

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WEST CONSHOHOCKEN POLICE OFFICERS

v.

WEST CONSHOHOCKEN BOROUGH

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Case No. PF-C-10-163-E

**PROPOSED DECISION AND ORDER**

On November 2, 2010, the West Conshohocken Police Department (Union), filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the Borough of West Conshohocken (Borough) violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that the Borough discriminated against Officer Adam Pagliaro when the Chief ordered him to attend an emergency vehicle operation course (EVOC) following a minor accident, when Borough Council suspended him for fourteen shifts and subsequently when the Chief sent him a second Loudermill letter for additional discipline which is forthcoming. The Union also alleged that the Borough refused to bargain in good faith by failing to bargain a Police Bill of Rights for the officers in the manner prescribed by the collective bargaining agreement (CBA).

On November 17, 2010, the Secretary of the Board issued a complaint and notice of hearing designating Donald A. Wallace, Esquire as the Hearing Examiner to conduct a hearing on February 17, 2011. Hearing Examiner Wallace granted several continuances at the request of both parties, including an indefinite continuance to conduct settlement negotiations. On November 18, 2011, I notified the parties that the matter had been reassigned to me, and I scheduled the hearing for May 25, 2012, in Harrisburg. During the hearing on that date, both parties 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. The Borough is a public employer and political subdivision under Act 111, as read in **pari materia** with the PLRA. (N.T. 4).
2. The Union is a labor organization under Act 111, as read in **pari materia** with the PLRA. (N.T. 4).
3. Michael J. Sinclair is the Chief of Police of the Borough of West Conshohocken. Chief Sinclair became the Chief in August of 2009. The Chief has no authority to suspend any police officers. (N.T. 235-236).
4. Steven Walker has been the Sergeant at the Borough's Police Department for nine years. He is the only Sergeant, and he supervises all the patrol officers. (N.T. 172).
5. Adam Pagliaro has been a patrol officer with the Borough's Police Department for approximately nineteen years. Officer Pagliaro is one of three members of the Union bargaining committee. (N.T. 16-17; Union Exhibit A-7).
6. Brian Raskiewicz has been a police officer with the Borough's Police Department for approximately sixteen years. Officer Raskiewicz is one of three members of the Union bargaining committee. (N.T. 17, 208-209; Union Exhibit A-7).
7. Salvatore Carfagno is a police officer with the Borough's Police Department. Officer Carfagno is one of three members of the Union bargaining committee. (N.T. 17; Union Exhibits A-2, A-4 & A-7).
8. The Borough and the Union entered into a Memorandum of Understanding, effective for 2009. They entered into the CBA in November, 2009, retroactively effective from January 1, 2009, through December 31, 2012. (N.T. 20-22; Union Exhibits A-1 & A-2).
9. In early 2010, the officer's pay did not include the retroactive four percent wage increase for 2009, as required by the CBA. (N.T. 22-23).

10. In January, 2010, all the officers, including Sergeant Walker, complained directly to the Chief about not receiving their proper wage increases. (N.T. 253).
11. Based on those complaints, the Chief invested approximately eight hours of his time determining the Borough's mistake in calculating the officers' retroactive pay for 2009. As a result, Chief Sinclair concluded that the four percent increase was mistakenly calculated based on the officers' shift differential instead of on their base pay. (N.T. 253).
12. On February 4, 2010, Chief Sinclair issued a memo to all the officers informing them that he resolved the calculation error and that the officers would receive their properly calculated retroactive pay increase for 2009. (N.T. 156-157, 253-254; Borough Exhibit 6).
13. Some officers then approached the Chief indicating that they did not understand the memo. The Chief went back to the Borough Manager who used the Chief's calculations to produce a spreadsheet. On February 11, 2010, the Chief issued another memo and attached the spreadsheet prepared by the Borough Manager. (N.T. 254-256, 278).
14. On February 12, 2012, Officers Pagliaro and Raskiewicz hand delivered a grievance dated February 9, 2009, complaining about the error in calculating the officers' retroactive pay increase for 2009. The grievance was signed by eight full-time officers. There are nine full-time officers, including Sergeant Walker and one Detective, who did not sign. (N.T. 24-25, 172, 254-255, 272, 278; Union Exhibit A-4).
15. Chief Sinclair informed Pagliaro and Raskiewicz that he had already fixed the calculation error and the Borough would be paying the correct wage increases based on his two previous memos dated February 4, 2010, and February 11, 2010. He did not discourage them from filing the grievance. He was not angry at the filing. He was excited that he discovered the source of the Borough's payroll calculation error. He explained to them that he had already taken care of it and relayed to them that his answer to the grievance would be the same as his February 4<sup>th</sup> and 11<sup>th</sup> 2010, memos.<sup>1</sup> (N.T. 254-256, 279-281).
16. The retroactive four percent wage increase for 2009 was properly calculated and paid to the officers in the next paycheck. (N.T. 30).
17. In April, 2010, Officer Pagliaro was involved in an accident with his patrol car. He collided with a tree planter in a privately owned restaurant parking lot. The estimated vehicle damage was \$2,261.88. (N.T. 60-63, 205; Borough Exhibit 7).
18. Chief Sinclair directed Sergeant Walker to contact the property owner, obtain a damage estimate from him and for the car. After the investigation was completed, the Chief directed Sergeant Walker to schedule Officer Pagliaro for EVOC training. Officer Pagliaro attended the EVOC training and was paid for his attendance. (N.T. 111-112, 186-187).
19. The April, 2010, accident was Officer Pagliaro's second vehicle accident within approximately two years. (N.T. 111-112, 200).
20. On April 20, 2010, Officer Pagliaro sent an e-mail to Sergeant Walker, but the letter was addressed to the Chief. (N.T. 62-63).

The e-mail provides as follows:

Chief,

At shift change, Sgt. Walker advised me that I was going to be sent to EVOC school. This was determined by you to be my punishment after an investigation for my involvement in a non-reportable accident. I spoke with you in your office on day shift weeks ago and you told me that no action would be taken since it was very minor. In seventeen years with the Police Department, I have never seen this many manhours and time spent on a non-reportable accident investigation involving a police officer. The manner that this has been addressed conflicts with past practice. I reported the accident to you via email and I told Sgt. Walker at shift change. The vehicle had very minor damage and no other vehicles or people were involved. If I am being disciplined, my intention [sic] to get legal counsel. I do not want something in my personnel jacket that can reflect negatively.

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<sup>1</sup> I do not credit Officer Pagliaro's testimony that the Chief "seemed to be pretty angry about" filing the grievance. (N.T. 27).

(Union Exhibit A-6).

21. The Chief credibly testified that, based on his past experience with two other police departments,<sup>2</sup> the first vehicle accident requires counseling and the second requires training. The Chief was unaware that the Police Officer Disciplinary Proceeding for the Borough provides that remedial training is considered discipline. The Chief credibly testified that driver training after two accidents is proactive and protects both the Borough and the Officer. (N.T. 257-260, 268-269; Union Exhibit A-3).
22. Article IV, Section II of the CBA provides as follows:

#### **POLICE BILL OF RIGHTS**

The bargaining unit and the Chief of Police shall form a committee to discuss issues related to police interrogation during internal interviews and the handling of civilian complaints.

(Union Exhibit A-2, Article IV, §2).

23. On May 12, 2010, the bargaining committee wrote a letter to the Chief requesting to meet monthly with him to discuss the Bill of Rights. The letter also proposed open, positive and productive communication between the bargaining committee and the Chief and noted that “[f]or several years communication within the Department on any level has been non existent.” The letter was signed by Pagliaro, Raskiewicz and Carfagno. The Chief did not respond to the May 12, 2010 letter. (N.T. 32, 37; Union Exhibit A-7).
24. On July 7, and 14, 2010, Officer Pagliaro e-mailed Sergeant Walker to inform him that he could not log onto the Mobile Data Terminals (i.e., patrol car computers). Sergeant Walker counseled Pagliaro about doing his reports even though the computers in the cars were not functioning properly. Sergeant Walker counseled that he expected Pagliaro to complete his reports on another computer at the station rather than not completing his reports. Nothing came of this investigation. (N.T. 67-68, 188; Union Exhibits A-9 & A-10).
25. On Wednesday, July 14, 2010, the Chief arrived early in the morning because the Borough Solicitor requested that the Chief be present when the Borough Manager terminated the Borough’s highway superintendent that morning. The Chief arrived at the Borough Police Station at 5:20 a.m. (N.T. 237-238).
26. Upon arriving, the Chief pulled behind the station and saw a police car parked by the rear door and the engine was running. The Chief parked and walked up to the car and saw Officer Pagliaro sleeping. The Chief knocked on the window, at which time Pagliaro became startled, rolled down the window and blurted out “Chief, I was only asleep twenty minutes!” “Chief the wiper blades put me to sleep!” The Chief had not, up to this point, encountered any of his officers asleep on duty. (N.T. 238-239).
27. On Thursday, July 15, 2010, the Chief began investigating by contacting the network vendor to help him download information from the GPS system as well as video from the camera system and to help him read and understand that information. (N.T. 244).
28. GPS reports must be compared to a patrol log. The Chief compared the patrol log and GPS report for the July 14, 2010, sleeping incident.  
  
The GPS indicated that Pagliaro’s car was parked idle behind the station from 3:00 a.m. until 5:20 a.m. (N.T. 243).
29. On Friday, July 16, 2010, the Chief was off. Sergeant Walker was off the following week. When Sergeant Walker returned on Monday, July 26, 2010, the Chief then asked Walker to conduct an investigation of the sleeping incident and question Officer Pagliaro. The Chief, Sergeant Walker and the Chief’s Assistant were on vacation at one time or another during late July into early August delaying with the investigation of the Pagliaro sleeping incident. (N.T. 197, 244-246, 267).

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<sup>2</sup> Chief Sinclair has an extensive service record with the City of Philadelphia Police Department having served that City for thirty years in various capacities including internal affairs, narcotics, guns and warrants and ultimately rising to the commanding officer rank of Captain in which capacity he supervised over 200 officers. He also served as the Chief of Police for Nazareth Borough. (N.T. 235, 240).

30. Sergeant Walker informed the Chief that he had never investigated one of his own officers and suggested that the Chief do it because he had all the information. (N.T. 198-199, 245).
31. On Thursday, July 29, 2010, the Chief received a letter dated July 27, 2010, from the Union bargaining committee requesting to meet in an effort to finalize the Bill of Rights issue outlined in the CBA. (N.T. 282; Union Exhibit A-11).
32. The next day, on Friday, July 30, 2010, Officers Pagliaro and Raskiewicz sat in the lunch room interrupting a staff meeting that the Borough Manager was trying to conduct. The Manager came to the Chief two times. The second time she told the Chief, "I can't believe you're not going to support what I'm doing here. I'm having a staff meeting and two of your cops sat in the middle of the meeting."<sup>3</sup> The Chief then went to the lunchroom and ordered Pagliaro and Raskiewicz to come upstairs at which time the officers told Chief Sinclair that they did not like the Borough Manager. (N.T. 282-283).
33. After Officers Pagliaro and Raskiewicz followed Chief Sinclair upstairs, they discussed the Bill of Rights. The Chief informed the officers that he contacted two other Townships regarding the Bill of Rights. Officer Pagliaro told the Chief that the officers wanted the Bill of Rights from Norristown Borough. The Chief responded that, if they get him the Bill of Rights from Norristown Borough, he would review and approve it. As of the date of the hearing, the Chief has not received the Norristown (or any other) Bill of Rights from the Union Bargaining Committee. (N.T. 122-123, 283-285).
34. Also on July 30, 2010, Chief Sinclair issued a memo to all officers about the Bill of Rights issue. In the memo, the Chief informed the officers that the bargaining committee gave him the July 29, 2010, letter requesting to meet to finalize the officers' Bill of Rights. It also informed the officers that the Chief met with Pagliaro and Raskiewicz on July 30, 2010, during which time Pagliaro indicated that he wanted to use the Norristown Bill of Rights and that the Chief advised Pagliaro to obtain a copy for review and approval. (N.T. 208; Borough Exhibit 8).
35. The Bill of rights committee was never formed and the issue remains unresolved. (N.T. 21, 31-32).
36. On Thursday, August 5, 2010, the Union bargaining committee wrote a letter to Borough Council seeking to meet with Council members and discuss with them their perceived low morale resulting from the Borough Manager's bullying of employes and Chief Sinclair's accommodation of the Manager and his application of Philadelphia police procedures to their small Borough Police Department. (N.T. 47-48; Union Exhibit A-12).
37. The August 5, 2010, letter provides, in relevant part, as follows:

We have serious concerns about the daily operation of the Police Department. We would like to work with you to avoid grievances and possible lawsuits which could arise from existing conditions.

We believe that between Borough manager Caren Andrews and Chief of Police Michael Sinclair, there is an existing hostile work environment in the Police Department and is getting worse. We believe that Borough manager Caren Andrews is using her position of authority to bully and intimidate employees. The Chief of Police is being very accommodating to the Borough Manager and is essentially letting her control the day to day operations of the Police Department.

Because of this, morale is very low in our department.  
The Chief is applying [C]ity of Philadelphia procedure and administration to West Conshohocken Borough which is a small municipal police dept.

There is an ongoing pattern of harassment towards specific members of the contract negotiation team, with the underlying theme being disciplinary action taken for trying to address certain issues which pertain to the Police contract which have been previously ratified. Members are looked at by the Chief as troublemakers, for simply addressing contract issues.

(Union Exhibit A-12).

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<sup>3</sup> This statement was admitted for the limited purpose of demonstrating the effect on Chief Sinclair. The effect of the statement on the Chief was to motivate him to go downstairs and remove his officers from the lunch room where the Manager was trying to conduct a meeting. The statement was not admitted for the truth of the matters contained therein.

38. On Monday, August 9, 2010, Chief Sinclair issued a memo to all officers regarding chain of command. (N.T. 49; Borough Exhibit 1).

39. The chain of command memo provides, in relevant part, as follows:

1. The West Conshohocken Borough Police Department follows the chain of command in the operations of the Police Department.

Specifically: Conduct unbecoming an Officer— subsection “o”, in that no member shall “Canvass any member of Borough Council, an official of the Commonwealth, County, Borough, or the public with regard to any matter concerning the Department without authority from the Chief of Police.”

2. Personnel will be held to strict compliance with the provisions of the above section of the duty manual.

(Union Exhibit A-13).

40. Also, on August 9, 2010, Officer Pagliaro sent an e-mail to Sergeant Walker regarding the chain-of-command memo. (N.T. 50; Union Exhibit A-14).

41. Officer Pagliaro’s e-mail provides, in relevant part, as follows:

I would submit to you that Contract issues are dealt directly with Council members. We have, as you know, some contract issues to finalize. “Strict compliance” is adhering to the rules of contract negotiations and are not “chain of command” issues. The Chief of Police and Borough Manager are not involved in our negotiations. And they should not be threatening Contract Negotiators because we are talking to Council. The Department has some serious issues that need to be addressed. The level of threats and hostility is increasing.

(Union Exhibit A-14).

42. Also on August 9, 2010, Chief Sinclair issued a memo to “All Personnel, West Conshohocken Police Department,” regarding radio patrol vehicles. The memo states that “[e]ffective immediately, 3801 will not be used for patrol. #3801 will be used by the sergeant.” It further provides that “Radio Patrol Car #3804 will be used by Patrol. Radio Patrol Car 3802 and 3806 will be used as replacement vehicles.” (N.T. 175, 295-296; Borough Exhibit 1).

43. On August 10, 2010, Chief Sinclair issued a memo to Officer Pagliaro informing him of an employment interview scheduled for August 18, 2010. The memo does not identify the subject matter of the interview. (N.T. 52-53; Union Exhibit A-15).

44. When Pagliaro received the memo on August 13, 2010, he was unaware of the subject of the interview. (N.T. 53).

45. On August 13, 2010, Officer Pagliaro e-mailed Sergeant Walker informing the Sergeant of the contents of the memo and stating that he was unaware that he was being investigated for any performance issues. (N.T. 53; Union Exhibit C).

46. Officer Pagliaro’s August 13, 2010, e-mail further provides, in relevant part, as follows:

There is a section in this memorandum that outlines Fifth Amendment Rights and Representation During The Interview. Am I being accused of some violation? This goes on to state that I am being questioned about events which are related to my performance as a police officer. I was not made aware of any event or incident that was in question. It does not indicate if I am ordered to attend this interview or not, as it is titled a Memorandum. If I am ordered to participate in this interview, and the outcome could result in disciplinary action, I would want my personal attorney and the FOP attorney present.

(Union Exhibit C).

47. Due to delays in obtaining representation, the employment interview was delayed to August 23, 2010. (N.T. 54, 246).
48. On August 14, 2010, Sergeant Walker e-mailed Officers Pagliaro and Raskiewicz the following message: Chief Sinclair has ordered me to order the two of you to NOT use patrol unit 3801 this weekend due to it[]s GPS being out of service. I will also relay this message to you at shift change. The Chief did not direct Sergeant Walker to issue this e-mail or any such directive to Pagliaro and Raskiewicz. (N.T. 174-175, 295-296; Union Exhibit A-16).
49. Officers Pagliaro and Raskiewicz were the only two officers on duty the weekend of August 14<sup>th</sup> and 15<sup>th</sup> of 2010. Chief Sinclair credibly testified that, contrary to Sergeant Walker's e-mail, the Chief did not order only Officers Pagliaro and Raskiewicz not to use unit 3801. He ordered all officers not to use it. Patrol Unit 3801 is an SUV. Raskiewicz prefers to use an SUV, like unit 3801, because he has back and leg problems. The Police Department has three other SUVs available for Officer Raskiewicz to use. (N.T. 175, 216-219, 295-296).
50. During the interview on August 23, 2010, Officer Pagliaro was expressly notified that he had no right to refuse to answer any questions and that if he refused to answer or gave a false answer, the Borough would construe such action as an act of insubordination which would separately subject him to discipline. Officer Pagliaro expressed his understanding of these warnings. (Borough Exhibit 3).
51. Present at the interview were Chief Sinclair, FOP Lodge President Steve Newfer, Police Administrative Assistant, Susan Van Fossen and Officer Pagliaro. Also during the interview on August 23, 2010, Officer Pagliaro did not admit to sleeping. He stated that the he did not recall the Chief waking him up or telling the Chief that the wiper blades put him to sleep, citing the fact that the incident occurred over a month before the interview. (N.T. 137, 247-248; Borough Exhibit 3).
52. The Chief concluded that Officer Pagliaro provided false and misleading statements during the August 23, 2010, interview. (N.T. 251).
53. On August 24, 2010, Chief Sinclair issued a **Loudermill** notice to Officer Pagliaro outlining the bases for contemplating disciplinary action. 54; Union Exhibit A-17).
54. The **Loudermill** notice specifically provided, in relevant part, as follows:

Based upon the above events, it appears to me that you were, in fact, sleeping on duty on July 14, 2010. Although you acknowledged this at the time on July 14, 2010, during the interview you stated that you could not recall being asleep on duty on July 14, 2010, did not recall any conversation with me regarding the incident and denied that you were sleeping, though you could not account for the 2+ hour gap in your log during the time that the GPS placed your vehicle at the police station and the cameras in the back showed the vehicle parked there and you not exiting the vehicle during the time in question. Accordingly, it also appears to me that you provided knowingly false and misleading information during the interview. This included denying during the interview that you were observed by me sleeping on duty, denying that we had a conversation at the time during which you acknowledged sleeping on duty and by also stating during the interview that you simply could not recall what you were doing for those 2 hours.

(Union Exhibit A-17).

55. On August 31, 2010, Officer Pagliaro responded in writing to the Chief's **Loudermill** notice, as requested. (N.T. 57; Union Exhibit A-18).
56. Officer Pagliaro's **Loudermill** response provides, in pertinent part, as follows:

I acknowledge that there is an idling time of 139 minutes generated by GPS on July 14 if you tell me that there is. Many officers also sit behind the police station for varying lengths of [time] during the overnight shift. I am sure that it is on the GPS system. It has been past practice to do so. To the best of my knowledge no other officer has been questioned or has had an investigation started against them, except me. I also do not recall ever receiving any verbal or written Memo or Order outlining this. No radio calls were missed during this time.

On August 23, 2010, you questioned me about a shift that occurred on July 14. That was forty (40) days later. You stated that I was sleeping. I was not notified of committing an infraction right there on the spot or anytime after that until the 23<sup>rd</sup> of August. I was not told anything verbally or receive anything in writing. Our Department SOP states in Section I, Procedure of Investigations, subsection a, that all investigations should be completed in 10 (ten) days.

I have a good record of performance in the Department. I have received commendations for my performance and duty. And I am proud to serve West Conshohocken. I have never been disciplined for any infraction in my 17 (seventeen) years as a police officer. . . .

(Union Exhibit A-18).<sup>4</sup>

57. The Police Officer Disciplinary Proceedings, Article IV, provides in pertinent part, the following:

I. Procedure of Investigations – The procedures for investigation of serious complaint, etc., shall be conducted as follows:

a. All investigations should, if possible, be completed within ten (10) days after the institution thereof.

(Union Exhibit A-3).

58. The Chief presented Officer Pagliaro's response to Borough Council and recommended a five-day suspension for sleeping and a fifteen-day suspension for providing false and misleading information during an official investigation. (N.T. 251-252).

59. On September 22, 2010, Borough Council issued a suspension without pay to Officer Pagliaro for 160 hours, i.e., twelve, 12-hour shifts and two 8-hour shifts. (N.T. 57-58, 149; Union Exhibit A-19).

60. The suspension provides that Officer Pagliaro was suspended without pay for "[n]eglect or violation of your official duties;" and for "[i]nefficiency, neglect, disobedience of orders and/or conduct unbecoming an officer." (Union Exhibit A-19).

61. The Borough Council's suspension notice adopted the investigative findings and conclusions of Chief Sinclair as recited in his **Loudermill** Notice of August 24, 2010. The suspension notice further provides as follows:

[I]t also appears that you provided knowingly false and misleading information during the interview. This included denying during the interview that you were observed by Chief Sinclair sleeping on duty, denying that you had a conversation with him at that time during which you acknowledged sleeping on duty and by also stating during the interview that you simply could not recall what you were doing for those 2 hours.

(Union Exhibit A-19).

62. At no time did the Chief authorize any of the officers to sleep on duty. He did tell officers that, as a safety issue, if they are so tired that they may get into an accident, then they should pull off the road. The Chief did not authorize any sleeping on duty for either Officer Carfagno or Officer Weiler, while they conducted a stakeout of a threatened resident's home. (N.T. 169, 270, 299-300).

63. On October 14, 2010, Chief Sinclair issued another **Loudermill** notice to Officer Pagliaro. (N.T. 106-107; Union Exhibit H).

64. The October 14, 2010, **Loudermill** notice provides, in pertinent part, as follows:

You are in violation of the West Conshohocken Borough Duty Manual, Neglect of Duty, in that you failed to patrol your assigned area and prepare the required Electronic Patrol Log indicating your activities. This violation occurred between 0255 hours and 0645 hours during your assigned 7pm-7am shift on August 10, 2010, into August 11, 2010. Your Electronic Patrol Log indicates 3 hours and 50 minutes of un-accounted time during the above listed patrol

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<sup>4</sup> At the time of these events, Pagliaro was a seventeen-year employe of the Borough Police Department.

shift. In addition the GPS indicates you were stationary at Police Headquarters from 0345 hours until the end of your tour of duty at 0645 hours.

As outlined above you are in violation of the West Conshohocken Borough Duty Manual Neglect of Duty, in that when you were interviewed by Sgt. Walker on September 12, 2010 at 600 you indicated that you were aware that you were required to account for your patrol activities during your designated shift and record such activities on your Electronic Patrol Log.

You are also in violation of the West Conshohocken Borough Duty manual, Neglect of Duty, for repeated violations of the duty manual in that you were charged with Neglect of Duty on 7-14-2010 for sleeping on duty and for providing false and misleading information during the interview. By your actions, you have indicated that your repeated violations of departmental rules and regulations or any other kind of conduct indicates that you have little or no regard for your duties and responsibilities as a West Conshohocken Borough Police Officer which will be cause for dismissal regardless of the severity and the type of violation.

(Union Exhibit H).

65. Prior to the October 14, 2010, **Loudermill** notice, Chief Sinclair examined all of the officers' GPS and patrol logs for a 30-day period. Within that period, only Officer Pagliaro had a long period of time where he was not patrolling or doing anything. (N.T. 272-275).
66. Chief Sinclair did not at any time refer to Officer Pagliaro or Officer Raskiewicz as "trouble makers." (N.T. 281).<sup>5</sup>
67. On or about May 20, 2012, the Chief issued a thumb drive to all the officers containing multiple documents comprising the Police Department's policy revisions. One of the documents was General Order 2.3.<sup>6</sup> This document was consistent with the prior policy regarding anonymous complaints, civilian complaints and internal investigations. General Order 2.3 contains procedures for internal affairs administration and operations. It specifically delineates the procedure for investigating complaints against police officers. (N.T. 44-47, 287; Union Exhibit B).

## DISCUSSION

In its post-hearing brief, the Union argues that the Borough engaged in unfair labor practices by discriminating against Officer Pagliaro and by refusing to bargain the formulation and adoption of an Officers' Bill of Rights, as required by the CBA. As an initial matter, where there were conflicts in testimony between the police officers and Chief Sinclair, I credited the Chief over the officers. I based this determination on the Chief's appearance, general bearing, conduct on the stand, demeanor, manner of testifying, candor, frankness and certainty with respect to facts. **Mid Valley Education Ass'n v. Mid Valley School District, 25 PPER ¶ 25138 (Final Order, 1994)** (citing **Kiskiminetas Township, 25 PPER ¶ 25007** (Proposed Decision and Order, 1993)).

As another preliminary matter, the Union requests that I accept a post-hearing submission into evidence of a document that was not produced at the hearing. Although the parties did agree to leave the record open for the limited purpose of permitting the post-hearing submission of additional GPS records and patrol logs, they did not agree to the post-hearing submission of General Order 1.8, which was part of the same set of documents contained on a flash drive distributed by the Chief that also contained General Order 2.3 and that was submitted at the hearing. General Order 1.8 is beyond the scope of the limited purpose for which the record was held open. Thus, admitting it at this time would require the reopening of the record.

In **Plouffe v. State System of Higher Education, Kutztown University**, 43 PPER 120 (Final Order, 2012), the Board reiterated the standard for re-opening a record to permit further evidence as follows: A request to reopen a record to permit introduction of additional evidence may only be granted where that evidence (1) is new, (2) could not have been obtained in time for hearing with exercise of due diligence, (3) is relevant and non-cumulative, (4) is not for purposes of impeachment, and (5) would likely compel a different result. *Id.* General Order 1.8, like anything else on the flash drive distributed by the Chief, is not new and it could have been obtained in time for hearing with the exercise of due diligence, as was General Order 2.3. Moreover, General Order 1.8, which is purportedly a sleeping-on-

<sup>5</sup> I discredit the testimony by Officer Raskiewicz that the Chief viewed him and Pagliaro as troublemakers, (N.T. 214), because the testimony is based on unreliable hearsay and it was directly contradicted by the credible testimony of the Chief.

<sup>6</sup> The post-charge conduct of issuing proposed policy revisions in May 2012 was admitted for the limited purpose of demonstrating an alleged persistent pattern of refusing to bargain an Officer Bill of Rights, which includes a procedure for investigating officers who are the subject of anonymous or civilian complaints.

duty policy authored by the Chief with less stringent penalties than were applied to Officer Pagliaro, is not relevant and will not likely compel a different result because, as discussed *infra*, Officer Pagliaro was disciplined because he lied to the Chief during an official investigation of his sleeping on duty and not solely for his sleeping on duty. Accordingly, I am not admitting General Order 1.8 as part of this record, and I am not entertaining any arguments pertaining to alleged policies regarding sleeping on duty that were circulated to the officers almost two years after Pagliaro's sleeping on duty incident.

### I. Discrimination

As stated in **FOP, Lodge No. 7 v. City of Erie**, 39 PPER 60 (Proposed Decision and Order, 2008), the analysis of a discrimination claim is as follows:

In a discrimination claim under Section 6(1)(c) [and 6(1)(d)] of the PLRA, the claimant has the burden of proving that the employee engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employee that was motivated by the employee's engaging in that known protected activity. **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004); **FOP, Lodge 5 v. City of Philadelphia**, 38 PPER 184 (Final Order, 2007). Motive creates the offense. **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented, or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. **Borough of Geistown v. PLRB**, 679 A.2d 1330 (Pa. Cmwlth. 1996).

The Board will 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. The close timing of an employer's adverse action alone is not enough to infer animus, but when combined with other factors can give rise to the inference of anti-union animus. **PLRB v. Berks County**, 13 PPER ¶ 13277 (Final Order 1982); **City of Philadelphia, supra**; **Teamsters Local No. 764 v. Montour County**, 35 PPER 12 (Final Order, 2004); **AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry**, 16 PPER ¶ 16020 (Final Order, 1984). Evidence that the employer has failed to adequately explain its adverse actions or that it has set forth shifting reasons for an adverse action can support an inference of anti-union animus and may be part of the union's *prima facie* case. **Stairways, supra**; **Teamsters Local 312 v. Upland Borough**, 25 PPER ¶ 25195 (Final Order, 1994). **Montgomery County Geriatric and Rehabilitation Center**, 13 PPER ¶ 13242 (Final Order, 1982), *aff'd*, **Montgomery County v. PLRB**, 15 PPER ¶ 15089 (Court of Common Pleas of Montgomery County, 1984). However, mere suspicion is insufficient to sustain a discrimination charge. **Shive v. Bellefonte Area Board of School Directors**, 317 A.2d 311 (Pa. Cmwlth. 1974).

Only if the union establishes a *prima facie* case that an employer's adverse action against an employee was motivated by the employee's protected activity does the burden shift to the employer. **West Shore Educ. Ass'n v. West Shore Sch. Dist.**, 23 PPER ¶ 23031 (Final Order, 1992). In such instances, the employer may rebut the union's *prima facie* case in one of two ways: (1) an employer may prove that the action complained of was taken for legitimate business reasons and not unlawful motive; or (2) the employer may prove that, despite evidence of unlawful motive, the employer would have taken the same action anyway because the legitimate business reason was the overriding, proximate cause of the adverse employment action and not the unlawful motive. **Upland Borough, supra**. **West Shore Sch. Dist., supra**; **Teamsters Local Union No. 32 v. Washington Township Mun. Auth.**, 20 PPER ¶ 20128 (Final Order, 1989). The latter is otherwise known as a "dual motive" case. **Indiana Area Educ. Ass'n v. Indiana Area Sch. Dist.**, 34 PPER 133 (Final Order, 2003). In either defensive posture, an employer's insubstantial or pretextual explanation for adverse action coupled with close timing of that adverse action to protected activity can establish a *prima facie* case and a sufficient evidentiary of basis to find a violation of Section (6)(1)(c). **Colonial Food Service Educ. Personnel Ass'n v. Colonial Sch. Dist.**, 36 PPER 88 (Final

**City of Erie**, 39 PPER at 204-205.

The Borough, in its post-hearing brief, concedes that the Union met its burden of proving, on this record, the first two prongs of the **Duryea Borough** standard. (Borough's Post-hearing Brief at 7). The record, however, does not demonstrate a **prima facie** case of discrimination because there is insufficient evidence from which to draw a reasonable inference, beyond mere suspicion, of unlawful motive, on the part of either the Chief or Borough Council, in sending Officer Pagliaro to EVOC training, suspending him for sleeping and lying and for issuing a second **Loudermill** notice regarding inactivity on duty.

The Union argues that evidence of anti-Union animus began as far back as the filing of the grievance in February, 2010, to retrieve the retroactive pay increase for 2009. (Union's Post-hearing Brief at 4). The Union maintains that the Chief became angry and upset by the grievance, tried to discourage it and asked Pagliaro and Raskiewicz to withdraw it. (Union's Post Hearing Brief at 4). The Union claims that "[w]hile the Chief explained his position in his testimony, he did not deny that he became angry at the officers for filing the grievance." (Union's Post-hearing Brief at 4). Contrary to the Union's argument, however, the Chief did not discourage the officers from filing the grievance and simply explained to them that he had already resolved the Borough's mistake in calculating the pay increase. Also contrary to the Union's argument, the Chief expressly denied being angry. Accordingly, the record does not support the Union's position that there is any evidence of animus arising from the February 2010 grievance filing. There is no evidence of anger or anti-union statements of any kind.

The Union also claims that the "the Chief referred to Pagliaro and Raskiewicz as "troublemakers and his relationship with the CBU cooled." (Union's Post-hearing Brief at 4). Again, there is no substantial, competent evidence of record establishing that the Chief ever referred to any of his officers as troublemakers. The Chief expressly and credibly denied referring to anyone as troublemakers. Also, the statement on this record about troublemakers is inadmissible and unreliable hearsay. Officer Raskiewicz testified "Well, I think [the grievance filing] kind of set us off on a bad note, because I would hear that, you know, we were viewed as trouble makers at that point." (N.T. 214). Accordingly, I conclude that there is no evidence of animus related to the grievance filing.

The Union posits that "[t]he Chief's actions following Officer Pagliaro's minor auto accident are a clear reflection of his growing anti-union animus." (Union's Post-hearing Brief at 5). The Union contends that the Chief launched a formal investigation including photographs and EVOC training when minor accidents are common, typically do not get investigated formally and officers are not sent to EVOC training as a result. (Union's Post-hearing Brief at 5). Remedial training is identified as discipline in the Department's disciplinary procedures and Pagliaro was singled out for this discipline, i.e., remedial training because of his Union activities. (Union's Post-hearing Brief at 5).

I disagree. Chief Sinclair had been Chief for only eight months at the time of Pagliaro's auto accident. There is no evidence on this record indicating how Chief Sinclair handled other minor auto accidents before or since Pagliaro's auto accident during his tenure as Chief at the Borough. The Chief's handling of other accidents would be necessary evidence to establish disparate treatment. A new Chief is going to have different ways of handling matters. Moreover, there are two significant facts omitted in the Union's argument: First, Officer Pagliaro's accident caused \$2,261 to the police car and an undisclosed amount of property damage to the private property owner's tree planter. Reasonable people could certainly differ over whether that amount of money constitutes "minor" damage. Second, Pagliaro's April 2010, auto accident was the second "minor" auto accident in a two-year time period. The Chief credibly testified that, based on his experience in other police departments, the first accident requires counseling and the second requires training. He also credibly testified that he was unaware that the disciplinary procedures characterize remedial training as discipline and that he does not view training as discipline.

Pagliaro was paid for his time at EVOC training, like he is paid for attending any other training, and he did not have to pay for the EVOC course. As the Chief credibly stated, driver training after two accidents is proactive, and it protects both the Borough and the Officer. EVOC training is primarily geared toward high speed, emergency driving and obstacle avoidance, not slow parking lot maneuvers. However, officers experiencing EVOC training will reasonably improve their overall skills in handling a vehicle. Accordingly, I simply find no evidence of animus emanating from the Chief's investigation of the accident or the decision to order Pagliaro to EVOC training. Again, Chief Sinclair simply has a different way of handling matters at the Borough than the prior Chief. Chief Sinclair is in the business of investigating, both externally and internally. He investigates for transparency and accountability in the interest of protecting the public, the Borough, the Department and the officers.

The Union further argues that the one-month suspension imposed on Officer Pagliaro was excessive on its face and that even Sergeant Walker believed the length of the suspension was excessive for a first offense. (Union's Post-hearing Brief at 7). Significantly, however, only Borough Council, and not the Chief, can suspend a police officer. In

this case, Council suspended Officer Pagliaro adopting the Chief's recommendations. Yet there is absolutely no evidence that any council members exhibited any signs of anti-union animus against Officer Pagliaro either before or after Pagliaro submitted the August 5, 2010, letter to Council. Moreover, Chief Sinclair credibly testified that he recommended only five days suspension for the sleeping on duty, which he concluded in fact occurred after a thorough investigation. Accordingly, Pagliaro did not receive an "excessive" one-month suspension for a first time offense of sleeping on duty. He received an additional fifteen days for lying about it.

The Union maintains that "Pagliaro has never denied the event, he just doesn't remember being awakened from a sleep." (Union's Post-hearing Brief at 6). The Union further contends that "[p]erhaps one of the reasons he does not remember it is that literally nothing was said to him about the incident for well over a month." (Union's Post-hearing Brief at 6). However, the Chief and the members of Borough Council believe that Officer Pagliaro lied about his inability to remember being caught sleeping by the Chief or having a conversation about his sleeping with the Chief at the time. The Chief's and Borough Council's beliefs that Officer Pagliaro lied about his inability to remember the sleeping incident is reasonable. A major part of Officer Pagliaro's job duties require him to cite and arrest citizens for minor and serious offenses. Consequently, his job duties further require him to attend hearings and credibly recount the details of those citations and arrests from memory, based on his first-hand knowledge, many months after the incident. Yet, the Union unreasonably expects us all to believe that, only five weeks after the incident, Officer Pagliaro could not remember that his Chief awakened him while sleeping on duty in his patrol vehicle and that he stated to the Chief that he was only asleep for twenty minutes and that the wiper blades put him to sleep. Moreover, the Chief's and the Borough Council members' motives do not have to be based on correct information to avoid liability for a discrimination charge. Those motives simply have to be unrelated to Pagliaro's protected activity, which is the case here. Accordingly, it is irrelevant whether Officer Pagliaro was actually lying. The point is that the Chief and Borough Council believed he was lying, which belief was their motive to suspend him for an additional fifteen days, not Union animus.

The Union also contends that "[t]he timing of the discipline imposed certainly is suggestive of anti-union animus." (union's Post-hearing Brief at 9). The Union maintains that the Borough waited until August 10, 2010, to notify Pagliaro of an employe interview, without informing him that he was being investigated for sleeping on duty on July 14, 2010, and that the August 10, 2010, letter "was issued immediately upon the heels of the letter of August 5, 2010 from the Bargaining Unit to Borough Council, and one day after the Chief's memorandum concerning chain of command and Officer Pagliaro's response thereto." (Union's Post-hearing Brief at 9-10). The Union further maintains that, "it was on August 10, 2010, the same day as the notice of employment interview that the Chief suddenly decided to review Officer Pagliaro's patrol log and GPS record, even though there was no incident to cause the Chief to do so." (Union's Brief at 10). Although the manner in which the Union has presented the timing of the interview notification and GPS/patrol log investigation may be "suggestive" of animus, the record belies the suggestion.

The Chief and Sergeant Walker both credibly testified that the Chief began his investigation before the bargaining unit sent the August 5, 2010, letter to Borough Council. The Chief began his investigation on July 15, 2010, the day after the incident, when he contacted the network vendor to obtain records from the GPS and video camera systems. Both the Chief and Sergeant Walker credibly testified that the investigation had to be delayed until the Chief, his assistant and Sergeant Walker returned from summer vacations. The employment interview that occurred on August 23, 2010, was part of the investigation that began on July 15, 2010; it was not punishment for any protected activity that occurred on July 30, 2010, or August 5, 2010.

The interview, instead, was Pagliaro's opportunity to take ownership of and responsibility for sleeping on duty and thereby preserve his credibility as a police officer. Rather, he pretended not to remember, thereby omitting requested information and failing to cooperate in an official investigation. Officer Pagliaro's misrepresentations and omissions constituted insubordination. Officer Pagliaro was expressly warned at the beginning of the interview that providing false or misleading information would constitute insubordination and subject him to separate discipline. (F.F. 50). Therefore, the Chief had cause to separately, and more severely, penalize Officer Pagliaro for insubordination and misrepresentation during the official investigation.<sup>7</sup> Accordingly, the investigation and suspension had everything to do with Pagliaro's sleeping on duty and then lying about failing to remember it. The investigation and suspension had nothing to do with Pagliaro's Union activity. Moreover, the Chief is not the only one who believes that Pagliaro lied. The members of Borough Council believe that Pagliaro lied, and they based their discipline on the fact that he both slept on duty and tried to pretend that he did not remember doing it. In this regard, the Borough Council's suspension notice cited neglect or violation of official duties, inefficiency, neglect, disobedience of orders and conduct unbecoming an officer. The suspension notice further stated that **"it also appears that you provided knowingly false and misleading information during the interview."** (F.F. 61)(emphasis added).

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<sup>7</sup> As long as the Chief's imposition of discipline was not unlawfully motivated, I do not have authority to evaluate whether the amount of the discipline was just or excessive.

The Union argues that the Chief singled out Pagliaro on August 10, 2010, the same day he issued the notice of employment interview to Pagliaro, by suddenly deciding to review Officer Pagliaro's patrol log and GPS record, even though there was no incident to cause the Chief to do so. The Union further contends that "[t]he Chief's testimony regarding his use of the GPS records was contradictory and confusing." (Union's Post-hearing Brief at 11). This argument, however, is not supported by the record.

The Chief clearly, consistently and credibly testified that he was "incident-driven," and that, as a result of Pagliaro's sleeping on duty, he was looking at all the officers' GPS records and patrol logs for a thirty-day time period. (N.T. 271-272). The record does **not** provide that the Chief "suddenly" began conducting these record reviews on all the officers on August 10, 2010, which is the same date that the Chief issued the notice of employment interview. The record does **not** provide that the Chief singled out Officer Pagliaro. Contrarily, it provides that the Chief and the Sergeant reviewed the records for all the officers and initiated the investigation based on Pagliaro's July 14, 2010 behavior, which certainly constitutes an "incident to cause the Chief to [investigate]." Based on that review of all officers during the thirty-day period, only Pagliaro's GPS records and patrol logs indicated that, on August 11, 2010, he had unaccounted for time where he was not patrolling the Borough. Accordingly, all officers were justifiably investigated based on Pagliaro's July 14, 2010, incident and his August 31, 2010, response to the Chief's **Loudermill** notice that "[m]any officers also sit behind the police station for varying lengths of [time] during the overnight shift." (F.F. 56).

The Union additionally maintains that the Chief's testimony that his conclusion that the GPS records for the Department showed "no other incidents where a vehicle had been stationary for an extended period of time[,] . . . is clearly at odds with the GPS records which have been offered into evidence on behalf of the Claimant." (Union's Post-hearing Brief at 12). The Union argues that "[i]t is clear from a review of these records that West Conshohocken police officers regularly remain stationary in their vehicles for extended periods of time, often outside of the Borough with no purpose." (Union's Post-hearing Brief at 12). Yet "only Officer Pagliaro has received discipline and has additional discipline pending against him." (Union's Post-hearing Brief at 12-13).

This argument, however, misstates the record. Chief Sinclair did not testify that there were "no other incidents where a vehicle had been stationary for an extended period of time." He testified that he **DID** see on the GPS records that other vehicles had been stationary for an extended period of time. (N.T. 272-273). Chief Sinclair, however, emphasized that the determinative factor is that the GPS records must be compared with the patrol logs because a stationary vehicle on the GPS records is not, by itself, indicative of sleeping on duty or other failure to perform the duties for which the officer is being paid. (N.T. 273). A stationary vehicle behind the police station is acceptable if an officer is having a lunch break and/or performing administrative duties in the station during his tour of duty. Only if the GPS indicates a stationary vehicle for an extended period of time and the patrol log indicates an absence of police duties or an unauthorized break does the Chief further investigate. In the Chief's investigation of other officers, their police logs established that they were performing a legitimate function while their vehicle was stationary. Only Officer Pagliaro was actually observed sleeping, which motivated the Chief to further investigate his patrol logs and GPS records for that shift to determine how long he had been asleep. The Chief admitted that the GPS logs alone cannot establish that someone is sleeping on duty in their patrol vehicle. The fact that the Union submitted GPS records indicating that other officers were stationary for extended periods of time, therefore, is not, as the Union claims, at odds with the Chief's testimony that, when compared to patrol logs, no other officers whose vehicles were stationary were also engaged in an unauthorized break from their duties.

The Union also posits that the Chief's animus against Pagliaro is evidenced by the Chief's selective enforcement of a vague and shifting policy regarding officers sleeping on duty. The Union contends that the Chief had discussions with other officers indicating that the Chief believed that it would be acceptable to sleep on duty and that he told Officers Weiler and Carfagno that they were authorized to sleep on duty during a stakeout detail while watching the home of a resident who received a threat. The Chief, argues the Union, has indicated that sleeping on duty is acceptable under certain circumstances, but not for Officer Pagliaro, who was severely disciplined for it.

This argument also is not supported by the record because there is a conflict in testimony between the officers and the Chief, and I credit the Chief and not the officers. Chief Sinclair categorically denied authorizing either Carfagno or Weiler to sleep on duty during their stakeout detail. (F.F. 62). I credit the Chief based on his demeanor and his commanding recollection of the facts. Moreover, it would undermine the whole purpose of the stakeout if the officers watching the threatened resident's home were sleeping and not watching for that which they were sent to prevent. Additionally, the Chief did not authorize any other officers to sleep on duty in public or private. In fact, the Chief credibly testified that he does not "expect anyone to come to work and sleep and get paid by the Borough, but I don't want [anyone] hitting a tree or a pole or hitting a car." (N.T. 300). The Chief specifically recalled a conversation with officers where he stated that if an officer is so tired that he/she is about to fall asleep at the wheel, then they should pull over before they hit a tree or a pole. In the Chief's words, under those circumstances, "it's common sense to pull over." (N.T. 300). This unequivocal testimony by Chief Sinclair does not support the Union's claims that the Chief selectively enforces a vague sleeping-on-duty policy and disproportionately targeted Officer Pagliaro. The policy

is very clear and consistent: No officer is permitted to get paid by the Borough and sleep on duty! If an officer is so tired that he/she may crash, that officer should probably call off work rather than get paid to sleep.

The Union additionally argues that the Chief's directive to Sergeant Walker to order Pagliaro and Raskiewicz not to use Unit 3801 because of the GPS being broken is additional evidence of animus. (Union's Post-hearing Brief at 14). The Union casts doubt on the legitimacy of Borough Exhibit 1, which is a memo from Chief Sinclair, dated August 9, 2010, addressed to "All Personnel, West Conshohocken Police Department." In the memo, the Chief prohibits all officers, except Sergeant Walker, from using Patrol Unit 3801. The Union emphasizes that none of the officers remember receiving that memo, which predates the August 14, 2010, e-mail from Walker to Pagliaro and Raskiewicz. The Walker e-mail provides that the Chief ordered Walker to order Pagliaro and Raskiewicz not to use 3801. The Union also argues that Walker testified that Chief Sinclair did order him to relay that order for those two officers alone not to use 3801.

However, again, I resolve the evidentiary conflict in favor of Chief Sinclair. He credibly testified that he issued Borough Exhibit 1. He also categorically denied ever telling Walker that he did not want Officers Pagliaro and Raskiewicz operating 3801. (N.T. 295-296). Accordingly, I find that the Chief prohibited all officers from using 3801 because the GPS was not functioning and that he did not tell Sergeant Walker to limit the prohibition to Pagliaro and Raskiewicz. Therefore, under the facts as I have found them, the 3801 matter does not support an inference of animus either alone or in combination with other facts. After reviewing the entire record in this case and making credibility determinations resolving evidentiary conflicts in favor of the Borough, I conclude that the Union has not established a **prima facie** case of discrimination. Specifically, there is insufficient evidence from which to draw an inference that the actions complained of were unlawfully motivated.

Although the burden did not shift to the Borough to establish legitimate business reasons as the proximate cause of its actions, I also conclude, for the purpose of Board and appellate review, that the Borough indeed met its burden of establishing legitimate business reasons for each and every action of which the Union complains. However, because I have already articulated those reasons throughout the analysis herein, I need not repeat them here.

## **2. Bargaining Violation**

The Union argues that the Chief refused to bargain the Officers' Bill of Rights in accordance with the CBA. (Union's Post-hearing Brief at 15). The Chief, contends the Union, ignored e-mails from Officer Pagliaro concerning the issue and the Chief's testimony indicates that he believes that he fulfilled his bargaining obligations. (Union's Post-hearing Brief at 15). Not only did the Chief fail to form the committee mandated by the CBA to address the Bill of Rights, argues the Union, but he also inserted his own Bill of Rights into General Order 2.3 without discussing it with the Union. (Union's Post-hearing Brief at 15). I agree.

Article IV, Section 2 of the CBA contains a Police Bill of Rights and provides as follows:

### **POLICE BILL OF RIGHTS**

The bargaining unit and the Chief of Police shall form a committee to discuss issues related to police interrogation during internal interviews and the handling of civilian complaints.

(F.F. 22).

On May 12, 2010, the bargaining committee wrote a letter requesting to meet monthly with the Chief to discuss the Bill of Rights. The letter also proposed open, positive and productive communication between the bargaining committee and the Chief and noted that "[f]or several years communication within the Department on any level has been nonexistent." The letter was signed by Pagliaro, Raskiewicz and Carfagno. The Chief did not respond to the May 12, 2010 letter. On Thursday, July 29, 2010, the Chief received a letter, dated July 27, 2010, from the Union bargaining committee requesting to meet in an effort to finalize the Bill of Rights issue outlined in the CBA. The next day, on Friday, July 30, 2010, Chief Sinclair discussed the Bill of Rights with Officers Pagliaro and Raskiewicz in his office after the officers had an altercation with the Borough Manager in the lunchroom. The Chief informed the officers that he contacted two other Townships regarding the Bill of Rights. Officer Pagliaro told the Chief that the officers wanted the Bill of Rights from Norristown Borough. The Chief responded that, if they get him the Bill of Rights from Norristown Borough, he would review and approve it. As of the date of the hearing, the Chief had not received the Norristown (or any other) Bill of Rights from the Union Bargaining Committee. Also, as of the date of the hearing, the Bill-of-rights committee had not been formed, and the Bill of Rights issue remained unresolved.

Although the Chief may have believed that he was cooperating with the bargaining committee on resolving the Bill-of-Rights issue by discussing it with Pagliaro and Raskiewicz and indicating that he would review and approve the Norristown Bill of rights, the Chief did not abide by the unequivocal directive contained in the CBA to form a

committee with the Union to negotiate the details of each provision of the Bill of Rights. At a minimum, bargaining the Bill of Rights to a satisfactory agreement, even using Norristown's police bill of rights as a model, would require examining and adopting each line item of that bill of rights and determining if each provision was acceptable or desirable at the Borough. The CBA requires that the Chief act as the managerial designee on behalf of the Borough to bargain the Bill of Rights as part of a committee of himself and Union representatives. The CBA, therefore, imposes a collective bargaining obligation on the Chief to formally meet, discuss ideas and bargain the details of a final Bill of Rights. The record is clear that the Chief has not met this bargaining obligation.

Moreover, General Order 2.3 contains procedures for internal affairs administration and operations. It specifically delineates the procedure for investigating complaints against police officers, the subject matter and purpose of which is identical to those of the Police Bill of Rights that was supposed to be negotiated. General Order 2.3 has not been agreed to by the Union. The Chief, therefore, may not unilaterally implement General Order 2.3 because it contains provisions that were to be negotiated by the labor-management committee, which has yet to be formed.

Accordingly, the Borough has **not** engaged in unfair labor practices in violation of Section 6(1)(c) of the PLRA, as read in **pari materia** with Act 111. However, the Borough has engaged in unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA, as read in **pari materia** with Act 111.

### CONCLUSIONS

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

1. The Borough is a public employer and a political subdivision within the meaning of Act 111, as read in **pari materia** with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA, as read in **pari materia** with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Borough of West Conshohocken has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA, as read in **pari materia** with Act 111.
5. The Borough of West Conshohocken has **NOT** committed unfair labor practices within the meaning of Section 6(1)(c) of the PLRA, as read in **pari materia** with Act 111.

### ORDER

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

### HEREBY ORDERS AND DIRECTS

that the Borough shall

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA.
2. Cease and desist from refusing to bargain collectively with the exclusive bargaining representative of its employees.
3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111, as read in **pari materia** with the PLRA:
  - (a) Direct the Chief of Police to affirmatively establish a joint labor-management committee with the Union bargaining committee.
  - (b) Direct the Chief of Police to schedule reasonable times to physically hold committee meetings with committee members.
  - (c) Direct the Chief of Police to meet at those reasonable times and negotiate the details of a final Police Bill of Rights as mandated by the parties' collective bargaining agreement.

- (d) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days; and
- (e) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

**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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of January, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WEST CONSHOHOCKEN POLICE OFFICERS

v.

WEST CONSHOHOCKEN BOROUGH

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Case No. PF-C-10-163-E

**AFFIDAVIT OF COMPLIANCE**

The Borough of West Conshohocken hereby certifies that it has ceased and desisted from violating Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read in **pari materia** with Act 111, by refusing to bargain collectively with the exclusive bargaining representative of its police employes; that it has directed the Chief of Police to affirmatively establish a joint labor-management committee with the Union bargaining committee; that it has directed the Chief of Police to schedule reasonable times and places to physically hold committee meetings with committee members; that it has directed the Chief of Police to meet at those reasonable times and places and negotiate the details of a final Police Bill of Rights, as mandated by the parties' collective bargaining agreement; that it has posted a copy of the proposed decision and order within five (5) days from the effective date hereof in the manner prescribed therein; 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