

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 110 :
 :
 v. : Case No. PF-C-05-14-W
 :
 ADAMS TOWNSHIP :

FINAL ORDER

On October 3, 2005, the Teamsters, Local 110 (Union) timely filed exceptions with the Pennsylvania Labor Relations Board (Board), to a Proposed Decision and Order (PDO) issued September 13, 2005. In the PDO, the Hearing Examiner concluded that Adams Township (Township) did not engage in unfair labor practices within the meaning of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) by discharging Officer Terry Williams for conduct that violated several of the Township's rules of conduct (Rules) for the police officers. On October 27, 2005, the Township timely filed its response.

The Township hired Officer Williams as a full-time police officer in May 1990. Shortly thereafter, Williams became aware of the Township's Rules. The relevant Rules provide that a third-level offense will be punishable by a suspension of from one (1) to five (5) working days without pay by the police commissioner with the approval of the board of supervisors; that a sixth-level offense may be punishable by dismissal by the board of supervisors; that sleeping on duty shall be a sixth-level offense; that permitting off-duty employment to interfere with Township employment shall constitute a third-level offense; that knowingly providing false or inaccurate information shall constitute a fourth, fifth or sixth-level offense depending on seriousness. In 1999, the Board certified the Union as the exclusive representative of a bargaining unit that includes full-time and regular part-time police officers employed by the Township. In 2003, the Township's board of supervisors designated one of its members, Dennis J. Gdula, as police commissioner.

On December 22, 2004, at 11:00 p.m., Williams began working a scheduled eight-hour shift. On December 23, 2004, between 5:45 A.M. and 6:00 A.M., Mr. Gdula and two other members of the board of supervisors, Roy Hoffman and Dennis Richards, observed Williams in his patrol car parked near the pro shop at the Windber Country Club. Mr. Gdula and Mr. Richards observed Williams with his eyes closed and his head back on the seat. Mr. Hoffman also observed that Williams was resting his head on the back of the seat. Mr. Gdula knocked on the patrol car door two times. Officer Williams did not respond to the first knock, but he responded to the second knock.

Later in the morning of December 23, 2004, Mr. Gdula began an investigation of Williams by contacting the chief of police at East Conemaugh Borough, which is a neighboring municipality where Williams also worked as a police officer. The chief informed Mr. Gdula that Williams had worked there the day before from 3:00 p.m. to 11:00 p.m. In the afternoon of December 23, 2004, Mr. Gdula attached a letter to Williams' time card informing him that Supervisors Richards, Hoffman, Smith and Gdula observed him sleeping on duty earlier that morning at the Windber Country Club Pro Shop and that disciplinary action was forthcoming.

On December 28, 2004, Mr. Gdula continued his investigation by reviewing the log of activities Williams filed for his shift beginning on December 22, 2004. Driving to all of the places that Williams listed on the log as having been patrolled by him, Mr. Gdula determined that over 62 miles would have to be driven for such a patrol. Checking odometer readings from the patrol car, Mr. Gdula also determined that Williams actually drove 29 miles during the shift. After reviewing the results of the investigation, the members of the board of supervisors decided to terminate Williams. On January 4, 2005, Mr. Gdula gave a letter to Williams informing him that the board of supervisors was terminating his employment effective at the end of his shift on January 4, 2005. The letter also provided that the bases for Williams' termination were the violation of the Rules prohibiting the following: Sleeping on duty; falsifying records; and permitting

off-duty employment to interfere with Township employment. The letter also advised Williams that he was found in violation of Section 5 of the Police Tenure Act and the current collective bargaining agreement provisions pertaining to neglect and violation of official duty.

In its exceptions, the Union contends that the Examiner erred by disregarding evidence establishing disparate treatment. Specifically, the Union argues that the Examiner erroneously rejected, as hearsay, evidence indicating that Officer Kirk Moss received only a suspension for sleeping on duty, where the Township failed to object to this evidence, thereby waiving any hearsay objection. The Union also claims that the Examiner erroneously rejected evidence that Charles Weyandt received only a written reprimand for sleeping on duty because the evidence regarding Weyandt was elicited on cross examination of a Township witness rather than during the Union's case in chief.

In Walker v. Unemployment Compensation Board of Review, 367 A.2d 366 (Pa. Cmwlth. 1976), the Commonwealth Court held that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding of the Board[,] and that "[h]earsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the Board, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand." Walker, 367 A.2d at (citations omitted)(emphasis original). The Commonwealth Court has also held that Walker applies to proceedings before the Board, Kaolin Mushroom Farms, Inc. v. PLRB, 702 A.2d 1110 (Pa. Cmwlth. 1997), and the Board has consistently applied Walker in Board proceedings. Teamsters Local #205 v. Manor Borough, 27 PPER ¶ 27025 (Final Order, 1995); Association of Mifflin County Educators v. Mifflin County School District, 22 PPER ¶ 22,229 (Final Order, 1991); David Braymer v. Beaver Valley Intermediate Unit, 21 PPER ¶ 21006 (Final Order, 1989). In Manor Borough, the Board stated that "a finding of fact cannot be based on uncorroborated hearsay." Manor Borough, 27 PPER at 52 (citing Walker, supra). Accordingly, unobjected to hearsay is not competent to support a finding of fact unless corroborated by other admissible competent evidence. In this case, the unobjected to hearsay evidence of Officer Moss's alleged sleeping on duty and his alleged subsequent discipline is the only evidence of such events. Absent corroboration from other competent, admissible evidence, the hearsay evidence concerning Officer Moss is insufficient, as a matter of law under Walker, supra, to support a finding of fact. Therefore, the hearsay evidence regarding Officer Moss was properly rejected by the Examiner. Accordingly, contrary to the Union's argument, the fact that the Township did not object to the hearsay evidence and may constitute a waiver for purposes of the Township's ability to subsequently challenge the competency of the evidence on exceptions, the Examiner did not err by concluding that the hearsay, without corroboration, is insufficient to support a finding.

Also contrary to the Union's claim, the Examiner did not reject or ignore evidence regarding the discipline of Weyandt. Indeed, the Examiner expressly addressed the Union's proffered evidence regarding Weyandt and concluded that Weyandt was not similarly situated such that the Examiner could infer animus from the alleged disparate treatment. In the PDO, the Examiner stated the following:

Local 110 next contends that the testimony of Mr. Gdula, Mr. Hoffman and Mr. Richards that they terminated Officer Williams for violating the rules of conduct was not credible because the Township only reprimanded Mr. Weyandt for sleeping on the job (N.T. 98-99). The record does not show that the Township had reason to believe that Mr. Weyandt also held off-duty employment that interfered with his employment with the Township or that Mr. Weyandt filed a false report, so there is no basis for finding that Officer Williams and Mr. Weyandt were similarly situated. See Montour County, 35 PPER 12 (Final Order 2004) (employees must be similarly situated in order for the Board to infer union animus based on disparate treatment). No reason to discredit the testimony of Mr. Gdula, Mr. Hoffman and Mr. Richards is apparent on that record.

(PDO at 7). The Union's claim simply contradicts the clear, express language of the PDO establishing that the Examiner considered and indeed relied upon the evidence as it was presented by the Union.

Moreover, the record establishes that Mr. Weyandt was disciplined twelve years ago, in 1993, and Officer Moss was disciplined fifteen years ago, in 1990, when the police commissioner and the membership of the board of supervisors were different individuals.¹ In Teamsters, Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), the Board concluded that "a new administrator charged with enforcing policy militates against a finding of anti-union bias. Previous cases have established that new administrators may employ different styles of management, including the meting out of discipline." Id. at 37. The disciplining of Mr. Weyandt does not yield the inference of union animus here because the upper management of the Township has changed. Indeed, the board of supervisors, which effectuates and enforces managerial policy, at least in part, through discipline, is not the same board that disciplined Mr. Weyandt. Accordingly, the less severe discipline imposed on Mr. Weyandt does not yield the inference of disparate treatment based on union animus in this case.

The Union next contends that the Examiner erred by "accept[ing] the Township's claim that Williams was properly disciplined under the Township's rule regarding secondary employment." (Union's Exceptions ¶ 2). The Union erroneously argues that this offense was based on the misunderstanding that Williams left his other job early to start his Township shift on time. The Union contends that the Township's lack of interest to interview Williams and learn whether he had permission to leave his other job early or whether he stole time from either employer is evidence of animus. The Union argues that the Examiner ignored this evidence of alleged union animus in favor of a conclusion that the Township supervisors acted "properly" even though there was no basis for the charge.

Notwithstanding whether Williams abused time at either police department, the Township possessed a legitimate, independent basis for discharging Williams, under the Rules, for sleeping on duty. There is substantial competent evidence of record clearly establishing that Williams was indeed sleeping on duty. The Township did not need any additional bases to justify its discharge of Williams. Accordingly, a favorable determination on the Union's claim of error would not affect the Examiner's or the Board's conclusions. Moreover, the fact that the supervisors did not question Williams to learn from him whether he was stealing time does not yield an inference of animus, where one of the bases for Williams' discharge was his dishonesty in falsifying police logs. "The Board will not substitute mere conjecture or surmise for sound evidence of a discriminatory motive or intent." AFSCME, Counsel 13 v. Commonwealth, Dep't of Labor and Indus., Office of Vocational Rehab., 16 PPER ¶ 16020 (Final Order, 1984).

Additionally, although Mr. Gdula testified that, at the time of Officer Williams' discharge, he thought that Williams abused time, which served as one basis for the charge of permitting off-duty employment to interfere with Township employment, he also testified that it was not the only basis for that charge. Mr. Gdula's testimony on page 143 of the notes of testimony clearly indicates that his concern regarding employment outside the Township was that working a full shift for the East Conemaugh Borough police department immediately before the full third shift at the Township interfered with and compromised Williams' ability to effectively perform his duties and remain alert. Contrary to the Union's claim, therefore, there is indeed a basis for the charge regarding secondary employment. Accordingly, the Examiner did not "reject" evidence as argued by the Union.

Also, there is no indication in the PDO that the Examiner "accepted the Township's claim that Williams was properly disciplined under the Township's rule regarding secondary employment," as alleged by the Union. (Union's Exceptions at ¶ 2). In the PDO, the Examiner concluded that "the Township established that it would have terminated Officer Williams regardless of whether or not he had engaged in protected activity." (PDO at 6). The sleeping on duty and the falsification of logs were sufficient for discharging Williams under the Rules. Accordingly, the Examiner did not err in concluding that the Township possessed an independent basis for Williams' discharge. In this regard, however, the Examiner did not accept that Williams was "properly disciplined", as argued by the Union. In dismissing the Union's charge against the Township for the

¹ The record establishes that Supervisor Hoffman became a supervisor in 2004, Supervisor Gdula became a supervisor in 1994, and became police commissioner less than two years before the hearing, and Supervisor Smith became a supervisor in 2002. (N.T. 72, 74, 101, 116).

discriminatory discharge of Williams, the Examiner concluded that the Township established a non-pretextual, independent reason for discharge. The Examiner did not express any value judgments regarding the Township's actions as "proper". The Board and its examiners do not determine just cause issues. Such determinations are reserved for arbitration.

The Union next argues that the Examiner erred by refusing to accept evidence, that the Township included a bill from its attorney for his collective bargaining negotiations in Williams' personnel file, as animus against Williams who was a member of the Union's bargaining committee. In the PDO, the Examiner stated that "[a]lthough it does seem odd that the solicitor's bill was in Officer Williams' personnel file, the record does not show that negotiations between the parties were contentious." (PDO at 7). The Examiner expressly credited the testimony of Mr. Gdula. Mr. Gdula testified that, although Williams was present during contract negotiations, he spoke very little. Williams' input, according to Mr. Gdula, was limited to "when he had something he wanted to say or a point that he wanted brought across, he did so." (N.T. 115). Instead, the business agent for the Union did most of the negotiating. (N.T. 115-116). Neither of the two contract negotiations thus far resulted in impasse that required interest arbitration. Also, only one grievance was filed during Supervisor Gdula's tenure as police commissioner. Mr. Gdula resolved the grievance favorable to the Union. Mr. Gdula testified that he recognized that he was at "fault" regarding the "scheduling problem," the subject of the grievance, and that the Union's position was correct. (N.T. 113). Significantly, Mr. Gdula could not remember who filed the grievance or on whose behalf the grievance was filed. Therefore, we agree with the Examiner that the record fails to support a finding of fact that a contentious relationship existed between management and Williams or that union animus existed based on protected activity. Accordingly, the record fails to establish that the presence of the solicitor's bill in Williams' personnel file was anything other than an unexplainable but unrelated occurrence.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that Adams Township did not engage in unfair labor practices in violation of Section 6(1)(a) and (c) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of November, 2005. 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.