

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

NEW BRITAIN BOROUGH POLICE :  
BENEVOLENT ASSOCIATION :  
 :  
v. : Case No. PF-C-07-63-E  
 :  
NEW BRITAIN BOROUGH :

**FINAL ORDER**

The New Britain Borough Police Benevolent Association (Association) filed timely<sup>1</sup> exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on February 19, 2008, challenging a Proposed Decision and Order (PDO) issued on January 29, 2008. In the PDO, the Board's Hearing Examiner concluded that New Britain Borough (Borough) did not violate Act 111 and Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA). The Borough timely filed a brief in opposition to the exceptions on March 12, 2008.

The facts of this case are summarized as follows. On or about November 7, 2005, the Borough received an in-depth study of its police department from Safe City Solutions, a third-party vendor. The report recommended, among other things, that the Borough move toward a full-time police force of five full-time officers. At that time, the Borough's police force consisted of five part-time officers and two full-time officers. Based on the recommendation of Safe City Solutions, the Borough increased the number of full-time officers to four.

Negotiations for a successor collective bargaining agreement between the Borough and the Association began in 2006. During a negotiation session held on November 9, 2006, the Borough indicated that the new chief, Donald L. Bowers, wanted Article 3, Section 7(a)(ii) removed from the collective bargaining agreement in order for him to have more flexibility in scheduling. That provision of the parties' 2004-2006 collective bargaining agreement required the Borough to schedule the part-time officers a minimum of four 8 hour shifts during a twenty-eight day work period. In exchange for removing the minimum-hour provision from the agreement, the Borough proposed a 35% salary increase and additional days off for the officers. When the Association expressed concern about removing the minimum-hour provision, the Borough stated that the Association could talk to Chief Bowers and try to come up with another arrangement. The Borough further indicated that it would incorporate any agreement made between the Association and Chief Bowers concerning the minimum-hour provision into the successor collective bargaining agreement. Immediately after the November 9, 2006 negotiating session, the Association discussed the matter with Chief Bowers.

In mid-January 2007, the Association representatives signed the successor collective bargaining agreement, effective January 1, 2007 to December 31, 2011. Article 3, Section 7(a)(ii) of the prior agreement was revised to state as follows:

Regular Part-Time Police Employee: Will, subject to his/her availability as set forth in #3 of this Article, be scheduled to work available hours at the discretion of the Chief of Police and/or his designee during any given twenty-eight (28) day work period. Available shifts will be offered to Regular Part-Time Police Employees based on seniority.

(Association Exhibit 4 at 4). After the successor collective bargaining agreement was ratified by the Borough, the part-time officers were not offered four 8 hour shifts every twenty-eight days. In February 2007, the Borough hired a fifth full-time officer.

The Association filed its Charge of Unfair Labor Practices on March 21, 2007, alleging that the Borough violated Section 6(1)(a), (c) and (e) of the PLRA and Act 111 by making a material false statement that the Borough would continue to provide regularly

<sup>1</sup> The Association's exceptions are timely because February 18, 2008, the twentieth day following issuance of the Hearing Examiner's proposed decision, was a legal holiday and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

scheduled part-time officers with an equivalent number of hours per month if the minimum-hour provision was removed from the successor collective bargaining agreement. The Association further alleged that the Borough secretly hired a fifth full-time officer even though it had indicated that it had no intention of hiring another full-time officer.

In the PDO, the Hearing Examiner concluded that the Association's charge alleging a violation of Section 6(1)(e) of the PLRA was moot because the parties had ratified a new collective bargaining agreement, citing Temple Association of University Professionals, Local 4531, AFT, AFL-CIO v. Temple University, 25 PPER ¶ 25121 (Final Order, 1994). Concerning the statements made by Chief Bowers to the Association about the minimum-hour provision, the Hearing Examiner determined that these statements were barred by the parol evidence rule. However, the Hearing Examiner also determined that even if the statements made by Chief Bowers were considered, they did not establish an unfair labor practice under Act 111 and the PLRA. Therefore, the Hearing Examiner concluded that the Borough did not violate Act 111 and Section 6(1)(a), (c) and (e) of the PLRA.

In its exceptions, the Association challenges the Hearing Examiner's conclusion that the Borough did not violate Section 6(1)(a), (c) and (e) of the PLRA. Relying on Blumenstock v. Gibson, 811 A.2d 1029 (Pa. Super. 2002), the Association asserts that the statements made by Chief Bowers concerning the minimum-hour provision are not barred by the parol evidence rule because the Association is alleging fraud in the inducement, not fraud in the execution. The Association further asserts that the statements made by Chief Bowers establish that the Borough engaged in bad faith bargaining.

Under the parol evidence rule, prior alleged oral representations concerning terms specifically covered by the parties' written contract are inadmissible to prove a contrary intent by the parties. Youndt v. First National Bank of Port Allegheny, 868 A.2d 539 (Pa. Super. 2005). Moreover, while the Pennsylvania Supreme Court has recognized an exception to the parol evidence rule where a party alleges fraud in the execution of a contract, it has refused to recognize an exception to the parol evidence rule for alleged fraud in the inducement of a contract. Toy v. Metropolitan Life Insurance Company, 593 Pa. 20, 928 A.2d 186 (2007); Yocca v. Pittsburgh Steelers Sports, Inc., 578 Pa. 479, 854 A.2d 425 (2004). In Toy, the Supreme Court noted that in Yocca:

We stated that "while parol evidence may be introduced based on a party's claim that there was fraud in the execution of a contract, *i.e.*, that a term was fraudulently omitted from the contract, parol evidence may not be admitted based on a claim that there was fraud in the inducement of the contract, *i.e.*, that an opposing party made false representations that induced the complaining party to agree to the contract."

928 A.2d at 205. The Court then explained its refusal to adopt the fraud in the inducement exception to the parol evidence rule as follows:

First, the policy that the parol evidence rule aims to serve, which is to uphold the integrity of the written contract because that writing is considered the embodiment [of] the parties' true agreement . . . is not furthered by a refusal to recognize the fraud in the execution exception, as it is in refusing to recognize an exception for fraud in the inducement . . . Second, if a party were allowed to introduce representations made prior to contract formation that contradicted or varied the terms of his written contract by merely alleging that the representations were fraudulent, the fraud exception could swallow the rule. . . And third, a party to a contract has the ability to protect himself from fraudulent inducements by insisting that those "inducements" be made part of the written agreement, and refusing to contract if they are not.

Id. at 206 n.24.

The Association argues that its members were induced to agree to the removal of the minimum-hour provision in the prior contract based on Chief Bowers' alleged assurances

that he would continue to schedule the part-time officers with an equivalent number of hours per month. However, as held in the Pennsylvania Supreme Court cases cited above, the parol evidence rule bars the Association's attempt to claim that it was induced to agree to the change in contract language by alleged false representations by the Chief of Police. Here, the parties' successor collective bargaining agreement provides in Article 3, Section 7(a)(ii) that part-time officers will be scheduled to work available hours at the discretion of the Chief of Police. Further, the agreement states that "[a]ll proposals of the parties not included in this Agreement shall be deemed denied." (Association Exhibit 4 at 5). Because the Association agreed to the revised language in Article 3, Section 7(a)(ii), it cannot now rely on the alleged oral representations of Chief Bowers to nullify that agreement. Toy, supra; Yocca, supra; Youndt, supra. Therefore, the Hearing Examiner did not err in concluding that the Association's reliance on alleged statements made by Chief Bowers is barred by the parol evidence rule.

Even if statements made by Chief Bowers were considered, the Association did not establish that the Chief promised to continue to schedule the part-time officers a minimum of 32 hours a month. Indeed, as noted by the Hearing Examiner, the Association's own witnesses admitted that Chief Bowers stated that he needed flexibility in scheduling and that he did not "want to be tied to a particular number" concerning the hours scheduled for part-time officers. (N.T. 27, 89). Accordingly, the Hearing Examiner found that "even if the chief's conversations were relevant, the [Association] has not substantiated that the Borough promised to continue the thirty-two hour monthly minimum schedule for part-time officers." (PDO at 5).

Further, the Association has not established that Chief Bowers gave any indication to the Association members that another full-time officer would not be hired in the future. As found by the Hearing Examiner, the testimony of Chief Bowers demonstrates that, at the time of the discussions between the Chief and the Association members, his proposed budget for 2007 did not contain a request for a fifth full-time officer. Additionally, the Chief stated that during those conversations, he did not know that the Borough would hire another full-time officer in 2007. He went on to testify that he never told the Association members that he did not intend to hire another full-time officer. Indeed, the Chief testified that the hiring of a fifth full-time officer was not even discussed. (N.T. 143). Because the Hearing Examiner's findings are consistent with the testimony of Chief Bowers and the Association's own witnesses, they will not be disturbed. In any event, if the alleged conversation had occurred, the Association could, and should have, had the alleged assurance that a fifth full-time officer would not be hired included in the collective bargaining agreement. Having failed to do so, the Association cannot now rely on that parol evidence to rescind the agreement it made with the Borough.

As further noted by the Hearing Examiner, the Board will dismiss as moot any unfair practice charge involving alleged bad faith bargaining where the parties have resolved the issues forming the basis for the charge through bargaining and a subsequent contract. AFSCME District Council 33 v. City of Philadelphia, 36 PPER ¶ 95 (Proposed Decision and Order, 2005), 36 PPER ¶ 158 (Final Order, 2005); Temple University, supra. Here, the parties resolved the issue of whether the part-time officers are guaranteed a minimum number of hours by removing the minimum hour provision in the prior contract and providing that scheduling of part-time officers shall be at the discretion of the Chief. Therefore, the Hearing Examiner did not err in holding that the Association's claim of bad faith bargaining was mooted by the parties' execution of a collective bargaining agreement resolving the matter in dispute. Id. For all of the reasons relied upon by the Hearing Examiner, the Association failed to prove that the Borough committed an unfair labor practice under Section 6(1)(a), (c) and (e) of the PLRA.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the New Britain Borough Police Benevolent Association are dismissed and the January 29, 2008 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 fifteenth day of July, 2008. 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.