COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-06-60-E
	:	
BUCKS COUNTY	:	

PROPOSED DECISION AND ORDER

On February 13, 2006, the Bucks County Security Guards Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that Bucks County (County) violated sections 1201(a)(1), 1201(a)(3), 1201(a)(4) and 1201(a)(5) of the Public Employe Relations Act (Act) by changing employe terms and conditions of employment unilaterally and "in retaliation against the bargaining unit members for their organizing efforts." On April 5, 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 May 22, 2006, if conciliation did not resolve the charge by then. On April 24, 2006, the County filed an answer admitting that it had not paid a clothing allowance as it had in the past but denying that it committed any of the unfair practices charged. The hearing examiner subsequently continued the hearing upon the request of both parties.

On June 12, 2006, the Association filed an amended charge alleging that the County committed further unfair practices under sections 1201(a)(1), 1201(a)(3), 1201(a)(4) and 1201(a)(5) of the Act by changing additional employe terms and conditions of employment unilaterally and "in retaliation against the bargaining unit members for their organizing efforts." On July 5, 2006, the Secretary issued an amended complaint and notice of hearing assigning the amended charge to conciliation and directing that a hearing on the charge as amended be held on September 6, 2006, if conciliation did not resolve the amended charge by then. On July 24, 2006, the County filed an answer denying that it committed any of the other unfair practices charged.

On September 6, 2006, a hearing on the charge as amended was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses.[1] On November 3, 2006, each party filed a brief by deposit in the U.S. Mail.

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. In the 1990's, the County adopted an attendance and punctuality policy under which its security officers are assigned three points for each time they are "not at work for his/her normally scheduled workday" and are subject to discipline if they accumulate

[1] At the hearing, the hearing examiner sustained the County's relevancy objections to the Association's presentation of evidence regarding the County's discipline of Officer Chris Tomlinson for leaving work early on March 20, 2006 (N.T. 80-88). The Association argued that the proferred evidence related to its charge that the County committed unfair practices by changing employe work schedules and therefore was relevant, while the County argued that the proferred evidence was irrelevant because the Association made no reference to Officer Tomlinson in the charge. The Association also argued that the proferred evidence was relevant to show that the County committed unfair practices by changing the procedure for calling off sick, while the County argued that the proferred evidence was irrelevant because the Association had filed no such charge. Even assuming without deciding that the charge with respect to changing employe work schedules may be read as broadly as the Association reads it, however, the proferred evidence hardly shows that the County changed employe work schedules. Moreover, the Board only has jurisdiction to find the unfair practices alleged in a charge. Iroquois School District, Case No. PERA-C-05-608-W (Final Order, November 21, 2006); Commonwealth of Pennsylvania (Liquor Control Board), 22 PPER ¶ 22009 (Final Order 1991), citing PHRC v. United States Steel Corporation, 458 Pa. 559, 325 A.2d 910 (1974). A close review of the charge does not reveal any allegation that the County committed unfair practices by changing the procedure for calling off sick. The County's objections were sustained accordingly.

more than 10 points over a three-month period. The first level of discipline is a written reprimand. (N.T. 123, 156-158; Employer Exhibit 1)

2. On August 26, 1999, the County issued a written reprimand to a security officer (Michael Wilker) for being in violation of the attendance and punctuality policy. (N.T. 124; Employer Exhibit 2)

3. In 2003 or 2004, the County issued a written reprimand to a security officer (Thomas Wicks) for being in violation of the attendance and punctuality policy. (N.T. 70)

4. By memorandum dated January 26, 2004, the County's director of security (Thomas P. O'Rourke) wrote to the security officers in part as follows:

> "All vacation requests for 2004 must be submitted by Friday February 20, 2004. The employee with the longest continuous Department service shall be granted the choice of vacation days. If you don't sign up by the closing date for vacation time and someone else with less seniority does, you forfeit this privilege.
>
> The request must be to use Vacation Time, and minimum staffing levels must be maintained. Minimum staffing on Day Shift is 6 persons, evening Shift is 2 persons and Night Shift is 1 person. Only one person is to be permitted to be off at Domestic Relations at any given time.
>
> Every effort will be made to accommodate vacation request: however, staffing levels must be maintained or cause paying unnecessary overtime. Single day request that create[s] overtime will be limited to four per year."

(Union Exhibit 6)

5. In January 2005, the County included in the last paycheck of the security officers for the month $200.00 of a $400.00 clothing allowance for the year. (Pleadings, charge ¶ 12, answer ¶ 12)

6. In the spring of 2005, the County for "a short period of time" assigned overtime to security officers who placed their name on a list. The County thereafter assigned overtime to whomever it wanted. (N.T. 49-51, 66, 153-154)

7. On August 1, 2005, the Association filed with the Board a petition to represent the security officers. (Case No. PERA-R-05-293-E)

8. On September 1, 2 and 21, 2005, Officer Patricia Villareale took off from work. (N.T. 93)

9. On September 29, 2005, the County filed with the Board a memorandum of agreement for an election. (Case No. PERA-R-05-293-C)

10. On October 6, 2005, Officer Villereale took off from work. (N.T. 93)

11. On October 26, 2005, the Board certified the Association as the exclusive representative of the security officers. (Case No. PERA-R-05-293-E)

12. On October 31, 2005, Officer Villereale took off from work. (N.T. 93)

13. On November 1, 2005, Lieutenant David Myers orally reprimanded Officer Villareale for being absent from work. (N.T. 92-93)

14. On November 8, 2005, the County required security officers who were scheduled off that day to work mandatory overtime instead in order to provide additional security needed at the courthouse during the processing of election returns from around the County. (N.T. 12, 125-126)

15. By memorandum dated December 12, 2005, Lieutenant Myers wrote to the security officers in part as follows:

> "In order to maintain the required minimal staffing levels, the following policy will be in effect starting January 1, 2006.
>
> There is to be only One Security officer off on (Vacation/Comp) per shift at the Courthouse or Neshaminy Manor."

The County did not bargain with the Association before he did so. (N.T. 60-61, 115-116; Union Exhibit 7)

16. On January 26, 2006, the County issued paychecks to the security officers without including a $200.00 clothing allowance in them. The County did not bargain with the Association before doing so. (N.T. 43, 161-162; Pleadings, charge ¶ 11, answer ¶ 11)

17. By memorandum dated February 1, 2006, Sergeant K. F. Frey wrote to the security officers as follows:

> "Vacation times submitted prior to this date have been approved or denied according to the departmental policy. After this date [] any request for an absence from duty will be approved on a first request basis. This is a reminder that only one absence per shift will be approved. Keep in mind that departmental policy has always been that Comp Time use could not create overtime. Although this has been somewhat relaxed and overlooked over the passed years; it will again be enforced. Vacation time will have the highest priority in granting absence from duty requests. Comp Time will be secondary (i.e. one officer submits a CU request on the same day as another officer who submits a Vac request. The Vac request will be granted first).
>
> No absences will be approved during **range qualification dates**. These dates will be posted as soon as I am notified by range instructors.
>
> The following procedure will apply if any officer submitted a request for an absence from duty and had it denied.
>
> > Submit a written request to the schedule sergeant to have the original request reviewed and express any mitigating circumstances that may influence a reversal.
> >
> > If the schedule sergeant still denies the request an appeal may be made through the chain of command (i.e. Sgt →, Lt. →, Director/Department Head →, Division Leader)."

(Union Exhibit 5)

18. By memorandum dated February 13, 2006, Mr. O'Rourke wrote to Officer John Wolper as follows:

> "Effective the week of February 20, 2006 your assigned shift hours are changed from 5 AM – 1 PM to 6:30 AM – 2:30 PM Monday thru Friday. There is no need for three officers to be on duty from 5 AM to 6:30 AM.
>
> This change is necessary to provide additional manpower from 1 PM to 2:30 PM. As you may be aware, we have had to deploy the portable Metal detector to screen the public coming back from lunch."

(Union Exhibit 9)

19. Within five or six months of September 6, 2006, the County's prison guards monitored security cameras at the courthouse. When the prison guards are not there, security officers monitor the security cameras. (N.T. 45, 67, 117)

DISCUSSION

The Association has charged that the County committed unfair practices under sections 1201(a)(1), 1201(a)(3), 1201(a)(4) and 1201(a)(5) by changing employe terms and conditions of employment unilaterally and "in retaliation against the bargaining unit members for their organizing efforts." According to the Association, proof of union animus on the part of the County may be found in the timing of events and statements made by Lieutenant Myers.

The County has answered that it changed and/or eliminated a clothing allowance that it paid in the past but did not commit any of the unfair practices charged. According to the County, it maintained the status quo after the Association was certified to represent its security officers and took no action against them because they organized.

I. The alleged unilateral changes to employe terms and conditions of employment

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it unilaterally changes a mandatory subject of bargaining, Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978), but not if it unilaterally changes a matter of inherent managerial policy. Joint Bargaining Committee of PSSU and PESEA v. PLRB, 503 Pa. 236, 469 A.2d 150 (1983).

The charging party has the burden of proving its charge by substantial evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Thus, no violation of sections 1201(a)(1) and 1201(a)(5) may be found if the charging party does not show by substantial evidence that the employer changed a mandatory subject of bargaining. Clarks Summit Borough, 29 PPER ¶ 29216 (Final Order 1998).[2] Nor may a violation of those sections be found if the charging party does not show by substantial evidence that the employer changed a mandatory subject of bargaining unilaterally, City of Philadelphia, 23 PPER ¶ 23152 (Final Order 1992), or within the four month period for the filing of a charge. Commonwealth of Pennsylvania, Pennsylvania State Police, 37 PPER 4 (Final Order 2006).

As set forth in the specification of charges, the Association first alleges that "[o]n or about November 1, 2005, the County unilaterally promulgated a policy placing restrictions/conditions on the use of sick leave and/or days absent." According to the Association, the County did so when "Unit Member Patricia Villareale was issued a verbal warning by Lt. David Myers for an alleged violation of the County's absenteeism point system" because "[p]rior to November 1, 2005, an employee taking sick leave was not subject to the absenteeism point system under which Patricia Villareale was issued a verbal warning." The record does not support the charge. As set forth in finding of fact 13, the record shows that Lieutenant Myers orally reprimanded Officer Villareale on November 1, 2005, for being absent from work. As set forth in findings of fact 1-3, however, the record also shows that well before he did so the County not only adopted a policy placing restrictions/conditions on the use of sick leave and/or days absent but also disciplined two other security officers (Officer Wilker and Officer Wicks) under it. Thus, although a policy of that nature is a mandatory subject of bargaining, Greater Johnstown School District, 19 PPER ¶ 19112 (Final Order 1988), there is no basis for finding that the County changed such a policy when Lieutenant Myers issued the verbal warning to Officer Villareale. Accordingly, under the analysis set forth in Clarks Summit Borough, supra, this portion of the charge must be dismissed.

The Association contends that support for a finding that the County had no policy placing restrictions/conditions on the use of sick leave and/or days absent before

[2] The Association cites New Britain Township, 33 PPER ¶ 33069 (Final Order 2002), for the proposition that an employer may be found to have committed unfair practices under sections 1201(a)(1) and 1201(a)(5) even though it has not changed a mandatory subject of bargaining, but the analysis set forth in that case only applies when an employer refuses a request to bargain over a mandatory subject of bargaining. In such a case, whether or not the employer has changed a mandatory subject of bargaining is irrelevant. The Association has charged that the County unilaterally changed mandatory subjects of bargaining; the Association has not charged that the County refused a request to bargain them. Accordingly, the analysis set forth in Clarks Summit Borough rather than in New Britain Township applies.

Lieutenant Myers orally reprimanded Officer Villareale on November 1, 2005, may be found in the testimony of two of its witnesses (Officer Edwin Howe and Officer Villareale) that they were not aware of any such policy at the time (N.T. 11-12, 94). As set forth in finding of fact 1, however, the County's human resource director (Carmen Thome) credibly testified that the County adopted such a policy in the 1990's. As set forth in finding of fact 2, the record also shows that another security officer (Officer Wilker) was written up by the County under the policy in 2001. In addition, as set forth in finding of fact 3, another of the Association's witnesses (Officer Wicks) testified that he was written up by the County under the policy in 2002 or 2003. On that record, the fact that Officers Howe and Villareale were not aware of the policy hardly supports a finding that the County had no such policy before Lieutenant Myers orally reprimanded Officer Villareale on November 1, 2005.

As set forth in the specification of charges, the Association next alleges that "[o]n or about November 7, 2005, the County unilaterally promulgated a policy, which changed the manner in which bargaining unit members were scheduled to work." According to the Association, the County did so when "Lt. Myers notified certain bargaining unit members including, but not limited to, Union President Ed Howe, that they would be required to work on November 8, 2005 even though it was their normal day off, and they were not on the schedule posted on or about October 25, 2005." The record does not support the charge. Even assuming without deciding that the County thereby changed the manner in which bargaining unit members were scheduled to work, the record does not show that the County did so unilaterally. Thus, under the analysis set forth in City of Philadelphia, supra, this portion of the charge must be dismissed for that reason alone. Moreover, a change in the schedule of individual employes is a matter of inherent managerial policy in any event. As the Board explained in Brandywine Heights School District, 29 PPER ¶ 29232 (Final Order 1998):

> "The [employer] has a right expressly granted under Section 702 of the Act to direct its employee. The routine direction of individual employes to perform work or not to perform work is a protected managerial prerogative and not mandatorily negotiable. The obligation to bargain in this regard usually arises when the employer makes a classification wide or bargaining unit wide changes in hours of employes based upon the Section 701 obligation to negotiate 'hours' and 'wages' as applied to the bargaining unit as a whole. [O]ur review of the unamended charge of unfair practices as originally filed does not disclose that the [employer's] action transcended mere direction of an individual in the bargaining unit and does not rise to the status of a refusal to bargain over the wages, hours or working conditions of the bargaining unit as a whole."

29 PPER at 564. Accordingly, this portion of the charge must be dismissed for that reason as well.

The Association cites Upper Saucon Township v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993), for the proposition that an employer is under an obligation to bargain over a change to employe schedules. In that case, the court held that an employer violated the private sector counterparts to sections 1201(a)(1) and 1201(a)(5) when it unilaterally changed the shifts of police officers covered by the Pennsylvania Labor Relations Act (PLRA). The test for deciding whether or not a matter is a mandatory subject of bargaining for police officers under the PLRA is different from the test for deciding whether or not a matter is a mandatory subject of bargaining under the Act, however. Under the PLRA, if an employer's interest in a matter "substantially outweighs" the interest of its police officers in the matter, then the matter is a managerial prerogative. Plumstead Township v. PLRB, 713 A.2d 730, 734 (Pa. Cmwlth. 1998). By contrast, under the Act, an employer's interest in a matter need only "outweigh[]" its employes' interest in the matter in order for the matter to be a matter of inherent managerial policy. PLRB v. State College Area School District, 461 Pa. 494, 507, 337 A.2d 262, 268 (1975). Moreover, even under the PLRA, a change to the schedule of an individual employe is management prerogative. City of Reading, 30 PPER ¶ 30121 (Final Order 1999). The Association's reliance on Upper Saucon Township is, therefore, misplaced.

As set forth in the specification of charges, the Association next alleges that "[o]n December 12, 2005, the County unilaterally promulgated a policy effective January 1, 2006, placing restrictions/conditions on the use of vacation . . . time."[3] According to the Association, the County "ordered that there is to be only one security officer off on vacation . . . time per shift at the County's Courthouse and Neshaminy Manor facilities" even though "an employee taking vacation . . . time was not subject to" such a restriction in the past.[4] The record supports the charge. As set forth in finding of fact 4, the record shows that the County's vacation policy in effect prior to January 1, 2006, only limited the number of security officers in domestic relations who could be off on vacation at any one time. As set forth in finding of fact 15, the record shows that effective January 1, 2006, the County unilaterally restricted the number of security officers who could be off on vacation at any one time to one per shift regardless of where they work. The use of leave by employes is a mandatory subject of bargaining, Mifflin County School District, 22 PPER ¶ 22229 (Final Order 1991), aff'd, 23 PPER ¶ 23187 (Court of Common Pleas of Mifflin County 1992); City of Nanticoke Housing Authority, 34 PPER 23 (Proposed Decision and Order 2003), so it is apparent that the County committed unfair practices under sections 1201(a)(1) and 1201(a)(5) as charged.

The County contends that it did not change the status quo because it "has always adjusted the staffing of its workforce and, in particular, its security officers for public and employee safety as well as eliminating unnecessary overtime" (brief p. 16). The County also points out that its director of emergency services (John D. Dougherty, Jr.) testified that its need for security services increased after 2003 (N.T. 102-104), that Lieutenant Myers testified that it only changed the policy to address staffing needs (N.T. 128) and that Ms. Thome testified that it has long sought to control its overtime costs (N.T. 156-158).

The County's contention is without merit. In order to maintain the status quo, an employer has to preserve the employe terms and conditions of employment in effect at the time of the Board's certification of an exclusive representative for its employes. Lawrence County Housing Authority, 5 PPER 39 (Final Order 1974). Thus, to the extent that the County's contention is that it had the right to adjust its vacation policy after the Association's certification just as it had prior to the Association's certification, the law provides otherwise. To the extent that the County's contention is that it did not change the status quo because in practice it always limited the number of security officers who could be on vacation to one per shift, the record does not show that to be the case. There is, therefore, no basis for finding that the County maintained the status quo. Moreover, the dispositive inquiry in a charge of this nature is whether or not the employer changed a mandatory subject of bargaining unilaterally. Cumberland Valley School District, supra. Whether or not the employer had a non-discriminatory reason for doing so is irrelevant. City of Aliquippa, 27 PPER ¶ 27037 (Proposed Decision and Order 1996). Thus, the County's motivation for changing its vacation policy provides no defense to the charge.

As set forth in the specification of charges, the Association next alleges that "[o]n or about January 26, 2006, the County unilaterally promulgated a policy that changed and/or eliminated a benefit [] which bargaining unit members had received in the past prior to certification." According to the Association, "[p]rior to January 26, 2006, the unit members received an annual clothing [allowance] of four hundred [dollars] ($400) with the first clothing allowance payment of two hundred [dollars] ($200) included in the last paycheck of January of each year" yet did not receive the same in their paychecks of January 26, 2006. The record supports the charge. As set forth in finding of fact 5, the record shows that in January 2005 the County paid its security officers $200.00 of a

[3] The Association also alleged that the County placed restrictions/conditions on the use of compensatory time, but the Association does not argue that point in its brief. Any argument not presented to a hearing examiner is waived. SSHE, infra. Accordingly, the allegation that the County placed restrictions/conditions on the use of compensatory time will not be addressed.

[4] In its brief, the Association contends that the County also committed unfair practices by unilaterally restricting the length of time the security officers could be off on vacation during a peak period, but the Association did not allege as much in the charge. As noted above, the Board only has jurisdiction to find the unfair practices alleged in a charge. Iroquois School District, supra; Commonwealth of Pennsylvania (Liquor Control Board), supra. Accordingly, the Association's contention will not be addressed.

$400.00 annual clothing allowance. As set forth in finding of fact 16, the record shows that on January 26, 2006, the County unilaterally issued paychecks to the security officers without including a $200.00 clothing allowance in them. In Cumberland Valley School District, supra, the court found that fringe benefits such as life and heath insurance and tuition reimbursement are compensation for services rendered and as such are wages as defined in section 301(14) of the Act and expressly made subject to bargaining under section 701 of the Act. A clothing allowance likewise is compensation for services rendered and as such is a mandatory subject of bargaining as well, so it is apparent that the County committed unfair practices under sections 1201(a)(1) and 1201(a)(5) as charged. See also Commonwealth of Pennsylvania, Pennsylvania Game Commission, 20 PPER ¶ 20163 (Proposed Decision and Order 1989)(meal allowance found to be a mandatory subject of bargaining).

The County admits that it did not pay the clothing allowance as it had in the past but contends that it was under no obligation to do so in January 2006. The County points out that Ms. Thome testified that the parties were negotiating for their initial collective bargaining agreement at the time and that the negotiations might result in an agreement to eliminate the clothing allowance as a separate payment and to include it in employe wages instead (N.T. 161). The County cites Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005), for the proposition that an employer does not change the status quo by refusing to pay a benefit under those circumstances. In that case, however, the court only held that an employer is under no obligation to pay longevity increases in order to maintain the status quo. The court did not hold that an employer is under no obligation to pay any benefits to maintain the status quo; to the contrary, the court cited Cumberland Valley School District, supra, for the proposition that an employer has to pay existing benefits in order to maintain the status quo. The County did not refuse to pay an increase in the clothing allowance; rather, the County refused to pay the existing clothing allowance. Thus, Pennsylvania State Park Officers Association provides no support for the County's contention.

As set forth in the specification of charges, the Association next alleges that "[o]n or about March 21, 2006 and on various occasions thereafter, the County assigned Prison Guards, non-bargaining unit members, to perform certain duties and functions which have been and continue to be performed by bargaining unit members including, but not limited to, the monitoring of security cameras at the Bucks County Courthouse." The record does not support the charge. The transfer of bargaining unit work to non-members of the bargaining unit is a mandatory subject of bargaining, PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978), but in order for work to be considered bargaining unit work, it must have been performed exclusively by members of the bargaining unit over time. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). Thus, if the work at issue has not been performed by members of the bargaining unit on an exclusive basis over time, then it is not bargaining unit work. Abington School District, 32 PPER ¶ 32129 (Final Order 2001). Moreover, in order for the Board to have jurisdiction to find unfair practices of this nature, the transfer of bargaining unit work had to have occurred before the charge was filed. Commonwealth of Pennsylvania, Pennsylvania State Police, supra. As set forth in finding of fact 17, the record only shows that within five or six months of September 6, 2006, prison guards monitored security cameras at the courthouse, so even assuming without deciding that they were performing bargaining unit work at the time, there is no basis for finding that they did so before the charge was filed on June 12, 2006. Under the analysis set forth in Commonwealth of Pennsylvania, Pennsylvania State Police, supra, then, this portion of the charge must be dismissed for that reason alone. Furthermore, although the record shows that security officers also monitor the security cameras, the record does not show that they did so on an exclusive basis before the prison guards did. Accordingly, under the analysis set forth in City of Allentown, supra, this portion of the charge must be dismissed for that reason as well.

The Association contends that support for a finding that the County transferred bargaining unit work to non-members of the bargaining unit may be found in testimony by Officer Howe that security officers monitored the security cameras before the prison guards did (N.T. 14) and by Officer Wicks that prison guards patrolled as replacements for security officers on weekends (N.T. 67-68). Officer Howe, however, did not testify as

to when the prison guards monitored the security cameras, so the fact remains that the record does not show that they did so any time before the charge was filed. Moreover, the Association did not allege that the County committed unfair practices by using prison guards to patrol on weekends, so the Board has no jurisdiction to find any such unfair practices. Iroquois School District, supra; Commonwealth of Pennsylvania (Liquor Control Board), supra. Furthermore, even if the Board did have jurisdiction to so find, Officer Wicks only testified that the prison guards patrolled on weekends "numerous times within the last four months" (N.T. 68). Thus, under the analysis set forth in Commonwealth of Pennsylvania, Pennsylvania State Police, supra, there is no basis for finding that the County committed any such unfair practices in any event.

As set forth in the specification of charges, the Association next alleges that "[o]n or about February 17, 2006, the County posted the holiday schedule for the remaining holidays in 2006 and excluded certain applicable unit members including, but not limited to, John Wolper." The Association, however, did not prosecute this portion of the charge at the hearing. Nor does the Association argue the point in its brief. Any argument not presented to a hearing examiner is waived. SSHE, 32 PPER ¶ 32118 (Final Order 2001). Accordingly, this portion of the charge must be dismissed.[5]

As set forth in the specification of charges, the Association next alleges that "[o]n or about March 30, 2006 and on various occasions thereafter, the County denied unit members the right to use compensatory time because its use would create overtime for another member." According to the Association, "[p]rior to March 30, 2006, unit members were allowed to use compensatory time whether or not it created overtime for another unit member." The record does not support the charge. The use of compensatory time is a mandatory subject of bargaining. Montgomery County, 14 PPER ¶ 14170 (1983); City of Reading, 31 PPER ¶ 31078 (Proposed Decision and Order 2000), but even assuming without deciding that the County changed its compensatory time policy as charged, the Association has not alleged and the record does not show that the County did so unilaterally. Thus, under the analysis set forth in City of Philadelphia, supra, this portion of the charge must be dismissed.

The Association contends that support for a finding that the County changed its compensatory time policy may be found in a February 1, 2006, memorandum where Sergeant Frey told the security officers to "[k]eep in mind that departmental policy has always been that Comp Time use could not create overtime. Although this has been somewhat relaxed and overlooked over the passed years; it will again be enforced" (Union Exhibit 5) and in the County's denial of requests by Officers Howe and Thomlinson to use comp time (Union Exhibits 4 and 11). Be that all as it may, the fact remains that even assuming without deciding that the County thereby changed its policy regarding compensatory time, the Association has not alleged and the record does not show that the County did so unilaterally.

As set forth in the specification of charges, the Association next alleges that "[o]n or about February 13, 2006 and on numerous occasions thereafter, the County unilaterally began changing the starting and ending times of various shifts including, but not limited to, the 5:00 a.m. to 1:00 p.m. shift." The record does not support the charge. As set forth in finding of fact 18, the record shows that on February 13, 2006, the County changed the shift of one security officer (Officer Wolper) effective the week of February 20, 2006, but the Association did not show that the County did so unilaterally. Thus, under the analysis set forth in City of Philadelphia, supra, this portion of the charge must be dismissed for that reason alone. Moreover, as explained above, a change in the schedule of an individual employe is a matter of inherent managerial policy. Brandywine Heights School District, supra. Accordingly, this portion of the charge must be dismissed for that reason as well.

Again, the Association relies on Upper Saucon Township, supra, for the proposition that an employer is under an obligation to bargain over a change to employe schedules. As set forth above, however, the Association's reliance on that case is misplaced.

[5] The County's timeliness averment relates to this portion of the charge. Given the disposition of this portion of the charge, the County's timeliness averment will not be addressed.

As set forth in the specification of charges, the Association next alleges that "[o]n or about March 16, 2006 and on various occasions thereafter the County began assigning overtime to unit members including part-time employees without utilizing the overtime time list." According to the Association, "[p]rior to March 16, 2006, the County assigned overtime based on an overtime list, which was compiled on a quarterly basis." The record does not support the charge. As set forth in finding of fact 6, the record shows that the County only used an overtime list to assign overtime for a short period of time in the spring of 2005 and that the County assigning overtime to whomever it wanted thereafter. Thus, although the procedure for assigning overtime is a mandatory subject of bargaining, City of Philadelphia, 20 PPER ¶ 20016 (Proposed Decision and Order 1988), there is no basis for finding that the County changed its overtime policy as charged. Under the analysis set forth in Clarks Summit Borough, supra, then, this portion of the charge must be dismissed for that reason alone. Moreover, the Association did not show that the County began assigning overtime to unit members including part-time employees without utilizing the overtime time list unilaterally. Thus, under the analysis set forth in City of Philadelphia, supra, this portion of the charge must be dismissed for that reason as well.

The Association contends that support for a finding that the County changed its overtime policy may be found in testimony by Officer Wicks that after January 1, 2006, the County stopped assigning overtime based on a seniority list as it had in the past (N.T. 66-67) and by Officer Wolper that the County used an overtime list for a short period of time in the spring of 2005 (N.T. 49-50). Officer Wolper also testified, however, that the overtime list "was never kept up" and that he had not seen it "in a long time, a long time" (N.T. 50). He further testified that "[t]hey would never go by seniority to ask anybody for overtime" (N.T. 51). The testimony of Officer Wicks and Officer Wolper is, therefore, conflicting and thus provides no support for the Association's contention.

II. The alleged discriminatory changes to employe terms and conditions of employment

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(3) if it discriminates against employes for engaging in an activity protected by the Act. St. Joseph's Hospital, supra. Organizing is an activity protected by the Act. Montour County, 35 PPER 147 (Final Order 2004). In order to prove unfair practices under sections 1201(a)(1) and 1201(a)(3), the charging party must present during its case-in-chief a prima facie case of discrimination. Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993). If the charging party does not present a prima facie case of discrimination during its case-in-chief, the employer's defense to the charge need not be addressed. Montour County. The timing of events alone provides an insufficient basis for finding that an employer violated sections 1201(a)(1) and 1201(a)(3). Pennsylvania State Park Officers Association, supra. The timing of events coupled with an overt display of union animus, however, will. City of Erie, 29 PPER ¶ 29001 (Final Order 1997). Again, any finding of an unfair practice must be supported by substantial evidence. St. Joseph's Hospital, supra.

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(4) if it retaliates against employes for filing a petition for representation with the Board. Lebanon County, 32 PPER ¶ 32006 (Final Order 2000). In deciding whether or not an employer has violated sections 1201(a)(1) and 1201(a)(4), the Board employs the same analysis it uses in deciding whether or not an employer has violated sections 1201(a)(1) and 1201(a)(3). Id.

As set forth in the specification of charges, the Association alleges that the County changed employe terms and conditions of employment "in retaliation against the bargaining unit members for their organizing efforts."[6] According to the Association, "the County has attempted to frustrate the efforts of the bargaining unit members and Association at every turn." During its case-in-chief, however, the Association did not present a prima facie case of discrimination. Accordingly, this portion of the charge must be dismissed for that

[6] In its brief, the Association also contends that the County committed unfair practices by discriminating against the security officers because the Association requested bargaining on their behalf, but the Association did not allege as much in the charge. As noted above, the Board only has jurisdiction to find the unfair practices alleged in a charge. Iroquois School District, supra; Commonwealth of Pennsylvania (Liquor Control Board), supra. Accordingly, the Association's contention will not be addressed.

reason alone, and the evidence presented by the County in defense of the charge after the Association rested its case-in-chief will not be addressed.

The Association contends that proof of union animus on the part of the County may be found in the timing of events. The Association finds support for its contention in the fact that the Board certified it to represent the security officers on October 26, 2005, and the fact that the County thereafter took a series of actions against the security officers beginning with the verbal warning to Officer Villareale by Lieutenant Myers less than one week later on November 1, 2005. The timing of events alone, however, will not support a finding of union animus. Pennsylvania State Park Officers Association, supra. Moreover, as set forth in findings of fact 7 and 9, the record shows that the County entered into a memorandum of agreement for an election after the Association filed a petition to represent the security officers. Thus, contrary to the Association's allegation that "the County has attempted to frustrate the efforts of the bargaining unit members and Association at every turn," the record shows otherwise.

The Association also contends that proof of union animus on the part of the County may be found in statements made by Lieutenant Myers. The Association first points out that Officer Villareale testified that when Lieutenant Myers issued the verbal warning to her on November 1, 2005, he said, "now that you guys are starting this union, I have to be strict" (N.T. 92). As set forth in findings of fact 8, 10 and 12, however, Officer Villareale also testified that she took off from work the day before November 1, 2005, and on three other occasions during the preceding two months. Moreover, as set forth in finding of fact 3, the Association also presented testimony by Officer Wicks that he had been written up under the County's absenteeism policy in 2003 or 2004. Lieutenant Myers, of course, did not write up Officer Villareale; he only gave her a verbal warning. Thus, although Lieutenant Myers' statement may have been coercively phrased, the record does not show that he enforced the policy more strictly than in the past. No union animus on the part of the County is apparent on that record.

The Association next points out that Officer Wicks testified that on June 5, 2006, Lieutenant Myers, Sergeant Frey and two other unnamed officers "were discussing when new officers come in, could they make sure or find a way that they were hired on the basis that they would be nonunion . . . and how if they waited long enough the union would be gone because eventually officers would be leaving for police jobs" (N.T. 71). Officer Wicks did not attribute any particular statement to Lieutenant Myers, however. Moreover, Officer Wicks testified on cross-examination that when similar conversations occurred on other occasions Lieutenant Myers "would come over and say, 'You know I was only kidding'" (N.T. 73). No union animus on the part of the County is apparent on that record either.

CONCLUSIONS

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

1. The County is a public employer under section 301(1) of the Act.

2. The Association is an employe organization under section 301(3) of the Act.

3. The Board has jurisdiction over the parties.

4. The County has committed unfair practices under sections 1201(a)(1) and 1201(a)(5) of the Act.

5. The County has not committed unfair practices under sections 1201(a)(3) and 1201(a)(4) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the Act:

(a) With the exception of security officers in domestic relations, rescind Lieutenant Myers' memorandum dated December 12, 2005, to the extent that it limits the number of security officers who may be on vacation at any one time to one per shift;

(b) Pay each security officer who received a paycheck on January 26, 2006, a clothing allowance of $200.00 with interest at the simple rate of six per cent per annum from that date to the date of payment;

(c) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit of compliance.

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 first day of December 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

_____

Donald A. Wallace, Hearing Examiner

Direct Dial
717-783-3050

Fax Number
717-783-2974

December 1, 2006

Richardson Todd Eagen, Esquire
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1717 Arch Street, Suite 3210
Philadelphia, PA 19103

BUCKS COUNTY
Case No. PERA-C-06-60-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Bucks County Commissioners

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-06-60-E
	:	
BUCKS COUNTY	:	

AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and 1201(a)(5) of the Act; that with the exception of security officers assigned to domestic relations it has rescinded Lieutenant Myers' memorandum dated December 12, 2005, to the extent that it limits the number of security officers who may be on vacation at any one time to one per shift; that it has paid each security officer who received a paycheck on January 26, 2006, a clothing allowance of $200.00 with interest at the simple rate of six per cent per annum from that date to the date of payment; that it has posted a copy of the proposed decision and order as directed; and that it has served a copy of this affidavit on the Association.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public