

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SHOEMAKERSVILLE BOROUGH :  
POLICE ASSOCIATION :  
 :  
v. : Case No. PF-C-06-151-E  
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SHOEMAKERSVILLE BOROUGH :

**FINAL ORDER**

The Shoemakersville Borough Police Association (Association) filed exceptions with the Pennsylvania Labor Relations Board (Board) on July 28, 2007, challenging a Proposed Decision and Order (PDO) issued on July 11, 2007. In the PDO, the Board's Hearing Examiner found that Shoemakersville Borough (Borough) had ceased providing police services and therefore had no obligation to negotiate a successor collective bargaining agreement. The Hearing Examiner also determined that the Borough had not transferred the work previously performed by the bargaining unit to non-unit personnel. Therefore, the Hearing Examiner dismissed the Association's Charge of Unfair Labor Practices alleging that the Borough violated Act 111 and Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA).

In dismissing the Charge, the Hearing Examiner noted that "neither the original charge nor its amendment alleged a failure by the Borough to arbitrate the effects of going out of the business of offering police services." On exceptions,<sup>1</sup> the Association argues that the Hearing Examiner erred in concluding that its charge, as amended, did not raise an impact bargaining claim against the Borough.

On September 22, 2006, the Association filed a Charge alleging, *inter alia*, that the Borough had not permanently and completely disbanded its police force and had transferred the bargaining unit work of enforcing Borough ordinances to a code enforcement officer. On September 27, 2006, the Association amended its charge to include an additional claim of a refusal to arbitrate, alleging:

On or about June 5, 2006, the Association timely initiated bargaining, pursuant to Act 111, for a contract to commence January 1, 2007 (the current contract due to expire December 31, 2006). As set forth in the prior specification of charges, although the Borough purported to disband its police department on or about June 7, 2006, the Borough has not, in fact, completely and permanently ceased providing police services previously performed exclusively by members of the Association. On September 11, 2006, the Association timely notified the Borough of its intention to proceed to Act 111 interest arbitration. By letter dated September 18, 2006, the Borough, through its legal counsel, advised the Association that since, the Borough, in the Borough's opinion "has completely and permanently disbanded its police department" this "effectively release[es] it from any obligation to bargain over terms and conditions of employment of its former officers." If, in fact, the Borough has not completely and permanently ceased police services and, as alleged in the charge, merely taken formal action to indicate that it has disbanded its police department in order to mask the continued performance of police services so as to avoid (1) a continued back pay obligation to [Chief] Yocum pending the processing of a frivolous appeal (or to avoid its obligation to reinstate Yocum) and (2) its obligation to bargain and/or proceed to arbitration under Act 111, then the Borough's stated refusal to proceed to arbitration constitutes interference with

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<sup>1</sup> The Association does not challenge the Hearing Examiner's determination that the Borough did not transfer bargaining unit work to non-unit personnel or otherwise violate the PLRA or Act 111 in ceasing to provide police services.

employees in the exercise of their rights, discrimination against former officers, as well as a refusal to bargain in good faith in violation of Act 111 and the Pennsylvania Labor Relations Act, Section 6(1)(a), (c) and (e).

Section 95.31(b)(3) of the Board's Rules and Regulations provide that that charge must include

A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated.

34 Pa. Code 95.31(b)(3); Iroquois School District, 37 PPER 167 at 524 (Final Order 2006).

Relying on Section 95.31(b)(3) of the Rules and Regulations the Board held in Commonwealth of Pennsylvania (Liquor Control Board), 22 PPER ¶22009 (Final Order 1991), that "the charging party must by way of its specification of charges put the responding party on notice regarding the precise nature of the conduct which is at issue in the charge." Liquor Control Board, 22 PPER at 24. The Board further stated that "[c]harges must be sufficiently detailed so as to put a respondent on notice of the specific conduct alleged to have been in violation of the Act.... Accordingly a charging party is limited to the presentation of evidence as to the specific allegations contained in the charge..." Id. (citations omitted). The Board has also stated that "a charging party may not allege one charge and then prosecute another." Teamsters Local Union No. 384 v. Kennett Consolidated School District, 37 PPER 89 at 289 (Final Order, 2006). Accordingly, as correctly held by the Hearing Examiner, the Board has jurisdiction only over those unfair labor practices that are alleged in the charge. Id.

Indeed, in Iroquois School District, supra, the union there made a similar argument on exceptions. The charge filed with the Board alleged that the school district had unlawfully transferred "classroom instruction" for students who were assigned to in-school suspension to an employe who was not a member of the professional bargaining unit. After reviewing the evidence vis-à-vis the charge, the hearing examiner concluded that faculty members continued to instruct the students who were assigned to in-school suspension, and thus found no unfair practice and dismissed the charge. On exceptions, the union argued that "classroom instruction", as alleged in the charge, included all incidental duties associated with monitoring the in-school suspension room. The Board disagreed. Relying on Section 95.31(b)(3) of the Rules and Regulation, the Board held that because the union was specifically challenging the alleged transfer of "classroom instruction" duties, the hearing examiner properly dismissed the charge.

Similarly, the Association argues that its impact bargaining claim was alleged in the amended charge because there was a reference to a September 11, 2006 demand for arbitration, and that the demand requested interest arbitration for both a successor agreement and "disbandment issues". However, the Association did not attach the September 11, 2006 demand letter or articulate its substance in the Specification of Charges. Moreover, a reading of the Association's charge does not lead to the conclusion that it was complaining of an alleged refusal to arbitrate the "disbandment issues." The charge, even as amended, complains that the Borough had not in fact ceased performing police duties, and therefore was obligated to proceed to interest arbitration for a successor collective bargaining agreement. In citing to the Borough's alleged refusal to arbitrate, the Association references only the Borough's refusal to arbitrate "over terms and conditions of employment". There is no allegation that the Borough refused to arbitrate "disbandment issues". The Association's attempt to refine its original allegations to incorporate a separate cause of action regarding the statutory obligation to impact bargain must fail.

In any event, upon review of the record, the Association did not have grounds at the time of filing of the charge to allege a refusal to proceed to interest arbitration over "disbandment issues". A cause of action over impact bargaining arises where (1) the employer lawfully exercises a managerial prerogative, (2) there is a demonstrable impact

on wage, hour or working condition matters that are severable from the managerial decision, (3) the union demands to bargain those issues, and (4) the employer refuses the union's demand. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). A cause of action concerning a refusal to arbitrate impact issues ripens with the employer's refusal. In its post-hearing brief, the Borough asserts that it "has not actively refused to bargain or to arbitrate regarding the impact of its decision to disband the department." (Post-Hearing Brief of Shoemakersville Borough at 21). Indeed, the testimony and documentary evidence of record does not indicate that the Borough affirmatively refused to interest arbitrate "disbandment issues." Accordingly, allegations of a refusal to interest arbitrate over issues of impact arising from the Borough disbanding of its police department, if alleged in the September 27, 2006 amended charge, would have, on this record, been premature.

Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Association and make the Hearing Examiner's PDO final.

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 exceptions filed by the Shoemakersville Borough Police Association are hereby dismissed, and the July 11, 2007 Proposed Decision and Order, be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of September 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.