COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Shoemakersville Borough Police Association (Union) on September 22, 2006, as amended on September 27, 2006, alleging that Shoemakersville Borough (Borough) violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On December 6, 2006, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for February 15, 2007, in Reading, Pennsylvania. This case was consolidated with a companion charge, PF-C-07-10-E, and both charges were heard on February 26, 2007. Both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Borough filed a post-hearing brief, while the Union chose to close on the record.

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.

FINDINGS OF FACT

1. The Union is a labor organization.

2. The Borough is a political subdivision of the Commonwealth of Pennsylvania.

3. By notice dated June 5, 2006, the Union notified the Borough on June 6, 2006, of its intention to initiate collective bargaining pursuant to Act 111. The notice was given to Borough officials at a Borough council meeting. The parties' then effective collective bargaining agreement expired in December of 2006. (N.T. 22, 23; Union Exhibit 3).

4. At the June 6, 2006 Borough council meeting, the Borough voted to disband the police department immediately. The June 6, 2006, meeting was the first council meeting after the issuance of a grievance arbitration award favorable to the chief, Ronald L. Yocum, who was also vice-president of the Union. (N.T. 23, 24; Union Exhibit 4(a) and 4(b)).

5. More than two years before this charge was filed the Borough enacted Ordinance No. 386-04 on June 1, 2004. That ordinance covered abandoned cars; junk, trash and other debris; weeds and grass; plus items under the general heading of "nuisances". The sole enforcer of violations under that ordinance was the code enforcement officer. (Borough Exhibit 5, Section 6, p.6).

6. The police, before disbandment, enforced a number of Borough ordinances. Documentary evidence shows that in 2002 the police enforced Ordinance 310 (Union Exhibit 9, 10) which was the predecessor to Ordinance 386-04; that from 2001 to 2004 the police enforced Ordinance 360-98 covering disturbing the peace (Union Exhibit 12, 13); that from 2000 to 2001 the police enforced Ordinance 341-94 covering snow emergency routes; and finally, that in 1997 and 1998 the police enforced Ordinance No. 152 covering peddlers' and solicitors' permits. The police also enforced the edicts of Ordinance 255 covering outdoor fires and burning. (Union Exhibit 9, 10, 11, 12, 13, 17, 18).

DISCUSSION

In this charge the Union alleges that the Borough violated the above-referenced section of the PLRA as read with Act 111 when it refused, after the Union's timely request, to proceed to interest arbitration for a successor agreement. The Borough denies any duty to interest arbitrate on the grounds that it has gone out of the business of providing police services. The Union counters that the Borough's going out of the police business is but cozenage to avoid binding interest arbitration and to avoid complying with an unfavorable grievance arbitration award handed down shortly before it supposedly went out of the police business.[1]

The Union has not proved that the Borough is still providing police services. And, since an employer can completely and permanently go out of the business, even for discriminatory reasons and not violate the PLRA, the Borough's motives for no longer supplying police services have no evidentiary value. Therefore, this charge is dismissed.

An employer may go out of the business of providing a discretionary public service for any reason, including union animus, so long as the service is completely and permanently discontinued. Youngwood Borough Police Dep't v. PLRB, 539 A.2d 26, 28 (Pa. Cmwlth. 1988), appeal denied, 522 Pa. 599, 562 A.2d 323 (1989); County of Bucks v. PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983); Jefferson-Penn Police Commission, 21 PPER ¶ 21025 (Final Order, 1989); Millcreek Township School Dist., 7 PPER 91 (Nisi Decision and Order, 1976).

Moreover, "[i]t is beyond the Board's statutory authority to monitor a public employer's actions *ad infinitum*. Even if the Board suspects that an employer has some intention of reinstating the service at issue at some future point in time, the Board should not usurp an employer's right to completely and permanently cease operations based only on that suspicion." Upper Mount Bethel Township, 31 PPER ¶ 31005 at 16 (Final Order 1999).

The Union's primary argument that the Borough has not completely and permanently gone out of the business of supplying police services to its citizens is that the code enforcement officer is now enforcing Borough ordinances that only the police enforced before their disbandment. That argument, however, is not borne out by the record.

The chief testified that police have exclusively enforced all Borough ordinances but for those covering zoning, West Nile virus, curbs and sidewalks, and weeds. (N.T. 34). Documentary evidence admitted at the hearing is at odds with that viva voce evidence.

More than two years before this charge was filed, the Borough enacted Ordinance No. 386-04 on June 1, 2004. (Borough Exhibit 5). That ordinance covered abandoned cars; junk, trash and other debris; weeds and grass; plus other items under the general heading of "nuisances". The sole enforcer of violations under that ordinance was the code enforcement officer. (Borough Exhibit 5, Section 6, p.6). Clearly, as far back as 2004, the police have not been enforcing violations of the behaviors proscribed by Ordinance No. 386-04. So the continuing enforcement of that ordinance by the code officer does not evidence that the Borough is still in the police business.

The Union has shown that the police, in the past, have enforced a number of other Borough ordinances. Documentary evidence shows that in 2002 the police enforced Ordinance 310 (Union Exhibit 9, 10) which was the predecessor to Ordinance 386-04; that from 2001 to 2004 the police enforced Ordinance 360-98 covering disturbing the peace (Union Exhibit 12, 13); that from 2000 to 2001 the police enforced Ordinance 341-94 covering snow emergency routes; that the police enforced Ordinance 255 (Union Exhibit 11) regulating outdoor fires and burning; and finally, that in 1997 and 1998 the police enforced Ordinance No. 152 covering peddlers' and solicitors' permits. (Union Exhibit 17, 18). What the Union has not shown, however, is that the Borough has enforced any of the ordinances previously handled by the police since the police force was disbanded.[2] Absent

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[1] The Union's companion charge, PF-C-07-10-E, alleges that the Borough violated the PLRA when it refused to comply with that grievance arbitration award, filed by the chief, after the award became final and binding.

[2] There is some testimony by the code enforcement officer that he was asked, after the disbandment of the police, to "consider" enforcing all borough ordinances. Because the code officer was unsure of his authority to do so, he asked Borough council for a letter of authority. The letter was never forthcoming, and there is no evidence that the code officer is, in fact, enforcing any ordinances that were enforced by the police in the past. (N.T. 149-155).

that showing, there is simply no evidence that the Borough is still supplying police services to its residents. The possibility that the Borough may, at some future time, choose to have others enforce those ordinances previously enforced by the police is simply of no moment in determining whether the Borough has completely and permanently gone out of the police business now. Upper Mount Bethel Township, *supra*.

Since the Borough is found to have completely and permanently gone out of the business of supplying police services to its residents, the Borough's motive for doing so doesn't matter. Youngwood Borough Police Dep't. v. PLRB, *supra*.

In its closing argument, at the conclusion of the hearing, the Union mentioned for the first time, "You've heard no defense to the refusal to arbitrate over at least the impact of disbanding the police department." Perhaps that's because 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. The Board has jurisdiction to find only unfair labor practices alleged in a charge. Iroquois School District, 37 PPER 167 (Final Order 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).

CONCLUSIONS

The 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.

2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The Borough has not committed unfair labor practices in violation of Section 6(1)(a), (c), and (e) of the PLRA as read with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices filed to the above case number is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this eleventh day of July, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner