

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DAUPHIN COUNTY DETECTIVES ASSOCIATION :
 :
 v. : Case No. PF-C-23-46-E
 :
 DAUPHIN COUNTY :

PROPOSED DECISION AND ORDER

On May 1, 2023, the Dauphin County Detectives Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Dauphin County (County or Employer), alleging that the County violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by deducting retroactive surcharges against two bargaining unit employees on April 7, 2023, in retaliation for the Association having filed and demanded arbitration of a grievance, challenging the County's assessment of the surcharge upon certain members of the Association prospectively.

On June 28, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on September 21, 2023, if necessary. The hearing was subsequently continued to October 18, 2023 at the Association's request and without objection by the County. The hearing ensued on October 18, 2023, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on December 1, 2023. The County filed a post-hearing brief in support of its position on December 4, 2023.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer and political subdivision under Act 111, as read *in pari materia* with the PLRA. (N.T. 5)
2. The Association is a labor organization under Act 111, as read *in pari materia* with the PLRA. (N.T. 5)
3. The Association is the exclusive bargaining representative for a unit of police employees at the County. (Union Exhibit 1)
4. The Association and the County were parties to a collective bargaining agreement (CBA) effective January 1, 2014 to December 31, 2017. The CBA did not address or require a spousal surcharge for bargaining unit members whose spouses were covered under the County's medical insurance. (Union Exhibit 4)
5. Following expiration of the 2014 to 2017 CBA, the parties went to interest arbitration. In 2019, the Arbitration Panel issued an award for the period of January 1, 2018 to December 31, 2021. (N.T. 10; Union Exhibit 4)

6. Section 3(c) of the 2018 to 2021 Award provides, in relevant part, as follows:

Employees hired after 01/01/2018 shall pay a spousal surcharge of \$80 per month for each month during the life of this Agreement. The spousal surcharge shall be charged if a spouse is eligible for coverage under another employer-offered plan, the spouse declines coverage under the third-party plan and elects coverage under the [C]ounty's plan. All spouses will be required to sign an eligibility-for-coverage certification during open enrollment. The spousal surcharge is in addition to the applicable premium sharing amounts above.

(N.T. 10; Union Exhibit 4)

7. Following expiration of the 2018 to 2021 Award, the parties were unable to negotiate a successor agreement and again proceeded to interest arbitration. On August 25, 2022, the Arbitration Panel issued an Award, effective January 1, 2022 through December 31, 2025. (N.T. 8-9; Union Exhibit 1)

8. Article XI, Section 11.1 of the 2022 to 2025 Award, provides in relevant part, as follows:

The spousal surcharge shall be \$130 per month following the issuance of this Award and shall be as set forth in the County Open Enrollment Guide for each subsequent year. The spousal surcharge will be charged if the spouse is eligible for coverage under another employer[-]offered plan but the spouse declines coverage under the third[-]party plan and elects coverage under the County's plan. All spouses will be required to sign an eligibility for coverage certification during open enrollment. The spousal surcharge is in addition to individual amount or employee with children amount, as appropriate.

(Union Exhibit 1)

9. The 2022 to 2025 Award, in a section entitled "Conclusion," also provides, in relevant part, as follows:

All remaining items and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain unchanged through December 31, 2025.

(Union Exhibit 1)

10. William Kimmick has been a detective for the County since August 2020. He was elected President of the Association on November 9, 2022 and succeeded Detective John O'Connor, who was the previous President. Kimmick testified that, while the 2022 to 2025 Award changed the amount of the surcharge, the Award did not change which employees were responsible for paying it. He described how the County did not impose the surcharge on anyone who was employed prior to 2018 in September, October or November of 2022. (N.T. 7, 10-11, 14)

11. Kimmick testified that he met with Robert Morgan, the County's Manager of Labor and Employee Relations, on November 15, 2022, during which

the parties discussed a potential Memorandum of Agreement (MOA). The MOA provided in relevant part as follows:

Employees hired before January 1, 2018 shall not be required to pay the healthcare related spousal surcharge outlined in the Award until January 1, 2023.

Effective January 1, 2023 and each year thereafter, all bargaining unit employees shall be subject to the spousal surcharge as set forth in the County Open Enrollment Guide.

(N.T. 11-13; Union Exhibit 2, 3)

12. The Association refused to sign the MOA and notified the County that it would not do so. (N.T. 13-14)

13. By email dated November 18, 2022, Kimmick indicated the following, in relevant part, to Morgan:

I[n] reference to our meeting on 11/15/22, I just want to be sure I'm explaining the [C]ounty's position to our members correctly. It's my understanding that the County's position is that the 2022 award modifies the language in the 2014-2017 contract, and that the 2018 award is no longer in effect.

(Union Exhibit 2)

14. By email dated November 18, 2022, Morgan indicated the following, in relevant part, to Kimmick:

Section 11.1 of the CBA was replaced in its entirety by the August 25th, 2022 Award. The prior [s]pousal [s]urcharge language from the 2018-2021 Award was in that Section 11.1. Under the new Section 11.1, there is no distinction between employees hired before or after a certain date. All are treated the same for purposes of the spousal surcharge. Effective September 2022, ALL employees with a covered spouse would be impacted by this new language with the spousal surcharge set at \$130 per month.

The [MOA] was presented only to clarify that given this happened, mid-year, that those who were previously under the 2018-2021 Award not paying a surcharge would not be subjected to the revised award on this specific issue until January 1, 2023.

Additionally, each paragraph of the [sic] Section 11.1 of the August 25th, 2022 Award addresses a separate issue.

(Union Exhibit 2)

15. Kimmick testified that the County did not impose a spousal surcharge in December 2022 either. (N.T. 14)

16. On December 21, 2022, Kimmick attended a second meeting with Morgan, along with another detective from the bargaining unit, during which the parties again discussed the MOA. Kimmick advised Morgan that the Association would not sign the MOA and that, if the spousal surcharge was imposed on members hired before 2018, the Association would file a grievance.

Kimmick testified that the meeting ended amicably and that Morgan told the Association they would begin paying the surcharge in January, to which Kimmick again replied that a grievance would follow. Kimmick testified that after he mentioned the potential grievance, Morgan indicated that the County would be looking to recoup the surcharge from the issuance of the Award through the end of 2022. (N.T. 14-15, 19)

17. Kimmick testified that, as of January 1, 2023, there were four employees in the bargaining unit that were hired before 2018. At that time, only two of those four employees had spouses on their healthcare coverage that would require them to pay the surcharge. The County imposed the surcharge on those two employees effective January 27, 2023. (N.T. 15, 17; Union Exhibit 4)

18. Kimmick testified that once he learned that the County had imposed the surcharge on January 27, 2023, he subsequently raised the matter with the Chief County Detective, who advised Kimmick that it was a labor issue, with which the Chief County Detective could not assist. Kimmick then brought the issue to the District Attorney, who provided the same response. As a result, Kimmick filed a grievance with the District Attorney on February 15, 2023, which he also forwarded by email to Morgan on March 6, 2023. (N.T. 16-17, 45; Union Exhibit 4)

19. The February 15, 2023 grievance provides, in relevant part, as follows:

The [CBA] between the [Association] and [t]he [County] for the period of 01/01/2014-12/31/2017 does not address or require a spousal surcharge for the members of the [A]ssociation.

For the period of 01/01/2018-12/31/2021, the above agreement was amended to include a spousal surcharge during arbitration...

In 2022, the 2014 Agreement and the 2018 arbitration award were amended by an arbitration award...for the period of 01/01/2022-12/31/2025...

The 2018 arbitration award amended the 2014 agreement to include the spousal surcharge for employees hired after 01/01/2018 at a cost of \$80.00 per month. The 2022 arbitration awards [sic] amends the cost of the surcharge from \$80.00 to \$130.00 per month. The 2022 award does not address or amend which employees are required to pay the surcharge. Therefor[e], it should only apply to employees hired after 01/01/2018 as per the 2018 arbitration award.

Beginning in 2023, [t]he County began deducting the spousal surcharge in the amount of \$130.00 per month from [Sergeant] Todd Johnson's and [Sergeant] Cory Dickerson's pay. Both [Sergeant] Johnson and [Sergeant] Dickerson were hired by the County before 01/01/2018 and as such, are not subject to the surcharge.

Remedy Requested: All appropriate relief, including ceasing payroll deductions for the spousal surcharge, for [Sergeant] Johnson and [Sergeant] Dickerson, and refunding any payroll deductions made in 2023.

(Union Exhibit 4)

20. By letter dated March 9, 2023, Morgan notified Kimmick that the grievance was denied. The March 9, 2023 letter provides, in relevant part, as follows:

Dear Mr. Kimmick:

I am in receipt of a grievance filed February 15, 2023. The grievance alleges that the County is in violation of the [CBA], 2018 Arbitration Award..., and the 2022 Arbitration Award...with respect to the [s]pousal [s]urcharge.

It should first be noted that this grievance is untimely and is denied on that basis...

This grievance is also denied on the merits. The [s]pousal [s]urcharge changed as of the effective date of the 2022 Award for all bargaining unit members. Effective September 2022, all employees with a covered spouse were subject to the [s]pousal [s]urcharge. This is supported and made clear by the fact that Section 11.1 of the CBA was replaced in its entirety by the 2022 Award. The prior [s]pousal [s]urcharge language was in Section 11.1. Under the new Section 11.1, there is no distinction between employees hired before or after a certain date. That is, all are treated the same for the purposes of the spousal surcharge. Additionally, it should be noted that the County has made clear to the [Association] that the County fully intends to recoup the [s]pousal [s]urcharge amount from any bargaining unit member who would have been subject to the surcharge from the month following the issuance of the 2022 Award.

Consequently, as no violation of the CBA has been substantiated, this grievance is denied.

(N.T. 17-18, 59; Union Exhibit 4, 5)

21. By letters dated March 14, 2023, Morgan indicated to Detectives Todd Johnson and Corey Dickerson the following, in relevant part:

As you are aware[,] the County and the [Association] were party to an Arbitration Award issued August 25, 2022. The [s]pousal [s]urcharge was set at \$130 per month following the issuance of this Award. Our records reflect that, as of January 2023, a [s]pousal [s]urcharge is currently being applied. The County shows an unpaid balance of \$520 representing the [s]pousal [s]urcharge for September - December 2022.

The County is willing to work out an arrangement spreading this balance due over several pay periods such as \$65 per pay for 8 pay periods; larger amounts over fewer pay periods would be an option as well. The County requests that you contact Debbie Smyre, Payroll Supervisor...to discuss these arrangements. Failure to make arrangements with Payroll by March 29, 2023, will result in the full unpaid balance of \$520 being deducted on Pay Period 7 with a Pay Date of April 7, 2023...

(N.T. 20-21; Union Exhibit 6, 7)

22. Kimmick testified that Morgan's March 14, 2023 letters to Johnson and Dickerson were the first notice to any bargaining unit members that they now had a debt to the County. Kimmick indicated that Dickerson paid the County, while Johnson did not. Instead, the County deducted the surcharges from Johnson's pay on April 7, 2023. (N.T. 21)

23. By email dated March 21, 2023 to Morgan, the Association's Vice President, Andrew Dixon, demanded arbitration of the February 15, 2023 grievance. (N.T. 59-60; Union Exhibit 4)

24. Kimmick testified that, at the time of the August 25, 2022 Award, there was another bargaining unit employe, who would have been subject to the spousal surcharge. He described how Detective Roxanne Snider had a spouse who was also on her benefits. He indicated that the County did not attempt to retroactively recoup the spousal surcharge from Snider, despite her husband continuing on her benefits into the fall of 2022. (N.T. 22-23)

25. Kimmick testified that Snider was not mentioned in the Association's grievance because the surcharge did not apply to her anymore in 2023. He explained that the County did not provide a reason for why it did not seek retroactive recoupment from Snider. He also indicated that the County did not provide an explanation for why it did not seek recoupment from the other bargaining unit employes for the months of September 2022 through March 2023. (N.T. 23)

26. Kimmick testified that there are nine bargaining unit employes at the County. He described how nobody would be subject to the surcharge at this time because Johnson subsequently retired and Dickerson became Chief, so they are both out of the unit. (N.T. 23-24)

27. On cross-examination, Kimmick acknowledged that Detective Snider sent an email to the County in September 2022 requesting to drop her spouse from her benefits to avoid paying the surcharge. He indicated that she did not receive any response. He agreed that Snider was hired prior to 2018. (N.T. 26-27)

28. On cross-examination, Kimmick admitted that during the meeting in November 2022, the County clearly articulated its position that the spousal surcharge would be immediately implemented absent the MOA, which included the pre-2018 hires. He conceded that the County offered to delay the full implementation of the surcharge until 2023 for the pre-2018 hires, which the Association rejected on December 21, 2022. (N.T. 27-29)

29. Robert Morgan, the County's Manager of Labor and Employee Relations, testified that the County was prepared to impose the surcharge in September 2022 until they received an email from Detective Roxanne Snider asking whether she could remove her husband from her benefits in September 2022. He stated that, once the County got her email, they began discussions with the Association about potentially delaying the surcharge since it was eight months into the plan year. He acknowledged that Snider's husband was not removed from her benefits at any point from September through December

2022. He also admitted that the County did not seek recoupment from Snider. (N.T. 36-37)¹

30. Morgan testified that the County's Director of Human Resources made the decision not to seek recoupment from Snider. He conceded that the County treated one of the three bargaining unit employees differently than the other two. He explained that the County did so because Snider was not similarly situated to the others because she had reached out to the County while attempting to drop her spouse. He described how the County did not complete the process because the County was meeting with the Association and discussing a potential delay of the implementation of the surcharge. He acknowledged that he did not notify the Association about why Snider was treated differently. (N.T. 37-38)

31. Morgan testified that the County was prepared to apply the surcharge to all the bargaining unit employees, but the County felt it was unfair to impose it on someone who had attempted to remove herself from the situation. He admitted that Snider ultimately did receive the benefit though and that she did not have to pay for it, while the other bargaining unit employees received the benefit and did have to pay for it. (N.T. 38-39)

32. Morgan testified that the County presented the MOA to the Association in October 2022. He claimed that the Association did not clearly refuse to enter the MOA during the meeting in November 2022. He indicated that the Association did not provide a clear refusal until the December 21, 2022 meeting. He described how the County always felt that the 2022 Award required a spousal surcharge for everyone in the unit and that the County was willing to give up their retroactivity interpretation if the Association signed the MOA, agreeing to the implementation of the surcharge as of January 1, 2023. (N.T. 39-41)

33. Morgan testified that the parties litigated the February 15, 2023 grievance during an arbitration hearing approximately one month prior to the hearing in the instant charge. (N.T. 41-42)

34. Morgan testified on direct examination that the County typically has between 60 to 75 employee grievances per year. He stated that he is consulted on most, if not all, of those grievances and that he is directly involved in about one-third of them. He insisted that he has never retaliated against an employee for filing a grievance or discouraged an employee from filing one. He indicated that processing grievances is a primary aspect of his job. (N.T. 57-58)

35. Morgan testified that the County first implemented the spousal surcharge for the 2023 calendar year on the January 27, 2023 paycheck. He described how the County first notified the pre-2018 hires of this obligation during the November 15, 2022 meeting with the Association, which was reiterated in his November 18, 2022 follow up email. He explained that the County communicated this obligation during the open enrollment process in November 2022 and then again in subsequent emails from the County's Benefits Department on January 18 and 19, 2023. (N.T. 60-61; Union Exhibit 2)

36. Morgan identified spousal surcharge coordination forms for Detectives Dickerson and Johnson, which were provided as part of the open

¹ Morgan was initially called as on cross-examination by the Association's counsel. (N.T. 32-33).

enrollment process in November 2022. He stated that the County does not have a form for Detective Snider because she elected not to cover a spouse in 2023. (N.T. 61-62; County Exhibit 1)²

37. Morgan testified that, after the January 27, 2023 implementation of the spousal surcharge, the County had a member of its Benefits Department go out on a medical leave of absence. Morgan described how this individual would have been the employe to forward emails communicating benefits information and entering it into the payroll system. He indicated that this employe never came back to work for the County. (N.T. 63)

38. Morgan testified that he learned that the County had not tried to recoup the surcharge for the September 2022 to December 2022 period during the first week of March 2023 when he was reviewing files for the January end-of-the-year process. His understanding had been that the recoupment effort was completed in January 2023 until he learned this was inaccurate. He then had a discussion with the County's Director of Human Resources, during which they agreed that but for the County's ongoing dialogue with the Association, Roxanne Snider would have been able to drop her spouse in September 2022. As a result, they concluded that she was "differently situated" from the other two pre-2018 hires. Morgan testified that after that meeting, the County issued the March 14, 2023 letters to the other two bargaining unit employes. (N.T. 63-65; Union Exhibit 6, 7)

39. Morgan testified that the County did not make the demand for recoupment in the March 14, 2023 letters to Dickerson and Johnson because of the Association's grievance. Rather, he testified that the demand was made because it had been the County's position all along that the surcharge applied as of September 2022. He indicated that the County did not implement the surcharge from September 2022 to December 2022 because the County was in discussions with the Association regarding the proposed MOA. He stated that the County intended to implement the surcharge in January 2023, and his mistaken understanding was that the County had done so. (N.T. 65-66)

40. Morgan testified that he made it clear to the Association during the November 15, 2022 and December 21, 2022 meetings that the County intended to recoup the surcharges. (N.T. 66)

41. On recross-examination, Morgan acknowledged that the two spousal surcharge coordination forms for Dickerson and Johnson do not indicate that the County was seeking recoupment back to September 2022. He conceded that neither Dickerson, nor Johnson signed any forms admitting liability for the surcharge back to September 2022. He acknowledged that the forms were for 2023. (N.T. 69-70; County Exhibit 1)

42. On recross-examination, Morgan reiterated the timeline he provided on direct. He testified that he was under the impression in January 2023 that the County had sought retroactive recoupment back to September 2022. He indicated that he found out that the County had not done so during the first week of March 2023. When asked if he then had a meeting with the County's Director of Human Resources, Morgan interrupted the question to state that the meeting with the Director of Human Resources actually occurred in January 2023.

² The Dickerson form appears to be undated, while Johnson's form was apparently signed on January 1, 2023. (County Exhibit 1).

43. At this point, on recross-examination, the following exchange took place between Association counsel and Morgan:

Q. That meeting occurred in January, okay.

A. Yeah. And it was my understanding, when we communicated the benefits to deduct these spousal surcharges going forward. They were also going to do the retro on the two of them.

(N.T. 71-72)

44. Morgan testified that the County's Director of Human Resources is his direct supervisor. He reiterated that the meeting where the County decided to exempt Detective Snider happened during the first half of January 2023. He acknowledged that the Association had rejected the MOA at that time and that he notified the County's Director of Human Resources of the same the day after the December 2022 meeting. (N.T. 72-73)

45. Morgan testified that the County sent an email to Snider in September 2022 indicating that nothing would change for her at that time until after discussions with the Association had occurred. He admitted that the two employees he sought recoupment from were both named in the February 15, 2023 grievance. He acknowledged that the County did not actually seek recoupment until after the grievance was filed. (N.T. 73-74)

DISCUSSION

The Association argues that the County violated Section 6(1)(a) and (c) of the PLRA³ and Act 111 by taking retroactive payment of the claimed spousal surcharge from bargaining unit employees named in the February 15, 2023 grievance in retaliation for their protected activity. Specifically, the Association submits that the timing of the County's implementation of retroactive recoupment, combined with the County's disparate treatment of Detective Snider from Detectives Dickerson and Johnson, and the County's lack of an adequate explanation for the County's failure to actually seek recoupment for many months until shortly after the protected, concerted activity, all yields an irrebuttable presumption of unlawful motive on behalf of the County. The Association further alleges that, whatever the motivation, the timing and late-raised threat of retroactive recoupment in Morgan's grievance response, has the tendency to interfere with or coerce employees from engaging in protected activity. The County, for its part, contends that it did not violate the PLRA or Act 111, and that the charge should be dismissed, because the County had legitimate nondiscriminatory reasons for its actions. In particular, the County relies on Morgan's testimony that the County intended to implement the spousal surcharge in September 2022 shortly after the August 25, 2022 Award, which predates the Association's protected activity. The County maintains that this critical factor is essentially dispositive, given that it shows the County could not have been unlawfully motivated and that there is no tendency to coerce

³ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act... (c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization..." 43 P.S. § 211.6.

employees, since the County has been asserting its position long before the protected conduct.⁴

To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employee 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. Cmwlt. 2004).

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 employee 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 employee 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).

In this case, the Association has sustained its burden of proving the first two elements for a Section 6(1)(c) discrimination claim. The record shows that the Association filed a grievance on February 15, 2023, challenging the County's prospective assessment of the spousal surcharge on two bargaining unit employees hired before 2018. In fact, the grievance specifically names those two bargaining unit employees, Detectives Johnson and Dickerson. Likewise, the Association filed a demand for arbitration of that grievance on March 21, 2023. Filing grievances and processing them to arbitration are clearly both activities protected under the PLRA. In addition, the record also shows that the County had knowledge of the grievance and demand for arbitration, as both were forwarded directly to the County's Manager of Employee and Labor Relations, Robert Morgan, on March 6

⁴ The County also argues that it has not committed a bargaining violation under Section 6(1)(e) of the PLRA for a number of reasons. However, while the Association did check the box on the charge form for a Section 6(1)(e) allegation, the specification of charges is devoid of any such averment and is clearly limited to Section 6(1)(a) and (c) claims related to retaliation and interference with employee rights. Indeed, the Association's post-hearing brief is limited to discussion regarding the Section 6(1)(a) and (c) claims and mentions nothing of a Section 6(1)(e) argument. Therefore, the allegation of a Section 6(1)(e) violation of the PLRA must be dismissed.

and 21, 2023, respectively. As usual then, the dispute boils down to the third element of a Section 6(1)(c) discrimination claim, i.e. whether the County was unlawfully motivated when it sought to recoup the spousal surcharge payments retroactively to September 2022 in April 2023.

The Association has also sustained its burden of proving that the County was unlawfully motivated. The first factor supporting such a determination is the obvious timing of events. The record shows that the Association filed its grievance, specifically naming the two affected employees, with the District Attorney on February 15, 2023, which was then forwarded to Morgan on March 6, 2023. Not more than three days later, on March 9, 2023, Morgan issued his denial letter, which was followed by his March 14, 2023 letters to Johnson and Dickerson asserting an unpaid balance of \$520 for the period of September 2022 to December 2022 and threatening to deduct the same on the April 7, 2023 paycheck. Indeed, the record shows that the County did deduct the alleged retroactive spousal surcharges from Johnson on April 7, 2023, which was not long after the Association's February 15, 2023 grievance and its March 21, 2023 demand for arbitration. This is all compelling evidence of anti-union animus on behalf of the County, especially when combined with the other factors discussed below.

To explain the distinct timing problem, the County points to Morgan's testimony regarding the County's benefits employee who allegedly went out on a medical leave of absence after implementation of the surcharge prospectively on January 27, 2023. Morgan described how this unnamed employee would have been responsible for forwarding emails, communicating benefits information, and entering it into the payroll system. Morgan indicated that she never came back to work and that he only learned of the County's failure to seek recoupment during the first week in March 2023 when he was apparently reviewing files as part of some "end-of-the-year process." However, this testimony has not been accepted as credible or persuasive. The County offered no specific explanation for why this departed employee could not have just implemented the surcharge retroactively at the same time she did so prospectively on January 27, 2023. In fact, Morgan testified that his understanding was that the recoupment had occurred at the same time as the prospective implementation. There is no evidence reflecting when she actually went off work and how close in time that was to the January 27, 2023 prospective implementation date. Furthermore, the County also failed to explain why another employee could not have simply performed the retroactive recoupment after the former employee began her leave of absence. Surely, the County would have taken steps to ensure that the former benefits employee's duties were covered prior to her leave, even if the County believed the absence would only be temporary at first. That Morgan somehow discovered this purported mistake right at the time of the grievance filing is simply too convenient to be credited.

The County also tries to counter the timing problem by pointing to Morgan's testimony about how the County was prepared to impose the surcharge shortly after the August 25, 2022 Award, which was long before the grievance and the demand for arbitration occurred in February and March 2023. However, while the record does show that Morgan advised Kimmick during their meetings in November and December 2022 that the County would immediately implement the surcharge absent the MOA, the record nevertheless also demonstrates that the County was not serious about doing so. As the Association persuasively notes, the County did nothing to implement the spousal surcharge following issuance of the August 25, 2022 Award from September to December 2022, despite its claims that the surcharge now applied to everyone. What is more,

the County still did nothing to implement the spousal surcharge retroactively even after it began imposing the surcharge prospectively. It was not until the Association filed the grievance with Morgan on March 6, 2023 that the County actually began taking steps to recoup the retroactive surcharges.

The County argues that this case is an example of how no good deed goes unpunished. Once again, the County relies on Morgan's testimony that the County did not implement the spousal surcharge from September 2022 to December 2022 because the County was in discussions with the Association regarding the proposed MOA. Unfortunately for the County, however, this evidence demonstrates nothing more than how the County was simply using the potential retroactive implementation of the surcharge as a bargaining chip to induce the Association to enter the MOA. If the County really believed that the 2022 Award gave it the authority to implement the spousal surcharge on every bargaining unit employe, it is curious why the County needed an MOA to secure the same authority. Although the County maintains that it steadfastly adhered to its interpretation of the 2022 Award, the County was certainly also aware that the Association had at least a colorable argument that the pre-2018 hires were still exempt from the spousal surcharge. As is typical, the 2022 Interest Award contained a clause stating "[a]ll remaining items and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain unchanged through December 31, 2025." (Union Exhibit 1).⁵ The County's interpretation notwithstanding, the 2022 Award did not expressly modify the exemption for the pre-2018 hires in the 2018 Award. For this reason, then, it must be inferred that the County was attempting to expressly secure for itself the right to impose the spousal surcharge on every bargaining unit employe prospectively when the County approached the Association about the MOA, and not because of some alleged purity of heart defense. To that end, the County dangled the threat of potential retroactive recoupment in order to entice the Association to trade its interpretation, so that the County could secure its bargaining objectives. While this may have initially been a permissible bargaining tactic in late 2022, the County never followed through on its position and essentially abandoned any such interpretation of retroactivity until Morgan received the March 6, 2023 grievance and began retaliating against the Association by resurrecting the County's old position.

In addition, the record also shows that the County has engaged in disparate treatment of similarly situated employes, which further supports an inference of unlawful motive on behalf of the County. As detailed above, the record shows that there were three bargaining unit employes, who were covering a spouse on the County's medical plan from September 2022 to December 2022, Detectives Johnson, Dickerson, and Snider. Yet the County sought retroactive recoupment from only two of those employes, Johnson and Dickerson, who incidentally were also named in the grievance. The County never sought retroactive recoupment from Snider. To explain this, the County relied on Morgan, who claimed that Snider was "differently situated" from the other two bargaining unit employes because Snider attempted to drop her

⁵ The County submitted a grievance arbitration award dated November 19, 2023 as an attachment to its post-hearing brief. However, this occurred after the record was closed, and the Association did not consent to the admission of the November 19, 2023 Award. Nor has the County requested that the record be reopened. As such, the November 19, 2023 Award has not been considered in this matter. However, even if the November 19, 2023 Award were to be considered, it confirms that the Association did, in fact, make this very argument to the Arbitrator in that case, albeit it unsuccessfully.

spouse shortly after the August 25, 2022 Award. However, Morgan's testimony on this point changed. As the Association points out, Morgan initially testified that right after he conveniently learned the County failed to recoup the retroactive surcharges in March 2023, he discussed the situation with the County's Director of Human Resources, during which they agreed that but for the County's ongoing dialogue with the Association in the fall of 2022, Snider would have been able to drop her spouse in September 2022. Morgan stated that, after that meeting, the County issued the March 14, 2023 letters to Johnson and Dickerson. But then, on recross-examination, Morgan changed his story and claimed that the meeting to exempt Snider actually occurred in January 2023, and not after he learned that the County failed to seek recoupment. Thus, Morgan has offered inconsistent accounts for how the County decided to exempt Snider. And why Snider was precluded from dropping her spouse simply because of an ongoing dialogue with the Association is unclear. To the extent the County argues it was concerned about potential direct dealing, such a notion is unfounded given that Snider was not trying to negotiate any terms and conditions of employment with the County's bargaining representatives, but rather communicating a benefits decision to employees in that department. Perhaps most importantly though, Morgan conceded that Snider received the benefit of covering her spouse without having to pay for it, while the other bargaining unit employees received the benefit and were required to pay for it. Simply put, this is plain evidence of disparate treatment and anti-union animus on behalf of the County.

On these facts, then, the Association has presented compelling evidence leading to an inference of unlawful motive on behalf of the County, including the timing of events, obvious disparate treatment, lack of an adequate explanation for the County's conduct, as well as pretext. Accordingly, it must be concluded that the County violated Section 6(1)(c) of the PLRA.

The Association has also raised an independent Section 6(1)(a) claim. The Board will find an independent violation of Section 6(1)(a) of the PLRA if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employees have been shown in fact to have been coerced. Bellefonte Police Officers Ass'n v. Bellefonte Borough, 27 PPER ¶ 27183 (Proposed Decision and Order, 1996) *citing* Northwestern Education Ass'n v. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 6(1)(a). Northwestern School District, *supra*. However, an employer does not violate the PLRA where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (*citing* Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

There is little doubt that the County has also committed an independent violation of Section 6(1)(a) of the PLRA. As the Association persuasively argues, the County failed to impose any spousal surcharge on the pre-2018 hires following the August 25, 2022 Award from September 2022 through December 2022. The County wielded the potential surcharge as a bargaining chip against the Association in late 2022, but failed to secure the express authority it sought for the surcharge by way of the MOA. On top of that, the County still failed to impose the spousal surcharge retroactively even after it began implementing the surcharge prospectively on January 27, 2023. However, when the County was confronted with a grievance in March 2023 over the prospective implementation of the surcharge, the County immediately began

threatening retroactive recoupment, and then only against two of the three bargaining unit employes, who were specifically named in the grievance. The message was undeniable, challenging the County through the grievance process will be costly. This would clearly have a tendency to interfere with and coerce employes from exercising their right to file grievances under the PLRA. Therefore, it must be concluded that the County has also independently violated Section 6(1) (a).

CONCLUSIONS

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

1. The County 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 County has committed unfair labor practices in violation of Section 6(1) (a) and (c) of the PLRA.
5. The County has not committed unfair labor practices in violation of Section 6(1) (e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;
2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:
 - (a) Immediately make whole all current and previous bargaining unit employes for the unlawful retroactive recoupment of the spousal surcharge deducted for the period of September 2022 through December 2022, plus six percent per annum interest;
 - (b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 9th day of February, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DAUPHIN COUNTY DETECTIVES ASSOCIATION :
v. : Case No. PF-C-23-46-E
DAUPHIN COUNTY :

AFFIDAVIT OF COMPLIANCE

Dauphin County 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 by immediately making whole all current and previous bargaining unit employes for the unlawful retroactive recoupment of the spousal surcharge deducted for the period of September 2022 through December 2022, plus six percent per annum interest; 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