

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LITTLESTOWN BOROUGH POLICE OFFICERS ASSOCIATION :  
: v. : Case No. PF-C-06-127-E  
: LITTLESTOWN BOROUGH :

**PROPOSED DECISION AND ORDER**

On July 25, 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 unilaterally changing the work schedule for its police officers. 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 9, 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 11 as follows:

"An officer's work schedule shall be subject to the following terms and conditions, which shall be deemed to have the stated meanings and intent, unless the context of same clearly imparts a different[t] meaning and intent:

QUARTERLY SCHEDULE: On or before the first day of the month preceding the first month of each calendar quarter (January, April, July & October), the Chief of Police shall prepare and post a quarterly work schedule for the entire Police Department for such calendar period. Such schedule shall clearly state each full-time officer's work days (on-duty), his non-work days (off-duty), his work shift for each work day, and shall consist of continuously cycling work weeks. The Chief of Police shall ensure that all full-time members of the Police Department receive, as nearly as possible, an equal allocation of weekends and holidays off-duty. It is understood that the aforesaid quarterly schedules are subject to change for bona fide operational requirements; however, the Borough shall make every effort to satisfy such operational requirements without resorting to a schedule change, if at all possible."

(Joint Exhibit 1)

3. Effective October 1, 2006, the Borough's police chief (Donald F. Baker) implemented a work schedule under which police officers have every sixth weekend off. Prior thereto, police officers had every fifth and sixth weekend off. (N.T. 11, 19-21, 23, 25, 28-29, 66, 101-103, 110-111, 117)

4. Before he implemented the new work schedule, Chief Baker determined that the prior work schedule did not provide the police coverage needed on weekends. (N.T. 111-112, 117-118)

## DISCUSSION

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 unilaterally changing the work schedule for its police officers. The Association contends that the Borough did so when its council authorized its police chief to post a work schedule under which its police officers have every sixth rather than every fifth and sixth weekend off.

The Borough contends that the charge should be dismissed because it was contractually privileged to change the work schedule as it did.

An employer commits unfair labor practices under sections 6(1)(a) and 6(1)(e) if it unilaterally changes a mandatory subject of bargaining. Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). If, however, the parties have negotiated a collective bargaining agreement that addresses the mandatory subject of bargaining and the employer has a sound arguable basis for ascribing a particular meaning to the agreement and has acted in conformity with its construction of the agreement, then no such unfair labor practices may be found. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000). In such a case, the only relief available to the charging party is from an arbitrator pursuant to the filing of a grievance because the employer satisfied its statutory obligation to bargain over the mandatory subject of bargaining when it negotiated the collective bargaining agreement in the first place and therefore cannot be found to have acted unilaterally. As the court explained in Pennsylvania State Troopers Association:

"The [Board] has recognized 'contractual privilege' as an affirmative defense to a charge of unfair labor practices alleging a refusal to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the employer's action was permissible under the agreement. See [Ellwood City Police Wage and Policy Unit v. Ellwood City Borough], 736 A.2d 707 (Pa. Cmwlth. 1999)]; Delaware County Lodge #27 of the Fraternal Order of Police on behalf of the Members of the Police Force of the Borough of Prospect Park v. Prospect Park Borough, 27 PPER [¶] 27222 (Final Order 1996); Jersey Shore Area Education Association v. Jersey Shore Area School District, 18 PPER [¶] 18117 (Final Order 1987)(quoting NCR Corp., 271 NLRB 1212 (1984) as saying that 'where an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it, the [National Labor Relations Board] will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct.')

761 A.2d at 651. Thus, although the work schedule for employees is a mandatory subject of bargaining, Township of Upper Saucon, *supra*, the Board in Commonwealth of Pennsylvania, Harrisburg International Airport, 26 PPER ¶ 26185 (Final Order 2002), noting that the employer had changed a work schedule in conformity with a reasonable construction of the parties' collective bargaining agreement providing that it need only "meet and discuss" before doing so, dismissed a charge alleging that the employer had committed unfair labor practices under sections 6(1)(a) and 6(1)(e) of the PLRA by changing the work schedule unilaterally. See also City of Reading, 30 PPER ¶ 30121 (Final Order 1999), where the Board dismissed a similar charge in light of language in a collective bargaining agreement providing that the employer had "the right to determine schedules for work."

As set forth in finding of fact 2, the record shows that effective January 1, 2006, the parties entered into a collective bargaining agreement providing at article 11 that "the Chief of Police shall prepare and post a quarterly work schedule" and that "the aforesaid quarterly schedules are subject to change for bona fide operational requirements; however, the Borough shall make every effort to satisfy such operational requirements without resorting to a schedule change, if possible" (finding of fact 2). As set forth in findings of fact 3-4, the record also shows that the Borough only changed the work schedule after its police chief (Donald F. Baker) determined that the prior work schedule did not provide the police coverage needed on weekends.

On that record, it is apparent that the Borough was contractually privileged to change the work schedule. The language of article 11 may be read to authorize a change in

work schedules for a bona fide operational requirement, while the fact that the Borough only changed the work schedule after Chief Baker determined that the prior work schedule did not provide the police coverage needed on weekends shows that it acted in conformity with such a construction of article 11. Accordingly, there is no basis for concluding that the Borough changed the work schedule unilaterally. The charge as filed under sections 6(1)(a) and 6(1)(e), therefore, must be dismissed.

The Association contends that support for the charge may be found in the fact that the work schedule the Borough changed had been agreed to by the parties before the effective date of their collective bargaining agreement. The focus in a charge of this nature, however, is not on what the parties agreed to before they entered into a collective bargaining agreement, however; rather, the focus is on whether or not the employer has a sound basis for arguing that the collective bargaining agreement privileged its action. Thus, whether or not the work schedule the Borough changed had been agreed to by the parties before the effective date of their collective bargaining agreement is irrelevant.<sup>1</sup>

To the extent that the Association contends that support for the charge may be found in the fact that the Borough did not change the work schedule for a bona fide operational requirement, the Association raises a question of contract interpretation (whether or not the change was for a bona fide operational requirement) that only an arbitrator may resolve pursuant to the filing of a grievance.

The Association has not alleged or shown that the Borough changed the work schedule for a discriminatory reason. A violation of section 6(1)(c) only occurs when the employer takes an action for a discriminatory reason. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996). The charge as filed under section 6(1)(c), therefore, must be dismissed as well.

#### 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 labor practices under sections 6(1)(a), 6(1)(c) or 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 eleventh day of December 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

<sup>1</sup> It is noted that whether or not the work schedule the Borough changed had been agreed to by the parties on a trial rather than permanent basis, as the Borough contends, is equally irrelevant.

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December 11, 2006

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LITTLESTOWN BOROUGH  
Case No. PF-C-06-127-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE  
Hearing Examiner

Enclosure

cc: Littlestown Borough