

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PROFESSIONAL ASSOCIATION :
OF PARAMEDICS :
 :
 v. : Case No. PERA-C-10-403-W
 :
PENN HILLS MUNICIPALITY :

PROPOSED DECISION AND ORDER

On November 5, 2010, the Professional Association of Paramedics (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that the Municipality of Penn Hills (Penn Hills or Municipality) violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA) by refusing to give requested information to the Union necessary to properly represent employes involved in a residency dispute with Penn Hills.

On December 21, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on May 11, 2011, in Pittsburgh. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. Penn Hills is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employer-employe disputes, wages, rates of pay, hours of employment, or conditions of work. (N.T. 4).

3. The parties' collective bargaining agreement (CBA) contains a residency requirement that provides as follows:

Section 7: Residency Requirement

All employees shall live in the Municipality. In the event an employe is hired who lives outside the Municipality, he/she must within (1) year of their date of hire, establish their permanent residence within the Municipality. Failure to comply with this provision will result in disciplinary action up to and including discharge from employment.

(Union Exhibit 3).

4. On June 16, 2010, Penn Hills Municipality Manager Mohammed Rayan sent a letter to Penn Hills Paramedic Pamela Edwards stating as follows:

We have compared the address on your driver's license with the addresses in the data base of RealSTATs and have found a discrepancy. Please supply proof of your residency with either a copy of a utility bill, property tax bill, or property deed in your name by Thursday, June 24, 2010.

(N.T. 12-13, 17, 38; Union Exhibit 4 at 1).

5. On June 24, 2010, Ms. Edwards filed a grievance. (N.T. 13; Union Exhibit 4 at 2).

6. On July 18, 2010, Arbitrator Michelle Miller-Kotula issued a grievance arbitration award disposing of a class action grievance filed on behalf of the bargaining unit employees regarding letters issued to five bargaining unit employees on August 5, 2009, requesting proof of their compliance with the Municipality's residency requirement. The letter required the five employees to provide proof in the form of a utility bill, property tax bill or property deed in their own names within ten days. On August 7, 2010, Arbitrator Miller-Kotula issued a clarification to her award. (Employer Exhibit 1).

7. Arbitrator Miller-Kotula awarded the following:

The Municipality did not violate the Agreement when the grievants were sent a letter on August 5, 2009 directing them to be in compliance with the residency requirement contained in the Agreement. The evidence shows the grievants are not in compliance with the language contained in the agreement because they do not actually "live" in the Municipality, but rather created a "paper residency" to establish they were residents of the Municipality of Penn Hills. The grievance is not granted and the grievants must comply with the residency requirements contained in the Agreement.

(Employer Exhibit 1 at 38).

8. On August 19, 2010, Mr. Rayan sent a letter to Ms. Edwards stating as follows:

As you are aware the Municipality received clarification of the Residency Arbitration Award last week. According to Arbitrator Miller-Kotula's award you have until November 5, 2010 to provide evidence to this office that you "actually live in the Municipality"; and are, therefore, in compliance with the Arbitration Award and the residency requirement contained in the Collective Bargaining Agreement.

(N.T. 14-18; Union Exhibit 4 at 3).

9. On August 31, 2010, Mr. Rayan sent Ms. Edwards a letter stating as follows:

Since you have failed to respond to my June 16, 2010 memo regarding residency, a meeting is scheduled for Tuesday, September 7, 2010 at 9:00 A.M. in the Manager's conference room. The purpose of this meeting is to investigate whether you are compliant with this requirement. If you choose, you may have union representation.

(N.T. 18; Union Exhibit 4 at 4).

10. On September 3, 2010, Mr. Rayan sent Ms. Edwards a letter stating as follows:

It is our understanding through discussions between the union's attorney and our labor attorney that you do not currently comply with the residency requirement but are making efforts toward compliance; and if the meeting would be rescheduled two weeks out, you will have better information on where you live. Accordingly, the meeting scheduled for Tuesday, September 7, 2010 is canceled and rescheduled for Thursday, September 23, 2010 at 9:00 A.M. If you choose, you may have union representation present at that time.

(N.T. 18-19; Union Exhibit 4 at 5).

11. On September 9, 2010, Ms. Edwards sent a letter to Mr. Rayan attaching a copy of a utility bill, lease and driver's license. The letter further stated that "[s]ince I have provided you with proof of my residency, it is my understanding that the meeting scheduled with you on September 23, 2010 at 9:00am is no longer necessary." (N.T. 20, Union Exhibit 4 at 6).

12. On September 13, 2010, Mr. Rayan sent a letter to Ms. Edwards informing her that he would still like to meet with her on September 23, 2010. (N.T. 20; Union Exhibit 4 at 7).

13. On September 22, 2010, the Union's attorney sent a letter to the attorney for Penn Hills disputing the necessity to meet with Ms. Edwards after she provided the requested proof of her residency. The letter further stated, inter alia, the following:

More importantly, the Arbitration Award does not deprive the Pennsylvania Labor Relations Board of its exclusive jurisdiction concerning unfair labor practices under Act 195, and the Arbitration Award is certainly not binding on the Board. It is the position of the Association that the Municipality is unilaterally changing the terms and conditions of employment concerning a mandatory subject of bargaining, as well as committing other unfair practices under Act 195.

. . . .

The Association intends to file appropriate unfair labor practice charges with the PLRB and to pursue other appropriate legal action concerning this matter if necessary.

(Union Exhibit 5, letter dated 9/22/10).

14. On September 23, 2010, Ms. Edwards attended the meeting as scheduled along with Union vice president and representative Brian Kelly, Mr. Rayan and Cynthia Carson, another employe who also attended on behalf of Penn Hills. (N.T. 23, 72-73).

15. At the meeting, Mr. Rayan sat at the head of the conference table. Ms. Edwards sat to his left in the first chair and Mr. Kelly sat to her immediate left. Ms. Carson sat to Mr. Rayan's right, across from Mr. Kelly. (N.T. 24).

16. After reviewing the documents that Ms. Edwards previously submitted with her letter dated September 9, 2010, Mr. Rayan consulted a prepared typewritten document. Mr. Michael Palombo, Esquire, labor counsel for Penn Hills, prepared the document (Document). It is three-and-one-half pages in length and contains spaces. (N.T. 25-26, 59-60, 63, 76).

17. Both Mr. Rayan and Ms. Carson made notations regarding Ms. Edwards's responses to Mr. Rayan's questions concerning residency. Ms. Edwards and Mr. Kelly did not take notes during the meeting, but they were permitted to do so. (N.T. 25-28, 42).

18. Ms. Edwards and Mr. Kelly could not read what was written on the Document. Ms. Edwards and Mr. Kelly could not see what Mr. Rayan was writing. They do not know if he was writing her answers or his mental impressions. They do not know whether the Document contained written advice or direction from labor counsel or whether Mr. Rayan read directly from the Document. (N.T. 33-35, 41-42, 45-47).

19. The Document was prepared based on communications between Mr. Rayan and Mr. Palombo regarding the residency investigation of Ms. Edwards and the investigation of her pending grievance litigation. (N.T. 59-60, 74).

20. This Examiner has conducted an in camera examination of the Document. The Document contains sample questions and directions from labor counsel to Mr. Rayan regarding the manner and substance of a residency investigation. It also contains advice regarding the direction to take the investigation depending on the answers given by the employe.

21. Mr. Rayan did not read the Document questions verbatim. He formulated his own questions based on the directions and sample questions contained in the Document. Mr. Rayan did not address every subject contained in the Document. (N.T. 60-61).

23. The notations made by Mr. Rayan on the Document contained a mixture of Ms. Edwards's answers to questions, points for conducting further investigation as well as reminders to obtain certain items to forward to labor counsel. Mr. Rayan did forward his notations to labor counsel, and Mr. Rayan did discuss those with labor counsel. (N.T. 62-63, 67-69).

24. The notations made by Ms. Carson were her interpretation of the discussion and reminders of matters to further investigate and follow up. Ms. Carson was aware of the pending grievance and threatened unfair practice litigation. The pending litigation caused Ms. Carson to compile a summary of her notes and Mr. Rayan's notes and forward that compilation to labor counsel. (N.T. 74-75).

DISCUSSION

There are three distinct pieces of information sought by the Union in this case: (1) the Document; (2) the notes made by Mr. Rayan; and (3) the notes made by Ms. Carson. The Union contends that this information is discoverable because it is relevant to the Union's policing of the residency provisions of the CBA and the investigation of a pending grievance involving an employee who is subject to a residency investigation by Penn Hills. In this regard, the Union maintains that the refusal to provide the Document was both discriminatory and a violation of the Municipality's bargaining obligation.

1. Retaliation/Discrimination

In Central York Educ. Ass'n v. Central York Sch. Dist., 40 PPER 29 (Proposed Decision and Order, 2009), the examiner presented the following:

In a discrimination claim, the complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employee engaged in activity protected by PERA; (2) that the employer knew that the employee engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employee's involvement in protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). 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); York City Employes Union v. City of York, 29 PPER ¶ 29235 (Final order, 1998). An employer's lack of adequate reason for the adverse action taken may be part of the employee's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994).

Central York Sch. Dist., 40 PPER at 134-135. On this record there is no evidence of unlawful or discriminatory motive. Accordingly, the Union did not establish a prima facie case that the refusal to provide the Document as requested was retaliatory or discriminatory.

2. Bargaining Obligation

In Commonwealth v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987), the Commonwealth Court held that the duty to provide information to police the parties' collective bargaining agreement and process grievances is a statutory duty independent of the parties' collective bargaining agreement. Id. at 1099. In Commonwealth, the Court adopted the relevancy standard espoused by the Supreme Court of the United States in National Labor Relations Board v. Acme Industrial Co., 385 U.S. 432, 87 S.Ct. 565 (1967). The Commonwealth Court stated the following:

The Supreme Court in Acme stated that relevancy should be determined under a discovery-type standard wherein the courts of necessity must follow a more liberal standard as to relevancy. Further, since the [union] is seeking information in connection with its pursuit of grievances, the Board need only find: (1) that the union is advancing a grievance which on its face is governed by the parties' agreement, and (2) that the information will be useful to the union.

Commonwealth, 527 A.2d at 1099 (citing Acme, 385 U.S at 437, 87 S.Ct. at 568). The Board has found a duty to provide information relevant to the union's investigation of whether the employer is complying with the collective bargaining agreement even where there is no pending grievance. North Hills Educ. Ass'n v. North Hills Sch. Dist., 29 PPER ¶ 29063 (Final Order, 1998). In Commonwealth, the Court opined that information pertaining to employes is presumptively relevant. Commonwealth, 527 A.2d at 1100.

Ms. Edwards filed a grievance on June 24, 2010, that is governed by the residency provisions of the CBA. (F.F. 3 & 5). The Document and the notes contain substantive information that outline the manner by which the Municipality plans to investigate the residency compliance of its employes as required by the CBA. The information would educate the Union and the bargaining unit members on the Municipality's view of the residency provisions of the CBA (post Miller-Kotula Award) by revealing the nature and extent of the Municipality's policy of pursuing multiple corroborative facts, in addition to paper documents, to establish an employe's residency. Because non-compliance with the residency requirement may result in termination of employment, I conclude that this information will be useful to the Union in evaluating grievances and policing the contract on behalf of unit members all of whom have an interest in knowing the Municipality's standards and requirements for complying with the residency provisions of the CBA.

A. The Document

Although relevant and discoverable under the standard set forth in Commonwealth, supra, and Acme, supra, Penn Hills contends that the Union is not entitled to the information. When an employer defends a charge of unfair practices for refusing to provide relevant information, the employer has the burden of demonstrating a legitimate claim of privilege or confidentiality which outweighs the Union's interest in gaining access to the requested, relevant information. North Hills, 29 PPER ¶ 29063. Penn Hills argues that the Document is not discoverable because it is protected by the attorney-client privilege and the attorney work product doctrine.

Section 5928 of the Judicial Code codifies the attorney-client privilege and provides as follows:

In a civil matter counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client.

42 Pa. C.S § 5928.

In Gillard v. AIG Insurance Co., ___ Pa. ___, 15 A.3d 44 (2011), the Supreme Court of Pennsylvania held that the attorney-client privilege protects confidential communications from an attorney to his/her client as well as communications from the client to the attorney. Inanimate entities, such as corporations (and municipalities) may claim and are protected by the attorney-client privilege. Maleski v. Corporate Life Ins. Co., 641 A.2d 1, 3 (Pa. Cmwlth. 1994). "The purpose of the privilege is not to further the fact-finding process, but to foster a confidence between attorney and client that will lead to a trusting and open dialogue." Commonwealth v. Chimiel, 558 Pa. 478, 738 A.2d 406 (1999). The attorney-client privilege is deeply rooted in the common law, although it has been codified in the Commonwealth, and is deemed "the most revered of the common law privileges." Chimiel, 738 A.2d at 414. Proper representation relies on "fullest and freest disclosures." Chimiel, 738 A.2d at 423 (quoting 2 MECHEM ON AGENCY § 2297 2d ed. 1914)). The Gillard Court observed that the beneficiary of the privilege is the system of justice and not the client. Gillard, ___ Pa. ___, 25 A.3d at 51 (citing In re Investigating Grand Jury of Phila. County, 527 Pa. 432, 440, 593 A.2d 402, 406 (1991)). The Gillard Court further adopted a 2005 resolution of the American Bar Association regarding the privilege, which provides as follows:

RESOLVED, that the American Bar Association strongly supports the preservation of the attorney-client privilege and work product doctrine as essential to maintaining the confidential relationship between client and

attorney required to encourage clients to discuss their legal matters fully and candidly with their counsel so as to (1) promote compliance with the law through effective counseling, (2) ensure effective advocacy for the client, (3) ensure access to justice and (4) promote the proper and efficient functioning of the American adversary system of justice.

Gillard, ___ Pa. at ___, 15 A.3d at 50 n.4.

In this case, Mr. Rayan learned of a discrepancy between the address on Ms. Edwards's driver's license and the address listed for her in the data base of RealSTATs. Upon learning of the discrepancy, Mr. Rayan, on June 16, 2010, requested that Ms. Edwards provide certain documents to prove her residency. Ms. Edwards filed a grievance on June 24, 2010. In July, Arbitrator Miller-Kotula issued an arbitration award (Kotula Award) for a class action grievance involving five employees who, in the prior year, were required by the Municipality to provide proof of residency similar to that of Ms. Edwards. After the Kotula Award and its clarification, Mr. Rayan scheduled a meeting with Ms. Edwards and a Union representative, for September 23, 2010, to investigate her residency. Although Ms. Edwards subsequently provided the previously requested documents to establish residency, Mr. Rayan insisted that a meeting was still necessary. On the day before the meeting, September 22, 2010, the Union's attorney sent a letter to the Municipality's attorney stating that the Union's position is that the Municipality's post-Kotula Award application of the residency provision in the CBA violated past practice and that the Union intended to file an unfair practice charge with the Board.

It is with this background of prior litigation over the class action grievance from 2009 resulting in the Kotula Award, Ms. Edwards's grievance and the threat of unfair practice litigation that I consider the Municipality's defense of privilege and protection. The credible and un rebutted testimony of record establishes that the Document was prepared by counsel for the Municipality based on attorney-client discussions between Mr. Rayan and Mr. Palumbo regarding the residency investigation of Ms. Edwards, post-Kotula Award. After conducting an in camera inspection of the Document, I conclude that the Document constitutes Mr. Palumbo's opinion regarding the nature, direction and policy of the Municipality in properly conducting residency investigations of its employees, in light of Mr. Palumbo's reading of the Kotula Award. The Document constitutes advice from Mr. Palumbo to Mr. Rayan, regarding the investigative techniques he should apply within the meaning of the CBA and the Kotula Award as interpreted and counseled by Mr. Palumbo. Both the questions and the directions contained in the Document constituted the legal opinion and advice of Mr. Palumbo regarding the approach to employe residency investigations.

The Union claims, however, that the privilege was waived in this case because Mr. Rayan disclosed the contents of the Document to Ms. Edwards and Mr. Kelly during the September 23, 2010 meeting. The Union correctly posits that the attorney-client privilege is waived when the privileged communications are disclosed to a third party. National Mutual Insurance v. Fleming, 605 Pa. 468, 992 A.2d 65, 68 (2010). However, the record does not contain factual support that the contents of the Document were disclosed to the Union representative Kelly or Ms. Edwards during the meeting. The record shows that Mr. Rayan did not read anything from the Document to Ms. Edwards thereby revealing its contents. Mr. Palumbo's sample questions were in the nature of advice to Mr. Rayan to address certain topics during the investigation. Those sample questions and statements were an outline prepared by Mr. Palumbo that Mr. Rayan was entitled to utilize during the meeting to refresh his own recollection of subjects to cover. It constituted a checklist from counsel to ensure a comprehensive investigation of Ms. Edwards's residency under counsel's interpretation of the Kotula Award. Indeed, Mr. Rayan formulated his own questions and did not address all the subjects on the checklist. Mr. Rayan's actions demonstrate that he was not publishing the Document's contents to the Union; rather he repeatedly consulted and relied upon his counsel's Document as a memory aid in conducting his own investigation.

Mr. Rayan was permitted to bring the Document to the meeting and rely on it during the meeting without waiving the privileged advice of counsel regarding the direction that the residency investigation should take. When an attorney's advice involves lengthy directions about the manner in which to proceed during an investigation, the client should be permitted to rely on that document during the investigation without waiving the

attorney-client privilege, simply because a third party witnesses him relying on the protected document. To conclude otherwise could effectuate a waiver whenever a client reveals that he/she is acting on his/her attorney's advice because the client's actions reveal something about what the attorney advised.

The Municipality also argues that the Document is protected by the attorney work product doctrine. Rule 4003.3 of the Rules of Civil Procedure provides, in relevant part, as follows:

The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.

Pa. R.C.P. 4003.3.

In Gillard, the Supreme Court of Pennsylvania recognized that the attorney work product doctrine under the rules of civil procedure is broader and more inclusive than the attorney-client privilege because it incorporates more than communications; it includes all the professional work of the attorney, regardless of whether it is confidential and it does not necessarily have to be in preparation for litigation. Gillard, ___ Pa. at ___, 15 A.3d at 59 n.16.

The Document is the attorney work product of Mr. Palombo containing his opinions and directions to his client regarding the manner in which the client should conduct an employe residency investigation post-Kotula Award.

B. Mr. Rayan's and Ms. Carson's Notes

Penn Hills argues that the notes taken by Mr. Rayan and Ms. Carson at the September 23, 2010 meeting constitute confidential communications with their attorney shielded by the attorney-client privilege because they were taken for the purpose of being provided to counsel, and in fact were so provided, to obtain legal advice. Penn Hills further argues that a party's own mental impressions, opinions and conclusions are protected work product, citing Sprint Communications and Communications Workers of America, Local 6174, 343 NLRB 987 (2004). Penn Hills contends that where Pennsylvania labor laws closely track the National Labor Relations Act, the Board and Pennsylvania courts have looked to federal decisions for guidance.

The Union, however, argues that the Municipality's reliance on federal authority here is misplaced because Pennsylvania law expressly diverges from federal authority on the issue of party work product. I agree with the Union.

Rule 4003.3 of the Pennsylvania Rules of Civil Procedure provides, in relevant part, as follows:

[A] party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent.

Pa. R.C.P. 4003.3.

The explanatory comments to the Rule 4003.3 expressly provide that the amendments to the Rule radically changed prior practice as to the discovery of documents, reports and tangible items prepared in anticipation of litigation by or for another party or that party's representative, agent or attorney. The former rule, explains the notes, prohibited such discover whereas the amended Rule permits it "subject to the limitation that discovery of the work product of an attorney may not include disclosure of the mental impressions, conclusions, opinions, memoranda, notes, legal research or legal theories of an attorney." Pa. R.C.P. 4003.3 (Explanatory Comment). The Comments further provide the following:

The essential purpose of the Rule is to keep the files of counsel free from examination by the opponent, insofar as they do not include written statements of witnesses, documents or property which belong to the client or third parties, or other matter which is not encompassed in the broad category of the "work Product" of the lawyer. Documents otherwise subject to discovery cannot be immunized by depositing them in the lawyer's file. The Rule is carefully drawn and means exactly what it says. It immunizes the lawyer's mental impressions, conclusions, opinions, memoranda, notes, summaries, legal research and legal theories, nothing more.

Pa. R.C.P. 4003.3 (Explanatory Comment).

The notations made by Mr. Rayan on the Document contained a mixture of Ms. Edwards's answers to questions, points for conducting further investigation as well as reminders to obtain certain items to forward to labor counsel. The notations made by Ms. Carson were her interpretation of the discussion and reminders of matters to further investigate and follow up. Ms. Carson was aware of the pending grievance and threatened unfair practice litigation. The pending litigation caused Ms. Carson to compile a summary of her notes and Mr. Rayan's notes and forward that compilation to labor counsel. Also, Mr. Rayan did discuss his notes with Mr. Palombo.

Under the express mandate of Rule 4003.3, the notes of Mr. Rayan and Ms. Carson are discoverable, even though they may contain mental impressions and conclusions or follow-up investigation notes for further investigation. The Rule allows the discovery of a party's investigation summaries and conclusions prepared by the party in preparation for litigation and for the purpose of providing those impressions, opinions, conclusions, summaries and notes to the party's attorney. Also, a public employer's internal investigative notes, summaries, and conclusions are discoverable to process grievances regarding the investigated employees. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 40 PPER 126 (Proposed Decision and Order, 2009).

It would countermand the policies of PERA to permit employers to hide the non-confidential, relevant employe investigations and resulting conclusions, in the application of the parties' contract, simply because the employer forwarded those records to its attorney. The reason why an employer has a duty to provide relevant information to the Union is to permit the Union to properly evaluate the employer's application of the provisions of the parties' contract as well as the merits of any grievances arising there under. The parties involved in a labor relationship, as here, are supposed to work together to resolve disputes. Indeed, Section 101 of PERA declares "that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employes." 43 P.S. § 1101.101. Such cooperative efforts toward the resolution of disagreements can only be achieved through the candid, open and honest sharing of relevant information that provides the bases for the parties' respective positions and behaviors. Having already concluded that the notes are relevant within the meaning of Commonwealth, supra, the Municipality must provide the Rayan-Carson notes to the Union.

Accordingly, Penn Hills has no obligation to provide the Document, but it does have a bargaining obligation to provide the notations made by Mr. Rayan and Ms. Carson during the September 23, 2010 meeting. To the extent that either Mr. Rayan's or Ms. Carson's notes are on a copy of the Document, the Municipality may redact the portions of the Document prepared by Mr. Palombo.

CONCLUSIONS

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

1. Penn Hills Municipality is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. Penn Hills Municipality has not committed unfair practices in violation of Section 1201(a) (3) of PERA.

5. Penn Hills has committed unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that Penn Hills Municipality shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately provide to the Union copies of the notes taken by Mr. Rayan and Ms. Carson during the September 23, 2010 meeting with Ms. Edwards regarding her residency, excluding any material written or prepared by Mr. Palombo;

(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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(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.

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 twenty-third day of September, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PROFESSIONAL ASSOCIATION :
OF PARAMEDICS :
 :
 v. : Case No. PERA-C-10-403-W
 :
PENN HILLS MUNICIPALITY :

AFFIDAVIT OF COMPLIANCE

Penn Hills Municipality hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has provided to the Union copies of the notes taken by Mr. Rayan and Ms. Carson during the September 23, 2010 meeting with Ms. Edwards regarding her residency, excluding any material written or prepared by Mr. Palombo; that it has posted a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and has had the same remain so posted for a period of ten (10) consecutive days; and that it has served a 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