

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COLUMBIA BOROUGH POLICE OFFICERS' :
ASSOCIATION :
 :
v. : Case No. PF-C-08-105-E
 :
COLUMBIA BOROUGH AND LEO LUTZ¹ :

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Columbia Borough Police Officers' Association (Union) on August 22, 2008, alleging that Columbia Borough (Borough) and Leo Lutz (Lutz) violated Section 6(1)(a), (b), (c), and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On September 11, 2008, the Secretary of the Board declined to issue a complaint. Exceptions were filed to the Secretary's decision and on November 18, 2008, the Board issued an Order Directing Remand to the Secretary for Further Proceedings, directing the Secretary to issue a complaint. On February 4, 2009, the Secretary issued a complaint and notice of hearing wherein a hearing was set for March 24, 2009, in Harrisburg, Pennsylvania. After a series of granted continuance requests, a hearing was held on May 4, 2009, 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. Attached to a memorandum, dated August 4, 2008, Leo Lutz, the Borough's Mayor, sent to "All Columbia Police Officers," a two-page document captioned, "The following is a 'CODE OF CONDUCT' that I have found and is an example of what is expected of an officer in Columbia Borough." (Joint Exhibit 2).

2. The Mayor testified that he did not intend to institute a code of conduct for the police. (N.T. 28).

3. The parties stipulated and agreed that counsel for the Borough, days before the hearing in this case, told the Union's counsel that the Borough had "not intended the code of conduct to be effective." (N.T. 51).

DISCUSSION

The Union alleges that the Borough violated Section 6(1)(a), (b), (c), and (e) of the PLRA as read with Act 111, when it "announced the creation of a code of conduct by letter dated August 4, 2008." Simply put, the record does not substantiate that allegation. A review of the record shows why this charge is baseless, and is therefore dismissed.

On August 4, 2008, the Mayor issued a memorandum to "All Columbia Borough Police." Attached to that memorandum was a two-page document titled, "The following is a 'CODE OF CONDUCT' that I have found and is an example of what is expected of an officer in Columbia Borough." (Joint Exhibit 2). This is the document referred to by the Union as creating a code of conduct. By its plain language it does not. It is merely precatory.

¹ The caption appears as amended by the Hearing Examiner.

The memorandum sent by the Mayor (which is not alleged to be the basis of this unfair labor practice) "is a reminder to all Columbia Borough Police Officers of the conduct expected. . . both on duty and off." (Joint Exhibit 2). The code of conduct attached is, as plainly stated "an example." Nowhere in either the memorandum or in the example code of conduct attached, are there any indicia that it is adopted, or is intended to be adopted by the Borough.

Testimony by individual police officers that they thought the example code of conduct was somehow the Borough's adopted policy is simply not based upon any ascertainable facts. In point of fact, one police officer testified that the Mayor told him the example code of conduct was, "just a reminder how to, you know, conduct ourselves...." (N.T. 12). Moreover, at the hearing, the Mayor testified that he never intended to institute a code of conduct. (N.T. 28).

At the hearing, counsel for the Union asked questions such as, "Where does it say in the code of conduct that it is not immediately effective?" (N.T. 29). The question presupposes that the code was immediately effective, which, as the record plainly shows, it was not. Such questions bring to mind Abe Lincoln's favorite aphorism, "How many legs does a dog have, if you call the tail a leg? Four; calling the tail a leg doesn't make it one."

Amazingly, the parties stipulated that days before the hearing, counsel for the Borough informed the Union's counsel that the Borough had not "intended the code of conduct to be effective." Nevertheless, the Union wanted a hearing. Based on this record, the charge that the Borough violated Section 6(1)(a) and (e) of the PLRA as read with Act 111 is dismissed.

But, the Union also charged the Borough with trying to dominate or interfere with the formation or administration of the Union or to give it material support. 43 P.S. § 211.6(1)(b). Aside from checking that section on the charge form, the Union offered absolutely no evidence to support that charge. It is also dismissed.

The Union also charged that the Borough discriminated against bargaining unit members because they participated in protected activities. 43 P.S. § 211.6(1)(c). Evidently, realizing how utterly lacking its proofs were for this section, the Union did not even argue in its brief that the Borough violated Section 6(1)(c). That portion of the charge is, likewise, dismissed.

This charge is much like that in Littlestown Borough Police Officers Association v. Littlestown Borough, 38 PPER 1 (Proposed Decision and Order, 2006), 38 PPER 2 (Final Order, 2007). In that case, the charge was dismissed because there was no unilateral change by the employer. In Littlestown, despite the employer's rescission of a future change in health care provisions before they became effective, the Union filed a charge anyway. It was dismissed because there was no unilateral change. This charge is dismissed for exactly the same reason; there was no unilateral change. And, the Borough informed the Union's attorney *before* the hearing that there was no change.

Aside from insufficient proofs, the Union also had citational deficiencies in its brief. In its post-hearing brief, the Union twice cites to Wikipedia, the on-line encyclopedia. And, that is just how the citations appear in its brief, as "Wikipedia." Wikipedia advertises itself as the "free encyclopedia that anyone can edit." That moniker itself gives pause as to its legal acumen. Nevertheless, setting a web browser to http://wikipedia.org/wiki/citing_wikipedia gives the reader the formal citation form to the page being viewed. Citation formats include, APA, MLA, Chicago and Turabian styles. Also, *The Blue Book, A Uniform System of Citation, 18th Edition*, offers Rule 18.2, titled, "The Internet," which sets forth the accepted rules for the legal citation of primary sources in that medium. The Union, in its brief, did not avail itself of these uniform rules, but rather simply wrote "Wikipedia" as the formal citation. Putting aside the questionable accuracy of the source cited, only writing "Wikipedia" is tantamount to citing a case by merely writing "A.2d" after the case caption, but failing to use the volume and page numbers.

Because the Union proved none of the allegations in its charge of unfair labor practices, the charge is dismissed in its entirety.

CONCLUSIONS

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

1. That the Borough is an employer within the meaning of Section 3(c) of the PLRA as read with Act 111.
2. That the Union is a labor organization within the meaning of Section 3(f) of the PLRA as read with Act 111.
3. That the Board has jurisdiction over the parties hereto.
4. That the Borough has not committed unfair labor practices in violation of Section 6(1)(a), (b), (c) and (e) of the PLRA as read with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices filed to the above case number is dismissed and the complaint issued thereon rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this twelfth day of January, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner