years." At this point, the discussion continued. Keller said, "If you [abolish the Department], that would be an unfair labor practice." Burkett at this point said, "If [Keller] came into my shop like that, I'd get rid of the Union." Burkett owns a business in town. The topic then moved to the Borough's concern that Bell and Murray worked the same shift, 9:00 AM to 5:00 PM. The Borough also expressed concerns that the full-time officers did not work weekend shifts. Keller responded that it was not true that the full-time officers worked the same hours, that it was not true that they did not work weekend shifts, and that the full-time officers worked the shifts they did because that is when the most calls for service came in. The Borough did not dispute Keller's points about scheduling. The Borough then brought up an issue with the budget and the need to move money around to put funds into a sinking fund. The Borough said there would be cuts to the road crew and other departments besides the Police Department. During this meeting the Union also provided to the Borough a letter from Union counsel regarding the validity of the CBA. The Borough reviewed the letter, but said they needed to talk to their Solicitor about it. At the end of the meeting, Cebulskie stated that, "The Borough wants to go in a different direction, and managing the Police Department wasn't there." Murray asked if she was the one going to part-time. The Borough said it looks that way. Murray then asked, "Why just the Police Department? Why not the Borough [road] crew?" Cebulskie replied, "The

Borough [road] crew was getting cut too." (N.T. 47-50, 122-129, 232, 299-310, 352-356; Union Exhibit 9).

25. On February 12, 2020 the Borough Council held a regular public meeting. At this meeting, Cebulskie announced that the Borough would be looking at moving to a 1 full-time / 1 part-time Police Department. In response to a question by Keller, who was attending the meeting, Cebulskie said that Murray would be moving to part-time immediately. The Borough also announced that it had approved a revised budget. (N.T. 59-60, 132-133, 309, 358; Union Exhibit 8, 11).

26. In the Borough's new budget, approved on February 12, 2020, Murray was reduced to part-time. The total of expenses in this budget was \$879,170. The line for her dedicated wages was reduced to \$6,640. Bell's full-time wages remained at \$45,240. The budget for part-time police officers was raised to \$26,507. The budget for police overtime was \$2,500. There were no cuts to the road crew or any other department besides cutting Murray to part-time. (N.T. 133-134, 310-311, 362; Union Exhibit 8).

27. On February 13, 2020, Bell received a letter from the Borough Council member Darren Scolese which stated in relevant part:

ATTN.: Troy Bell Chief

Be advised that, with the Budget changes that were made at last night's Borough Council meeting, you are officially being notified that you will remain at your full time status, and Sgt. Murray will be changed to part time status. Furthermore, you will be provided a schedule, from the Mayor, which will become effective Monday, February 17, 2020. . . .

(N.T. 61-62; Union Exhibit 12).

28. The Mayor provided a schedule. It consisted of handwritten notations on an informal monthly calendar. The schedule assigned Murray between 11 and 25 hours per week at irregular hours and for shifts not normally previously worked by Murray. Bell had no input in making the schedule. (N.T. 64-65, 139; Union Exhibit 16).

29. Immediately after receiving the schedule, Bell raised Murray's schedule issues with the Mayor on Murray's behalf and the Mayor responded by informing Bell that Murray's hours were being reduced to a maximum of 10 hours per week. In effect, the Mayor rescinded his schedule before it even took effect and limited Murray to ten hours per week. Murray thereafter requested to work more than 10 hours per week, but the Mayor refused to schedule her for more than 10 hours per week. (N.T. 65-66, 139-141, 263).

30. In the beginning of February 2020, the Borough advertised for part-time police officers in local newspapers. The ads ran on February 2 and 16. (N.T. 67, 135-136, 260; Union Exhibits 14, 15).

DISCUSSION

In its charge, the Union alleges that the Borough violated Section 6(1)(a)(c) and (e) of the PLRA by moving Murray to part-time status and

limiting her hours to 10 hours per week after Murray engaged in protected activity.²

In a discrimination claim under Section 6(1)(a) and (c) of the PLRA, the union 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 3 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. 7 64 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER 3 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 3 25195 (Final Order, 1994); Montgomery County Geriatric and Rehabilitation Center, 13 PPER 3 13242 (Final Order, 1982), aff' d, Montgomery County v. PLRB, 15 PPER 3 15089 (Court of Common Pleas of Montgomery County, 1984).

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.

² The Union did not present any evidence of a violation of Section 6(1)(e) of the PLRA in this matter and does not argue in its brief that any violation of Section 6(1)(e) occurred. The Union's charge pursuant to Section 6(1)(e) is therefore dismissed.

Moving to this case, it is clear that Murray was participating in protected activities and that the employer was aware of these activities. The record shows that Murray participated in the 2019 negotiations of the CBA and she raised her concerns about the January, 2020, Directives with the Mayor including questions about compliance with CBA, question about the impact on Officer safety, and raising the possibility of reviewing the Directives with her Union. Additionally, the record is clear that the Borough had knowledge that Murray was participating in all of these protected activities. Indeed, immediately after the January 14, 2020, meeting, Keller called the Mayor who answered the phone by saying, "Let me guess, she called you?" As Murray is the only female officer in the Department, it is clear to whom the Mayor was referring. Thus, the Union has met part of its burden by showing that Murray was engaged in protected activities and that the employer was aware of these activities.

The record is clear that the Employer was suffused with anti-union animus and discriminatory motive. The following are examples of the Employer's explicit anti-union animus. During the January 14, 2020, meeting the Mayor angrily said, "The Union should have checked with me before they put anything in [the CBA] because I run this department. Not you and not the Union." He also angrily said, "Every time I try and do something, every time I try and do something with the Police Department, make a change, a directive for example, you are just going to run to the Union?" The Mayor also told Murray, "If you are not going to sign the Directive, punch out." The Mayor also said in response to a statement to Murray, "Why? Because you are going to call the Union? So you are going to nitpick everything I do and when you don't get your way, you are going to involve the Union." I find these are all evidence of anti-union animus. Additionally, during the February 6, 2020 meeting between the Union and the Borough, Council President Cebulski got mad at one point, stood up, slammed his folder on the table and said, "We are done here. We are going to let the Labor Board handle it. If you are not willing to open the contract or renegotiate then we will just abolish the department and start over in two years." Later, Council Member Burkett said, "If [Keller] came into my shop like that, I'd get rid of the Union." I find that these statements from Council members are explicit evidence of anti-union animus.

In addition to the examples of explicit anti-union animus above, animus can also be inferred from this record. The record in this matter shows that timing and the Borough's strong desire to re-open the CBA are also evidence of anti-union animus. The Mayor, Bell and Murray had a meeting on January 14, 2020, to discuss the Mayor's new Directives. At this meeting, Murray engaged in protective activity by questioning the Mayor's Directives with respect to safety and the fact that the Directive potentially raised an issue, on-call work, that was not covered by the CBA. This was on January 14, 2020. Fifteen days later, on January 29, 2020 the Council for the first time discussed changing personnel in the Police Department in a special meeting. The Council discussed wanting to reduce one of the positions to part-time. This would have been understood by everyone to be affecting Murray as she had less seniority than Bell. The Minutes for the special meeting contain the following line: "Motion by Popson seconded by Burkett to modify the Police Budget, due to the police contract being invalid, and renegotiate said police contract accordingly. . . . Motion carried on unanimous vote." This was the first time the Borough had expressed any idea that the CBA with the Union was invalid. Further, on January 29, 2020, immediately after the Council meeting, the Mayor said to Bell that the Borough wanted to renegotiate the CBA because it was not "a legal agreement"

and that the Police Department might be going to one-full time and one part-time officer. Again, it would have been understood by everyone that the reduction to part-time would affect Murray only. Bell asked the Mayor, "If we do not renegotiate what is going to happen?" and the Mayor responded, "The Police Department would be disbanded if the contract could not be agreed upon and the State Police would assume coverage." I find that the above evidence shows anti-union animus. The events described happened very close to Murray's participation in protected activities and I infer that the Borough's strong desires to force the Union to reopen a valid CBA, combined with threats of disbanded the Police Department, are more evidence of anti-union sentiment on the part of the Borough.

Additionally, I find that the Mayor's schedule provided to the Police Department on February 13, 2020, to be evidence of anti-union animus. The schedule assigns Murray between 11 and 25 hours per week at irregular hours and for shifts not normally previously worked by Murray. There was no credible explanation given by the Borough for such a bizarre schedule and I infer from the record that the schedule was made by the Mayor to retaliate against Murray for her engagement in protected activities. The arbitrary and pretextual nature of this schedule is underscored by the fact that it never went into effect, for as soon as it was questioned, the Mayor responded by reducing Murray's hours further still to a mere 10 hours per week maximum.

Based on the above, the Union has established its prima facie case in the matter. The Employer may rebut a prima facie case of discrimination by proffering a credible nondiscriminatory reason for its actions. In this matter the record does not support such a conclusion. In its Brief, the Borough argues:

The Borough's position in this case is simple. The Borough Council was well within its rights as a matter of contract and law, to take issues of managerial prerogative into its own hands by reducing Ms. Murray's hours for budgetary reasons. Ms. Murray's hours were not reduced based on any anti-union animus, and rather, were simply based upon strict budget concerns.

The testimony and evidence elicited at the two hearings in this case make it abundantly clear that Ms. Murray's position was reduced due to budget concerns. As a whole, the entire available budget for the Borough in 2020 was limited to \$833,000, following a loss in 2019. It is no secret that the Borough is in a rather dire economic situation and is hurting financially. The single largest expense for the Borough's operation was personnel salaries and pay, and in particular, the police department. Council unanimously voted to reopen the 2020 budget to make changes to the Borough's streets and in an effort to obtain grants. Council publicly undertook lengthy review of each budget line item and determined that the two areas that could stand to take cuts were the Police Department and Street Department. Simply put, Council determined that the Borough's streets, something that stood to benefit the entirety of the community, were of a higher priority than Ms. Murray's perceived entitlement to a certain number of

hours at the Borough, within a Department that was single handedly the Borough's biggest expense.

(Borough's Brief at 13-14) 1 (footnotes omitted).

In this matter I find that the record shows that the Employer's proffered budgetary reasons for moving Murray to part-time and cutting her hours to a maximum of ten per week are pretextual and not credible.

First, no Borough witness credibly explained why Murray's hours had been cut by the Mayor to a maximum of ten hours per week. I find that the record does not support the Borough's professed argument that it was worried about budget shortfalls or other budgetary issues when the Mayor limited Murray's hours to a maximum of 10 per week. During his testimony, the Mayor claimed the Council told him how many hours to schedule Murray and that Council directed him to impose the cap. (N.T. 274-275). The Mayor also non-credibly claimed that he cut Murray's hours down to a maximum of ten per week due to COVID-19, despite the fact that the all events material to this charge happened well before COVID-19 shutdowns in March, 2020. (N.T. 274). Contributing to the finding that the Borough's reasons are pretextual is Cebulskie's claim that the Mayor had discretion to set Murray's hours to either 10-12 hours a week or 18-20 hours a week. (N.T. 370). Later in his testimony, when asked who decided what hours Murray worked, Cebulskie said, "We kind of left it up to the Mayor." (N.T. 370). Cebulskie then later claimed not to remember what the Council told the Mayor with respect to how many hours Murray should be scheduled and offered the confusing explanation of: ". . . you know, [the Mayor] just needed to go ahead and run the department. But we said try to keep it within these limits." (N.T. 388-389). Based on the record as a whole, including the demeanor of the witnesses, I find Cebulskie's testimony to be not credible and pretextual.

Similarly, the Borough did not provide any credible explanation as to why it denied Murray additional hours while it continued to advertise to hire more part-time officers and she was the only person available to fill those hours. The Borough incredibly maintains that it had a need to hire additional part-time police officers to cover weekends but couldn't schedule Murray to do this because of the CBA. (N.T. 263-265). In particular, and based on the record as a whole including the demeanor of the witness, I find the following testimony of the Mayor on cross-examination to be not credible and evidence of pretext:

Q. Do you recall telling [Bell] at one point after this schedule had come out that [Murray] would go to a maximum of 10 hours per week?

A. Yes.

Q. Why is that?

A. I was going to get another part-timer in for the weekends. And I had to use it - the part-time hours.

Q. Who were you going to get?

A. I was looking for - that is why it was advertised.

Q. Well, did you ever consider asking [Murray] if she would work the weekends?

A. Not - according to the contract, no, I didn't want to go there.

Q. The contract says that the full-time officers won't work the weekends, doesn't it?

A. Yes.

Q. So once you reduced her to part-time, why didn't you consider saying to her as a part-time officer, I'm going to schedule you for week-end shifts?

A. I didn't want to bring up no issues on the contract. I was following the contract.

Q. How is following the contract preventing you from assigning a part-time officer to a weekend shift?

A. I never gave it a thought at the time.

(N.T. 263-264).

Moving on, I find, based on the record as a whole, that the Borough's reasons for reducing Murray to part-time status also to be pretextual.³ A careful review of the record evidence strongly supports a finding of pretext. The record shows that the new Council did reopen the budget in early January, 2020, because the per capita tax had been advertised improperly and overcharged. Indeed, the Council met on January 6 and 9, 2020, for this purpose. There is no evidence in the contemporaneous documents that the Borough Council was interested in reopening "the 2020 budget to make changes to the Borough's streets and in an effort to obtain grants" as the Borough argues in its Brief at page 14. A review of the meeting minutes for the January 8, 2020, meeting shows that the budget was reopened expressly because the "per capita and assessment taxes were not advertised correctly, so they were void". (Borough Exhibit 6). No mention is made of any budget shortfall motivating Council action. No mention is made of the Police Department at all. No mention of the "CBA being invalid" is made.

At the January 13, 2020, meeting, the Council discussed the need for additional part-time assistance, not less. There is no mention in the minutes of reducing any full-time police officer to part-time and no mention of any concern of the "CBA being invalid." The minutes from this meeting contain the following entry: "After a lengthy review of the 2020 budget, a motion was made . . . to approve the advertising of the 2020 budget, as well as the Occupational Assessment Tax and Real Estate Millage Ordinances, for passage at February's meeting." (Borough Exhibit 7). Again, no mention is made of any budget shortfall motivating Council action. No mention is made of the need to move money to streets.

³ In particular, based on the record as a whole including the witness's demeanor, I find the testimony of Cebulskie on N.T. 340-346 to not be credible.

At the January 15, 2020, Borough Council meeting there is no mention of moving a Police Officer to part-time. The minutes contain the entry which states: "Cebulskie [Junior] explained that he would like to review the possibility of Regionalization of the Police forces. With half hour to one hour response time from PSP, he feels it is necessary to look into this possibility. [The Mayor] states that he feels that the Borough should contact Sykesville Borough first." (Borough Exhibit 8).

By the end of January, however, the Borough's attitude towards the Union and Murray had drastically changed. At the January 29, 2020, meeting, the Borough Council suddenly moves to "modify the Police Budget, due to the police contract being invalid, and renegotiate said police contract accordingly." (Borough Exhibit 11). There had not been any talk of challenging the validity of the CBA before this meeting. These minutes expressly say that the Council wanted to renegotiate the CBA because "the police contract [was] invalid." I find it completely incredible that the Borough Council members at any time held the sincere belief that the CBA was invalid based on their sophistication and experience, and the convenient timing of their collective belief as to the ineffectiveness of the CBA.

Also, during the executive session it was for the first time discussed moving a full-time officer to part-time. Then, immediately after the Council meeting, the Mayor called Bell and said that the Borough wanted to renegotiate the CBA because it was not "a legal agreement" and that the Police Department might be going to one full-time and one-part time officer. Since Bell had seniority over Murray, everyone understood this meant Murray would be moved to part-time. Bell asked, "If we do not renegotiate what is going to happen?" and the Mayor responded, "The Police Department would be disbanded if the contract could not be agreed upon and the State Police would assume coverage." I infer that the threat to move police coverage to the Pennsylvania State Police is evidence of animus and pretext since, approximately two weeks earlier, Borough Council had discussed the need for more police coverage due to the inadequacy of Pennsylvania State Police response times.

After the events of January 29, 2020, the parties agreed to have a meeting on February 6, 2020. Prior to this meeting, Murray obtained the proposed budget from the Borough. (Union Exhibit 7). The total expenses in this budget were \$880,670. In this budget there are lines for two full-time officers: Bell and Murray. I infer from the record that this was the budget approved to be advertised by the Council in mid-January. This budget clearly shows that the Council had no intention of reducing Murray to part-time in mid-January. In addition, the total amount of expenses in this budget was \$880,670, similar to the budget passed by the previous Council (Union Exhibit 6), which undercuts and discredits any argument by the Borough that it was concerned with budget shortfalls. Indeed, the Borough's final, passed budget (Union Exhibit 8) has expenses of \$879,170 which is similar to the first budget for 2020 passed by the previous Council.

Moving to the February 6, 2020, meeting Cebulski said, "The [CBA] is invalid because the Mayor didn't sign it, the police officers didn't sign it, and the president of Council who signed it was not president when it took effect." Cebulskie also said, "If you are not willing to open the contract or renegotiate then we will just abolish the department and start over in two years." Burkett at this point said, "If [Keller] came into my shop like that, I'd get rid of the Union." At the end of the meeting, Cebulskie stated that, "The Borough wants to go in a different direction, and managing the

Police Department wasn't there." These opinions not only demonstrate anti-union animus but also are newly expressed by the Borough and not present in mid-January and before. Finally, at the February 12, 2020, Borough Council regular public meeting, Cebulskie said that Murray would be moving to part-time immediately.

Thus, in less than a month, the Borough Council had gone from no plan to move anyone to part-time status to moving Murray to part-time status along with clear expressions of anti-union animus and threats to disband the Department along with novel and incredible declarations that the CBA was invalid. I find that the record does not support the conclusion advanced by the Borough that, "[t]he testimony and evidence elicited at the two hearings in this case make it abundantly clear that Ms. Murray's position was reduced due to budget concerns." (Borough's Brief at 13). I find that the record instead shows that the Borough opened the budget to fix a minor error with the per capita tax. Once fixed, it was then content with passing a budget substantially the same as the one passed by the previous council. Then the events of January 14 happened between the Mayor and Tammy Murray. These events sparked a wave of anti-union animus against Murray and the Union, culminating in the decision to punish her by reducing her to part-time and then capping her hours at 10 per week. The Borough then used the excuse of moving money into streets as pretext for its actions.

The Borough has therefore committed an unfair labor practice in violation of Section 6(1)(a) and (c) of the PLRA and Act 111.

CONCLUSIONS

The Hearing 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. 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 an unfair labor practice in violation of Section 6(1)(a) and (c) of the PLRA and Act 111.
5. The Borough has not committed an unfair labor practice in violation of Section 6(1)(e) 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 Borough 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. 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 labor organization.

3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately reinstate Tammy Murray to a full-time police officer position;

(b) Immediately pay Tammy Murray and make Tammy Murray whole for all lost wages and benefits she would have earned as a full-time police officer from February 13, 2020, until the date of her reinstatement, including but not limited to wage increases received by the bargaining unit during the backpay period and any other lost benefits, medical and dental payments and co-payments or accoutrements and terms and conditions of employment enjoyed by full-time police officers, including any differentials in holiday pay, overtime and the accrual of sick and vacation time, as well as pension contributions during the backpay period;

(c) Immediately pay Tammy Murray interest at the rate of six percent *per annum* on the outstanding backpay owed to her;

(d) 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;

(e) 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

(f) 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 thirteenth day of August, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 110 :
 :
 v. : Case No. PF-C-20-19-W
 :
 REYNOLDSVILLE BOROUGH :

AFFIDAVIT OF COMPLIANCE

Reynoldsville 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 immediately reinstated Tammy Murray to a full-time police officer position; that it immediately paid Tammy Murray and made Tammy Murray whole for all lost wages and benefits she would have earned as a full-time police officer from February 13, 2020, until the date of her reinstatement, including but not limited to wage increases received by the bargaining unit during the backpay period and any other lost benefits, medical and dental payments and co-payments or accoutrements and terms and conditions of employment enjoyed by full-time police officers, including any differentials in holiday pay, overtime and the accrual of sick and vacation time, as well as pension contributions during the backpay period; that it immediately paid Tammy Murray interest at the rate of six percent per annum on the outstanding backpay owed to her; 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