

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORWEGIAN TOWNSHIP POLICE DEPARTMENT :
 :
 V. : Case No. PF-C-08-143-E
 :
 NORWEGIAN TOWNSHIP

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Norwegian Township Police department (Union) on October 31, 2008, alleging that the Norwegian Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On January 15, 2009, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for March 4, 2009, in Philadelphia, Pennsylvania. After a series of granted continuance requests the hearing was held on May 21, 2009, when both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

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.

FINDINGS OF FACT

1. The Union is a labor organization under Act 111 as read in *pari materia* with the PLRA.
2. The Township is a public employer and political subdivision of the Commonwealth of Pennsylvania under Act 111 as read in *pari materia* with the PLRA.
3. As of January 1, 2008, the Township disbanded its police department. (N.T. 14).
4. Before the disbanding of the police department, officers had filed some non-traffic citations as the last step in the enforcement process for some Township ordinances. (N.T. 16-18; Union Exhibit 1).
5. Non-bargaining unit employes of the Township enforced Township ordinances, including filing non-traffic citations, before the police department was disbanded. (N.T. 31, 41, 42, 44, 59, 60; Township Exhibit 4, 5, 6, 7).
6. After disbanding of the police department, the Township no longer enforces ordinances banning dogs running at large, or fines for false alarms at businesses. (N.T. 20-21, 75).

DISCUSSION

The Township disbanded its police department on January 1, 2008. The Union alleges that prior to that date "the enforcement of the Township ordinances was work that was performed exclusively by the members of the collective bargaining unit." The Union alleges that it found out in October of 2008 that the Township was using non-bargaining unit members to enforce Township ordinances. Therefore, argues the Union, the Township has violated Section 6(1)(a) and (e) of the PLRA as read with Act 111.

The Township counters the charge by alleging that the Union has no standing because the Township disbanded the police department, so there are no employes having collective bargaining rights; that the charge is time barred under Act 111; and that the bargaining unit never exclusively performed the enforcement work.

The record does not show that the Union ever exclusively enforced Township ordinances. Nor does it show that the Union exclusively performed an identifiable

proportion of any shared duties so that the bargaining unit members had an expectation and interest in retaining that work. Consequently, the charge is dismissed.

The Township's argument that the Union has no standing cites no cases to support that bald assertion. And, in fact the Board's case law allows disbanded police units to file charges with the Board. Shoemakersville Borough Police Association v. Shoemakersville Borough, 38 PPER 107 (Proposed Decision and Order, 2007), 38 PPER 126 (Final Order, 2007).

The Township's argument that the Union is time barred under 43 P.S. § 211.9(e), which allows a six-week period for filing, also fails. That limitations period runs from when the complainant knows or should have known about the facts or circumstances giving rise to the cause of action. Dormont Borough v. PLRB, 794 A.2d 402 (Pa. Cmwlth. 2002). The Township argues that the non-traffic citations introduced by the Union itself, as evidence that the Township contracted out bargaining unit work, were all dated more than six weeks before this charge was filed.

The Union's witness testified that he first found out about the existence of these non-traffic citations when he was at an October 6, 2008, Township meeting, and then he corroborated what he heard by visiting the local district justice's office and acquiring copies of them. This charge was filed on October 31, 2008, clearly within six weeks of that meeting.

In both public and private sector labor law the party advancing the affirmative defense of the statute of limitations bears the burden of proving by "clear and unequivocal notice," either actual or constructive, of the acts that constitute the alleged unfair labor practice. Delaware County Intermediate Unit, 25 PPER ¶ 25119 (Final Order 1994); City of Philadelphia 27 PPER ¶ 27007 (Final Order, 1995); Truck Drivers and Helpers Local 170 v. NLRB, 933 F.2d 990 (1st Cir. 1993).

The Township argues that the Union should have known of these non-traffic citations when they were filed because they were matters of "public record." Well, so are thousands of other documents. Being a matter of public record only establishes that someone may view them after they become aware of their existence. The Union became aware of the non-traffic citations on October 6, 2008, and immediately affirmed their existence. The charge is timely.

The Union, states in its charge that "the enforcement of Township ordinances was work that performed exclusively by members of the collective bargaining unit." It is only in the Union's opening statement that the Union alleges that the exclusive work in question is the filing of some non-traffic citations for "nuisance ordinances." The Union's post-hearing brief reverts again to the general allegation that enforcement of the Township's ordinances was exclusively bargaining unit work.

Although not mentioned in its brief, the Union's testimony was that the bargaining unit was solely responsible for enforcing alarm ordinances, open burning violations, unleashed dogs,¹ junk cars on properties and high weeds. The latest example the Union offered was a non-traffic citation issued by a bargaining member ten years ago, in 1998. (Union Exhibit 1).

The Township's evidence, however, shows that alarm ordinances and unleashed dog ordinances are no longer enforced by the Township. The high weed ordinance has, since at least 2006, also been enforced by the Township's zoning officer. The junk car and trash ordinances have been enforced, at least since 1979, by both the bargaining unit and the Township's zoning officer.

The enforcement process involves multiple steps; the more recalcitrant the violator, the more steps necessary to ensure enforcement. (N.T. 37, 44, 46, 77-78). The dénouement of every enforcement action is not a non-traffic citation. The Union has not shown one ordinance that it exclusively enforced.

Moreover, the Union has neither argued nor proved that bargaining unit members "exclusively performed an identifiable proportion or quantum of the shared duties such

¹ The non-traffic citation from 1992, introduced by the Union for the only unleashed dog violation is unsigned and has a different Magisterial District number than do the other citations admitted. These discrepancies raise questions as to whether it was actually filed, and if so, by whom and where.

that the bargaining unit members have developed an expectation and interest in retaining that amount of work." Lake Lehman Educational Support Personnel Association v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006), 179 (citation omitted). Indeed, the Union's own witness testified that his portion of the enforcement process "would go in spurts[,] and that "[y]ou never know [when the work will be there]." (N.T. 18).

At best, the Union proved that bargaining unit members occasionally, on an as-needed basis, participated in one step of the Township's multi-step ordinance enforcement process. This is simply insufficient, under Board law, to sustain a violation of Section 6(1)(a) and (e) of the PLRA as read with Act 111.

CONCLUSIONS

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

1. The Township is an employer within the meaning of Section 3(c) of the PLRA as read with Act 111.
2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA as read with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Township has not committed unfair labor practices in violation of Section 6(1)(a) 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 twenty-first day of July, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner