COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the New Britain Borough Police benevolent Association (Union) on March 21, 2007 alleging that New Britain Borough (Borough) violated Section 6(1)(a, (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111. On May 8, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for July 30, 2007, in Doylestown, Pennsylvania. After a series of continuance requests were granted, a hearing was held on October 3, 2007, during which both 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

1. The Borough is a political subdivision of the Commonwealth and an employer.

2. The Union is a labor organization.

3. On or about November 7, 2005, the Borough received the results of an in-depth study of its police department from Safe City Solutions, a third-party vendor. This report recommended, *inter alia*, that the Borough move toward a full-time police force of five full-time officers, other than the chief; that the Borough increase the hourly rate of its police officers and renovate police facilities; and that the Borough write a new policies and procedures manual for the police department. (Borough Exhibit 3).

4. Until 2007, the Borough's police department was comprised of more part-time officers than full-time officers. In 2006, the new chief, Donald L. Bowers, hired a total of four full-time officers, to compliment the five part-time officers. In February of 2007, a fifth full-time officer was hired. (N.T. 17, 154, Union Exhibit 5, 6; Borough Exhibit 6, 14).

5. Negotiations for a successor agreement began in 2006. The Borough proposed a 35% salary increase and additional days off for the officers. In return for this the Borough wanted the minimum-hour provision removed from the contract. The minimum-hour provision provided that part-time officers had to be offered four, eight-hour shifts every twenty-eight days. Bowers, the new chief hired in April of 2006, wanted that provision removed because he felt that his discretion to schedule the four full-time officers was hampered by this limiting provision in the contract. (N.T. 19-23, 59, 103, 139, 140; Union Exhibit 1, 4).

6. The Union's negotiating committee was comprised solely of part-time officers. When they were less than enthusiastic about removing this provision from the new contract, the Borough's negotiating committee told the Union if it could work another arrangement out with the chief directly, the Borough would simply incorporate that agreement into the new contract. Immediately after that negotiating session, the Union's bargaining committee went to talk with the chief. (N.T. 21-25, 87).

7. Between January 18 and January 21, 2007, Union representatives signed the newly bargained collective bargaining agreement, valid on its face from January 1, 2007, through December 31, 2011. That contract did not contain a minimum-hour provision for the part-time officers. It did, however, contain a replacement provision whereby part-time officers would "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." (N.T. 27, 28; Union Exhibit 4).

8. After the new contract was signed, part-time officers were not offered four, eight-hour shifts every twenty-eight days. The Borough hired a fifth full-time officer in February of 2007. (N.T. 28, 29, 91-94, 99, 109, 110, 112; Union Exhibit 5, 6).

DISCUSSION

The Union charges the Borough with violating Section 6(1)(a), (c) and (e) of the PLRA as read with Act 111 when the Borough did not continue to offer the part-time officers thirty-two hours of work a month, after the provision mandating that requirement was mutually bargained out of a successor agreement. A review of the *mise en scène* reveals that the Borough did not violate the PLRA, and therefore this charge is dismissed in its entirety.

In 2006, the parties started negotiating for a successor collective bargaining agreement because their then-current contract expired on December 31, 2006. Before negotiations started, the Township had engaged an outside source, Safe City Solutions, to perform an exhaustive evaluation of its police department. The Safe City Solutions report recommended, *inter alia*, that the Borough move toward the use of five, full-time officers (other than the chief), offer greater remuneration to all officers, have a more professional police chief, and improve facilities for the police department.

Historically, the Township's police department had consisted of mostly part-time officers. However, by the latter part of 2006, the department was comprised of the chief (who was not in the bargaining unit), four full-time officers and five part-time officers.

When it came to the bargaining table, the Borough offered the Union a 35% salary increase and additional days off; clearly a *rara avis* initial offer from an employer. The Township did, however, want the bargaining unit to give up something in return for this generous proposal. There was then a contractual requirement that the Borough had to offer part-time officers a minimum of four, eight-hour shifts every twenty-eight days, and the Township wanted that provision removed from the successor agreement. Needless to say, this gave pause to the negotiating committee, made up solely of part-time officers.

The Borough's negotiating committee told the Union's negotiating committee that this removal was at the new chief's request, and that if the Union and the chief directly could come to some mutually acceptable understanding about part-time officers' hours, the Township would simply incorporate that agreement into the new collective bargaining agreement. The part-time officers on the negotiating committee left that meeting and went directly to talk to the chief about this issue.

The testimony reveals, even from the Union's own witnesses, that the chief, while silver-tongued and reassuring in his answers, did not promise the Union's negotiating team members that they would still get the four, eight-hour shifts every twenty-eight days. The chief's statements were, however, invitingly vague, especially when coupled with the promise of a 35% salary increase. Indeed, while stating that he needed more scheduling flexibility, the chief made it clear that he did not intend to eliminate the part-time officers, and made reassuring references about the part-time officers being the department's "fifth officer." The chief also made it clear that he needed scheduling flexibility that the current mandatory minimums for part-time officers simply did not allow.

After those discussions with the chief, the Union's negotiators agreed to a contractual provision that removed the mandatory four, eight-hour shifts every twenty-eight days and replaced it with a provision that allowed the chief, *at his discretion*, to

schedule part-timers, according to seniority. That new provision is part of the current collective bargaining agreement, signed by the Union, and currently in effect.

About a month after the Union signed the successor agreement, the Borough hired a fifth, full-time officer: a move consistent with the Safe City Solutions recommendation.

The Union's charge is based upon the allegations that the chief promised the part-time officers that they would still be offered, with little, if any, variation, the same number of hours as in the removed contractual provision, and that the Borough knew during negotiations that a fifth officer would be hired in early 2008 and yet consciously kept that fact hidden from the Union in negotiations.

Insofar as the Union charges a violation of Section 6(1)(e) of the PLRA, the charge fails because the signing of the current collective bargaining agreement makes such a violation moot. Temple University, 25 PPER ¶ 25121 (Final Order, 1994). The Borough wanted the minimum-number-of-hours provision removed from the new contract. The chief told the Union that he couldn't exercise the scheduling discretion he needed with that limitation in the contract. The Union agreed to the language in the new agreement in return for, *inter alia*, a 35% salary increase. The pull of a 35% salary increase was evidently greater than the reservations regarding relinquishment of the mandatory minimum hour requirement for the part-time officers. After receiving the benefit of that bargain, the Union can't come before the Board and ask for what it gave up in bargaining. Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991).

The provision the Union agreed to in the successor agreement reads in pertinent part that part-time officers will "be scheduled to work available hours at the discretion of the Chief of Police...during any given twenty-eight (28) day work period...." (Union Exhibit 4). There is simply no patent or latent ambiguity in those words, and consequently no parole evidence is admissible. The parole evidence rule prevents consideration of prior or contemporaneous oral representations which purport to alter the specific, unambiguous provisions of an integrated collective bargaining agreement, absent fraud, accident or mistake. Bardwell v. Willis Co., 375 Pa. 503, 100 A.2d 102 (1953).

Prior contrary, oral representations are of no moment as against the specific, unambiguous contractual provision:

> "A party cannot justifiably rely upon prior oral representations, yet sign a contract denying the existence of those representations. If [a party] relied on any understanding, promises, representations, or agreements made prior to the execution of the written contract... [that party] should have protected [itself] by incorporating in the written agreement the promises or representations upon which [it] now relies...."

McGuire v. Schneider, Inc., 368 Pa. Super. 344, 352-353, 534 A.2d 115, 119-120 (1987)(citations omitted).[1] Consequently, the parole evidence rule precludes the consideration of those conversations that the bargaining committee had with the chief concerning future hours assigned to the part-time officers.

Moreover, there is only one reason why the Borough wanted the minimum-hour provision removed from the contract: the chief didn't want to be bound by a provision that limited his discretion in scheduling. While he essentially offered his best efforts in continued scheduling of the part-time officers, the pentimento of the chief's position was that he wanted to be free to offer fewer hours.[2] Clearly, there was no need to remove the contractual provision if the scheduled part-time hours were to remain the same or to

[1] The Supreme Court affirmed this case without opinion. McGuire v. Schneider, Inc., 519 Pa. 439, 548 A.2d 1223 (1988).

[2] And, clearly, at least two members of the negotiating team had serious reservations about the final agreed-upon contract section, presumably because they were worried about reduced part-time hours. As Officer Robert A. Hinde, who was on the negotiating committee recalled: "Up until the day before we actually signed the contract[,] myself and [Officer] Mitchell Davis were very much on the fence as to whether we were going to sign the contract based on this particular section." (N.T. 26). This hesitancy evidences the fact that at least these two part-time officers realized the chief was not guaranteeing a continuation of the thirty-two hour minimum.

increase. The Union's argument is, essentially, that the Borough wanted the minimum hours for part-time officers removed from the contract, but promised, on the side, to pretend that provision was still in the contract. Were that the case, one wonders why the Borough would want it out of the contract at all.

The Borough's hiring of a fifth full-time officer in February of 2007, is also part of the actions complained of by the Union. The Union alleges bad faith on the Borough's part because the chief "made a material[ly] false allegation to the [Union] that the Borough would continue to provide regularly scheduled part-time officers with an equivalent number hours per month if the provision were removed because the Borough had no intention of expanding the full-time contingent of the police force." (Union's brief at 4). As the above discussion evidences, even if the chief's conversations were relevant, the Union has not substantiated that the Borough promised to continue the thirty-two hour monthly minimum schedule for part-time officers.

There is unrebutted *viva voce* evidence that there was no money in the Township's 2006 budget for a fifth full-time officer. The chief testified that the Township was not amenable to his hiring a fifth officer in 2006. In point of fact, the chief testified that in his proposed 2007 budget, submitted in September of 2006, he only requested money for four full time officers. When the Borough accepted the chief's proposed budget as submitted with no requests for reductions, the chief decided to press for the fifth officer. After discussions in January of 2007, the Borough agreed to hire a fifth police officer, who was hired in February of that year. Moreover, even if the chief's remarks were not excluded from consideration by the parole evidence rule, they do not establish an unfair labor practice under the PLRA as read with Act 111.

The Union's brief is somewhat vague about just what actions by the Borough support corresponding violations of either Section 6(1)(a) or 6(1)(c) or 6(1)(e). Cases cited by the Union center around an employer's direct communications with bargaining unit members, Portage Area School District, 7 PPER 325 (Decision of the PLRB, 1976); an employer's interrogation of individual bargaining unit members as to their strike intentions, Lehigh County, 11 PPER ¶ 11115 (Nisi Decision and Order, 1980); and whether an employer engaged in good faith bargaining where that employer accepted bids to subcontract bargaining unit work, while refusing to bargain with the union for a collective bargaining agreement, Homer-Center School District, 12 PPER ¶ 12169 (Final Order, 1981).

The Borough did not attempt to communicate directly with bargaining unit members, nor did it interrogate any members, nor did the Borough engage in behavior from which it can be concluded that it "never intended to achieve an agreement", nor did the Borough "display a single-minded purpose to thwart the public policy...." 12 PPER at 262.

Simply put, the Union agreed to the removal of the provision in the collective bargaining agreement that guaranteed part-time officers at least thirty-two hours of work every month in exchange for, *inter alia*, a 35% increase in wages. Evidently, the Union now regrets that agreement. Nevertheless, a deal's a deal. And this deal is exclusively defined by the four corners of the signed, collective bargaining agreement.

Because the Union has not proved a violation of Section 6(1)(a), (c), or (e) of the PLRA this charge is dismissed.

CONCLUSIONS

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

1. The Borough is a political subdivision and public employer under PLRA and Act 111.

2. The Union is a labor organization under PLRA and Act 111.

3. The Board has jurisdiction over the parties hereto.

4. The Borough has not committed unfair labor practices within the meaning of Section 6(1)(a), (c) and (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 and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint is 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 twenty-ninth day of January, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner