

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PULASKI TOWNSHIP POLICE ASSOCIATION :
:
:
v. : Case No. PF-C-23-83-W
:
PULASKI TOWNSHIP :

PROPOSED DECISION AND ORDER

On September 11, 2023, the Pulaski Township Police Association (Union or Association) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (PLRB or Board) against Pulaski Township (Township or Employer) alleging that the Township violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111, when a Township Supervisor threatened the Association President with a demotion in July, 2023, after the Association President announced his intention to file a grievance.

On November 8, 2023, the Board Secretary issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating January 19, 2024, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was continued with the consent of the parties and held on February 29, 2024, via Microsoft Teams, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on April 4, 2024. The City submitted a post-hearing brief on May 3, 2024.

The Hearing Examiner, based on all matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 6).

2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 7).

3. The parties are subject to a collective bargaining agreement (CBA) with the effective dates of January 1, 2022, through and including December 31, 2024. (Employer Exhibit 1).

4. Chad Adams is employed by the Township as a police officer. He has been employed by the Township since 1997. At the time of the hearing, his rank was lieutenant and officer-in-charge. As officer-in-charge he is responsible for the every day running of the police department including scheduling, supervising and training. He in essence performs the duties of a chief. In July 2023, two full-time police officers and four to five part-time police officers worked for the Township. (N.T. 12, 29, 32).

5. Adams is also President of the Union. As President, Adams negotiates contracts, files grievances and resolves issues and disputes as needed. (N.T. 12).

6. On or about July 19, 2023, Adams created a schedule for August which included time for a Community Day festival. The Community Day festival was held August 5, 2023. Adams submitted the schedule for August to the Township in July. The event would be four hours of overtime on a Saturday. Adams asked Sergeant Randy Courson to work the event. Courson agreed to do so. Courson does not normally work Saturdays. Adams determined that no other part-time police officer was available to work that overtime shift. Part-time officers tend to work on the weekends, when available and needed. (N.T. 13-15, 32-33, 46-47, 50, 80; Union Exhibit 1).

7. After Adams had created the schedule and assigned Courson to the Community Days overtime shift, Township Supervisor Kelly Smith called the police department and told Adams that Police Officer Wiesen was going to work the scheduled Community Day event instead of Courson. Smith also came into the Police Department on or about July 24, 2023, and told Courson in person that he (Smith) had scheduled Wiesen to work the Community Day festival shift and that Courson would not work it. (N.T. 15, 63; Union Exhibit 1).

8. Kelly Smith has been a Township Supervisor for approximately four years. Smith testified that once he learned that Courson was scheduled to work the Community Day festival, he decided it would be better for the Township to have a part-time officer work to save the Township money. Smith testified that his reasoning was that if Courson worked the shift the Township would have to pay Courson time-and-a-half, instead of straight-time to a part-time officer. Smith asked Wiesen if he could work the shift. Wiesen said yes even though he had previously indicated that he was unavailable. (N.T. 76-77).

9. Adams was immediately concerned about the change made by Smith because Wiesen was a part-time police officer while Courson was a full-time police officer. Adams believed that the parties CBA let full-time officers have precedence over part-time officers for over-time shifts. Adams believed that Smith had violated the CBA. (N.T. 15).

10. On or about July 31, 2023, Adams informed the Township secretary, Megan Allison, that the Union intended to file a grievance over the issue. (N.T. 15, 67).

11. On or about July 31, 2023, Adams then continued with his police work. He soon received a call from Smith that went to voicemail. Adams called Smith back and the two spoke on the phone. On this phone call, Smith told Adams that if the Union were to file a grievance over the overtime issue, Smith would remove Adams as officer-in-charge. (N.T. 16).

12. Smith testified that he did not say to Adams that he was going to remove Adams as officer-in-charge. Smith testified that he only told Adams: "In my heart, we need to make some changes around here." Smith testified that after he said this to Adams, Adams said "Are you threatening me on my job?". (N.T. 85).

13. On or about July 31, 2023, after Smith had left a voicemail with Adams, and before Adams called Smith back, Smith called Courson. Smith told Courson that he could not get a hold of Adams, that Allison had told him that the Union was filing a grievance, and that because of the grievance he was upset. Smith also told Courson that, if the grievance went through, Adams

would be removed as officer-in-charge. Smith also said the Township would take the grievance "all the way." Courson testified that Smith was very upset on this phone call. (N.T. 51-52, 67).

14. Smith testified that he did not say to Courson that he was going to remove Adams as officer-in-charge. Smith testified that he only told Courson: "In my heart, we need to make changes around here." (N.T. 85).

15. The officer-in-charge receives more pay than a patrol or sergeant police officer. (N.T. 17).

16. On August 7, 2023, Adams prepared and filed a grievance at the request of Courson. The grievance was ultimately resolved before going to arbitration. (N.T. 17-20, 52-54; Union Exhibit 1).

DISCUSSION

The Union in this case argues Smith's actions towards the bargaining unit police officers are unfair labor practices under Section 6(1)(a) and (c) of the PLRA as read with Act 111.

In a discrimination claim under Section 6(1)(c) of the PLRA, the union has the burden of proving that an employee engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employee that was motivated by the employee engaging in that known protected activity. Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 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. Cmwlth. 1981).

In this case, it is clear that Adams was engaged in protected activity and that the Township knew Adams had mentioned that he was going to file a grievance over the scheduling issue. Adams told the Township's secretary that he was going to file a grievance. Smith learned of Adam's intent to file a grievance from the Township Secretary. Filing a grievance is a protected activity under the PLRA.

However, the Union cannot carry its burden of showing a Section 6(1)(c) violation in this matter because there was no adverse action taken against Adams or any other bargaining-unit member. The record shows that Adams was threatened with demotion but no such demotion occurred. The issue of the weekend shift, which had originally been assigned to Courson, and which led to the grievance, was settled between the parties. Therefore, there is no adverse employment action on this record to support a Section 6(1)(c) violation.

The Union also argues the Township committed an independent violation of Section 6(1)(a). 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 employees 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 where, on balance, its legitimate reasons justifiably outweigh concerns over the

interference with employe rights. Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010) (citing Ringgold Education Ass'n v. Ringgold School District, 26 PPER ¶ 26155 (Final Order, 1995)).

In this case, it is clear the Township committed an independent violation of Section 6(1)(a) when Smith told Adams and Courson that Adams would be demoted from officer-in-charge if the Union pursued its grievance. These statements would coerce an employe in the exercise of protected rights, in this case the filing and prosecution of grievances. Based on the record as a whole, including the demeanor of the witnesses on the stand, I do not credit Smith's testimony that he did not threaten to demote Adams. I do not credit Smith's testimony that he merely said: "In my heart, we need to make some changes around here". I instead credit the testimony of Adams and Courson that Smith did in fact explicitly threaten to demote Adams if the grievance was pursued.

On this record, there is no legitimate reason for Smith to threaten Adams' job as officer-in-charge over a grievance.

The Township argues in its brief at page 10 that Smith did not have the power on his own to demote Adams and, therefore, his statement that he would demote Adams as officer-in-charge cannot have possibly threatened anyone. I disagree. Based on the record as a whole, I find that an employe would be coerced if one of the three Township Supervisors threatened a demotion, regardless of the fact that any such demotion would need to be voted on by all Supervisors. A threat by a manager is sufficient to coerce, especially in the context of this record, where the threat of demotion was explicitly and conditionally linked to the issue of filing a grievance.

The Township argues at 12-13 of its brief that Smith has a First Amendment right to communicate his views to Township employes. However, threats to employes are not entitled to constitutional protection. County of Berks, 79 A.3d 8 (Pa. Cmwlth. 2013). As I have determined above that Smith's statements were coercive, they are not entitled to free speech protection.

Therefore, for the above reasons, the Township has violated Section 6(1)(a) of the PLRA and will be ordered to cease and desist from such violations.

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 political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The Township has committed an unfair labor practice in violation of Section 6(1)(a) of the PLRA and Act 111.
5. The Township has not committed an unfair labor practice in violation of Section 6(1)(c) of the PLRA and 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 with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(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 the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(c) Serve a copy of the attached Affidavit of Compliance upon the Association.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixteenth day of May, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PULASKI TOWNSHIP POLICE ASSOCIATION :
:
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v. : Case No. PF-C-23-83-W
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PULASKI TOWNSHIP :

AFFIDAVIT OF COMPLIANCE

Pulaski Township hereby certifies that it has ceased and desisted from its violations of Section 6(1) (a) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature

Title

Date

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

Signature of Notary Public