

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BENSALEM TOWNSHIP POLICE BENEVOLENT ASSOCIATION :
: v. : Case No. PF-C-03-150-E
: :
BENSALEM TOWNSHIP :

FINAL ORDER

The Bensalem Township Police Benevolent Association (Association) filed exceptions with the Pennsylvania Labor Relations Board (Board) on March 14, 2005, challenging the Proposed Decision and Order of February 23, 2005, as to the remedy for Bensalem Township's (Township) violation of Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). Following an extension of time, the Association filed a brief in support of the exceptions on April 11, 2005. The Township filed its brief in response to the exceptions on April 29, 2005.

The Association does not challenge any of the hearing examiner's Findings of Fact nor any of the Conclusions of Law, but objects to his discussion of the *status quo ante* in determining the appropriate remedy. A brief history of the circumstances leading to the Charge of Unfair Labor Practices is necessary to put the Association's arguments in perspective.

Prior to a January 6, 2003 interest arbitration award that limited accrual of compensatory time, when a Township detective was placed "on-call" for eight hours a day, the officer received one and a half hours of compensatory time for each weekday, and five hours for each weekend the detective was "on-call". Following the January 2003 award, on February 4, 2003, the parties agreed to a work schedule of four ten-hour days reducing the need for an "on-call" detective to four hours during the week. In addition, a new "availability call-in list" was devised whereby no single detective would be on-call, but if a detective was needed the Township would call detectives from a predetermined list who could then elect to report. On February 4, 2003, the Township unilaterally issued a memorandum that if no detective volunteered to report when called, a detective was to be directed to report for duty. Detectives were directed to report for work ten times in the nine months the call-in list was being used. On November 10, 2003, the Township unilaterally reverted to placing a detective "on-call" in advance, as opposed to using the "availability call-in list" on an as needed basis.

On December 10, 2003 the Association filed a charge alleging that the Township did not bargain in good faith by unilaterally implementing the "on-call" requirement. The hearing examiner agreed, and found that the Township violated Act 111 and Section 6(1)(a) and (e) of the PLRA by reinstating an "on-call" procedure. The Hearing examiner directed the Township to rescind the November 10, 2003 on-call policy and restore the *status quo ante*. The Township filed no exceptions to that order and submitted its Affidavit of Compliance on March 16, 2005.

In its exceptions, the Association argues that the last enforceable agreement between the parties was the January 2003 interest arbitration award, and the hearing examiner erred in finding that the *status quo ante* was a February 4, 2003 agreement that established the "availability call-in list". Alternatively, the Association contends that the hearing examiner erred in stating that the "call-in" procedure permitted the Township to order detectives to report for work when no one volunteered.

Generally, the relief ordered by the Board under Section 8 of the PLRA is remedial, and therefore restoring of the *status quo ante* is designed to make the employes whole by returning the parties to their respective positions as if the unfair labor practice never occurred. Plumstead Township v. Pennsylvania Labor Relations Board, 713 A.2d 730, 736 (Pa. Cmwlth. 1998). The *status quo ante* is typically the last actual uncontested status

preceding the controversy. Fairview School District v. Unemployment Compensation Board of Review, 499 Pa. 539, 454 A.2d 517 (1982); Teamsters Local #764 v. Milton Regional Sewer Authority, 36 PPER 15 (Final Order, 2005).

Thus, in determining the *status quo ante*, we are not concerned here with whether there was a prior agreement entered into on February 4, 2003, governing an availability "call-in" procedure, but rather what the practice was immediately prior to the filing of the charge. The Association did not challenge the Township's unilateral practice of ordering detectives to report for work (which had been done by the Township on ten occasions during the nine months preceding the filing of the charge), but challenges the Township's implementation of an "on-call" procedure on November 10, 2003.¹

Because, the Association's charge alleged that the Township committed an unfair labor practice by implementing the November 10, 2003 "on-call" policy, the *status quo ante*, for purposes of the Association's charge, was to restore the Association and the Township to the circumstances that existed prior to the unlawful implementation of the November 10, 2003 policy. Milton Regional Sewer Authority, supra. It is uncontested that between February 4, 2003, and November 10, 2003, there was in place a "call-in" procedure, and that agreeably or not, the employer had been unilaterally ordering detectives into work when no one volunteered to report in. Thus, the circumstances that existed prior to November 10, 2003, (*i.e.* the *status quo ante*), included a "call-in" procedure whereby a detective was directed to report for work if no one volunteered.

After a thorough review of the exceptions and all matters of record, the hearing examiner did not err in directing restoration of the *status quo ante* as so defined in the PDO, and thus, the Association's exceptions are dismissed.

ORDER

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

HEREBY ORDERS AND DIRECTS

That the Association's exceptions filed March 14, 2005 are hereby dismissed, and the Proposed Decision and Order of February 23, 2005 be and hereby is made absolute and final.

SIGNED, SEALED, DATED and MAILED this twenty-first day of June, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

¹ The November 10, 2003 implementation of the "on-call" procedure was the only unilateral action occurring within the six-week statute of limitations under Section 9(e) of the PLRA.