

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CONEWAGO TOWNSHIP POLICE OFFICERS :
ASSOCIATION :
 :
 v. : CASE NO. PF-C-14-109-E
 :
CONEWAGO TOWNSHIP :

PROPOSED DECISION AND ORDER

On September 23, 2014, the Conewago Township Police Officers Association (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Conewago Township (Township) violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.¹

On September 29, 2014, the Secretary issued a complaint and notice of hearing, and therein designated a hearing date of January 26, 2015, in Harrisburg. The undersigned Examiner held four days of hearing before closing the record. During all four days of hearing, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On September 2, 2015, the Union filed its post-hearing brief. The Township filed its post-hearing brief on October 26, 2015.²

The examiner, based upon the testimony, exhibits and all matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer and political subdivision within the meaning of the PLRA as read with Act 111. (N.T. 3)
2. The Union is a labor organization within the meaning of the PLRA as read with Act 111. (N.T. 3)
3. David Williams has been the Township Chief of Police since May 1999. (N.T. 7-8, 76)
4. Marcie Krum was the Township Manager at all times relevant herein. (N.T. 228)
5. Keith Whitaker was the Township Secretary-Treasurer at all times relevant herein. (N.T. 90)
6. The parties had a collective bargaining agreement that expired December 31, 2012, and the parties engaged in negotiations beginning in June

¹ The Union specifically alleges an independent violation of Section 6(1)(a) in its specification of charges, although that cause of action is not checked off on the face of the charge of unfair labor practices.

² Delays in issuing certain Board decisions resulted from Commonwealth hiring freezes and position eliminations causing backlogs.

2012. The parties entered a new collective bargaining agreement, sans interest arbitration, which was effective January 1, 2013 through December 31, 2017. (N.T. 9-11, 830; Police Exhibit 1)

7. Patrolmen Lucabaugh was the Chief Union negotiator. He retired effective December 25, 2012. As his retirement date approached, a new Union negotiating team, including Detective Hartlaub, Officer Kile and Officer Bailey, replaced Officer Lucabaugh. Officer Lucabaugh negotiated from June 2012, through November or the beginning of December 2012. The Township negotiating team wanted to rewrite the collective bargaining agreement and refused to discuss economic issues until all else was resolved. Lucabaugh agreed to negotiate non-economic terms first and to address economic issues last in negotiations. There are over 40 articles in the contract and Lucabaugh initialed many of those articles, both changed and unchanged, to which he agreed. (N.T. 16-19, 270, 343, 426, 580, 581-582, 770, 831-832, 837-838)

8. The new Union negotiators wanted to begin bargaining from the beginning and disregarded the tentative agreements on specific provisions of the parties' contract reached between Officer Lucabaugh and the Township. The Union membership at no time wanted to bargain tentative agreements on non-economic issues before addressing the economic issues. The Union wanted to bargain the whole contract all at once before reaching any tentative agreement. Supervisor LeGore expressed his frustration to Hartlaub and felt that he wasted three months of negotiating. (N.T. 16-19, 214-216, 271, 343-344, 582-583, 839-842)

9. Two supervisors expressed their displeasure to the other Board members with the new Union team's desire to scrap the tentative agreements. During a public Board of Supervisors meeting, while negotiations were ensuing, Supervisor Bortner said that the officers did not care if they bankrupted the Township. He said that he did not like Act 111 and that the officers were greedy. Either Bortner or LeGore stated to the other Board members that Hartlaub "was being a real asshole about [] not going along with what they had already agreed upon," and that he [Hartlaub] was just being his arrogant self," and that Kile and Hartlaub were not playing fair. (N.T. 17, 35, 100, 214-216, 250-251, 288, 353, 895)

10. Supervisor Bortner wanted to place the collective bargaining agreement on the Township website to let the residents see how their tax dollars were being spent. The agreement was placed on the website. The agreement for the Township's other bargaining unit is also on the website. (N.T. 35-36, 98, 246-247, 722, 951)

11. Supervisor LeGore said that the supervisors were displeased with Detective Hartlaub's demeanor during negotiations. He further said to the Chief of Police: "They [the other supervisors] want him [Detective Hartlaub] gone; they want him out of here! Paper his ass for anything!" "I'm tired of his bullshit;" "get him the hell out of here;" "I'm done with it." "He's an asshole like his father was; we're going to get rid of him; we got to do what we got to do." He also told the Chief: "those are your marching orders." And at a Township meeting, one of the supervisors said: "And Officer Kile is just like him [Hartlaub]; he's going to be big trouble." Officers Kile and Bailey were in attendance and heard the comment. (N.T. 18, 74, 93, 96-97, 222-223, 226, 237-238, 502-503, 895)

12. The Chief understood Supervisor LeGore's comments to mean that the Chief was being directed to start a paper trail to have Detective Hartlaub fired. Approximately two weeks later, Supervisor LeGore asked the

Chief: "Got anything on Hartlaub yet?" The Chief replied in the negative. (N.T. 18, 21-22)

13. During a break in the first negotiation session with the new Union team, Supervisor LeGore said that the officers are "cocksuckers" or "dirty rotten cocksuckers," and "all they want to do is arbitrate." The Union negotiators heard him. The parties continued to negotiate that day. (N.T. 27-28, 96-97, 348, 489, 584, 843-845, 895)

14. In 2014, Chief Williams spoke with Officer Kile about promoting Kile to part-time detective. Supervisor Bortner, one of the two supervisors on the safety committee in charge of the Police Department, never learned that the Chief wanted to promote Kile to part-time detective. The Chief eventually told Kile that the promotion would not happen and that, if Officer Kile wanted criminal investigation work, he should go to another municipality. Supervisor LeGore purportedly did not want to create a position that was not already in the bargaining unit. Officer Kile would still work a combined 40-hour week with his part-time detective and patrol duties. Any overtime would be minimal. The Department was always under budget for overtime. Patrol officers work overtime. (N.T. 40-42, 104-106, 491-493, 717, 865-866, 903)

15. The Union filed a grievance on behalf of retired Officer Aldridge regarding his post-retirement health care benefits or buyouts. Officers Grimm and Baily served the grievance on Supervisor Knight at his home on Thanksgiving Day due to the Union's perceived time constraints. Supervisors Knight, Bortner and LeGore were upset by the Thanksgiving grievance service. They indicated that it was "unprofessional," and that there was "no reason to deliver [a grievance] to a supervisor on Thanksgiving. The Township won the Aldridge arbitration. (N.T. 220-221, 307, 706-707, 780-782, 853-855)

16. Light duty assignments are within the Chief's discretion. The Chief denied a request from Detective Hartlaub for light duty. (N.T. 84-85, 110, 113, 118, 632, 713-714)

17. In March 2014, Officer Bailey experienced a medical issue that interfered with his full duty, and he requested light duty. Officers had previously received light duty, including Hartlaub and Bailey prior to becoming Union negotiators and grievance filers. The Chief determines whether an officer should be given light duty depending on the nature of the injury and the nature of available light duty work. The Chief denied Officer Bailey light duty based on his injury and available work. There was not enough available work within Bailey's restrictions. The Board of Supervisors defer to the Chief regarding light-duty determinations and affirmed the Chief's denial of Bailey's light duty. (N.T. 45-48, 84-85 117-118, 165-168, 252-254, 294-295, 360-364, 587-588, 7134-714; Police Exhibits 2-3; Township Exhibits 1-2, 14)

18. The Union grieved the denial of light duty for Officer Bailey. The Chief is the first step in the grievance procedure, and he denied the Bailey grievance. The Union offered a settlement proposal for the Bailey grievance, but Supervisor Bortner rejected the offer, and counter proposed another offer which was rejected by the Union, after which the Supervisors instructed their labor counsel to make another offer to the Union. The Bailey grievance has been resolved. Officer O'Brien, who was not active in the Union, received light duty in January 2015. (N.T. 45-49, 53-56, 117-119, 165-166, 320-321, 366)

19. The Chief approves clothing reimbursements under the officers' clothing allowance provided by the collective bargaining agreement. Those

approvals are sent for payment to the Township Secretary-Treasurer and Manager. The Chief approved Hartlaub's request for reimbursement of a winter coat that he purchased on August 19, 2014. The Treasurer informed the Chief that he would not approve the reimbursement. The Chief and the Union President contacted Manager Krum. The Safety Committee (Supervisors Boyer and LeGore at the time) directed Manager Krum to approve the reimbursement for the coat. In fifteen years, the Township had not before denied a clothing reimbursement approved by the Chief. (N.T. 64-70, 86-87, 139, 191, 261-263, 296, 317, 394-396, 865-866; Township Exhibits 3(A) & (B))

20. The Chief approved in-soles for Officer Kile's shoes. The Treasurer and the Manager questioned the need for in-soles. Officer Kile and Detective Hartlaub, both on the Union negotiating team, were the only officers to have Chief-approved clothing reimbursements questioned for payment by the Manager and the Treasurer. Ms. Krum approved the reimbursement for in-soles a couple of months before for Officers O'Brien and Duncan, who were not on the negotiating team. Ms. Krum eventually approved the reimbursement for the in-soles. (N.T. 70, 143-144, 191-192, 497-498)

21. The Township examined Officer Kile's reimbursement for UnderArmour but not other officers who submitted reimbursement for UnderArmour. (N.T. 193-194)

22. In general, a new agreement was reached in January 2013, but the parties haggled over specific language until the new collective bargaining agreement was signed on August 19, 2013. The agreement was made retroactively effective on January 1, 2013. After contract settlement, the Board of Supervisors became concerned about money spent on overtime hours. (N.T. 40-42, 82, 106-107, 468-469, 530-533, 565-566, 585, 701, 852-853)

23. One day, Manager Krum called the Chief of Police, who was at home at the time, to report that Officer Bailey was talking to the Police Department receptionist for several hours. The Chief investigated Officer Bailey's activities for the day and concluded that he was with the Receptionist during his lunch period only and that he was conducting police business and processing walk-in complaints during the remainder of his time at the station. (N.T. 61-63, 132-134, 189-190, 598-601)

24. In late March 2014, a file was missing at the Police Department for approximately one week. There was a conflict between Hartlaub and another officer regarding the missing file. Hartlaub was accused of having the file. Hartlaub then located the file in a file drawer after the Chief and Sergeant Baumgardner had already looked there. Hartlaub became escalated and red-faced; he began yelling in front of the Chief in an animated manner. The Chief retreated to his office; Hartlaub followed him and started yelling again. Hartlaub said: "This is bullshit and you know that it's bullshit!" The Chief told him to "knock it off." The Chief informed the supervisors and the Manager, who requested that the Chief document his concerns about Hartlaub. On April 1, 2014, the Chief sent an email to the Manager listing his concerns. (N.T. 182-188, . 195-197, 231-232, 369-372, 775; Township Exhibit 4)

25. On March 14, 2014, Nicholas J. Reich, the Security Administrator for the Justice Network (JNET), wrote to Chief Williams informing him that JNET was suspending Detective Hartlaub for two weeks for misusing the JNET and that Hartlaub would be required re-take a specific on-line course before JNET reinstated his privileges. (Township Exhibit 18)

26. The supervisors, at the recommendation of Supervisor Boyer, determined that Hartlaub would be sent for a fitness-for-duty evaluation,

while on paid leave, until determined fit for duty. The paid administrative leave at the Supervisors' suggestion was before LeGore told the Chief to "paper his ass, in June 2014." (N.T. 232-233, 235-237, 640, 715)

27. Chief Williams disciplined Hartlaub and placed him on administrative leave for a psychological evaluation on April 29, 2014. The Union filed two grievances on behalf of Hartlaub. The Union filed one grievance on April 29, 2014, regarding the administrative leave, and the other on May 6, 2014, regarding discipline for violating JNET protocols, a Department rules violation. The Union proposed a resolution which was rejected by the Board of Supervisors. Both grievances have been resolved. Officer Kile served both the Bailey and the Hartlaub grievances on Supervisor Boyer after obtaining her permission. Both Hartlaub grievances were settled. (N.T. 120-122, 153, 175, 287, 301, 320-321, 374, 392, 494-495, 715; Township Exhibit 12)

28. Hartlaub went for a psychological evaluation with Dr. Robert Tannenbaum who concluded that he was fit for duty. Dr. Tannenbaum met with Hartlaub on April 5, 2014. (N.T. 376, 389-393, 668-678)

29. The supervisors at no time expressly directed the Chief to deny light duty requests to Hartlaub or Bailey; they did not direct the Chief to discipline Hartlaub or to deny his grievances; and they did not direct Marcie Krum to deny uniform and clothing reimbursements to any officers. (N.T. 728, 777-779, 827)

30. In August 2014, Hartlaub filed a grievance over retired Officer Lucabaugh's buyout for opting out of the Township's retirement medical plan. Bailey accompanied Hartlaub to witness service of the Lucabaugh grievance on the Supervisors at the Township building. All five Supervisors were participating in an executive session in the locked conference room. All five supervisors refused to sign for the grievance and appeared upset by the nature of the service because the officers interrupted an executive session. They advised the officers to serve the Township at the Township Building during regular Township hours. The officers left the grievance. (N.T. 399-402, 601-603, 615-616, 709-710, 872)

DISCUSSION

In its specification of charges, the Union alleges that the Township discriminated against Detective Hartlaub and officers Kile and Bailey for engaging in protected Union activities. It also alleges that the Township independently coerced and intimidated bargaining unit officers. The alleged adverse employment action taken against Hartlaub was resolved by the settlement of two grievances and no remedy is sought with respect to Detective Hartlaub. However, the Union presented evidence regarding the Township's treatment of Hartlaub as pattern evidence of animus against the other Union officers.

The Board will find an independent violation of Section 6(1)(a) of the PLRA if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown in fact to have been coerced. Bellefonte Police Officers Ass'n v. Bellefonte Borough, 27 PPER ¶ 27183 (Proposed Decision and Order, 1996) *citing* Northwestern Education Ass'n v. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985). Improper motivation need not be established; even an inadvertent act may constitute an independent violation of Section 6(1)(a). Northwestern School District,

supra. However, an employer does not violate the PLRA or PERA where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employe rights. Ringgold Educ. Ass'n v. Ringgold Sch. Dist., 26 PPER ¶ 26155 (Final Order, 1995).

A reasonable person in the bargaining unit of police officers would certainly be coerced and intimidated in the exercise of protected rights by the statements and comments made by Supervisors Bortner and LeGore. One of them stated that Hartlaub was being an "asshole" about the manner in which he conducted contract negotiations on behalf of the Union and that Hartlaub was arrogant. Supervisor LeGore told the Chief of Police to "paper [Hartaub's] ass" to get him out of the Department. He further iterated that Hartlaub was an "asshole" like his father and that Kile was just like him and that Kile would be trouble. During negotiations, LeGore also referred to the Union negotiators as "dirty rotten cocksuckers." These statements collectively interfered with the manner in which the Union negotiators chose to bargain and process grievances. It also interfered with the Union's position in bargaining and, therefore, violated Section 6(1)(a) of the PLRA.

As regards the discrimination claim, the Union has the burden of establishing the following elements under Act 111 and the PLRA:

[T]hat the employe engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employe that was motivated by the employe's engaging in that known protected activity. Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlt. 2004); FOP, Lodge 5 v. City of Philadelphia, 38 PPER 184 (Final Order, 2007). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlt. 1981). Because direct evidence of anti-union animus is rarely presented, or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlt. 1996).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. In PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board opined that "[t]here are a number of factors the Board considers in determining whether anti-union animus was a factor in the [adverse action against] the Complainant." Id. at 380. These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employe, the effect of the employer's adverse action on other employes and protected activities, and whether the action complained of was "inherently destructive" of important employe rights. Centre County, 9 PPER at 380. The close timing of an employer's adverse action alone is not enough to infer animus, but when combined with other factors can give rise to the inference of anti-union animus. PLRB v. Berks County, 13 PPER ¶ 13277 (Final Order 1982); City of Philadelphia, supra; Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984). Evidence that the employer has failed to adequately explain its adverse actions or that it has set forth shifting reasons for

an adverse action can support an inference of anti-union animus and may be part of the union's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). Montgomery County Geriatric and Rehabilitation Center, 13 PPER ¶ 13242 (Final Order, 1982), aff'd, Montgomery County v. PLRB, 15 PPER ¶ 15089 (Court of Common Pleas of Montgomery County, 1984). However, mere suspicion is insufficient to sustain a discrimination charge. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974).

The employer may rebut the union's prima facie case in one of two ways: (1) an employer may prove that the action complained of was taken for legitimate business reasons and not unlawful motive; or (2) the employer may prove that, despite evidence of unlawful motive, the employer would have taken the same action anyway because the legitimate business reason was the overriding, proximate cause of the adverse employment action and not the unlawful motive. Upland Borough, supra. West Shore Sch. Dist., supra; Teamsters Local Union No. 32 v. Washington Township Mun. Auth., 20 PPER ¶ 20128 (Final Order, 1989). The latter is otherwise known as a "dual motive" case. Indiana Area Educ. Ass'n v. Indiana Area Sch. Dist., 34 PPER 133 (Final Order, 2003). In either defensive posture, an employer's insubstantial or pretextual explanation for adverse action coupled with close timing of that adverse action to protected activity can establish a prima facie case and a sufficient evidentiary basis to find a violation of Section (6)(1)(c). Colonial Food Service Educ. Personnel Ass'n v. Colonial Sch. Dist., 36 PPER 88 (Final Order, 2005); Lehigh Area School District v. PLRB, 27 PPER ¶ 27001 (Pa. Cmwlth., 1996).

FOP, Lodge No. 7 v. City of Erie, 39 PPER 60 at 204-205 (Proposed Decision and Order, 2008).

There is no dispute that the Township supervisors, the Chief and the Manager knew that Hartlaub, Kile and Bailey were involved in collective bargaining activities conducted in a manner that was upsetting to the supervisors. The Union argues that the unfiltered statements boldly expressed by Supervisors Bortner and LeGore are the best evidence of animus against the officers. The Union claims that the Township issued directives targeting Hartlaub, Kile and Bailey with no attempt to hide the motive.

However, there is no nexus between the negative comments of the supervisors and the alleged adverse employment action taken against any of the officers by the Chief. I credit the Chief's reasons for disciplining Hartlaub and placing him on paid administrative leave for a fitness-for-duty evaluation and I credit the testimony that no supervisor directed the Chief to take the specific disciplinary action against Hartlaub or to deny Bailey's light duty request and grievance. The Chief was clear and credible in testifying that he was not acting on behalf of the supervisors in any of his decisions and that he thinks that Hartlaub is a very good detective. Also, the Chief could not have been following Supervisor LeGore's desire that the Chief "paper his ass" because the actions against Hartlaub predated Mr. LeGore's comments. The credible, substantial evidence of record shows that the Chief determines light duty and discipline. The Supervisors deferred to the Chief's recommendations regarding the light-duty and disciplinary determinations of the Chief in this case. The record does not, however, establish a connection between the supervisors' comments and the Chief's

legitimate actions regarding Hartlaub and Bailey or that the Chief was acting at the unlawfully motivated request of Supervisor LeGore.

The third-party administrator of the J-NET system contacted the Chief informing him that Hartlaub allegedly misused the system and that his privileges were suspended. Additionally, Hartlaub became escalated with and arguably insubordinate to the Chief regarding the missing file after Hartlaub was blamed by another officer for having misplaced it. The Chief became legitimately concerned for Hartlaub's stability in the field. Significantly, Supervisor Boyer, whose husband is a former Township police officer and who is very sympathetic to the Union, agreed and it was her idea to send Hartlaub for a fitness-for-duty evaluation. Moreover, both the Chief and Supervisor Boyer believed Hartlaub to be very good at performing his duties as a detective. Accordingly, none of the employment actions regarding Hartlaub were born out of animus or any influence or directives from the Supervisors.

I find, however, that there was discrimination in LeGore's denying the Chief's request to have Officer Kile promoted to part-time detective. When the Chief approached the Safety Committee with the idea of creating a new position, Supervisor LeGore purportedly was unwilling to create another bargaining unit position, and he single-handedly quashed the idea without consulting with the other Safety Committee member, Supervisor Bortner. Supervisor LeGore's unwillingness to add a position to the bargaining unit was, by itself on its face, a reasonable business decision. However, the totality of the circumstances of record shows more. Permitting Kile to perform part-time detective duties necessary to assist and support Detective Hartlaub, who also did work for the County, in processing his case load at no extra cost to the Township, except for occasional, minimal overtime, was a better and more reasonable option for the improvement of the Department. The occasional, minimal overtime would have been no different than for any other patrol officer who may have to occasionally work some overtime. Moreover, the Department is always under budget for overtime.

The facts demonstrate the following: that Kile's detective work would have benefitted the Township; LeGore made anti-Union statements about Kile, (that Officer Kile was just like Hartlaub, who Supervisors LeGore and Bortner referred to as "arrogant" and "a real asshole," and that Officer Kile, like Hartlaub, was not playing fair in bargaining and that he was trouble); LeGore did not consult with Supervisor Bortner on the Safety Committee concerning the part-time detective promotion; and the Bortner-LeGore Safety Committee deferred to the Chief's discretion when the Chief denied Union leader Bailey's light duty and disciplined Union leader Hartlaub, both negative actions against Union leaders, but refused to defer to the Chief's discretion in promoting Union leader Kile to part-time detective at no extra cost, which is positive for Kile. These facts yield the inference that Supervisor LeGore's denial of Kile's promotion to part-time detective was unlawfully motivated. However, because the position did not previously exist, I am without authority to order the Township to create the position for Kile.

The Chief denied Officer Bailey's light-duty assignment based on the nature of his physical condition and the availability of light duty work within his capabilities as outlined by Bailey's physician. The supervisors deferred to the Chief's discretion in determining Bailey's light duty. There is no evidence that the Chief denied Bailey's light duty because of his Union activities. The fact that other officers received light-duty assignments does not constitute disparate treatment because the Union did not establish that the other officers were not similarly situated, given the nature of

their respective physical conditions and the type of available work at the time.

Manager Krum reported to the Chief that Officer Bailey spent several hours talking with the Township Receptionist. The Chief's investigation of Bailey established that Ms. Krum's assessment of the situation was not accurate, and the Chief reached a different conclusion. In fact, Officer Bailey was at the police station working on police matters and walk-in complaints during the time period. Although he did spend some time talking with the Township Receptionist, that time was during his lunch period only, and it was not several hours in duration. The Manager also questioned the Chief-approved clothing reimbursements for Hartlaub and Kile. I find the Manager's behavior with respect to Hartlaub, Kile and Bailey, who are actively involved in Union activities, beyond mere suspicion. Although there is insubstantial evidence that Ms. Krum harbored animus toward the officers at the behest of the supervisors, there is sufficient evidence of her own disparate treatment of those officers thereby yielding the inference that Ms. Krum targeted the active Union officers. Ms. Krum's questioning and attempted denial of clothing/uniform reimbursements as well as her causing the Chief to investigate Bailey's use of his work time, therefore, was unlawfully motivated.

In fifteen years, the Township had not before denied a clothing reimbursement approved by the Chief. The Chief approved in-soles for Officer Kile's shoes, his UnderArmour and Hartlaub's coat. Officer Kile and Detective Hartlaub, both on the Union negotiating team, were the only officers to have Chief-approved clothing reimbursements questioned for payment by the Manager and the Treasurer. Moreover, Ms. Krum approved the reimbursement for in-soles a couple of months before for Officers O'Brien and Duncan, who were not on the negotiating team, but denied initial reimbursement for Officer Kile's in-soles. Although Ms. Krum eventually approved the reimbursement for the in-soles at the direction of the Safety Committee, she clearly targeted Hartlaub and Kile and created an uncomfortable environment for them by denying their Chief-approved reimbursements and by reporting Officer Bailey for stealing Township-paid time when he was conducting legitimate police work.

Clearly, the supervisors, particularly Bortner and LeGore were not pleased, and arguably angry, with the manner in which Union officers engaged in bargaining and filed grievances. This clearly expressed frustration manifested in outbursts and comments that, under the totality of the circumstances, interfered with and coerced reasonable employees in the bargaining unit in conducting protected, indeed necessary, Union business in violation of Section 6(1)(a) of the PLRA as read with Act 111. Additionally, Supervisor LeGore denied Officer Kile a part-time detective position for discriminatory reasons. Also, Ms. Krum unlawfully targeted Union officers by denying reimbursements and by seeking to get Bailey in trouble with his Chief. However, there is no nexus between the supervisors' actions and their expressed frustrations with collective bargaining activities and the Chief's actions taken regarding Hartlaub and Bailey.

Accordingly, the Township engaged in unfair labor practices under Section 6(1)(a) and (c) of the PLRA, as read with Act 111.

CONCLUSIONS

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

1. The Township is a public employer and a political subdivision of the Commonwealth within the meaning of the PLRA, as read in pari materia with Act 111.
2. The Union is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Township has committed unfair labor practices within the meaning of Section 6(1)(a) and (c) 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 and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA;
2. cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;
3. take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111 as read in pari materia with the PLRA:
 - (a) 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
 - (b) 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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of November, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CONEWAGO TOWNSHIP POLICE OFFICERS :
ASSOCIATION :
v. : CASE NO. PF-C-14-109-E
CONEWAGO TOWNSHIP :

AFFIDAVIT OF COMPLAINT

Conewago Township hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111; that it has posted a copy of the Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public