## COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

NAZARETH BOROUGH POLICE ASSOCIATION :

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v. : Case No. PF-C-08-42-E

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NAZARETH BOROUGH

#### PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Nazareth Borough Police Association (Union) on March 24, 2008, alleging that Nazareth Borough (Borough) violated Section 6(1)(a), (c)<sup>1</sup> and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111. On April 10, 2008, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for May 14, 2008, in Allentown, Pennsylvania. After a series of granted continuance requests a hearing was held on July 9, 2008, at which time 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. The parties are subject to an interest arbitration award issued May 31, 2006, that was effective January 1, 2006, to December 31, 2008. That award established a scheduling committee to "deal with the scheduling issues presented before this panel." (N.T. 9; Union Exhibit 2).
- 4. The scheduling committee, made up of Borough and Union representatives, met and agreed upon a twelve-hour shift schedule to be worked by bargaining unit members. That schedule was implemented in July of 2006. Before the arbitration award was issued, bargaining unit members worked an eight-hour shift schedule. (N.T. 10-12; Union Exhibit 1, 2).
- 5. On February 12, 2008, the Borough implemented an eight-hour shift schedule, without bargaining with the Union. (N.T. 15, 30; Union Exhibit 4).
- 6. On February 14, 2008, the Borough distributed a document called titled, "Administrative and Procedural Policies." The cover page of this document told recipients that they were to review that attached policy, and, "[a]fter reviewing the policy, personnel are asked to forward any comments or criticism requiring clarification or any change that should be made to the policy." The directions further explained that, "comments or criticism should be made in a written format so that all necessary change(s) can be reviewed and the necessary change(s) made to the policy." (Union Exhibit 5).

### DISCUSSION

On February 12, 2008, the Borough unilaterally imposed a department-wide schedule change for the police, from twelve-hour shifts to eight-hour shifts. On February 14, 2008, the Borough unilaterally issued "Administrative and Procedural Policies," which offered, for "comments or criticism," proposed rules concerning smoking, job duties and classification, temporary and special assignments, disciplinary procedures, and off-duty

<sup>&</sup>lt;sup>1</sup> The Union, at the start of the hearing, when asked if it was pursuing the Section 6(1)(c) portion of this charge, responded in the affirmative. (N.T. 4,5). Nevertheless, it presented no evidence other than that which supported the unilateral implementation portion of the charge, nor did it argue discrimination in its brief. Consequently, the Section 6(1)(c) portion of the charge is dismissed.

employment. The Union argues that each of these two actions by the Borough is an unfair labor practice.

The Borough parries these charges by alleging that public safety was the reason for the unilateral scheduling change, and therefore the schedule change was a managerial prerogative under the PLRA and Act 111. The new Administrative and Procedural Policies document is also a managerial prerogative, according to the Borough, because it merely recites existing prohibitions in the Borough code, and various other state and federal sources.

The Borough's arguments supporting the schedule change do not carry the day. The Borough's unilateral, wholesale schedule change violates the PLRA and Act 111. However, the Union's charge over the Administrative and Procedural Policies fails, not because it is a managerial prerogative, as the Borough argues, but because there is no evidence that the Borough ever implemented those proposed changes.

Before we review the law, an examination of the facts is helpful.

The last Act 111 interest arbitration award between the parties included a direction that a scheduling committee be established. This committee was to be made up of equal numbers of Union and Borough representatives. Its purpose was to "meet over the matter of alternate scheduling systems." (Union Exhibit 2). At the time this award was issued officers worked eight-hour shifts.<sup>2</sup>

Pursuant to the interest arbitration panel's instruction to establish a scheduling committee, Union representatives, in June of 2006, made a presentation for twelve-hour shifts to the then Chief Ruch, Mayor Earl Keller, and Councilman Larry Stoudt, who was head of the police committee.

According to the Mayor, whatever schedule the Chief and the Union "would work out that was beneficial to both the [Union] and the Borough, I'd be more than happy to put my stamp of approval on it." (N.T. 56). And in point of fact, the Union and the Borough did agree upon a twelve-hour shift schedule. That twelve-hour schedule was implemented in July, 2006, some nineteen months before it was unilaterally changed by the Borough in February of 2008.

In February of 2008, the Borough unilaterally changed the police schedule from the steady, twelve-hour schedule to a revolving, eight hour schedule. The notice of that change was issued on February 11, 2008, and became effective the following day, February 12, 2008.

In addition to the schedule change, on February 14, 2008, the Borough issued a memorandum to "all police personnel," titled, "Administrative and Procedural Policies." The cover page of that document informed officers that,

[a]fter reviewing the policy, personnel are asked to forward any comments or criticism requiring clarification[,] or any change that should be made to the policy. Your response regarding your comments or criticism should be made in a written format so that all necessary change(s) can be reviewed and the necessary change(s) made to the policy....Your input in this process is critical to the department as it will be the mandate that every officer will be required to follow.

(Union Exhibit 5).

#### SCHEDULE CHANGE

An examination of the law reveals why the Borough committed an unfair labor practice when it unilaterally instituted a wholesale schedule change. "[A] fundamental change in the very nature of the shift system for police officers," when unilaterally instituted by an employer, violates the PLRA as read with Act 111. Township of Upper Saucon v. PLRB, 620 A.2d 71 at 75 (Pa. Cmwlth. 1993).

<sup>&</sup>lt;sup>2</sup> The prior collective bargaining agreement, effective by it's terms from January 1, 2003, until December 31, 2005, included provisions for three, eight-hour work shifts per day. (Union Exhibit 1).

The Borough argues that the loss of full-time and part-time officers, and the resultant difficulty in staffing the twelve-hour schedule, created a situation where the Borough's unilateral change was necessary "to insure the safety of its citizens." (Borough's brief at 7). Therefore, argues the Borough, the decision fell under the rubric of managerial prerogative. That kind of public safety argument was considered and rejected by the Hearing Examiner in <u>Upper Saucon Township</u>, 23 PPER ¶ 23001 at 4 (Proposed Decision and Order, 1991), and by the Board in <u>Upper Saucon Township</u>, 23 PPER ¶ 23057 (Final Order, 1992). See also <u>Dunmore Police Association v. Borough of Dunmore</u>, 34 PPER 30 (Proposed decision and Order, 2003)(department-wide schedule change for coordination of police services to further public safety interests still has to be bargained beforehand).

The chief testified that "it's very difficult" to get part-time officers to work twelve-hour shifts, and that "[i]t was easier to cover [eight hour shifts]...for scheduling purposes." (N.T. 48). Inconvenience, however, does not excuse the Borough from bargaining with the Union over a schedule change, even one supposedly in response to an immediate exigency. Moreover, the Borough did schedule officers for twelve-hour shifts on the weekends (N.T.51-52), undercutting the implied argument that twelve-hour shifts were impossible to fill. The Borough is ordered to return to the twelve-hour shift schedule. After it does so, the Borough must bargain with the Union before implementing any wholesale schedule changes it wants to initiate.

#### ADMINISTRATIVE AND PROCEDURAL POLICIES

The Borough's issuance of the memorandum entitled "Administrative and Procedural Policies" did not violate the PLRA or Act 111. The Union, in its brief, argues that "the new policy implemented on February 14, 2008, by the Borough," was done sans bargaining. Despite that allegation, the first page of the memorandum reveals that it was being distributed to all officers for criticism and comment, not implementation. And, there is nothing in the record that establishes implementation of the February 14 memorandum. Suffice it to say that where no implementation is established, a charge of unilateral implementation is not sustained.

#### CONCLUSIONS

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

- 1. The Borough is an employer under Section 3(c) of the PLRA, as read with Act 111.
- 2. The Union is a labor organization under Section 3(f) of the PLRA, as read with Act 111.
  - 3. The Board has jurisdiction over the parties.
- 4. The Borough has committed unfair labor practices under Section 6(1)(a) and 6(1)(e) of the PLRA.
- 5. The Borough has not committed unfair labor practices under Section 6(1)(c) of the PLRA.

## ORDER

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

<sup>&</sup>lt;sup>3</sup> Under Act 111, when an employer's managerial policy concern substantially outweighs any impact the issue in question has on the employes, that issue is deemed a managerial prerogative. <u>Township of Upper Saucon</u>, supra.

 $<sup>^4</sup>$  The Union's charge here is not direct dealing, but rather, unilateral implementation.

#### HEREBY ORDERS AND DIRECTS

that the Borough shall:

- 1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.
- 2. Cease and desist from refusing to bargain collectively with the representative of its employes.
- 3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PLRA:
  - (a) Return officers to the twelve-hour shift schedule;
- (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.

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 first day of April, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Timothy Tietze, Hearing Examiner

# COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

NAZARETH BOROUGH POLICE ASSOCIATION :

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v. : Case No. PF-C-08-42-E

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NAZARETH BOROUGH

#### AFFIDAVIT OF COMPLIANCE

The Borough hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act and Act 111; that it has returned officers to the twelve-hour shift schedule; that it has posted a copy of the proposed decision and order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

					Signature/Date		
					Title		
WORN	AND	SUBSCRIBED	то	before me			

SWORN AND SUBSCRIBED TO before me the day and year first aforesaid.

Signature of Notary Public