

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :  
ASSOCIATION :  
 :  
v. : Case No. PF-C-00-135-E  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Pennsylvania State Troopers Association (Association) filed timely Exceptions with the Pennsylvania Labor Relations Board (Board) challenging the August 29, 2001 Proposed Decision and Order (PDO) in which the Hearing Examiner determined that the Commonwealth of Pennsylvania, Pennsylvania State Police (Employer) did not violate Act 111 of 1968 (Act 111) or Section 6(1)(a) or (c) of the Pennsylvania Labor Relations Act (PLRA) in removing two troopers from the Bureau of Drug Law Enforcement (BDLE) and returning them to their troops. Concurrently with its Exceptions, the Association filed a request to reopen the record to present allegedly after-discovered evidence to support an alleged unlawful motive. The Association filed its supporting briefs with its Exceptions and motion filed on September 17, 2001, and the Employer filed briefs in response on October 9, 2001.

On September 27, 2000 the Association filed a Charge of Unfair Labor Practices alleging that the Employer violated Sections 6(1)(a), (c) and (e) of the PLRA when it removed Troopers Dan Wigley (Trooper Wigley) and Laura Zelinski (Trooper Zelinski) from their detached specialized positions with the BDLE and returned them to their respective troops. A complaint was issued and the matter proceeded to a hearing.<sup>1</sup>

The facts as found by the Hearing Examiner reveal that Troopers Wigley and Zelinski were assigned to the Tactical Narcotics Team (TNT) at Troop P, Wyoming under the supervision of Corporal Louis Altieri. (Finding of Fact No. 13 ). Troopers Sean Murray and Rich Weinstock were also part of the TNT. (Finding of Fact No. 13). In June 2000, the TNT organized a Drug Abuse Resistance Team (DART) to target open air drug trafficking. (Finding of Fact No. 20). A DART operation typically lasts three to five days, during which time undercover officers, assisted by confidential informants, purchase drugs from dealers on the street and thereafter "round-up" those dealers from whom they made purchases. (Finding of Fact No. 20). During the second day of the DART operation, on June 28, 2000, the team terminated the operation before the end of their shift on the belief of some of the members that there were safety concerns arising during one of the purchases. (Finding of Fact No. 26). The following day Corporal Altieri investigated the alleged safety concerns and determined that the DART operation should not have been cancelled. (Finding of Fact No. 27).

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<sup>1</sup> At the hearing the Association withdrew the claims of a violation of Section 6(1)(e) of the PLRA.

The team members worked additional hours during the DART operation beyond their regularly scheduled workday. (Finding of Fact No. 28). Following the DART operation, and after discussing the amount of his overtime for that week with Corporal Altieri, Trooper Murray sought only six hours overtime, which was approved. (Finding of Fact No. 29). Because some of the overtime submitted by Troopers Wigley and Zelinski was not approved in advance, Corporal Altieri asked the Troopers if they would change their overtime requests, which they declined. (Finding of Fact No. 32, 33). Corporal Altieri only granted Trooper Wigley five hours of overtime, and Trooper Zelinski five and a half hours of overtime. (Finding of Fact No. 31). Corporal Altieri understood at that time, that grievances may be filed by Troopers Wigley and Zelinski over his denial of their overtime. (Finding of Fact No. 34).

Troopers Wigley and Zelinski thereafter contacted Trooper Joseph Plant who is president of a local lodge of the Association. (Finding of Fact No. 35). Trooper Plant contacted Sergeant Ruda, Corporal Altieri's supervisor and also a president of a local lodge, in an attempt to resolve the matter without the filing of a grievance. (Finding of Fact No. 35). Sergeant Ruda scheduled separate meetings with Troopers Wigley and Zelinski, at which Corporal Altieri was also present. (Finding of Fact No. 36). Both Troopers acknowledged that there was a policy of requiring pre-approval for overtime, and that neither had gotten the denied overtime hours pre-approved. (Finding of Fact No. 36).

On August 10, 2000, Corporal Altieri and Sergeant Ruda attended a supervisor's meeting where, Sergeant Ruda's supervisor Lieutenant Mark Lomax was present. (Finding of Fact No. 38). Because Corporal Altieri had previously expressed concerns regarding the TNT members, Sergeant Ruda arranged a meeting with Lieutenant Lomax and Corporal Altieri at which time Corporal Altieri expressed his beliefs that Trooper Wigley was encouraging members to "slow down" their arrests, and that Troopers Zelinski and Wigley had prematurely terminated the DART operation. (Finding of Fact No. 38). He also indicated that the other members of the team generally did as he asked, and that he did not recommend the removal of either Troopers Zelinski or Wigley. (Finding of Fact No. 38). At the conclusion of the meeting, Lieutenant Lomax and Sergeant Ruda both suggested that Corporal Altieri use progressive discipline within his team. (Finding of Fact No. 38).

Based on what was discussed with Corporal Altieri and Sergeant Ruda, Lieutenant Lomax contacted his supervisor, Captain John Duigan, and recommended that Trooper Wigley be removed from his detached status with the BDLE, but that no action be taken against Trooper Zelinski. (Finding of Fact No. 39). Captain Duigan contacted Corporal Altieri directly and Corporal Altieri again reiterated the concerns he expressed to Lieutenant Lomax, and noted infighting amongst the team members, concerns over preparation of paperwork, and an inappropriate comment made by Trooper Zelinski during a debriefing of a patrol unit about their ability to execute warrants. (Finding of Fact No. 40). Based on this information Captain Duigan recommended to Major Tyree Blocker, that he terminate Trooper Wigley and Trooper Zelinski's detached status with the BDLE. (Finding of Fact No. 40). In making his recommendation to Major Blocker, Captain Duigan did not mention the

overtime issue or that there was the possibility of a grievance. (Finding of Fact No. 41). Based on this recommendation, and without further investigation, Major Blocker terminated Trooper Zelinski and Trooper Wigley's detached status in the BDLE on August 21, 2000.

The Hearing Examiner found that Troopers Wigley and Zelinski engaged in protected activity when they contacted Trooper Plant. The Hearing Examiner acknowledged that while Major Blocker, who terminated the Troopers detached status, was not aware of their protected activity, Corporal Altieri was, and his reports were the basis for the removal. The Hearing Examiner, however, credited Corporal Altieri's testimony that he had ongoing legitimate concerns about Troopers Zelinski and Wigley that existed before the completion of the DART operation and their request for overtime. The Hearing Examiner noted that Corporal Altieri did not set up the discussions with Sergeant Ruda, Lieutenant Lomax, or Captain Duigan, and did not advocate the removal of either Trooper Wigley or Trooper Zelinski. Based on this credible testimony, the Hearing Examiner concluded that there was no showing that Corporal Altieri harbored anti-union animus when relaying his concerns regarding Troopers Wigley and Zelinski to his supervisors. Accordingly, the Hearing Examiner concluded that there was no violation of Section 6(1)(a) or (c) of the PLRA and dismissed the complaint.

The Association filed a Motion to Reopen the Record contending that after-discovered evidence establishes compelling reasons questioning Corporal Altieri's motives in making reports to his supervisors about Troopers Zelinski and Wigley. The evidence sought to be introduced is a Disciplinary Action Report, a Summary Report, and a Notice of Disciplinary Action issued to Corporal Altieri concerning the investigation into a sexual harassment claim filed by Trooper Zelinski.

Generally, the decision whether to reopen the record for additional evidence is discretionary with the Board. Middletown Township Police Benevolent Association v. Middletown Township, 24 PPER ¶24167 (Final Order, 1993). Unless the evidence sought to be introduced is 1) new; 2) could not have been obtained at the time of the hearing; 3) relevant and non-cumulative; 4) not offered solely for purposes of impeachment; and 5) likely to compel a different result, the Board will not reopen the record. Id.

Here, while the June 6, 2001 Disciplinary Action Report and Summary Report, and the August 24, 2001 Notice of Discipline were not available at the time of the hearing, the information therein sought to be introduced was available to the Association. The documents refer to allegations made by Trooper Zelinski in connection with her complaint filed with the Pennsylvania Human Relations Commission (PHRC) on January 12, 2001 pertaining to incidents occurring before her removal from the BDLE that she claims constitute sexual harassment. Trooper Zelinski acknowledged at the hearing that she filed a sexual harassment complaint with the PHRC against Trooper Weinstock. Therefore, any allegation made in support of that sexual harassment complaint, if deemed relevant to show an improper motive, could have been elicited at the hearing.

The Association's argument that the evidence is not submitted merely for purposes of impeaching Corporal Altieri's testimony but to establish improper motives is inconsistent with the relevancy of that

evidence. The evidence sought to be proffered demonstrates that the Employer, after an investigation, concluded that Corporal Altieri acted improperly in a supervisory relationship with Trooper Zelinski, thereby crediting Trooper Zelinski's claims of harassment and discrediting Corporal Altieri's position. That Corporal Altieri may have allowed a hostile work environment to exist in the workplace does not tend to support the Association's claim that he acted with specific anti-union animus with regard to Troopers Zelinski and Wigley. Because the evidence sought to be introduced pertains to a claim by Trooper Zelinski that she was being harassed because of her sex, it is irrelevant to whether Corporal Altieri acted with anti-union animus necessary for a finding of an unfair labor practice.

In paragraph 12 of the motion to reopen the record, the Association attempts to overcome the Employer's claim that it is merely attempting to impeach Altieri's credibility by claiming that the proffered evidence shows motive through Altieri's actual dealings with Troopers Zelinski. However, the Association was aware of the existing circumstances in the TNT, and was free to have Trooper Zelinski testify to any such dealings or events at the hearings. To the extent that the Employer conducted its own investigation into the events and credited, or discredited certain individuals, merely goes to its credibility determinations made in the context of a disputed claim about "actual events" within the TNT. The only value the proffered documents may have to supplement the Board's record evidence, is that, like the Hearing Examiner, the Employer also made credibility determinations. Accordingly, we find that the preferred evidence merely goes toward impeaching Corporal Altieri's credibility, and as such does not constitute a basis for reopening the record.

In addition, the alleged findings in the Summary Report that a hostile work environment existed within the team is consistent with Corporal Altieri's testimony at the hearing regarding the internal conflicts between his team members, and therefore merely cumulative. Finally, upon review of the evidence submitted it is not likely to compel a different result. Accordingly, the Association's request to reopen the record is denied.

In the alternative to reopening the record, the Association has also filed timely Exceptions with the Board arguing that based on the evidence presented at the hearing, the Hearing Examiner erred in finding Corporal Altieri credible and in concluding that he was not motivated by anti-union animus. Specifically, the Association argues that there are compelling circumstances necessitating the reversal of the Hearing Examiner's credibility determinations and that there is sufficient evidence that Corporal Altieri harbored anti-union animus when making allegations to his supervisors which resulted in the removal of Trooper Wigley and Trooper Zelinski from their positions with the BDLE.

Generally, because the hearing examiner is best able to observe the manner and demeanor of the witnesses, the Board gives deference to the hearing examiner's decision to credit some, all, or none of a witness's testimony. Crestwood School District v. Crestwood Education Association, 32 PPER ¶32050 (Final Order, 2001). The Board will not disturb the hearing examiner's credibility determinations absent compelling circumstances. Id.

To show compelling circumstances the Association points out that there was no objective evidence of Corporal Altieri's alleged concerns regarding Trooper Zelinski or Trooper Wigley's performance prior to the DART operation, and that Trooper Wigley received a satisfactory evaluation only days prior to his request for overtime. The Association notes that Corporal Altieri's complaints regarding Troopers Wigley and Zelinski intensified after he became aware that they had sought the assistance of a union representative. It claims that Corporal Altieri's only rationale for the lack of objective evidence of his concerns and Trooper Wigley's satisfactory performance evaluation is that he is a "nice guy." The Association also notes that Corporal Altieri's response to the testimony of Troopers Zelinski, Wigley, and Murray indicating that there was no infighting amongst them was that they had lied on the stand.

The Hearing Examiner, however, adequately addressed these concerns in finding Corporal Altieri's testimony credible. The Hearing Examiner reasoned:

The Association notes that there is little or no documentation of Altieri's stated concerns with the two troopers, and that no discipline was imposed before the troopers engaged in protected activity. However, Corporal Altieri credibly testified that while he was concerned about certain conduct by these troopers before the DART, in his opinion this conduct did not rise to the level warranting formal discipline, and thus no discipline was imposed.... Moreover, Altieri credibly explained that although he eventually has serious concerns regarding Trooper Wigley, those concerns did not come to fruition until the DART operation during the last week of June 2000..., which commenced after Altieri prepared Wigley's performance evaluation....

(PDO, pg. 7-8) (citations to record omitted). In addition, the Hearing Examiner noted that Trooper Murray immediately recanted testimony suggesting difficulties within the team and instead placed responsibility on himself for his voluntary decision to seek removal from the TNT. Thus, the Hearing Examiner adequately explained the reasons for crediting Corporal Altieri's testimony, and since those reasons are supported in the record, there is no compelling reason to disturb that credibility determination.

To establish a violation of 6(1)(c) under the PLRA it must be shown that 1) the employe was engaged in protected activity; 2) the employer knew of that protected activity; and 3) there was an adverse employment action motivated by anti-union animus. Pennsylvania Labor Relations Board v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Since there is no direct evidence of anti-union animus, any unlawful motivation under the PLRA could only have been established through inferences drawn from the facts. Teamsters Local #429 v. Lebanon County, 32 PPER ¶132006 (Final Order, 2000). The timing of the alleged

acts, standing alone however, is insufficient to infer anti-union animus. Id.

Here, the Hearing Examiner did not err in concluding that no such inference of an unlawful discriminatory motive is warranted. Corporal Altieri credibly testified regarding his legitimate and ongoing concerns with Trooper Zelinski and Trooper Wigley. He testified about incidents he addressed with the Troopers prior to the completion of the DART operation, including an inappropriate comment made by Trooper Zelinski during a debriefing of the patrol unit, Trooper Wigley's involvement in the termination of the DART operation, and his displeasure over the team's inability to work together. Corporal Altieri also indicated that he believed that these incidents did not warrant formal discipline in the team setting, and therefore did not discipline them for these incidents. He also testified that his reason for expressing his concerns to Sergeant Ruda and Lieutenant Lomax was to seek direction in how to have the team work together.

Albeit that Sergeant Ruda, Lieutenant Lomax and Captain Duigan solicited Corporal Altieri's concerns regarding Troopers Zelinski and Wigley after he was made aware that they contacted the Association, Corporal Altieri stated that when discussing his concerns he did not seek the Troopers' removal from the team, and that the possibility of a grievance being filed for his denial of overtime did not influence him. Captain Duigan testified that he did not mention the possibility of a grievance to Major Blocker when he recommended removing Troopers Wigley and Zelinski from the BDLE.

The credible testimony of Corporal Altieri is substantial evidence supporting the Hearing Examiner's finding that he did not harbor anti-union animus when discussing concerns regarding Troopers Zelinski and Wigley. Accordingly, the Hearing Examiner did not err in concluding that the Association failed to establish anti-union animus necessary for a violation of 6(1)(c) of the PLRA.

After a thorough review of the Exceptions and all matters of record, the Board concludes that the Employer has not committed an unfair labor practice in violation of Act 111 and Section 6(1)(a) and (c) of the PLRA and shall therefore sustain the Proposed Decision and Order of the Hearing Examiner.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

#### **HEREBY ORDERS AND DIRECTS**

that the Motion to Reopen the Record is denied, the Exceptions filed to the Proposed Decision and Order of August 29, 2001 are hereby dismissed, and the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and

L. Dennis Martire, Member, this nineteenth day of November, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.