COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PORT ALLEGANY POLICE OFFICERS	:	
	:	
v.	:	Case No. PF-C-03-32-W
	:	
PORT ALLEGANY BOROUGH	:	

FINAL ORDER

Port Allegany Police Officers (Union) filed timely exceptions and a supporting brief on October 16, 2003, with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued September 30, 2003. In the PDO, the Hearing Examiner dismissed the charge and concluded that the Port Allegany Borough (Borough) did not engage in unfair practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 (Act 111) by failing to bargain with the Union over adjusting its members' working schedules and shifts prior to implementing unilateral changes. The Borough's Brief in Response was filed on November 3, 2003.

The Union sets forth sixteen (16) exceptions, which may be summarized as follows. The Hearing Examiner erred by: (1) failing to find that the Borough neglected to engage in collective bargaining within the meaning of the PLRA and Act 111 regarding the changes in the schedules and the shifts; (2) finding that the Borough secured the Union's agreement to change its members' schedules and shifts; (3) failing to find that the alleged agreement was not reduced to writing and consequently, is not legally binding under Section 2 of Act 111 and the PLRA; (4) failing to find that the Borough is not authorized to unilaterally change police schedules and shifts under the Borough Code, the Collective Bargaining Agreement, the Board's holding in City of Reading, 30 PPER ¶ 30121 (Final Order, 1999) or through its managerial prerogative.

The Hearing Examiner's unchallenged findings of fact are as follows. The Borough employs David Distrola and Brian Collins as full-time police officers, and Sergeant Collins represented the unit in negotiations with the employer. (PDO p.2) The officers' working schedules and shifts are set forth in a memorandum entitled "Police Department Scheduling Policy Letter," dated December 12, 1995, which states in pertinent part:

> Shifts shall consist of four (4) consecutive days of twelve (12) hours each of on-duty hours, followed by four (4) consecutive days off. The hours of the shift shall have one-half hour (30 minutes) each shift for dinner.

(PDO p.2).

Effective January 1, 2002, the Borough and the Union entered into a three-year collective bargaining agreement providing at Article I:

> The Officers shall be regularly scheduled for one hundred forty-four (144) on-duty hours of work per scheduled twenty-four (24) day work period so long as conditions and personnel resources permit. Specific scheduling policies and guidelines are as set forth in the Borough Police Department scheduling letter.

(PDO p.2).

On February 17, 2003, the Borough Mayor Joseph C. DeMott, Jr. and Chief of Police Donald Carley met with the Union and Officer McClain, a part-time officer excluded from the bargaining unit, to discuss changing the Union's schedules and shifts. (PDO p.3). Mayor DeMott presented a proposal, subject to discussion, under which police coverage would be provided on a 24-hour basis, with the Union working eight-hour shifts on a rotating basis with a two-day weekend every third week. (PDO p.3). Sergeant Collins complained about the proposal and Officer McCain indicated that he would be willing to work weekends on a regular basis. (PDO p.3) Mayor DeMott agreed to revise the proposal so the Union members would have every other weekend off. (PDO p.3).

Between February 17, 2003, and March 1, 2003, Sergeant Collins presented Chief Carley with a proposal under which the Union would work eight-hour shifts on a rotating basis with three-day weekends off every other week. Mayor DeMott agreed to schedule the officers accordingly. (PDO p.3).

On March 1, 2003, the Borough began implementing a schedule under which the officers were to work eight-hour shifts on a rotating basis with three-day weekends every other week. (PDO p.3).

In its first two groups of exceptions, the Union asserts that the Borough did not fulfill its collective bargaining duty within the meaning of the PLRA and Act 111 regarding the schedule and shift changes, and that the Borough failed to obtain the Union's agreement regarding the changes. The Board agrees with the Hearing Examiner's conclusion that the Borough and the Union participated in collective bargaining and, at the time, reached a mutually satisfactory agreement.

An employer commits unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA by unilaterally changing employe terms and conditions of employment. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). Terms and conditions include work schedules for the bargaining unit. Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997); Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). The Board finds that the Borough was statutorily obligated to bargain with the Union prior to changing the bargaining unit's work schedules. Furthermore, the Board agrees with the Hearing Examiner's findings that the Borough fulfilled this obligation and obtained a legally sufficient agreement from the Union. (See PDO p.4)(stating "[T]he record shows that the Borough only changed their schedules upon [the Union's] agreement.")

A Hearing Examiner's findings must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942); State System of Higher Education v. PLRB, 737

A.2d 313, 315, n.6 (Pa. Cmwlth. 1999); Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000); Manuel Zavala-Lopez v. Kaolin Mushroom Farms, Inc., 29 PPER ¶ 29025 (Final Order, 1997). Substantial evidence is "`relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942)(quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)).

A review of the record reveals that the testimonial evidence substantially supports the Hearing Examiner's conclusion that an agreement was reached through collective bargaining. The direct testimony of Sergeant Collins, the Union's representative, indicates that he met with the Mayor and Chief of Police on February 17, 2003, to discuss the new schedules and shifts. (N.T. 23-24). Furthermore, Sergeant Collins acknowledged that he voiced concerns regarding the proposed schedule and offered an alternative proposal, one which was ultimately adopted by the Borough. (N.T. 27). Accordingly, the Board finds the Borough and the Union reached an agreement to adjust the working schedules and shifts through collective bargaining, and consequently, dismisses these exceptions.

The Union's next group of exceptions assert that the agreement is not legally sufficient under Act 111 and the PLRA, because it was not memorialized in writing.[1] Precedent establishes, however, that a written agreement is not required to prove that a "meeting of the minds" resulted in the establishment of an enforceable agreement. The Board finds that the Borough and the Union reached an agreement through a meeting of the minds, and as such, the Board will enforce the agreement.

In support of this exception, the Union cites Lebanon Lodge, FOP No. 42 v. City of Lebanon, et al., 288 A.2d 835 (Pa. Cmwlth. 1972), which states, "To us it is apparent that written agreements must be consummated to terminate labor disputes." Lebanon Lodge, FOP No. 42 v. City of Lebanon, et al., 288 A.2d at 836. Lebanon Lodge, however, is distinguishable. There, the Court determined that no meeting of the minds occurred between the parties and that there was no formal acceptance of the terms. In the present case, the terms agreed upon were those proposed by the Union. The Union cannot argue the absence of a meeting of the minds when it was their proposal that was ultimately adopted.

Additionally, the Board has ruled as a matter of law that where an agreement had in fact been reached, and no genuine difference of opinion exists as to the substance of the agreement, that agreement is enforceable. See Donora Borough, 29 PPER ¶ 29069 (Proposed Decision and Order, 1998); Athens Area School District, 29 PPER ¶ 29002 (Final Order, 1997) (district's revocation of ratification of tentative

[1] Section 2 of Act 111 states:

> It shall be the duty of public employers and their policemen and firemen employes to exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and by entering into settlements **by way of written agreements** and maintaining the same. (emphasis added).

agreement regarding unfair practice where no evidence that parties did not have a meeting of the minds).

As established previously in this opinion, the Board finds that a meeting of the minds occurred between the Borough and the Union, resulting in a valid, enforceable agreement understood by all parties. Since the Borough sufficiently proved the existence of the agreement through other evidence, the lack of a writing does not prove fatal in establishing the existence or enforceability of the agreement.

This result is analogous to those reached in similar cases involving the Public Employe Relations Act (PERA). Section 901 of PERA provides in relevant part that,

> Once an agreement is reached between the representatives of the public employes and the public employer, the agreement shall be reduced to writing and signed by the parties.

43 P.S. § 1101.901. Notwithstanding, PERA recognizes the binding nature of oral agreements despite Section 901, by making it an unfair practice for a party to refuse to reduce a collective bargaining agreement to writing and execute it. 43 P.S. § 1101.1201(a)(6) and (b)(5). The Board has routinely enforced agreements manifested from a meeting of the minds between the parties, which were not subsequently reduced to writing. Athens Area School District v. PLRB, 760 A.2d 917, 920 (Pa. Cmwlth. 2000); Construction, General Laborers and Material Handlers, Local Union 1058 v. Coraopolis Borough, 19 PPER ¶ 19114 (Final Order, 1988). As the Board stated in Coraopolis Borough, "If the parties had reached a meeting of the minds and had orally agreed to a contract, the subsequent refusal to reduce that to writing or to execute the agreement is an unfair practice regardless of the motives of the parties." Therefore, the Board dismisses this exception.

The Union's next group of exceptions assert that the Borough was not authorized to unilaterally change police schedules and shifts under the Borough Code, the Collective Bargaining Agreement, the Board's holding in City of Reading, 30 PPER ¶ 30121 (Final Order, 1999) or through its managerial prerogative. As the Board has found that an agreement was reached through collective bargaining, the Borough did not require a legally permissible alternative for modifying the schedules and shifts. Consequently, the Board dismisses these exceptions.

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

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 exceptions filed to the above case number be and the same, are hereby dismissed, and the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this eighteenth day of November, 2003. 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.