

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ROSTRAVER TOWNSHIP POLICE WAGE AND POLICY :
COMMITTEE :
v. : Case No. PF-C-08-40-W
ROSTRAVER TOWNSHIP :

PROPOSED DECISION AND ORDER

On March 19, 2008, the Rostraver Township Police Wage and Policy Committee (Committee) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that Rostraver Township (Township) violated sections 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by laying off Officers Scott Abbott and Mark Shemansky "in retaliation for the [Committee's] invocation of grievance arbitration and the officers[] participation in that process." On April 2, 2008, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 28, 2008. The hearing examiner subsequently continued the hearing four times, once upon the request of the Committee and without objection by the Township, twice upon the request of the Township and without objection by the Committee and once upon the request of both parties.

On October 21, 2008, the hearing was held. The hearing examiner afforded the parties a full opportunity to present evidence and to cross-examine witnesses. On November 26, 2008, each party filed a brief by deposit in the U.S. Mail.

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. The Township has recognized the Committee as the exclusive representative of a bargaining unit that includes police officers employed by the Township. (N.T. 132)
2. In 2003, Officer Shemansky and a member of the Township's board of commissioners (Brian Sokol) began a "quite rocky" relationship stemming from a dispute they had following an event at the Rostraver Central Fire Department. Over the next five years, Mr. Sokol filed with the Township's chief of police (Gregory Resetar) "numerous complaints" about Officer Shemansky. (N.T. 20-26, 42, 60-61)
3. In 2003, 2004 or 2005, Sergeant Chris Pollack filed a grievance. (N.T. 137-138)
4. On August 14, 2007, Officer Shemansky filed a grievance. (N.T. 14-15; Complainant Exhibit 1)
5. On August 16, 2007, Chief Resetar denied Officer Shemansky's grievance at the first step of the parties' grievance/arbitration procedure. (N.T. 15; Complainant Exhibit 1)
6. On August 26, 2007, a member of the Township's board of commissioners (Nick Lorenzo) denied Officer Shemansky's grievance at the next step of the grievance/arbitration procedure. (N.T. 15; Complainant Exhibit 1)
7. The Committee requested arbitration of Officer Shemansky's grievance at the last step of the grievance/arbitration procedure. (N.T. 15; Complainant Exhibit 1)
8. In late September or early October 2007, Mr. Sokol asked Officer Richard Beranek how many police officers would have to be laid off to get to Officer Shemansky. (N.T. 34-36, 38)

9. As the Township was preparing its budget for 2008, its insurance carrier informed it of a 24-25% increase in rates for medical insurance, adding approximately \$110,000.00 to its medical insurance costs for 2008. (N.T. 101-102)

10. By the end of 2007, the Township had overspent its 2007 budget by approximately \$85,000.00 for grants, \$80,000.00 for salt and \$50,000.00 for the police department, had loaned itself \$30,000.00 from its capital reserve fund to pay its year end bills and had \$13,329.49 left over in its general fund. (N.T. 74-76, 79-81, 91; Complainant Exhibits 6, 9)

11. On January 2, 2008, the Township took out a \$400,000.00 tax anticipation loan. (N.T. 78-79, 95)

12. By letter dated January 14, 2008, an arbitrator scheduled March 13, 2008, as the date for a hearing on Officer Shemansky's grievance. (Complainant Exhibit 1)

13. On January 29, 2008, the Township executed a collective bargaining agreement covering its road crew effective January 1, 2008. The collective bargaining agreement included an increase in pay, an additional payment for a pair of boots and no co-pays for medical insurance. (N.T. 68-69, 114; Complainant Exhibit 5)

14. By the end of January 2008, the Township was experiencing cash flow problems. (N.T. 106)

15. In February 2008, Officer George Milkent left employment with the Township. The Township did not replace him. (N.T. 95, 110-111, 144)

16. By letter dated February 6, 2008, the board of commissioners informed Chief Resetar as follows:

"For reasons of economy, the Township is directing that you furlough two police officers effectively immediately.

This action is in addition to not utilizing the part-time police officer services and further, in addition to not replacing Patrolman George Milkent, who has recently left the Township for other employment endeavors.

Therefore, in accordance with the provisions set forth in the Collective Bargaining Agreement currently in effect, you are directed to institute layoff provisions which, as we understand it, will affect the two most recent hires on the seniority roster."

(N.T. 146; Respondent Exhibit D)

17. On February 6, 2008, Chief Resetar informed Sergeant Robert Glass of the impending lay offs of the two most recent hires on the seniority roster. Sergeant Glass offered to be laid off instead. Chief Resetar declined the offer. (N.T. 59-60)

18. On February 7, 2008, the Township laid off Officers Abbott and Shemansky. Officer Abbott was the least senior full-time police officer. Officer Shemansky was the next least senior full-time police officer. The Township also laid off two part-time police officers and a part-time clerical employe. (N.T. 12, 16, 49, 109, 132, 146-148)

19. The Township did not lay off any road crew employes. The Township was short-handed by two road crew employes at the time. (N.T. 134-135)

20. On February 11, 2008, the board of commissioners held a special meeting of two minutes duration at which it ratified without comment the February 6, 2008, letter it sent to Chief Resetar. (N.T. 127-129; Complainant Exhibit 10)

21. On February 21, 2008, the Township borrowed \$100,000.00 from its solid waste fund to pay its bills. (N.T. 106-109; Respondent Exhibits A-C)

22. In late February 2008, Chief Resetar informed Sergeant Glass that a voluntary lay off "was available" to him. Sergeant Glass told Chief Resetar that he was no longer interested in being laid off. (N.T. 61-63)

23. On March 13, 2008, the arbitrator held the hearing on Officer Shemansky's grievance. (N.T. 15)

24. On May 12, 2008, the Township recalled Officer Shemansky to work. (N.T. 12, 16; Complainant Exhibit 2)

25. On June 9, 2008, the Township recalled Officer Abbott to work. By then, another police officer (Richard Miller) had left employment with the Township. (N.T. 49, 147-148, 152-153)

26. On June 21, 2008, the arbitrator issued an award. (Respondent Exhibit E)

27. In September 2008, the Township purchased a new police cruiser. (N.T. 96, 151)

28. As of October 21, 2008, the Township did not have an audit for 2007 and had not filed a financial report with the Department of Economic and Community Development. (N.T. 71)

29. During 2008, the Township continued renovations to its municipal building that began in 2007. The Township has paid for the renovations with grant monies it received for that purpose. (N.T. 96, 112-113, 153-154)

30. The Township purchased a new scoreboard for its athletic fields with grant monies it received for that purpose. (N.T. 123-125)

DISCUSSION

The Committee has charged that the Township committed unfair labor practices in violation of sections 6(1)(a), (c) and (e) by laying off Officers Abbott and Shemansky "in retaliation for the [Committee's] invocation of grievance arbitration and the officers[] participation in that process." According to the Committee, support for the charge may be found (1) in an overt display of anti-union animus by a member of the Township's board of commissioners (Mr. Sokol) and (2) in an insubstantial explanation for the Township's decision to lay off Officers Abbott and Shemansky.

The Township contends that the charge should be dismissed because it lawfully laid off Officers Abbott and Shemansky for budgetary reasons.

An employer commits unfair labor practices under sections 6(1)(a) and (c) if it discriminates against an employe for having engaged in an activity protected by the PLRA as read in pari materia with Act 111. Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004). Filing a grievance is a protected activity. Commonwealth of Pennsylvania, PSP, 34 PPER 14 (Proposed Decision and Order 2003).

In order for the Board to find an employer in violation of sections 6(1)(a) and (c), the charging party must present during its case-in-chief a prima facie case that an employe engaged in a protected activity, that the employer knew that the employe had engaged in the protected activity and that the employer discriminated against the employe for having engaged in the protected activity. Brentwood Borough, 35 PPER 112 (Final Order 2004), citing Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1992). The discriminatory motivation creates the offense. Id. If the charging party presents a prima facie case during its case-in-chief, the charge is to be sustained unless the employer shows that it would have taken the same action even if the employe had not engaged in the protected activity. Brentwood Borough, supra. A valid non-discriminatory reason for the employer's action may rebut any inference that the employer was discriminatorily motivated. Duryea Borough Police Department, supra.

Any finding of an unfair labor practice must be supported by substantial evidence. Commonwealth of Pennsylvania, PLRB v. Fabrication Specialists, Inc., 477 Pa. 23, 383 A.2d

802 (1978). An overt display of anti-union animus by the employer will support a finding that the employer discriminated against the employee for having engaged in protected activity. Brentwood Borough, supra. Close timing between the employee's protected activity and the employer's action coupled with an inadequate explanation for the employer's action will, too. Lehigh Area School District v. PLRB, 682 A.2d 439 (Pa. Cmwlth. 1996). The timing of events alone, however, will not. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005). Nor will animus of a personal nature. Scott Township, 27 PPER ¶ 27206 (Final Order 1996). Suspicion is not substantial evidence. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974).

During its case-in-chief, the Committee established that Officer Shemansky engaged in a protected activity by filing a grievance (finding of fact 4) and that the Township was aware that he had engaged in the protected activity of filing the grievance (findings of fact 5-6). As explained below, however, the Committee did not establish that the Township laid off Officers Abbott and Shemansky because Officer Shemansky engaged in the protected activity of filing the grievance. Accordingly, the charge as filed under sections 6(1)(a) and (c) must be dismissed.

In its brief, the Committee contends that support for the charge may be found in an overt display of anti-union animus by a member of the Township's board of commissioners (Mr. Sokol). As the Committee points out, Officer Beranek testified during its case-in-chief that in late September or early October 2007 Mr. Sokol asked him how many police officers would have to be laid off to get to Officer Shemansky (N.T. 34-36). As the Committee also points out, the Township laid off Officers Abbott and Shemansky within five months thereafter (finding of fact 18). According to the Committee, it should be apparent under the circumstances that the Township was motivated by anti-union animus when it laid them off. Notably, however, Officer Beranek made no mention of Mr. Sokol having referenced Officer Shemansky's protected activity in filing the grievance. Moreover, as reflected in finding of fact 2, during its case-in-chief, the Committee presented testimony by Officer Shemansky, Officer Beranek and Sergeant Glass that Mr. Sokol had a personal vendetta against Officer Shemansky that began in 2003 and lasted into the fall of 2008 (N.T. 20-22, 42, 60-61). Personal animus is not anti-union animus. Scott Township, supra. In context, then, Officer Beranek's testimony as to what Mr. Sokol asked him provides no support for a finding that the Township was motivated by anti-union animus when it laid off Officers Abbott and Shemansky. Thus, the Committee's contention is without merit.

The Committee also contends that support for the charge may be found in an inadequate explanation for the Township's decision to lay off Officers Abbott and Shemansky. As the Committee points out, the Township's finance director (David Amatangelo) testified during its case-in-chief that on January 2, 2008, the Township took out a tax anticipation loan of \$400,000.00 (N.T. 78-79, 95). As reflected in findings of fact 14 and 21, however, Mr. Amatangelo also testified during the Committee's case-in-chief that by the end of January 2008 the Township was experiencing cash flow problems (N.T. 106) and that on February 21, 2008, it borrowed \$100,000.00 from its solid waste fund to pay its bills (N.T. 106-109). In addition, as reflected in findings of fact 15 and 18, Mr. Amatangelo and Chief Resetar testified during the Committee's case-in-chief that the Township did not replace a police officer (Officer Milkent) who left employment around the time it laid off Officers Abbott and Shemansky (N.T. 95, 110-111, 144), while Chief Resetar testified that the Township laid off two part-time police officers and a part-time clerical employee along with Officers Abbott and Shemansky (146-148). On that record, the fact that the Township took out a tax anticipation note of \$400,000.00 on January 2, 2008, provides no support for a finding that the Township's had an inadequate explanation for its decision to lay off Officers Abbott and Shemansky. Thus, the Committee's contention is without merit.

In its brief, the Committee, ostensibly in support of the charge, references testimony by Sergeant Glass that he was not aware of any grievance other than Officer Shemansky's having been filed with the Township (N.T. 58-59), that when he became aware that the Township was laying off Officers Abbott and Shemansky he offered to be laid off instead (N.T. 59-60) and that Chief Resetar declined his offer (N.T. 60). The Committee

apparently would have the Board find on those facts that the Township was motivated by anti-union animus when it laid off Officers Abbott and Shemansky because the filing of a grievance was an unusual occurrence and because it went to great lengths to lay off Officer Shemansky in particular. Notably, however, Chief Resetar testified during the Committee's case-in-chief that another grievance had been filed with the Township (N.T. 137-138). Chief Resetar appeared to be more certain than Sergeant Glass as to whether or not a grievance other than Officer Shemansky's had been filed with the Township, so as reflected in finding of fact 3 Chief Resetar's testimony has been credited over Sergeant Glass's. Moreover, as reflected in finding of fact 22, Sergeant Glass admitted on cross-examination that Chief Resetar eventually tried to take him up on his offer to be laid off (N.T. 61-63). Thus, Sergeant Glass's testimony provides no support for the charge.

The Committee also references additional testimony by Mr. Amatangelo relating to the Township's finances. As reflected in findings of fact 9, 10, 13, 27, 28, 29 and 30, Mr. Amatangelo testified that as the Township was preparing its budget for 2008 its insurance carrier informed it of a 24-25% increase in medical insurance rates, adding approximately \$110,000.00 to its medical insurance costs for 2008 (N.T. 74-76, 79-81, 91); that by the end of 2007 the Township had overspent its budget by approximately \$85,000.00 for grants, \$80,000.00 for salt and \$50,000.00 for the police department, had loaned itself \$30,000.00 from its capital reserve fund to pay its year end bills and had \$13,329.49 left over in its general fund (N.T. 74-76, 79-81, 90-92); that in late January 2008 the Township entered into a collective bargaining agreement covering its road crew that included increased pay, an additional payment for a pair of boots and no co-pays for medical insurance (N.T. 68-69, 121-122); that in 2008 the Township purchased a new police cruiser (N.T. 96); that as of October 21, 2008, the Township did not have an audit for 2007 and had not filed a financial report with the Department of Economic and Community Development (N.T. 71); that during 2008 the Township continued renovations on its municipal building that began in 2007 (N.T. 96); and that the Township purchased a scoreboard (N.T. 123). The Committee apparently would have the Board find on those facts that the Township was motivated by anti-union animus when it laid off Officers Abbott and Shemansky because its budgetary problems were of its own making or not as dire as it contends.

As noted above, however, Mr. Amatangelo also testified during the Committee's case-in-chief that the Township was having cash flow problems when it laid off Officers Abbott and Shemansky and that shortly thereafter it had to borrow \$100,000.00 from its solid waste fund to pay its bills. Although the Committee seemingly suggests that Mr. Amatangelo's testimony was not credible, it was un rebutted and has been credited accordingly. Thus, regardless of whether or not the Township's budgetary problems were of its own making or as dire as it contends, the fact remains that the Township was having budgetary problems.

None of the other facts referenced by the Committee supports the charge. As reflected in finding of fact 27, Chief Resetar testified during the Committee's case-in-chief that the Township did not purchase the police cruiser until September 2008 (N.T. 151). By then, the Township had recalled Officers Abbott and Shemansky to work (findings of fact 24-25), so the timing of events relative to its purchase of the police cruiser militates against a finding that it was motivated by anti-union animus when it laid them off. Whether or not the Township had an audit or filed a financial report with the Department of Community and Economic Development is irrelevant. As reflected in findings of fact 29-30, Chief Resetar and Mr. Amatangelo testified during the Committee's case-in-chief that the Township has paid for the renovations to the municipal building from grants for that purpose (N.T. 112-113, 153-154), while Mr. Amatangelo testified during the Committee's case-in-chief that the Township paid for the scoreboard from grants for that purpose (N.T. 123-125). Thus, the Township's renovation of the municipal building and purchase of the scoreboard provide no better support for the charge.

The Committee finally references testimony by the Township's solicitor (Timothy Maatta, Esquire) that on February 11, 2008, the board of commissioners publicly announced the layoffs of Officers Abbott and Shemansky without comment at a special meeting that lasted two minutes (N.T. 127-129). The Committee apparently would have the Board find that the Township was motivated by anti-union animus when it laid them off because it did not comment on the lay offs publicly or take longer than two minutes to announce them. Whether

or not the Township publicly commented on the lay offs or took enough time to announce them is irrelevant. Thus, Mr. Maata's testimony provides no support for the charge.

Even if the Committee had presented a prima facie case during its case-in-chief, the result would be the same. Given, as noted above, that the Township was having cash flow problems when it laid off Officers Abbott and Shemansky, that shortly thereafter it had to borrow \$100,000.00 from its solid waste fund to pay its bills, that it laid off two part-time police officers and a part-time clerical employe along with Officers Abbott and Shemansky and that it did not replace another police officer (Officer Milkent) who left employment around the time that it laid off Officers Abbott and Shemansky, it is apparent that the Township would have laid off Officers Abbott and Shemansky for budgetary reasons even if Officer Shemansky had not engaged in protected activity by filing the grievance. Moreover, the Township established that it was short-handed by two members of the road crew when it laid off Officers Abbott and Shemansky (findings of fact 18-19), so no adverse inference may be drawn from the fact that it did not lay off road crew employes instead of Officers Abbott and Shemansky.

Section 6(1)(e) prohibits an employer from refusing to bargain in good faith. The charge does not state a cause of action under section 6(1)(e). Accordingly, the charge under section 6(1)(e) 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 as follows:

1. The Township is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The Committee is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The Township has not committed unfair labor practices under sections 6(1)(a), (c) or (e) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, 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 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 fifteenth day of December 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner