

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SOLEBURY TOWNSHIP POLICE :
BENEVOLENT ASSOCIATION :
 :
 v. : Case No. PF-C-07-170-E
 :
SOLEBURY TOWNSHIP :

PROPOSED DECISION AND ORDER

On, December 31, 2007, the Solebury Township Police Benevolent Association (Association or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Solebury Township (Township or Respondent) violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA)¹ and Act 111 of 1968².

On February 26, 2008, the Secretary of the Board, issued a complaint and notice of hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and March 12, 2008 in Solebury Township as the time and place of hearing, if necessary. The hearing was necessary, but the date of the hearing was continued to May 6, 2008, at which time the parties were offered the opportunity to present testimony, offer documentary evidence and cross-examine witnesses.

The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That Solebury Township Police Benevolent Association is a labor organization within the meaning of the PLRA. (N.T. 14)
2. That Solebury Township is an employer within the meaning of the PLRA. (N.T. 13-14)
3. That the Association and the Township are parties to a collective bargaining agreement covering the wages, hours and terms and conditions of employment for the police employees. (N.T. 14-15, Joint Exhibit 1).
4. That the most recent CBA covers the period from January 1, 2005 to December 31, 2007 and sets forth compensation to be received by all members of the bargaining unit. Under the CBA, in 2007, the relevant year in this proceeding, for officers hired after January 1, 2005, the compensation is as follows:

Probationary Officer (0-12 months) \$38,937.60
Second Year Patrolman (13-24 months of service) \$41,100.80
Third Year Patrolman (25-36 years of service) \$47,590.40
Fourth Year Patrolman (37-48 months of service) \$54,080.00
Full Patrolman (49+ months of service) \$64,771.40

(N.T 14-15, Joint Exhibit 1)

¹ Act of June 1, 1937, P.L. 1168, as amended, 43 P.S. § 211.6(1)(a) and (e).

² Collective Bargaining by Policemen and Firemen Act, Act of June 24, 1968, P.L. 237, as amended, 43 P.S. § 217.1-217.27. Act 111 grants to police officers and firefighters the right to bargain collectively with their public employers over the terms and conditions of employment. Section 1 of Act 111, 43 P.S. § 217.1. Because Act 111 lacks many of the specific provisions normally found in a collective bargaining statute, our Supreme Court has determined that it is to be read *in pari materia* with the PLRA. Philadelphia Fire Officers Association v. Pennsylvania Labor Relations Board, 470 Pa. 550, 369 A. 2d 259 (1977).

5. That the Township Chief of Police is Domenick Bellizzie, who was hired as Chief on June 1, 2006. Prior to his current employment, Chief Bellizzie worked for 26 years in Philadelphia, where he achieved the rank of captain, and Coatesville, where he worked for five years as police chief. (N.T. 16, 31)

6. That newly hired employes are referred to as probationary employes. In the words of Chief Bellizzie, this is to make sure they work out in the department and that they do the job they are supposed to do. They work with a training officer. They learn the particulars of the department and the Township's streets. (N.T. 18)

7. That the Township Manager is John S. Granger. He has been in this position for five years and has over 30 years experience as a manager or assistant manager in various Pennsylvania municipalities. (N.T. 47)

8. That on or about October 29, 2007, the Township hired a new police officer, Sean Murrin. The Township hired him at the fourth year patrolman rate and stated he would be on probation for one year. (N.T. 20, 22, 33-34, Employer Exhibits 1, 2, 3)

9. That Chief Bellizzie did not notify the Association as to Murrin's compensation prior to the Township hiring him. On December 17, 2007, the Chief Bellizzie advised the Association President that the Township decided to pay him at the highest rate. (N.T. 20-21, 40-41)

10. That no one in the Township official or Police Department official discussed or bargained with the Association over Murrin's compensation prior him being hired. (N.T. 24, 48)

11. Officer Murrin was the first police officer hired under Chief Bellizzie's tenure. (N.T. 19)

12. That Chief Bellizzie testified that the reason the Township hired Murrin and placed him on a higher compensation level was that the Township wanted to infuse some experience into the department with officers who had dealt with Part I Crimes, (felonies such as robberies and murder, categorized under the FBI's Uniform Crime Reporting system). The Chief knew that Murrin had such experience because he worked under the Chief in Coatesville. (N.T. 30-33)

13. That Murrin had ten years prior police service but the Chief did not want to start Murrin out at the Full Patrolman compensation rate. (N.T. 21)

14. That Township Manager Granger contended that the CBA's management rights clause justified the paying Murrin a higher rate than other probationary employes. (N.T. 52)

15. That the Management Rights clause, found in Article 40 of the CBA, states,

The management of the Police Department and the direction of its work force shall be vested exclusively in the Township; provided that such rights shall not be exercised in a fashion that is discriminatory arbitrary, capricious or contrary to law. These rights shall include but are not limited to: the right to hire, discipline for proper cause, promote, lay off, assign and transfer Officers, and the right to schedule hours of work.

(N.T. 15, Joint Exhibit 1)

16. Chief Bellizzie admitted that Officer Murrin is still on probation and will remain on probation until October 31, 2008. (N.T. 26, Employer Exhibit 2).

DISCUSSION

The Association's charge of unfair labor practices alleges that the Township violated the PLRA and Act 111 when it hired a new officer above the contractually provided compensation rate for new hires, thereby repudiating the collective bargaining agreement.

The facts of the case are clear. Chief Bellizzie wanted the police department to gain the benefit of adding officers with more experience in responding to Part I crimes, such as robberies. The Chief recommended this action to the Township Manager and Board of Supervisors. They agreed with the Chief and on October 29, 2007, the Township hired Sean Murrin at three pay grades above the grade for new hires set forth in the collective bargaining agreement. Murrin came in at fourth year patrolman rate. Neither Chief Bellizzie nor anyone in the Township discussed or bargained with the Association over this compensation issue prior to hiring Murrin.

Pursuant to the PLRA, an employer commits an unfair labor practice if the employer takes unilateral action and refuses to bargain collectively with the representatives of its employees over a mandatory subject of bargaining. Section 6(1)(e) of the PLRA, 43 P.S. 211.6(1)(e). Act 111, which must be construed in *pari materia* with the PLRA, sets forth those subjects over which policemen have the right to bargain collectively. Specifically, policemen have the right to bargain collectively with their public employers "concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits..." Section 1 of Act 111, 43 P.S. § 217.1.

The issue in this case, compensation, is a matter set forth explicitly in Act 111 as a mandatory subject of bargaining. See Section 1 of Act 111, 43 P.S. § 217.1.

Furthermore, the Commonwealth Court has held that an employer's unilateral repudiation of a term in a collective bargaining agreement is an unfair labor practice. Wilkes-Barre Township v. Pennsylvania Labor Relations Board, 878 A.2d 977 (Pa. Cmwlth. 2005). (Pensions held to be a mandatory subject of bargaining under Act 111, and the township's unilateral increase in contribution rate repudiated the CBA.) In the present case, the rate for probationary officers is set forth in the CBA. Thus, Act 111 and judicial precedent support a finding that the Township violated its duty to bargain.

However the Township argues that the management rights clause of the CBA gives it the authority to deviate from the compensation scale. The Township offered the testimony of the Chief of Police and Township Manager, who contend that the Township would benefit from hiring officers who had experience with Part I crime and to do this required going to other departments and paying more than the CBA provided for new hires. The Township contends that the CBA's management rights clause provided the contractual justification for this decision.

The Board and the Courts have rejected similar arguments that relied on a management rights clause to justify a unilateral employer action, holding that a boilerplate management rights clause in a collective bargaining agreement provides no defense to a refusal to bargain claim. Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997); Ellwood City Wage and Policy Unit v. Ellwood City Borough, 36 PPER ¶ 89 (Final Order, 2005).

When viewed against a contract clause that has a clearly stated compensation rate for probationary officers, the Township's argument runs contrary to the language of Act 111 which says that compensation is a mandatory subject of bargaining. Wilkes-Barre Township, supra. Additionally, the Commonwealth Court has rejected a similar argument when used to attempt to take bargaining unit work out of a police unit under the justification of a management rights clause. In City of Bethlehem v. PLRB, 621 A.2d 1184 (Pa. Cmwlth. 1993), the Court found that the Board was correct in finding that a similarly worded management rights clause was "neither broad enough to permit a unilateral change in bargaining unit work, not explicit enough to operate as a waiver of the right to bargain." Id. at 1186.

The Township also contends that the CBA's compensation provisions did not apply to Officer Murrin at the time of his hiring because he was not a member of the Association or the unit, and therefore not covered by the CBA. This argument confuses association membership with membership in the unit, the relevant factor in this inquiry. Furthermore, this argument ignores the fact that Murrin was covered by the CBA the minute he started working for the Township and remains covered by the CBA in his probationary year just as other newly hired officers would be. The Township's hiring of him at the higher rate and its continued payment of a higher rate repudiated the collective bargaining agreement.

CONCLUSIONS

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

1. That Solebury Township is an employer within the meaning of Section 3(c) of the PLRA.
2. That the Solebury Township Police Benevolent Association is a labor organization within the meaning of Section 3(f) of the PLRA.
3. That the Board has jurisdiction over the parties hereto.
4. That the Township has committed unfair labor practices within the meaning of Sections 6(1)(a) and (e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the Act.

2. Cease and desist from refusing to bargain collectively in good faith with the labor organization which is the exclusive representative of the employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action:

(a) Adjust Officer Sean Murrin's compensation for the remainder of his probationary year so that it conforms to a probationary officer under the collective bargaining agreement;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance.

(d) Serve a copy of the attached affidavit of compliance upon the Association.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of June, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner