

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTH WALES BOROUGH POLICE DEPARTMENT :
 :
 v. : Case No. PF-C-06-107-E
 :
 NORTH WALES BOROUGH :

PROPOSED DECISION AND ORDER

The North Wales Police Department (Union) filed exceptions on January 11, 2007, to my proposed decision and order issued December 22, 2006, 37 PPER 176, dismissing its unfair labor practice charge, filed against North Wales Borough (Borough) for alleged violations of Section 6(1)(a), (b), (c), and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111. On March 20, 2007, the Pennsylvania Labor Relations Board answered those exceptions with an Order Directing Remand to Hearing Examiner for Further Proceedings.

In that remand order the Board included instructions to hold a "further proceeding concerning the August 11, 2005 audit with regard to the Union's claims of discrimination."¹ Additionally, the Board vacated Conclusion of Law 4 in the proposed decision and order, and ordered "the matter remanded to the Examiner for the submission of the August 11, 2005 audit, and for further proceedings as warranted and pertinent thereto."

The remand hearing was originally scheduled for April 23, 2007, but continuances postponed the hearing until August 10, 2007. At that time both parties were afforded a full opportunity to present evidence and cross-examine witnesses, within the confines set by the Board's remand order. Both parties filed post-hearing letter 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:

ADDITIONAL FINDINGS OF FACT

FINDINGS OF FACT numbers 1 through 10 inclusive, as set forth in the proposed decision and order issued December 22, 2006, 37 PPER 176, are incorporated by reference herein and expressly made a part hereof, and the following additional findings are made:

11. The auditing firm of Major and Masters performed an annual audit of the Borough's finances for the fiscal year 2005, according to generally accepted accounting principles. The audit was performed in the manner prescribed by the Department of Community and Economic Development, Annual Audit and Financial Report. Essentially the report mirrors all the Borough's financial transactions in the course of the fiscal year. (N.T. 355-357; Union Exhibit A; Borough Exhibit A).²

12. According to Linda Major, a certified public accountant and principal in the firm that conducted the Borough's audit, the Borough, in fiscal 2005, "had a very bad year." That opinion is based upon her conclusion that the Borough's "expenditures exceeded their [sic] revenues for that year." According to Major, expenditures exceeded revenues by over \$600,000.00. (N.T. 357).

13. The modified accrual method of accounting is the more accurate and precise method of ascertaining the financial health of the party audited. (N.T. 361, 362, 369).

¹ As set forth in the seminal case on discrimination, St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977), to carry the day, the Union must prove that the employee in question participated in protected activity, that the employer was aware of that activity, and that the employer would not have taken the adverse action it did, but for the employee's participation in that protected activity.

² The page numbers for the remand hearing are numbered serially along with those of the prior two hearings on the merits of the original charge.

DISCUSSION

This case was remanded pursuant to the Union's request that the Borough's annual financial audit for fiscal year 2005 be part of the record in this case. The Union's stance is that "such information [in the audit report] is at the very heart of the Borough's claim that its actions toward the police are rooted in its economic condition." (Union's exceptions at 2). Putting a finer point on it, the Union's argument is that the audit report will reveal that the Borough had adequate resources despite its asserted claims of a deficit during negotiations. And, as the Board noted "[f]acts supporting that argument are relevant to the key determination of motive and/or pretext for a claim under Section 6(1)(c) of the PLRA."³ (Order Directing Remand to Hearing Examiner for Further Proceedings, March 20, 2007, at 3). With this *mise-en-scène* in mind, we now examine the Union's proofs at the remand hearing. And they are thin.

The Union, at the hearing, offered no *viva voce* evidence, but merely introduced the audit report and rested. It was the Borough that fleshed out the meanings to be taken from that audit through the testimony of Major, a certified public accountant and principal in the firm that conducted the audit, and those meanings supported the Borough's consistent, previous assertion that it experienced negative fiscal exigencies during fiscal year 2005.

Major's testimony, interpreting the audit reports, was that the Borough's coffers were being depleted faster than they were being replenished. In point of fact, the Borough had halved its own general fund balance by spending over \$600,000.00 more than it took in. While certainly phrased in laymen's terms, Major succinctly summed it up by observing that the Borough "had a very bad year."

Major testified that there are two accepted ways to take an accounting snapshot of the Borough's financial health; the accrual basis method and the modified accrual basis method. Of these two, according to Major, the modified accrual method - which shows over \$600,000.000 in deficit spending - gives a more accurate and precise measurement of the Borough's actual financial state. (N.T. 361, 362, 369). The Union attempts to gloss over this testimony by dismissively asserting, "[t]he testimony of the Borough's auditor was contradictory at best." (Union's brief at 3). It was not.

Yet, even in the face of a sizeable negative revenue stream, the Union argues "the Borough was in reasonable financial condition with substantial net assets in a period of stable economic conditions." (Union's brief at 3). Evidently, the Union is of the opinion that the Borough must turn out empty municipal pockets before it may properly raise an economic defense for its cost-cutting actions. However, the Union puts forth no authority to support that opinion. And, in the face of well over a half-million dollars in negative cash flow, it does not seem suspicious that the Borough sought ways to cut employe costs, both in the police department and in the remaining, non-organized, municipal work force, including Borough council members. This across-the-board fiscal husbandry is not evidence of discrimination against the Union. Indeed, it militates against any discriminatory intent.

The audit report and the testimony solicited by the Borough at the remand hearing serve to further shore-up, through a neutral third party, the Borough's previously asserted economic situation, to the detriment of the Union's allegation of discrimination. The Union's proofs fell well short at the original hearings on the merits, and this hearing certainly brought the Union no closer to adequate proofs for its discrimination charge. Rather, it served to further weaken the Union's assertions and to further bolster the Borough's otherwise previously adequate defense.

After considering the evidence presented at the remand hearing, along with all other evidence from the prior hearings, this charge is dismissed in its entirety.

³ The Board concluded that the Union had not, in fact, abandoned its discrimination claims under Section 6(1)(c) of the PLRA in its post-hearing brief. (Order Directing Remand to Hearing Examiner for Further Proceedings, March 20, 2007, at 2).

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), (b), (c) 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 twenty-fourth day of September, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner