

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 91 :  
 :  
 v. : Case No. PF-C-09-92-W  
 :  
 FAWN TOWNSHIP :

**PROPOSED DECISION AND ORDER**

On July 24, 2009, the Fraternal Order of Police, Lodge 91 (FOP), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Township of Fawn (Township) had violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by "unilaterally eliminat[ing] the dental healthcare and eye healthcare of its police department[.]" On August 20, 2009, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on December 3, 2009, if conciliation did not resolve the charge by then. The hearing was held as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. Neither party filed a brief.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing, makes the following:

**FINDINGS OF FACT**

1. On December 10, 2001, the Township and the Police Department of the Township of Fawn entered into a collective bargaining agreement providing in pertinent part at section XI as follows:

**"A. MEDICAL AND DISABILITY INSURANCE**

"The Township of Fawn agrees to maintain complete and adequate coverage of hospital, surgical, outpatient and medical insurance benefits for the employees of the regular police force and their immediate families as set forth in the policies owned by the Township of Fawn and agreed to with Blue Shield and Blue Cross or its equivalent."

(Township Exhibit B)

2. The Blue Shield and Blue Cross policies referred to in section XI(A) of the collective bargaining agreement included dental and eye care coverage. (N.T. 9-10, 29-30)

3. On November 29, 2008, an interest arbitration panel issued an award with a term "effective from January 1, 2008 through December 31, 2010." (Police Exhibit 1)

4. Section 1 of the award provides as follows:

"Fawn Township (Township) shall recognize Fraternal Order of Police Lodge 91 (FOP) as the sole and exclusive Collective Bargaining representative for all full-time and regular part-time police officers within the bargaining unit with respect to compensation, hours of work, working conditions and other terms and conditions of employment. Part-time employees shall be covered by only those provisions of the Agreement that specifically state that they apply to part-time employees."

(Police Exhibit 1)

5. Section 5 of the award provides in pertinent part as follows:

"Section XI(A) shall be deleted and replaced with the following:

The total cost of purchasing health insurance coverage for the Fawn Township full-time police officers in 2007 was \$36,212.04. As soon as practicable after this Award is issued, the health insurance plan for the Fawn Township police officers shall be switched to UPMC PPO Option 8."

(Police Exhibit 1)

6. Section 7 of the award provides in pertinent part as follows:

"The pre-existing Collective Bargaining Agreement is herein incorporated by reference and its provisions shall remain viable and unchanged except as modified herein or by subsequent mutual agreement by the parties."

(Police Exhibit 1)

7. The parties have executed a collective bargaining agreement incorporating the terms of the award. (N.T. 33; Township Exhibit C)

8. UPMC PPO Option 8 does not include dental and eye care coverage. (N.T. 11-12, 36)

#### DISCUSSION

The FOP has charged that the Township committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by "unilaterally eliminat[ing] the dental healthcare and eye healthcare of its police department[.]"

The Township contends that the charge should be dismissed because it was contractually privileged to eliminate the dental and eye care coverage.

An employer commits unfair labor practices under sections 6(1)(a) and (e) if it unilaterally changes employe health care benefits. Douglas Township, 36 PPER 160 (Final Order 2005). If the was contractually privileged to change the health care benefits, however, then no such unfair labor practices may be found. As the court explained in Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000):

"The [Board] has recognized 'contractual privilege' as an affirmative defense to a charge of unfair labor practices alleging a refusal to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the [respondent]'s action was permissible under the agreement. See [Ellwood City Police Wage and Policy Unit v. Ellwood City Borough], 29 PPER ¶ 29213 (Final Order 1998), aff'd, 736 A.2d 707 (Pa. Cmwlth. 1999)]; [Delaware County Lodge #27 of the Fraternal Order of Police on behalf of the Members of the Police Force of the Borough of Prospect Park v. Prospect Park Borough], 27 PPER [¶] 27222 (Final Order 1996); [Jersey Shore Area Education Association v. Jersey Shore Area School District], 18 PPER [¶] 18117 (Final Order 1987)(quoting NCR Corp., 271 N.L.R.B. 1212 (1984) as saying that 'where an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it, the [National Labor Relations Board] will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct')."

761 A.2d at 651. The same analysis applies when the parties' negotiations end with an interest arbitration award. City of Pittsburgh, 24 PPER ¶ 24111 (Final Order 1993).

The record shows that an interest arbitration panel issued an award replacing a health insurance plan (Blue Shield and Blue Cross) that included dental and eye care coverage with a health insurance plan (UPMC PPO Option 8) that does not include dental and eye care coverage (findings of fact 1-6, 8). The record also shows that the parties have executed a collective bargaining agreement incorporating the terms of the award (finding of fact 7).

Given that the award replaced the health insurance plan that included dental and eye care coverage with a health insurance plan that does not include dental and eye care coverage, it is apparent that the Township has a sound arguable basis for interpreting the award/collective bargaining agreement to mean that it is not presently obligated to provide dental and eye care coverage for its police officers. Thus, the Township was contractually privileged to eliminate the dental and eye coverage for its police officers.

The FOP contends that the Board should find to the contrary because (1) the Township did not expressly propose the elimination of dental and eye coverage during the bargaining leading up to the award and (2) neither the award nor the collective bargaining agreement incorporating its terms expressly references the elimination of dental and eye coverage, reflecting the intent of the FOP that those coverages were not to be eliminated. The parties' bargaining history and the FOP's intent might be relevant in deciding whether or not the Township has correctly construed the award/collective bargaining agreement. Under Pennsylvania State Troopers Association, supra, however, whether or not the Township has correctly construed the award/collective bargaining agreement is for an arbitrator rather than the Board to decide.

#### CONCLUSIONS

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

1. The Township is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The FOP 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 Borough has not committed unfair labor practices under sections 6(1)(a) 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 as read in pari materia with Act 111, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

#### 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 eighteenth day of December 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner