

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 :
 v. : Case No. PF-C-12-8-W
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 :
 FORWARD TOWNSHIP :

PROPOSED DECISION AND ORDER

On January 10, 2012, Teamsters Local 205 (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in **pari materia** with Act 111. In the charge, the Union alleged that Forward Township (Township) violated Section 6(1)(a), (b), (c) and (e) of the PLRA by threatening to eliminate the police department if the Union did not accept a decrease of paid time off for the officers. The Union further alleged that the Township unlawfully entered into a new agreement with individuals of the police department, excluding the certified bargaining representative. In this new agreement with individual officers, alleged the Union, the Township provided salary increases to gain support for the new agreement and to undermine the Union.

On January 24, 2012, the Secretary of the Board (Secretary) issued a letter to the Union indicating that the Board was unable to process the charge in its current form. The Secretary requested that the Union amend the charge to include the relevant dates of the allegations in the charge and indicated that the Board would preserve the original filing date. On February 17, 2012, the Union filed an amended charge including the requested dates.

On February 24, 2012, the Secretary issued a complaint and notice of hearing designating a hearing date of June 21, 2012, in Harrisburg, Pennsylvania. During the hearing on that date, the parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Union and the Township both filed post-hearing briefs.

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

FINDINGS OF FACT

1. The Township is a political subdivision within the meaning of Act 111, as read with the PLRA. (N.T. 7).
2. The Union is a labor organization within the meaning of Act 111 and the PLRA. (N.T. 7).
3. Carl Bailey is the Secretary/Treasurer and principal officer of Teamsters Local 205. Prior to January 1, 2012, Mr. Bailey was the President and Business Agent. He is the chief negotiator for the bargaining unit of police officers at the Township. Teamsters Local 205 is the Board certified exclusive collective bargaining representative of that bargaining unit. (N.T. 65-66; PF-R-91-44-W).
4. The Township's Chief of Police retired in 2009. The Township did not hire a replacement Chief. Officer Bob Curdie is the Officer-in-Charge (OIC) of the police department. Officer Curdie was the Union steward prior to his ascension to the position of OIC. Sometime thereafter in 2010, he stepped down as steward and Officer Travis Stoffer became the Union Steward. (N.T. 66-68, 132).

5. Officer Stoffer was not the Union steward on the date of the hearing. Thomas DeRosa is the Chairman of the Township Board of Supervisors. (N.T. 14-16, 18-19, 126; Complainant Exhibits 8-9; Respondent Exhibit 2).
6. No grievances were filed by the police before 2009. Mr. DeRosa testified as follows: "A pet peeve of mine was no grievances and no disabilities and we'll never have a problem." (N.T. 131-133).
7. In 2010, there were a series of issues in the police department that concerned Mr. DeRosa. (N.T. 134-155).
8. Mr. DeRosa believed that certain officers caused a defibrillator and a speed clicker to go missing. All the Tasers were broken and it cost the Township \$500-\$600 per Taser to fix them. He also believed that certain officers broke the radios. (N.T. 133).
9. The Township received a series of workers' compensation claims all during the summer months. One officer did not appear at a burglary trial under subpoena and an officer did not appear for a deposition, but cashed the check for the appearance. (N.T. 134).
10. Police officers refused to give the supervisors the keys to the police station. (N.T. 137).
11. Police officers started a separate fund for money donated to the police department. Supervisors did not know for what purposes the officers were using the money. The supervisors requested that the officers turn over the account and the officers refused. They finally turned over the account after the supervisors threatened to send the officers home. (N.T. 142-143).
12. Mr. DeRosa had the cell phone numbers of all officers, except for Jason Miller. Officer Miller refused to provide his cell phone number when Mr. DeRosa requested it. Officer Miller told Mr. DeRosa that he did not have a cell phone, but Mr. DeRosa saw Officer Miller using his cell phone. Mr. DeRosa subsequently learned that Officer Miller, in fact, had three cell phones. (N.T. 144-145, 148-149).
13. Officer Miller called Mr. DeRosa "an extortionist" on television for making a movie company pay \$2,400 to the Township for extra Township resources, i.e., road crew and police, to cover the cost of services needed for the movie production. (N.T. 149-151).
14. Mr. DeRosa believed that Officer Stoffer went to his home five to six times per shift. (N.T. 153-154).
15. Traffic tickets went from approximately 1200 per year to about 100 per year. (N.T. 187).
16. Sometime in 2011, the officers met with Mr. DeRosa to discuss the issues, and the officers charged the Township 4.5 hours of overtime for attending that meeting. (N.T. 154-155).
17. Mr. DeRosa attempted to suspend Officer Stoffer for failing to appear for a burglary trial for which he was subpoenaed. The Union indicated that it would challenge the suspension at arbitration if the officer was suspended. Mr. DeRosa decided not to discipline Officer Stoffer and let him work. (N.T. 145-147).
18. The bargaining unit members prepared a list of issues for bargaining and presented the list to Mr. Bailey. (N.T. 17).

19. On May 6, 2011, the Union initiated negotiations for a new collective bargaining agreement with the Township and sent its proposals for negotiation. The list of proposals was shorter than the list prepared by the officers. The collective bargaining agreement (CBA) in effect at that time was due to expire December 31, 2011. (N.T. 16, 17, 76-77, 110; Complainant Exhibit 7).
20. At a grievance meeting, where Mr. DeRosa, Mr. Bailey, Officer Stoffer and Township Supervisor David Magiske were present, Mr. DeRosa indicated that he would not review the Union's proposal and that the Township would give the Union a contract to sign at the end of the 2011 calendar year and the Union would either sign it or the Township would disband the police department; and that if the Union signs the contract offered by the Township, the police officers would have jobs. (N.T. 18-19, 78, 95, 110; Respondent Exhibit 2).
21. On June 15, 2011, the Township sent a letter to Carl Bailey informing the Union of the Township's intent to disband the police department. (N.T. 78-80, 156, 188; Complainant Exhibit 8).
22. The letter of intent provided, in relevant part, as follows:

[T]his letter is to notify the Union that the Township wishes to terminate the [CBA] effective December 31, 2011.

The Township plans to disband its police force. The Township offers to bargain over the effects of disbanding the police force. The Township proposes that the following shall be the effects of disbanding the police force:

1. At the end of the last shift that the police officer works, each police officer shall return to the Township all uniforms, weapons, equipment and/or other property that the Township supplied to them and/or that the police officers purchased with the uniform allowance.
2. Heart and Lung Benefits shall cease as of December 31, 2011 for all officers receiving them as of that date, and no officers shall receive Heart and Lung benefits from the Township thereafter.
3. The Township will not oppose unemployment compensation benefits for any officer whose termination is due solely to the Township's disbanding the police force.
4. Police officers shall not receive payment for any accrued, unused paid days off of any kind, or for any un-accrued paid days off of any kind.
5. The Township will stop paying for health insurance, eye insurance and Team Legal Criminal and Civil Defense insurance at the time necessary to assure that such coverage will end on the same date as the Township's disbanding the police force.

(Complainant Exhibit 8).

23. On July 8, 2011, an article appeared in the local newspaper reporting on the Township's regularly scheduled public meeting. The article reported that the supervisors were threatening to disband the police department.¹ Officer Stoffer became concerned that the supervisors would disband the police department if

¹ These statements were not admitted or relied upon for the truth of the assertions made therein. Rather they were admitted as relevant support for the effect on Officer Stoffer and the other officers in the bargaining unit.

the Union did not sign the contract that the supervisors wanted the Union to sign. (N.T. 34-36; Complainant Exhibit 1).

24. The July 8, 2011, article reported that the Township supervisors oversee the police department but Mr. DeRosa stated that "their hands are tied as far as disciplining officers because of the police union." The article further provided as follows: "DeRosa has butted heads with the police department before. Last summer, he fired officer Jason Miller after the officer allegedly refused to give him or other township officials his cell phone number. Miller later was reinstated to the department after the union intervened but currently is not working due to a back injury he sustained on a call in February." (Complainant Exhibit 1).²
25. On September 8, 2011, the Union timely requested Act 111 interest arbitration within one hundred ten days before the end of the Township's fiscal year. (N.T. 63, 94; Complainant Exhibit 9).
26. In November 2011, the Union and the supervisors discussed the amount of paid days off received by the officers. The supervisors' position was that, under the CBA, the senior officers received forty-nine of one hundred seventy days off and the junior officers received thirty-nine; the supervisors proposed taking seventeen and twelve of those days back, respectively. (N.T. 19-20, 28-29, 83).
27. The Union proposed to give up six paid holidays, maintain a pay freeze and all other contractual terms would remain the same. The supervisors rejected that proposal wanting back at least twelve paid days off or they would disband the police department. (N.T. 28-29, 85-86).
28. On December 9, 2011, or December 16, 2011, Mr. Bailey again met with Mr. DeRosa and asked him to accept the Union's proposal of giving back six paid days off and a wage freeze. Mr. DeRosa refused, and he restated his demand that the bargaining unit must give back twelve days or the Township would go out of the police business. (N.T. 87-88, 160-165).
29. At some point after the last Bailey-DeRosa meeting, but before the end of 2011, OIC Curdie and Sergeant Fine approached Mr. DeRosa to make a deal. Mr. DeRosa and OIC Curdie were on speaker phone with Mr. Bailey who stated: "I am not accepting those terms, do what you want." Mr. Bailey refused to sign any agreement that gave back twelve paid days off. (N.T. 116, 165-166).
30. The next day, OIC Curdie and Sergeant Fine informed Mr. DeRosa that they would take the deal the Township offered the Union. Mr. DeRosa directed them to take a vote. OIC Curdie and Sergeant Fine reported to Mr. DeRosa that the bargaining unit voted five-to-two in favor of a deal. Mr. DeRosa told them to sign the contract and they can stay working. OIC Curdie signed the Township contract without Union representation or approval, and the Township allowed the officers to continue working without disbanding the police department. (N.T. 88-89, 167, 170-172, 201-202, 205; Respondent Exhibit 3).
31. In early January 2012, the Township solicitor telephoned Mr. Bailey and indicated that OIC Curdie signed a new agreement on behalf of the officers. OIC Curdie is not authorized by the certified exclusive collective bargaining representative, i.e., Teamsters Local 205, to sign an agreement on behalf of the bargaining unit. Only the Union Secretary/Treasurer has the authority to sign a collective bargaining agreement on behalf of Teamsters Local 205. (N.T. 88-89, 115).

² These statements have not been admitted or relied upon for the truth of the matters asserted therein. Rather, they have been admitted to demonstrate the frame of mind of Mr. DeRosa regarding the allegations contained in the Union's charge of unfair practices.

32. In the first paycheck of 2012, Officers Stoffer and Miller received a wage increase of \$.25 per hour. Sergeant Fine received a wage increase of \$.75 per hour and OIC Curdie received a wage increase of \$.85 per hour. At the same time, all part-time officers received a wage increase to \$17.00 per hour, whereas under the expired CBA, second and third class part-time officers received \$14.76 hourly and \$13.51 hourly, respectively. These wage increases were not negotiated with the Union. (N.T. 37, 40, 42, 59-60, 116, 123, 162, 169-170; Joint Exhibit 1 at 7; Respondent Exhibit 3).
33. In February 2012, officers received a new health care program provided by UPMC. Under the expired CBA, the officers received health care benefits under Highmark Blue Cross/Blue Shield. These changes were not negotiated with the Union. (N.T. 37-39, 59-60; Complainant Exhibits 4-5).
34. Under the expired CBA, officers were paid for the Martin Luther King holiday, and they were paid, as a floating holiday, for their birthdays. In 2012, officers were not paid for the Martin Luther King holiday or their birthdays. These changes were not negotiated with the Union. (N.T. 38-39, 59-60).
35. During the hearing on June 21, 2012, Mr. DeRosa testified that the Township's police department is not currently unionized. (N.T. 127).

DISCUSSION

Initially, there is no evidence presented on this record to support the conclusion that the Township dominated or interfered with the formation or administration of the Union or contributed financial or other material support to it, in violation of Section 6(1)(b) of the PLRA. Accordingly, that cause of action is hereby dismissed. Additionally, the Union did not plead an independent violation of Section 6(1)(a). The causes of action, therefore, are limited to (and I will confine my analysis to) Section 6(1)(c) and (e). In this regard, I conclude that the Township engaged in unfair labor practices in violation of Section 6(1)(c) and (e).

1. Discrimination

In its post-hearing brief, the Union argues that the Township repeatedly and unlawfully threatened to disband the police department, in violation of Section 6(1)(c) of the PLRA and Act 111, to eliminate the Union from the collective bargaining process. (Union's Post-hearing Brief at 12-18). The Union maintains that the Township harbored anti-union animus which became manifest by threats of job loss resulting from the supervisors' frustration with the limitations on disciplinary action in a unionized police force. (Union's Post-hearing Brief at 19).

In a discrimination claim, the complainant has the burden of establishing the following three-part conjunctive standard: (1) that the employees engaged in protected activity; (2) that the employer knew that the employees engaged in protected activity; and (3) the employer engaged in conduct that was motivated by the employees' involvement in protected activity. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977); **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981).

In **Teamsters, Local 776 v. Perry County**, 23 PPER ¶ 23201 (Final Order 1992), the Board stated that, under **Wright Line**, "once a **prima facie** showing is established that the protected activity was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the action would have occurred even in the absence of that protected activity." **Perry County**, 23 PPER at 514. Upon the employer's offering of such evidence, "the burden shifts back to the complainant to prove, on rebuttal, that the reasons proffered by the employer were pretextual." **Teamsters Local #429 v. Lebanon County**, 32 PPER ¶ 32006 at 23 (Final Order, 2000). "The employer need only show by a preponderance of the evidence that it would have taken the same actions sans the

protected conduct." **Pennsylvania Federation of Teachers v. Temple University**, 23 PPER ¶ 23033 at 64 (Final Order, 1992).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. In **PLRB v. Child Development Council of Centre County**, 9 PPER ¶ 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 in the [adverse action against] the Complainant." **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.

Under the totality of the circumstances presented on this record, the Union established a **prima facie** case of unlawful discriminatory conduct and the burden shifted to the Township to rebut the Union's case. Although the Township offered explanations for its actions in rebuttal, I do not credit those explanations; rather, I find the Township's explanations to be pretextual, which further supports the Union's case for discrimination.³

There is no dispute that the officers were engaged in protected activity of which the Township supervisors were aware. The officers met in the spring of 2011, to develop a list of bargaining proposals. They forwarded that list to Mr. Bailey, their chief negotiator and Union representative, who eliminated some of the demands. On May 6, 2011, Mr. Bailey, in his capacity as negotiator and bargaining unit representative, forwarded a contract proposal and requested bargaining on behalf of the bargaining unit members. Also, Officers Stoffer and Miller had filed grievances.

The mindset of Mr. DeRosa was that, if the officers did not file grievances or disability claims, "we'll never have a problem." In the summer of 2010, Officer Miller was reinstated after being fired for not providing his cell phone number to Mr. DeRosa. The Union also filed a grievance on behalf of Officer Stoffer in 2011 and informed the Township that it would arbitrate any suspension given to him for failing to appear at a trial for which he was subpoenaed. At this point, after the Township's disciplinary actions against two officers were twice challenged, Mr. DeRosa developed a "problem" with the Union. At the grievance meeting for Officer Stoffer, Mr. DeRosa informed Teamsters representative Bailey that he would not even review the Union's May 6, 2011, bargaining proposal. Rather, he will give a contract to the Union which the Union will sign or the Township will disband the police department. After the Stoffer grievance meeting, the Township sent a letter to Mr. Bailey informing the Union of its intent to disband the police department on December 31, 2011, and would terminate officers' health and other insurance benefits at that time. Mr. DeRosa further expressed frustration with the Union at the July 2011, Township meeting where he stated that the Township's hands were tied regarding the discipline of officers because of the Union.

In November and December 2011, the Union and the Township negotiated over the issue of officers giving back paid days off. The Township wanted seventeen days back from the full timers and twelve days back from the part timers. At a meeting on either December 9, 2011, or December 16, 2011, between Mr. Bailey and Mr. DeRosa, the Union proposed giving back six paid days off and a wage freeze. Mr. DeRosa declined and reiterated that the officers must give back twelve or the Township would go out of the police business. Mr. DeRosa's repeated and continuous threats to disband the police department, which culminated in the actionable threat of December 9th or 16th, were calculated to undermine the Union's position in bargaining and to retaliate against the Union and certain officers for challenging the Township's attempts to discipline officers.

³Although I credit the testimony establishing misconduct and unprofessional behavior/performance by certain officers, I discredit the proffered nexus between these activities and the Township's threats to disband the police department and direct dealing with individual officers.

The threats to disband the police department and the direct dealing were not motivated by the list of missteps offered in defense by the Township (and which I will not recite here). Although there certainly were problems at this police department, they are pretextually offered in a thinly veiled attempt to disguise an unlawful motivation in this case. If the Township was genuinely and legitimately motivated to eliminate its police department based on poor police performance, broken equipment, secret accounts, public criticism of and lying to supervisors, it would not have entered a contract with the individual officers in spite of those problems and given them all wage increases. Accordingly, the anti-union statements, the effect of threats to disband the police department on the bargaining unit, the direct dealing and promises of wage increases without Union involvement and the pretextual, inadequate explanations for threatening to disband the police department collectively yield the strong inference of unlawfully motivated discrimination within the meaning of **Centre County, supra**.

Moreover, the Board has adopted the test set forth in **NLRB v. Great Dane Trailers, Inc.** 388 U.S. 26 (1967). **AFSCME, Council 13 v. Bensalem Township**, 19 PPER 19034 (Order Denying Application for Stay, 1988; **Chester County Deputy Sheriffs Ass'n v. Chester County**, 28 PPER ¶ 28045 (Final order, 1997). Under that analysis, "proof of an unlawful motive is not necessary to establish a violation of Section 1201(a)(3) of PERA if the employer's actions are inherently destructive of important employe rights." **Chester County Deputy Sheriffs Ass'n v. Chester County**, 28 PPER ¶ 28045 (Final Order, 1977) (citing **Great Dane, supra**; **Center County, supra**. "[W]here inherently destructive conduct is demonstrated, the employer may defend its action by producing evidence of legitimate business justification." **Oxford Area Educational Support Personnel Ass'n v. Oxford Area Sch. Dist.**, 32 PPER ¶ 32168 (Proposed Decision and Order, 2001) (citing **Great Dane, supra**.) "Inherently destructive conduct by employers is conduct that creates 'visible and continuing obstacles to the future exercise of employe rights.'" **Oxford**, 32 PPER at 414 (quoting **Portland Willamette Co. v. NLRB**, 534 F.2d 1331, 1334 (9th Cir. 1976)). The Board will determine whether conduct is inherently destructive by weighing the facts on a case-by-case basis. **Id.**

Notwithstanding the Township's unlawful motive, I find that Mr. DeRosa's intransigent take-it-or-leave-it attitude of attempting to jam the Township's contract terms down the Union's throat without even looking at the Union's proposals or submitting to Act 111 interest arbitration combined with the threat of disbanding the police department and directly dealing with employes and agreeing to a pay increase, while the Union was proposing wage freezes, to be **inherently destructive of employe rights** within the meaning of **Great Dane Trailers, supra**. Certainly, this conduct created a visible and continuing obstacle to the future exercise of employe rights as conceded by Mr. DeRosa who incorrectly testified that there no longer is a Union at the Forward Township Police Department. Accordingly, the Township engaged in discriminatory threats and direct dealing to discourage membership in the Union in violation of Section 6(1)(c). Indeed, the Township discriminatorily and successfully undermined the employes' free choice to support the Union by directly dealing with Sergeant Fine and Officer Curdie under the threat of job loss and the promise of wage increases.

2. Bargaining Violations:

A. Direct Dealing/Refusal to Submit to Act 111 Interest Arbitration

The Union also argues that the Township violated its bargaining obligation when it engaged in direct dealing with the bargaining unit members without the knowledge or participation of the certified exclusive collective bargaining representative, i.e., Carl Bailey and Teamsters Local 205. In **Delaware County Lodge No. 27 v. Chester Township**, 21 PPER ¶ 21005 (Final Order, 1989), the Board held that as follows:

Pursuant to Section 6(1)(e) of the PLRA, it is an unfair labor practice for an employer to "refuse to bargain collectively with the representatives of his employes." Therefore, a public employer violates its statutory bargaining obligation where, as here, it enters into a

collective bargaining agreement with a party other than the exclusive representative of its employees.

Chester Township, 21 PPER at 15. In **Millcreek Township School District v. PLRB**, 631 A.2d at 734 (Pa. Cmwlth. 1993), the Commonwealth Court of Pennsylvania opined as follows:

The rationale for considering the unilateral grant of benefits to be an unfair labor practice is that, even if unintentional, the role of the collective bargaining agent as the sole representative of all employees would be undermined if the school district could unilaterally bargain to give individual employees greater benefits than those negotiated for employees who bargained collectively. The issue is not whether the change is a benefit or a detriment to the employees, but whether it affects a mandatory subject of bargaining, i.e., wages hours or other terms or conditions of employment. A unilateral change in a mandatory subject of bargaining constitutes a refusal to bargain in good faith and is an unfair labor practice because it undermines the collective bargaining process which is favored in this Commonwealth.

Millcreek Township School District, 631 A.2d at 738. As the Board further opined in **Chester Township**, *supra*, Act 111 and the PLRA prohibit an employer from entering into collective bargaining agreements with **any party other than the exclusive collective bargaining representative of the employes covered by the agreement**.

Before the end of 2011, OIC Curdie and Sergeant Fine approached Mr. DeRosa to make a deal. During a speaker phone meeting between Mr. DeRosa, OIC Curdie and Mr. Bailey, the Union refused to accept the Township's demand that the Union give back twelve paid days off. The next day, OIC Curdie and Sergeant Fine informed Mr. DeRosa that they would take the deal the Township offered the Union. After a vote in favor of the Township's offer, Mr. DeRosa told OIC Curdie and Sergeant Fine that, if they signed the Township's contract, they can stay working. OIC Curdie signed the Township contract without Union representation or approval, and the Township allowed the officers to continue working without disbanding the police department. In early January 2012, the Township solicitor telephoned Mr. Bailey and informed him that OIC Curdie signed a new agreement on behalf of the officers. OIC Curdie is not authorized by the Teamsters Local 205 to sign an agreement on behalf of the bargaining unit. Only the Union Secretary/Treasurer has the authority to sign off on a collective bargaining agreement. The record in this case is clear that the Union is the certified exclusive collective bargaining representative of the police officers employed by the Township. The record is also clear that the Township negotiated and entered into a contract with the police officers and not the Union, which constitutes an unlawful refusal to bargain with the certified bargaining representative in violation of Section 6(1)(e). Moreover, by entering that contract with OIC Curdie, the Township unlawfully violated its bargaining obligation to proceed to Act 111 interest arbitration with the Union, as timely requested by the Union on September 8, 2011.

B. Refusal to Bargain in Good Faith/Unilateral Changes

Public employers in the Commonwealth of Pennsylvania are barred from making unilateral changes to mandatory subjects of bargaining without negotiating an agreement with the employes' exclusive bargaining representative. **Plumstead Township v. PLRB**, 713 A.2d 730 (Pa. Cmwlth. 1998). Under Act 111, as read in *pari materia* with the PLRA, **Plumstead**, *supra*, wages, health care providers or benefits or administration, and the number of paid days off are mandatory subjects of bargaining. 43 P.S. § 217.1; **PLRB v. State College Area School District**, 461 Pa. 494, 337 A.2d 262 (1975); **Palmyra Area Education Association v. Palmyra Area School District**, 26 PPER ¶ 26087 (Final Order, 1995); **Wyoming Area Educ. Ass'n v. Wyoming Area School District**, 39 PPER 169 (Proposed Decision and Order, 2008); **Bucks County Security Guards Ass'n v. Bucks County**, 38 PPER 99 (Final Order, 2007); **Middletown Township Police Benevolent Ass'n v. Middletown Township**, 27 PPER ¶ 27203 (Final Order, 1996).

The record unequivocally establishes that, as a result of its direct dealing with employees in the bargaining unit and bypassing the Union, the Township unilaterally increased the officers' wages, changed their health care provider from Highmark Blue Cross/Blue Shield to UPMC and changed the number and designation of paid days off. None of these changes were negotiated with or agreed to by the Union. By unilaterally implementing changes to these mandatory subjects of bargaining, the Township has violated Section 6(1)(e) of the PLRA and Act 111, and it has seriously damaged the officers' support for and confidence in their Union, which will take a significant period of time to restore.

3. Remedy

Recently, in **Moshannon Valley Educ. Support Professionals v. Moshannon Valley School District**, 41 PPER 81 (Final Order, 2010), the Board addressed the matter of determining the appropriate remedy in direct dealing cases involving increased wages. In this regard, the Board opined as follows:

The remedy for an unfair practice is a matter within the sound discretion of the Board. **Pennsylvania Labor Relations Board v. Martha Company**, 359 Pa. 347, 59 A.2d 166 (1948); **In re Appeal of Cumberland Valley School District**, 483 Pa. 134, 394 A.2d 946 (1978); **Association of Mifflin County Educators v. Mifflin County School District**, 22 PPER ¶ 22065 (Final Order, 1991). Section 1303 of PERA authorizes the Board to order "such reasonable affirmative action ... as will effectuate the policies of [PERA]". 43 P.S. § 1101.1303. Where an employer has unilaterally implemented wage increases for employees without satisfying its bargaining obligation, the Board has a long-standing policy of directing rescission of the wage increase, but not directing that employees return the wage increases that they already received as a result of the employer's unlawful action. As recognized by the Board, forcing employees to return wages after having rendered services would unfairly penalize the employees for the employer's unlawful unilateral action. **AFSCME District Council 88 v. Warminster Township**, 31 PPER ¶ 31156 (Final Order, 2000). In **Warminster Township**, rejecting arguments similar to those raised by the District here, the Board noted as follows:

"To issue an order requiring employees to repay overpayments would encourage, not prevent, the practice of unlawful direct dealing with small groups of employees to undermine the collective bargaining obligation and the policies established by PERA [P]ermitting employers to recover the fruits of their unlawful conduct could not possibly deter employers from repeatedly dealing directly with bargaining unit members and offering them wage increases to buy their disassociation from a union or to undermine a union's effectiveness. The collective bargaining rights of public employees would become a nullity if employers were permitted to undermine the employees' exclusive bargaining representative through direct dealing and then unilaterally recoup its unlawful investment when found by that conduct to have violated its bargaining duty."

Warminster Township, 31 PPER at 375. Thus, as a matter of sound labor policy, and in exercising discretion over the appropriate remedy for unfair practices, the Board continues to hold that "an employee who has received overpayments as a result of an employer's [unfair practice] is entitled to keep the amount of the overpayments as part of the remedy for the original unfair practice." **Id.** at 374.

Moshannon Valley School District, 41 PPER at 280. Given the multiple unfair labor practices committed by the Township, I will order the appropriate make-whole relief,

which shall include an order that the officers keep their increased wages received from January 1, 2012 until the date of this order, after which employees will receive the wages in effect on December 31, 2011, as required by **Moshannon Valley School District, supra.**

CONCLUSIONS

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

1. The Township is a public employer within the meaning of Section 301(1) of PERA.
2. The Teamsters, Local 205 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Township **has** committed unfair practices in violation of Section 6(1)(a) and (c) of the PLRA.
5. The Township has **not** committed unfair practices in violation of Section 6(1)(b) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

That Forward Township shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in Section 5 of the PLRA, as read with 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 employe organization.
3. Cease and desist from refusing to bargain collectively in good faith with the exclusive employe representative.
4. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111 and the PLRA:
 - a) Immediately rescind the unilateral changes in health insurance, paid days off and wages;
 - b) Immediately restore wages, the amount and designation of paid days off and the health insurance provider and level of coverage to the status quo ante that existed on December 31, 2011;
 - c) Immediately unconditionally offer to engage in Act 111 mandatory interest arbitration, as timely requested by the Union on September 8, 2011, and immediately engage in good-faith collective bargaining with the Union for a new collective bargaining agreement.
 - d) Immediately rescind the unlawful contract signed by OIC Curdie that unilaterally changed wages and other terms and conditions of employment.

- e) Immediately ensure that all officers keep all wage increases received under the void contract that resulted from direct dealing with officers until the date of this order.
- f) Immediately make all officers whole and restore all benefits and paid time off, including but not limited to sick, holiday, vacation and personal time, that they would have received since December 31, 2011 but for the void, unlawful terms of the OIC Curdie agreement.
- g) Immediately pay all officers and make them whole for all out-of-pocket dental, medical and optical expenses for themselves and family members (if covered on December 31, 2011) as a result of changing health care providers/level of care.
- h) Pay interest at the simple rate of six percent per annum on any and all backpay due to the officers for out of pocket expenses as a result in changes in benefits since December 31, 2011.
- i) 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 employees and have the same remain so posted for a period of ten (10) consecutive days; and
- j) 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 second day of November 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205
:
:
:
:
v. : Case No. PF-C-12-8-W
:
FORWARD TOWNSHIP :

AFFIDAVIT OF COMPLIANCE

Forward Township hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a),(c) and (e) of the PLRA as read with Act 111; that it has rescinded the unilateral changes in health insurance, paid days off and wages; that it has restored wages, the amount and designation of paid days off and health insurance provider and level of health coverage to the status quo ante that existed on December 31, 2011; that it has unconditionally offered to engage in Act 111 mandatory interest arbitration, as timely requested by the Union on September 8, 2011; that it has engaged in good-faith collective bargaining with the Union for a new collective bargaining agreement; that it has rescinded the unlawful contract signed by OIC Curdie that unilaterally changed wages, paid time off and health care providers and coverage as a result of direct dealing; that it has ensured that all officers keep all wage increases received under the void contract that resulted from direct dealing with officers until the date of this order; that it has made all officers whole and restored all benefits and paid time off, including but not limited to sick, holiday, vacation and personal time, that they would have received since December 31, 2011 but for the void, unlawful terms of the OIC Curdie agreement; that it has paid all officers and made them whole for all out-of-pocket dental, medical and optical expenses for themselves and family members (if covered on December 31, 2011) as a result of changing health care providers/level of care; that it has paid interest at the simple rate of six percent per annum on any and all out of pocket expenses due to benefits changes since December 31, 2011; and that it has posted a copy of this decision and order within five (5) days from the effective date of the proposed decision and order in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public