

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LITTLESTOWN BOROUGH POLICE OFFICERS ASSOCIATION :
:
v. : Case No. PF-C-06-128-E
:
LITTLESTOWN BOROUGH :

PROPOSED DECISION AND ORDER

On July 31, 2006, the Littlestown Borough Police Officers Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that Littlestown Borough (Borough) violated sections 6(1)(a), 6(1)(c) and 6(1)(e) of the Pennsylvania Labor Relations Act (PLRA) by changing the health insurance coverages for its police officers unilaterally and "for the specific purpose of marginalizing the Association."¹ On August 15, 2006, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on October 2, 2006, if conciliation did not result in a settlement of the charge by then. The hearing was held as scheduled. Both parties were afforded a full opportunity to present relevant evidence and to cross-examine witnesses. On November 7, 2006, the Association filed a brief. On November 21, 2006, the Borough filed a brief.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On June 27, 1987, the Board certified the Association as the exclusive representative of a bargaining unit that includes police officers employed by the Borough. (Case No. PF-R-87-36-E)

2. Effective January 1, 2006, the parties entered into a five-year collective bargaining agreement providing at article 25 in part as follows:

"The Borough shall provide each full-time officer, and his eligible dependents with a comprehensive policy of Capital Blue Cross insurance, or equal. The policy provided shall be the Capital Blue Cross PPO Plan 250, Rx Premium Card Plan. The quality or amount of benefits provided to an officer shall not be changed without the consent of the Association, during the term of this contract."

(Joint Exhibit 1)

3. On July 25, 2006, the Borough's council passed a motion "to switch the Borough[']s health insurance for all employees from Capital Blue Cross to Highmark Blue Shield effective September 1, 2006." (Plaintiff's Exhibit 3)

4. On August 8, 2006, council passed a motion "to rescind the motion from the July 25, 2006 Regular Borough Council Meeting regarding switching the health insurance for all Borough Employees from Capital Blue Cross to High Mark Blue Shield." (Borough Exhibit 2)

5. The Borough never changed the health insurance coverages for its police officers. (N.T. 13, 24, 36, 38)

DISCUSSION

¹The Association also alleged that the Borough's conduct "is discriminatory to the officers in their status as union members[.]" The Association has not argued as much in its brief, however. An argument not presented to a hearing examiner is waived. SSHE, 32 PPER ¶ 32118 (Final Order 2001). Accordingly, this portion of the charge will not be addressed.

The Association has charged that the Borough committed unfair labor practices under sections 6(1)(a), 6(1)(c) and 6(1)(e) of the PLRA by changing the health insurance coverages for its police officers unilaterally and "for the specific purpose of marginalizing the Association."

The Borough contends that the charge should be dismissed because it never changed the health insurance coverages for its police officers and because it bargained over any change that might have occurred.

An employer commits unfair labor practices under sections 6(1)(a) and 6(1)(e) if it unilaterally changes a mandatory subject of bargaining. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). In such a case, the employer's violation of section 6(1)(e) (refusing to bargain collectively with the representative of its employees) is a derivative violation of section 6(1)(a) (interfering with the rights of employer under the PLRA). Springfield Township, 28 PPER ¶ 28164 (Final Order 1997)(a derivative violation of section 6(1)(a) occurs whenever an employer commits any other unfair labor practice).

The Association contends that the Borough unilaterally changed a mandatory subject of bargaining because, as set forth in finding of fact 3, its council passed a motion "to switch the Borough[']s health insurance for all employees from Capital Blue Cross to Highmark Blue Shield effective September 1, 2006," without bargaining with the Association. Without any citation to authority, the Association submits that "[t]he fact that the change in coverage was prospective is of no moment" (brief at 5). Thus, the Association would have the Board ignore the fact that council subsequently rescinded the motion (finding of fact 4) and the fact that the Borough never changed the health insurance coverages for its police officers (finding of fact 5).

In City of Allentown, 19 PPER ¶ 19190 (Final Order 1988), however, the Board found that an employer does not commit unfair labor practices under sections 6(1)(a) and 6(1)(e) by announcing its intention to change a mandatory subject of bargaining. The Borough did no more than that here. Thus, although health insurance for police officers is a mandatory subject of bargaining, Douglass Township, 36 PPER 160 (Final Order 2005), this portion of the charge must be dismissed. See also Churchill Borough, 28 PPER ¶ 28042 (Proposed Decision and Order 1997)(no violations of sections 6(1)(a) and 6(1)(e) occurred where an employer authorized a change to a health insurance plan for its police officers but never changed the plan); New Castle Area School District, 21 PPER ¶ 21133 (Proposed Decision and Order 1990)(no violations of the Public Employe Relations Act's counterparts to sections 6(1)(a) and 6(1)(e) occurred where an employer passed then rescinded a resolution authorizing a change in the carrier of its dental insurance for its employees).

An employer also commits unfair practices under sections 6(1)(a) and 6(1)(e) if it violates the parties' collective bargaining agreement by repudiating one of its provisions. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000). If, however, the employer has a sound basis for ascribing a particular meaning to the agreement and for arguing that it acted in conformity with its construction of the agreement, then no such unfair labor practices may be found. Id. In such a case, only an arbitrator has jurisdiction to find that the employer violated the agreement. Id.

The Association contends that the Borough violated the parties' collective bargaining agreement because article 25 "is clear that the Council must get the approval of the Littlestown Police Officers' Association before making any changes to health care insurance" (brief at 4) and because council did not do so before passing the motion "to switch the Borough[']s health insurance for all employees from Capital Blue Cross to Highmark Blue Shield effective September 1, 2006." Given that council subsequently rescinded the motion (finding of fact 4) and the fact that the Borough never changed the health insurance coverages for its police officers (finding of fact 5), however, it is apparent that the Borough has a sound basis for arguing that it did not repudiate the agreement. Thus, this portion of the charge must be dismissed.

An employer commits unfair labor practices under sections 6(1)(a) and 6(1)(c) if it discriminates against its police officers for having engaged in an activity protected by the PLRA. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996). In such a case, the motivation creates the offense. Id. If a discriminatory intent on the part of the employer is not shown, however, then no violation of those sections may be found. Cleona Borough, 28 PPER ¶ 28065 (Final Order 1997).

Reiterating that the Borough changed the health insurance coverages of its police officers when its council passed the motion "to switch the Borough[']s health insurance for all employees from Capital Blue Cross to Highmark Blue Shield effective September 1, 2006," the Association contends that the Borough did so "for the specific purpose of marginalizing the Association." As set forth in its brief, the Association submits that "[s]ince the change affected all employees of Littlestown Borough, uniformed or not, unionized or not, Borough Council marginalized the Association's role in the collective bargaining process" (brief at 5). The fact that the motion applied to all employees, unionized or not, however, undercuts rather than supports a finding that the Borough acted with a discriminatory intent. Accordingly, this portion of the charge must be dismissed.

Given the foregoing, the Borough's contention that it bargained over any change that might have occurred need not be addressed.

CONCLUSIONS

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

1. The Borough is an employer under section 3(c) of the PLRA.
2. The Association is a labor organization under section 3(f) of the PLRA.
3. The Board has jurisdiction over the parties.
4. The Borough has not committed unfair practices under sections 6(1)(a), 6(1)(c) and 6(1)(e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed

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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixth day of December 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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December 6, 2006

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LITTLESTOWN BOROUGH
Case No. PF-C-06-128-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Littlestown Borough