

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
 v. : Case No. PF-C-06-98-E
 :
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Fraternal Order of Police, Lodge No. 5 (Union) on June 19, 2006, alleging that the City of Philadelphia (City) violated Section 6(1)(a), (c) and (d) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On July 12, 2006, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 10, 2006, in Philadelphia, Pennsylvania. This case was consolidated with a companion charge, PF-C-06-63-E, and hearings were held on August 10 and September 18, 2006. On both dates the parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing 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 findings of fact.

FINDINGS OF FACT

1. The Union is a labor organization.
2. The City is a political subdivision of the Commonwealth of Pennsylvania.

3. On April 28, 2006 the Union filed an unfair labor practice charge, alleging that on April 21, 2006, officer Theresa Brooks was denied her rights under the doctrine first set forth in NLRB v. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), and then retaliated against by the City for her invocation of those rights. The April 21, 2006 incident revolved around whether Brooks would be paid for a preparation and the giving of a deposition on her day off. The deposition topic was Brooks's involvement in an on-duty traffic accident where her police car struck a civilian vehicle. The City Solicitor's Office told Brooks that it would not represent her if she failed to attend. Misunderstanding the reason behind the notice, her immediate supervisors, the previous day, told her not to attend. (FOP Lodge No.5 v. City of Philadelphia, PF-C-06-63-E, Proposed Decision and Order, issued March 12, 2007, Finding of Fact 3,4).

4. At the April 21, 2006, meeting Brooks alleged that then Captain Gerard Levins violated her rights as set forth under NLRB v. J. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), when he grabbed her personal cell phone from her hand as she attempted to call the Union. Because the facts as proved by the Union did not show that the April 21, 2006, meeting was investigatory in nature, nor that Brooks had a reasonable fear of discipline resulting from that meeting, the charge was dismissed. (FOP Lodge No.5 v. City of Philadelphia, PF-C-06-63-E, Proposed decision and Order, issued March 12, 2007).

5. On or about the evening of April 21, 2006, Brooks's service weapon was confiscated by the police department. (N.T. 80).

6. Although Brooks filled out the appropriate paperwork, and reported to the "comp clinic" for the injuries she testified she received during the April 21, 2006, altercation, she was denied injured-on-duty-status by the City. When Brooks finally

returned to full-duty status it was another two-weeks before her service weapon was returned to her, forcing her to work inside and not on the street. (N.T.77-79, 88-90).

7. After she returned to Narcotics Strike Force duty Brooks was temporarily reassigned to drive a police wagon transporting prisoners. This assignment is given to officers whose performance is in some way deficient. Officers assigned to drive the wagon have fewer overtime opportunities than do officers working the Narcotics Strike Force. (N.T. 89, 90, 91, 98, 356, 357, 367).

DISCUSSION

The Union charges the City with violations of Section 6(1)(a), (c) and (d) of the PLRA as read with Act 111. More specifically, the Union alleges the City "shunned" Brooks and that her "employment needs" were ignored by the City; that Brooks was "suddenly and inexplicably stripped of her regular assignment in a patrol car and has been forced to drive a wagon transporting prisoners for her entire shift." Additionally the Union argues that Brook's supervisor, when asked about the reason for the change, "declined to give her a reason for the obviously less desirable reassignment." The Union argues that these actions were motivated by the City's intent to discriminate against Brooks for her participation in protected activity; namely her request for Union representation at an April 21, 2006 meeting. The alleged actions, according to the Union, were also taken in retaliation for Brooks's prior filing of a companion unfair practice charge at docket number PF-C-06-63-E.¹

Insofar as it alleges a violation of Section 6(1)(d) of the PLRA, the Union has not shown that the City took these actions because Brooks filed the companion unfair labor practice charge. Absent an evidentiary nexus between Brooks's filing of the companion charge and the actions of the City in this case, this portion of the charge cannot be substantiated and must be dismissed. See Beaver County (County Commissioners), 7 PPER 307 (Nisi Decision and Order, 1976), 10 PPER ¶ 10056 (Final Order, 1979)(this section only protects an employe from discrimination because the employe has participated in a Board proceeding); Clearfield County, 27 PPER ¶ 27087 (Final Order 1996)(same);

Jefferson County, 27 PPER ¶ 27256 (Final Order, 1996)(same).²

The Union has certainly raised the suspicion that the City took the actions it did because of Brooks's behavior at the April 21, 2006 meeting, but that behavior was not protected activity. (see FOP Lodge No. 5 v. City of Philadelphia, PF-C-06-63-E, issued March 12, 2007). Absent some evidentiary nexus between the City's adverse action against Brooks and some protected activity by Brooks, there can be no violation of Section 6(1)(c) of the PLRA. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

Therefore, this charge is dismissed in its entirety.

CONCLUSIONS

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

1. The City 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.

¹ FOP Lodge No.5 v. City of Philadelphia, PF-C-06-63-E, Proposed Decision and Order, issued March 12, 2007.

² Actually, in these cases the Board was opining on the Public Employe Relations Act (PERA), 43 P.S. § 1101.101 to 1101.2301, specifically Section 1201(a)(4). That section of PERA essentially mirrors Section 6(1)(d) of the PLRA.

4. The City has not committed unfair labor practices within the meaning of sections 6(1)(a), (c) and (d) 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 fourteenth day of March, 2007

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner