

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

NORTH WALES BOROUGH POLICE DEPARTMENT :  
 :  
 v. : Case No. PF-C-06-8-E  
 :  
 NORTH WALES BOROUGH :

**PROPOSED DECISION AND ORDER**

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the North Wales Police Department (Union) on January 19, 2006 alleging that North Wales Borough (Borough) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

. On February 27, 2006, the Union filed an amended charge. On March 28, 2006, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for May 19, 2006 in Norristown, Pennsylvania. On May 1, 2006 the Union filed a second amended charge. On May 4, 2006 the Secretary issued another complaint and notice of hearing keeping the original hearing date. Because of continuance requests the hearing was rescheduled for July 28, 2006 and held on that date. Another day of hearing was necessary and was held on August 8, 2006. On both hearing dates, the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

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

**FINDINGS OF FACT**

1. The Borough is a political subdivision of the Commonwealth and an employer.
2. The Union is a labor organization.
3. The Union and the Borough are parties to a collective bargaining agreement (CBA) that includes, *inter alia*, dollar amounts for an educational incentive, a sick leave buyback provision, and specified longevity payments. The CBA also specifies that unit members receive enumerated health care benefits without employe contribution. (N.T. 18,19; Joint Exhibit 4)<sup>1</sup>.
4. The Borough passed a budget for fiscal year 2006 on December 13, 2005. The line items for the above-enumerated three contractual benefits were not funded in this budget. (N.T. 21, 61; Joint Exhibit 5).
5. On February 14, 2006, Borough Council opened the December 13 budget and passed a revised budget. That revised budget did not fund line items for the educational incentive or the sick leave buyback provision. It did, however, fund longevity payments in the amount of \$1,000.00. (N.T. 41, 63, 64, 72; Joint Exhibit 6).
6. Despite the budget's configuration, the Borough continued to pay unit members the benefits in question, as they came due, under the CBA. (N.T. 25, 26, 57, 58, 72-74, 78, 79-81; Borough Exhibit 1-3).
7. The parties stipulate and agree that bargaining unit members do not contribute toward their contractually mandated health care. There is also testimony that the Borough

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<sup>1</sup> There are two transcripts, one each from two days of hearing, July 28 and August 8, 2006. Despite being specifically requested to do so, the reporting agency neglected to serially paginate the transcripts. All references in this proposed order are to the July 28, 2006 hearing transcript, unless otherwise noted.

has not charged bargaining unit members for their health care, but continues this benefit according to the CBA. (N.T. 35, 52, 94).

## DISCUSSION

The original charge alleged a violation of Section 6(1)(a) and (e) of the PLRA by the Borough for two reasons. The first reason was because the Borough eliminated the dollar amounts for certain line items in the 2006 budget where those line items were for benefits enumerated in the parties' collective bargaining agreement. Those line items funded an education incentive, longevity payments, and sick time buybacks. The second reason was because the Borough started a policy whereby all employees would pay five percent of their medical insurance premium despite a contractual provision to the contrary.

The first amendment to this charge added a violation of Section 6(1)(d) of the PLRA and pled additional facts. Those additional facts were that the Borough had passed a budget which eliminated funding for two of the six bargaining unit positions, and laid-off two officers. These actions, asserted the Union, were in retaliation for the Union's filing of the original charge in this case.<sup>2</sup>

On May 1, 2006 the Union filed the second, and last, amendment to this charge. It alleged violations of Section 6(1)(a) and (e) of the PLRA when the Borough indicated it would replace the two full-time, furloughed officers with part-time officers.<sup>3</sup>

The Union, in fact, did prove that the Borough passed a budget with either no dollar amounts, or greatly reduced dollar amounts in the line items for an educational incentive, longevity payments, and sick time buybacks. Nevertheless, the Borough has continued to pay eligible officers two of those benefits. For the third benefit, sick time buyback, officers do not become eligible until December of any given year, so there is no evidence of any change in that benefit. Additionally, despite the Union's allegation otherwise, the Borough has not required any contribution for medical insurance from bargaining unit members.

Essentially, the Union asks that the Board find the Borough presumptively guilty of violating the PLRA for some future acts which the Borough might or might not perform. Insofar as the Union argues that the Borough's elimination of line item amounts from its budget somehow evidences a future intent to eliminate payments under those line items, that argument is meritless: the Borough's manager testified that because contract negotiations were then underway, the Borough's practice was to leave those contested budget line items blank until amounts had either been agreed to, or an interest arbitration award set them, since the budget could be reopened at anytime.

Board law is clear on this issue: where an employer's purported unilateral actions have not actually effected a change in the bargaining unit's terms and conditions of employment, the Board will dismiss a refusal to bargain charge as premature. APSCUF v. PLRB, 611 A.2d 898 (Pa. Cmwlth, 1995), *appeal denied*, 542 Pa. 649, 666 A.2d 1058 (1995); Dormont Borough v. PLRB, 794 A.2d 402, 408 n. 17 (Pa. Cmwlth. 2002). The Union has shown no effect on the bargaining unit of the changes the Borough has so far only made on paper.

The Union in its first amended charge alleged a violation of Section 6(1)(d) of the PLRA by the Borough when it laid-off two officers in retaliation for the Union's filing of the initial charge. The proofs offered by the Union do not establish any connection between the filing of the original charge and the subsequent lay-offs, other than their

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<sup>2</sup> In its single brief, covering both this charge and charge PF-C-06-107-E, the Union urges the Board to find only that the Borough "committed unfair labor practices within the meaning of Section 6.1(a) [sic] and (e) of the PLRA and Act 111." (Union brief at 34). The Union has therefore abandoned its allegation in this charge that the Borough violated Section 6(1)(d) of the PLRA.

<sup>3</sup> At the outset of the Hearing on August 8, 2006, the Union's attorney asked to withdraw the portion of this charge dealing with the Borough's replacement of the two furloughed, full-time officers with part-time officers since the Union's amendment to a sister charge (PF-C-06-107-E) covered just that issue. The Borough's attorney did not object and the request was granted. (August 8 N.T. 9, 10). This action by the Union essentially removed the second amendment from this charge.

order in time. The Union attempts to offer proofs more aligned with a violation of Section 6(1)(c) of the PLRA, a section not charged. The Board has ruled that elements establishing a retaliation charge are subsumed within the elements for establishing the more general discrimination charge, and therefore a Section 6(1)(c) charge that proves a Section 6(1)(d) violation is acceptable. Lebanon County (Sheriff), 32 PPER ¶ 32006 (Final Order, 2000).<sup>4</sup> The Board has not, however, ruled the reverse of that proposition to be the law. The Union has not proved a violation of Section 6(1)(d) of the PLRA. Therefore, to the extent that allegation may not have been waived by the Union, it is dismissed. (See footnote 2).

Since the Union has not proved that the Borough violated Section 6(1)(a), (d) and (e) of the PLRA as read with Act 111, this charge is dismissed in its entirety.

#### 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 within the meaning of Section 3(c) of the PLRA as read with Act 111.
2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA as read with Act 111.
3. The Board has jurisdiction over the parties.
4. The Borough has not committed unfair labor practices within the meaning of Sections 6(1)(a), (d) and (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 charge is dismissed and the complaint rescinded.

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code §95.98(a) within twenty (20) days of the date hereof, this Decision and Order shall become absolute and final.

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

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

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<sup>4</sup> Actually, in Lebanon County, *supra*, the Board was opining on the Public Employe Relations Act, 43 P.S. § 1101.101 to 1101.2301, specifically Section 1201(a)(3) and (4). Those two sections essentially mirror Section 6(1)(c) and (d) of the PLRA.