

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MANOR TOWNSHIP POLICE ASSOCIATION :
:
v. : Case No. PF-C-10-63-E
:
MANOR TOWNSHIP :

FINAL ORDER

The Manor Township Police Association (Association) filed timely¹ exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on January 31, 2011, challenging a Proposed Decision and Order (PDO) issued on January 10, 2011. In the PDO, the Board's Hearing Examiner concluded that Manor Township (Township) did not violate Section 6(1)(a) or (c) of the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111 of 1968, when it laid off Officers Charles Snyder, Wayne Smoker and Justin Kinard and denied their request for union representation at the meeting where they were informed of the layoffs and of the terms of the severance package that the Township had negotiated with the Association.² The Township timely filed a brief in response to the exceptions on February 22, 2011.

The facts found by the Hearing Examiner are summarized as follows. Effective January 1, 2005, the Township and the neighboring Borough of Mountville (Borough) entered into a five-year extension of a long-standing contract under which the Township had been providing police services to the Borough in exchange for yearly payments by the Borough.

On September 9, 2008, the Association demanded binding arbitration for the contract period beginning January 1, 2009. The Association had not demanded arbitration during the previous 25 years. Barry Smith, the Township Manager, did not consider laying off police officers at that time. On October 1, 2009, an interest arbitration panel held a hearing. The Township did not consider laying off police officers at that time.

By letter dated November 3, 2009, the Township proposed to the Borough another five-year extension of their long-standing contract for the provision of police services. The Township based the proposal on a study by Township Chief of Police Graeff, who determined that the Borough had accounted for 14.6% of police calls requiring paperwork in 2008 and that the yearly cost of providing police services to the Borough was about \$250,000.

On November 10, 2009, Mr. Smith read in a newspaper that the Borough was going to be contracting with another township for police services. At a staff meeting later that day, Mr. Smith broached the subject of police layoffs for the first time. Based on Chief Graeff's study and on his own knowledge that the average yearly cost of a police officer was \$80,000, Mr. Smith calculated that three police officers would have to be laid off to cover the loss of revenue from the Borough. Mr. Smith did not recommend laying off any police officer at the time because the contract for the police was open and he did not know what police services would cost in 2010.

By letter dated November 23, 2009, the Borough gave notice to the Township that it would be entering into a contract with another township for police services beginning January 1, 2010. On December 1, 2009, Patrick Harvey, the Township's partial arbitrator, upon the direction of Mr. Smith, attempted to have the interest arbitration panel deliberate with due regard for the loss of revenue from the Borough. Mr. Harvey's attempt

¹ The Association's exceptions are timely because January 30, 2011, the twentieth day following issuance of the Hearing Examiner's proposed decision, was a Sunday and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

² The Association also alleged in its Charge that the Township violated Section 6(1)(e) of the PLRA. The Association withdrew that portion of the Charge at the hearing and, therefore, that allegation is no longer before the Board.

failed. In December 2009 or January 2010, John May, a member of the Board of Supervisors, told Sergeant James Alexander, the Association President, that the Township would wait to see what happened in arbitration before laying off any police officers.

The Township received no revenue from the Borough for 2010 and transferred \$735,000 from its capital reserves to cover operating costs for the year. The Township had been funding its capital reserves to cover major long-term capital expenditures. Except for calls for assistance, the Township no longer provides police services for the Borough.

In March 2010, the interest arbitration panel issued an award. On April 5, 2010, Mr. Smith recommended to the Board of Supervisors that three police officers be laid off because the award did not cover the loss of revenue from the Borough. Mr. Smith did not base his recommendation on the fact that the Association had demanded interest arbitration. The Board of Supervisors accepted Mr. Smith's recommendation. Three of the five board members (Mr. May, Alan Kreider and Richard Bauder) did so because the termination of the Township's long-standing contract with the Borough left the Township with reduced revenues and responsibilities for the police. The Hearing Examiner found as fact that the Board of Supervisors did not do so because the Association had demanded interest arbitration.

On April 21, 2010, the parties held an impact bargaining session, after which they agreed on a severance package of six months pay and medical benefits for the three police officers to be laid off. On April 28, 2010, the Township met with its three least senior police officers (Officers Snyder, Smoker and Kinard) to lay them off and to inform them of the severance package. The officers requested union representation. The Township explained to them that the meeting was not disciplinary in nature and denied their request.

The Hearing Examiner concluded in the PDO that the Township did not violate Section 6(1)(a) and (c) of the PLRA because the Association failed to establish that the Township's action in laying off Officers Snyder, Smoker and Kinard was motivated by anti-union animus. The Hearing Examiner further concluded that the record established that the Township laid off Officers Snyder, Smoker and Kinard for a non-discriminatory reason (the Borough's decision not to renew its long-standing contract with the Township). The Hearing Examiner additionally determined that the Township did not violate the police officers' Weingarten³ rights because the April 28, 2010 meeting was to inform them of their layoffs and severance packages, and was not an investigatory interview. The Hearing Examiner also determined that the Association failed to allege an independent violation of Section 6(1)(a) in its Charge. Therefore, the Hearing Examiner dismissed the Association's Charge of Unfair Labor Practices.

The Association does not challenge any of the Hearing Examiner's findings of fact in its exceptions. Therefore, the Hearing Examiner's findings of fact are conclusive. FOP Lodge #5 v. City of Philadelphia, 34 PPER 22 n.3 (Final Order, 2003).

The Association also does not except to the Hearing Examiner's determination that the Township did not violate Section 6(1)(a) and (c) of the PLRA because the layoffs were not retaliatory, but were motivated by legitimate business reasons (the Township's loss of funds due to the Borough's termination of its contract to provide police services). Finally, the Association does not except to the Hearing Examiner's conclusion that the Township did not violate the police officers' Weingarten rights because the April 28, 2010 meeting was not an investigatory interview that could lead to potential discipline, and thus did not trigger a right to union representation.

Rather, the sole basis for the Association's exceptions is the claim that the Hearing Examiner erred in determining that the Association failed to allege in its Charge that the layoffs constituted an independent violation of Section 6(1)(a). The Association asserts that "[t]he Unfair Labor Practice Charge ... alleges ... that the Association and its members engaged in protected activities and were subject to retaliatory action as a direct and proximate result of the protected activities," and that "[t]he Unfair Labor

³ NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975).

Practice Charge likewise asserts that the retaliatory action taken against members of the Association violated Section 6(1)(a) of the PLRA." (Association's exceptions at 2). The Association further alleges in its brief in support of exceptions that the record demonstrates that the Township engaged in coercive conduct by treating the Association's President (Sergeant Alexander) differently in retaliation for his protected activity and by alleged past anti-union statements made by members of the Township Board of Supervisors.

The Board will find that an independent violation of Section 6(1)(a) has occurred where, in light of the totality of the circumstances, the employer's action has a tendency to coerce a reasonable employe in the exercise of protected rights. E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police v. City of Scranton, 38 PPER 104 (Final Order, 2007). The Association's allegation in its Charge that the police officers were laid off in retaliation for their protected activity of pursuing interest arbitration stated a violation of Section 6(1)(c) and a derivative violation of Section 6(1)(a), but not an independent violation of 6(1)(a). Teamsters Local Union No. 384 v. Kennett Consolidated School District, 37 PPER 89 (Final Order, 2006); Wattsburg Education Association v. Wattsburg Area School District, 35 PPER 27 (Proposed Decision and Order, 2004), 35 PPER 54 (Final Order, 2004); Derry Township Police Association v. Derry Township, 40 PPER 38 (Proposed Decision and Order, 2009). In its Charge, the Association alleged that "[t]he Township's discriminatory and retaliatory actions has [sic] interfered with, restrained, or coerced all members of the bargaining unit." (emphasis added). This allegation evidences a derivative, not independent, violation of Section 6(1)(a). Further, there was no mention in the Association's Charge of the Township's alleged coercive treatment of Sergeant Alexander or the past anti-union statements of the Township Supervisors. Therefore, these allegations cannot be the basis for a finding of an independent violation of Section 6(1)(a) because they were not included in the Association's Charge. See Kennett Consolidated School District, *supra* (Board only has jurisdiction to consider unfair labor practices alleged in charge). Thus, the Hearing Examiner did not err in concluding that the Association did not allege an independent violation of Section 6(1)(a).

Even if the Association had alleged in its Charge that the layoffs were an independent violation of Section 6(1)(a), this claim would fail because the totality of the circumstances shows that the Township's decision to lay off police officers was due to the loss of its long-standing contract with the Borough, which reduced its revenue and responsibilities. Given that the layoffs were instituted for a legitimate business reason, it cannot be said that the layoffs would tend to restrain, interfere with or coerce reasonable employes in their pursuit of rights under Act 111 and the PLRA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Manor Township Police Association are dismissed and the January 10, 2011 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and James M. Darby, Member, this eighteenth day of October, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.