

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

JOHN SMITH :  
 :  
 v. : Case No. PF-C-09-70-E  
 :  
 BETHEL TOWNSHIP :

**FINAL ORDER**

Complainant, Officer John Smith, filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on December 18, 2009, to a Proposed Decision and Order (PDO) issued on November 30, 2009. In the PDO, the Hearing Examiner dismissed Officer Smith's Charge of Unfair Labor Practices in which he alleged that Bethel Township (Township) terminated his employment as a part-time police officer in violation of Section 6(1)(a), (c) and (d) of the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111. On January 4, 2010, the Township filed a response to the exceptions and a supporting brief. The Hearing Examiner's Findings of Fact, salient to the exceptions, are summarized as follows.

The Township's police department is located in a large trailer, and is composed of a full-time chief of police and approximately 36 part-time officers. John Smith was one of the regular part-time police officers from 2003 to April, 2009.

In 2008, Michael George, a Township Supervisor, convened a meeting of all the police officers, at which he announced that if he was to find out who was responsible for distributing union literature, that person would be fired and he would disband the police department. However, by early 2009, Mr. George became the Township Manager, and resigned his position as a Township Supervisor. As the Township Manager, Mr. George could not vote to disband the police force. Nor does he have any supervisory authority over the police department.

In November 2008, Officer John Cairo became the acting Chief of Police, following the former Chief's death. Cairo was appointed as Chief of Police by the Township Supervisors in March 2009.

In January 2009, the Township held a reorganization meeting to reappoint police officers for that year. Officer Smith was assigned to work patrol during the reorganization meeting. However, in disregard of Chief Cairo's request that he stay out on patrol, Officer Smith instead attended the meeting at the Township offices. Officer Smith became upset at what had transpired at the meeting, and afterwards slammed the outside door to the police department with such force that it came off its hinges. Despite causing the damage to the door, Officer Smith was not disciplined by either the Chief or the Township Supervisors. Chief Cairo testified that Officer Smith's conduct that day was excused as possibly related to the recent death of his friend, the former chief.

In late January 2009, Officer Smith began posting flyers in the police department from the International Brotherhood of Teamsters Law Enforcement League, which explained the alleged benefits of the Teamsters' representation of the part-time officers. Officer Smith posted the flyers on the front door of the building, as well as in areas of the building which were only used by the police officers. He also placed the flyers in all of the police officers' office mail boxes. Chief Cairo admitted that he removed the flyers from areas of public access, such as the front door of the police offices, because he viewed them as a nuisance. However, he did not remove the flyers from the non-public areas of the police station. Chief Cairo also provided Officer Smith with the personal telephone numbers of the part-time officers.

On April 3, 2009, Officer Smith failed to report for duty on his scheduled shift. Chief Cairo called Officer Smith and left a message on his cell phone inquiring as to why Officer Smith was not at work that night as he had been scheduled. Officer Smith called the Chief back and explained that he was on vacation and had not received the schedule.

Chief Cairo asked Officer Smith to come into the office to talk with him about this incident and other matters concerning Smith's conduct.<sup>1</sup> Officer Smith replied, "Put it in writing. I am not doing anything unless you put it in writing," and then hung up on Chief Cairo. Two days later, Officer Smith went to the station and found out that his name had been taken off the schedule for April. Officer Smith did not comply with Chief Cairo's directive to come to the station to talk with the Chief.

Officer Smith contends in his exceptions that the Hearing Examiner erred in determining that he had failed to establish that the Township terminated his employment in April of 2009 because of his efforts to organize the Township's part-time police officers. To support a charge of discrimination under Section 6(1)(c) of the PLRA, the complainant must establish by substantial, credible evidence that the employee engaged in activity protected by the PLRA, that the employer had knowledge of that protected activity, and that the employer took adverse action against the employee because of the protected activity. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). It is the employer's anti-union motive which creates the offence under Section 6(1)(c) of the PLRA. PLRB v. Ficon, 434 Pa. 383, 254 A.2d 3 (1969).<sup>2</sup>

In determining the employer's motive for its action, the hearing examiner's finding must be supported by substantial and legally credible evidence. PLRB v. Kaufmann Department Stores, Inc., 345 Pa. 398, 99-400, 29 A.2d 90, 92 (1942). In that respect, it is the function of the hearing examiner, who is able to view the witnesses' testimony first-hand, to determine the credibility of the witnesses and to weigh the probative value of the evidence presented. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). The Board will not disturb the hearing examiner's credibility determinations absent the most compelling of circumstances. Hand v. Falls Township, 19 PPER ¶ 19012 (Final Order, 1987); AFSCME District Council 84 v. Department of Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986).

The Hearing Examiner determined that Officer Smith failed to prove that the Township removed him from the schedule because of unlawful union animus.<sup>3</sup> The Hearing Examiner found that Chief Cairo credibly testified that his decision to remove Smith from the schedule had nothing to do with Smith's activities in posting the Teamsters' flyers. Indeed, the evidence shows that Officer Smith failed to appear for duty on a scheduled shift, hung up on the Chief during a telephone conversation, and refused to speak with Chief Cairo unless the Chief's request was placed in writing. The substantial evidence, credited by the Hearing Examiner, supports the finding that it was not Officer Smith's protected organizing efforts that motivated Chief Cairo to remove Smith from the schedule in April 2009, but rather Smith's recent behavior unrelated to his union activity. In essence, the Hearing Examiner believed Chief Cairo's testimony that Smith's union activities had nothing to do with Smith's removal from the schedule. The Complainant proffers no reason, let alone a compelling reason, for the Board to reverse that credibility determination.

After a thorough review of the exceptions and all matters of record, there is substantial, credible evidence of record supporting the Hearing Examiner's finding that unlawful union animus did not motivate the Township's removal of Officer Smith from the schedule in April 2009. As such, the Hearing Examiner did not err in dismissing Officer Smith's charge of discrimination under Section 6(1)(a) and (c) of the PLRA. Accordingly, Officer Smith's exceptions to the PDO shall be dismissed, and the PDO made absolute and final.

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<sup>1</sup> By this time, Chief Cairo was aware of reports that Officer Smith had made disparaging remarks about the Township police department to newly hired officers. (N.T. 92-93). There was also an investigation regarding Officer Smith's knowledge of the whereabouts of a training flyer that was found in the office shredder, (N.T. 128-129), and concerns raised by other officers over Officer Smith's attitude. (N.T. 101)

<sup>2</sup> There is no dispute that Officer Smith engaged in protected activity, of which the Township was aware, by posting union literature at the police station.

<sup>3</sup> The Hearing Examiner expressly found that Chief Cairo did not work against Smith's efforts to organize the police officers.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by John Smith are hereby dismissed, and the November 30, 2009 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this sixteenth day of February, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.