COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LOWER MORELAND TOWNSHIP POLICE BENEVOLENT ASSOCIATION	:	
v.	:	Case No. PF-C-16-85-E
LOWER MORELAND TOWNSHIP	:	

FINAL ORDER

On June 13, 2017, the Lower Moreland Township Police Benevolent Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) challenging a Proposed Decision and Order (PDO) issued on May 25, 2017. In the PDO, the Board's Hearing Examiner concluded that Lower Moreland Township (Township) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111 of 1968, when the Township's Chief of Police declined to consider a one-year reckoning period in issuing a ten-day suspension to Officer Shawn McCoy. Pursuant to an extension of time granted by the Acting Secretary of the Board, the Township filed a response and brief in opposition to the exceptions on July 14, 2017. After a thorough review of all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

13. On March 26, 2015, Officer McCoy received a six-day suspension for filing a criminal complaint which charged the wrong person with regard to a hit and run collision that occurred on January 6, 2015. The March 26, 2015 discipline did not include a reckoning period. (N.T. 12, 20, 61-63, 69-70; PBA Exhibit 1).

DISCUSSION

The facts of this case are summarized as follows. The Association and the Township were parties to a collective bargaining agreement (CBA) effective from January 1, 2014 to December 31, 2015. Peter Hasson has been employed as the Township's Chief of Police since 2000. Shawn McCoy has been employed as a police officer with the Township since April 2010.

On July 31, 2012, Officer McCoy received a Letter of Reprimand from Chief Hasson for an incident involving a failure to acknowledge radio transmissions and an untimely response to a call. Chief Hasson's Memorandum indicates that "[t]his document shall serve as a Letter of Reprimand for Officer McCoy's actions on July 3, 2012. It will remain in Officer McCoy's file for a period of one year from the date of the incident, provided there is no repeat of a similar type incident."

On September 25, 2012, Officer McCoy received a Letter of Reprimand from Chief Hasson for responding to a call in another township without permission or a request for assistance from that township. Chief Hasson's Memorandum indicated that "[t]his document shall serve as a Letter of Reprimand and shall be placed in Officer McCoy's personnel file for a period

of one year from the date of the incident. It may be removed at that time provided that there are no further disciplinary issues during that time."[1]

On March 26, 2015, Officer McCoy received a six-day suspension for filing a criminal complaint which charged the wrong person with regard to a hit and run collision that occurred on January 6, 2015. The March 26, 2015 discipline did not include a reckoning period.

On August 5, 2016, Officer McCoy met with Chief Hasson to discuss his failure to appear at a preliminary hearing scheduled for June 29, 2016. During the meeting, Chief Hasson advised Officer McCoy that he was recommending a ten-day suspension to the Board of Commissioners for neglect of duty. Because he had gone more than a year without discipline, Officer McCoy requested that Chief Hasson consider a reckoning period, i.e., a period of time in which no disciplinary action has occurred, which would render the most recent discipline a first offense. Chief Hasson declined to apply any reckoning period and considered prior instances of discipline over the past several years, including prior suspensions, in recommending the ten-day suspension for Officer McCoy. By letter dated August 11, 2016, Chief Hasson notified Officer McCoy that the Board of Commissioners voted to approve the recommendation that he be suspended for ten days.

The Association filed its Charge of Unfair Labor Practices on September 9, 2016, alleging that the Township violated Section 6(1)(a), (c) and (e) of the PLRA when Chief Hasson refused to apply a reckoning period and imposed a ten-day suspension on Officer McCoy. A hearing was held before the Board's Hearing Examiner on December 19, 2016, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs in March 2017.[2]

The Hearing Examiner concluded in the PDO that the Township did not violate its duty to bargain under Section 6(1)(a) or (e) of the PLRA, stating as follows:

> In the instant matter, the Association has not sustained its burden of proving that the Township unilaterally changed a past practice regarding the application of reckoning periods in the imposition of discipline for bargaining unit members. In the specification of charges, the Association specifically alleged that the parties had a past practice of applying a one-year reckoning period for offenses classified as neglect of duty. … However, the record is devoid of any evidence whatsoever that either Hasson or the previous Chief ever applied a reckoning period for a neglect of duty offense. Instead, the only record evidence shows that Hasson applied a reckoning period for minor offenses, which he addressed through Letters of Reprimand. Without

[1] Chief Hasson applied one-year reckoning periods to several officers that were issued Letters of Reprimand between 2008 and 2012.

[2] In its post-hearing brief, the Association withdrew the portion of its Charge alleging a violation of Section 6(1)(c) of the PLRA.

> more, I am unable to conclude that the parties had a past practice of applying a one-year reckoning period for more serious offenses, such as neglect of duty, as alleged by the Association. Indeed, Hasson specifically testified that he does not apply reckoning periods to more serious offenses, such as neglect of duty.

(PDO at 4). Accordingly, the Hearing Examiner rescinded the complaint and dismissed the Charge of Unfair Labor Practices.

The Association initially alleges in its exceptions that the Hearing Examiner failed to make various findings of fact concerning the Township's policy of applying reckoning periods when imposing discipline. Specifically, the Association asserts that the Hearing Examiner failed to find, among other things, that Chief Hasson did not inform the bargaining unit police officers that reckoning periods would only be applied to minor offenses and that Chief Hasson advised Officer McCoy at the August 5, 2016 meeting that he no longer applied reckoning periods for any discipline. The Hearing Examiner must set forth those findings that are relevant and necessary to support the conclusion reached, but need not make findings summarizing all of the evidence presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). Further, 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 weigh the probative value of the evidence presented at the hearing. North Wales Borough Police Department v. North Wales Borough, 38 PPER 181 (Final Order, 2007); E.B. Jermyn Lodge No. 2 of the FOP v. City of Scranton, 38 PPER 104 (Final Order, 2007). A hearing examiner may accept or reject the testimony of any witness in whole or in part. Limerick Township Police Officers v. Limerick Township, 36 PPER 125 (Final Order, 2005). The Board will not disturb a hearing examiner's credibility determinations absent the most compelling of circumstances. City of Scranton, supra. Upon review of the exceptions, no compelling reasons warranting reversal of the Hearing Examiner's credibility determinations are presented by the Association.

In concluding that the Association failed to establish a past practice concerning the application of reckoning periods to all disciplinary offenses, the Hearing Examiner credited the testimony of Chief Hasson that he only applied reckoning periods to minor offenses involving verbal or written reprimands, and not to suspensions for more serious offenses such as neglect of duty. The Board concludes that the Hearing Examiner made the findings that are necessary to support the proposed decision, and that the Association's suggested findings of fact are not necessary or relevant. Accordingly, the Hearing Examiner did not err in failing to make the Association's proffered findings of fact.

Where the charge alleges an established past practice concerning a mandatory subject of bargaining, the complainant has the burden of proving by substantial, credible evidence that the employer has unilaterally changed the practice. South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002), appeal denied, 569 Pa. 727, 806 A.2d 864 (2002); Delaware County Lodge No. 27, Fraternal Order of Police v. PLRB, 694 A.2d 1142 (Pa. Cmwlth. 1997); Fraternal Order of Police Fort Pitt Lodge 1 v. City of Pittsburgh, 37 PPER 84 (Proposed Decision and Order, 2006). It is undisputed that the application of reckoning periods for the imposition of discipline is a mandatory subject of bargaining. See Fairview Township Police Association

v. Fairview Township, 31 PPER ¶ 31019 (Final Order, 1999). In County of Allegheny v. Allegheny County Prison Employees Independent Union, 476 Pa. 27, 381 A.2d 849 (1977), the Pennsylvania Supreme Court defined a past practice as follows:

> A custom or practice is not something which arises simply because a given course of conduct has been pursued by Management or the employees on one or more occasions. A custom or a practice is a usage evolved by men as a normal reaction to a recurring type situation. It must be shown to be the *accepted* course of conduct characteristically repeated in response to the given set of underlying circumstances. This is not to say that the course of conduct must be *accepted* in the sense of both parties having agreed to it, but rather that it must be *accepted* in the sense of being regarded by the men involved as the *normal* and *proper* response to the underlying circumstances presented.

476 Pa. at 34 n.12, 381 A.2d at 852 n.12 (emphasis in original). An employer commits an unfair practice when it makes a unilateral change in a mandatory subject of bargaining that has been established through a binding past practice. Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 43 PPER 53 (Final Order, 2011); Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 29 PPER ¶ 29041 (Proposed Decision and Order, 1998).

In its Charge, the Association alleged that Chief Hasson "unilaterally changed a longstanding past practice regarding the application of [r]eckoning [p]eriods" when imposing a ten-day suspension on Officer McCoy for failure to attend the June 29, 2016 preliminary hearing. The Association asserts that the Hearing Examiner erred by limiting his discussion to neglect of duty offenses because the Charge concerned a refusal to apply reckoning periods to all disciplinary offenses. Although the Association cites to a prior employer policy which outlined some instances where reckoning periods were available, there was no evidence presented by the Association that reckoning periods have actually been utilized for more serious offenses where a suspension was imposed. American Federation of State, County and Municipal Employees, Council 13 v. Pennsylvania State System of Higher Education, 48 PPER 58 (Final Order, 2016)(policy only utilized to close universities for inclement weather or emergencies, and no evidence established policy utilized to provide employes with paid day off). Indeed, the evidence of record establishes that Chief Hasson has applied a one-year reckoning period to only minor offenses where a verbal or written reprimand was issued, and not to serious offenses where a suspension was imposed, such as neglect of duty.

It is undisputed that Officer McCoy was suspended on March 26, 2015 for a serious offense of neglect of duty when he filed a criminal complaint charging the wrong person with regard to a hit and run collision. The March 26, 2015 discipline imposed upon Officer McCoy did not include a reckoning period. The Association also does not dispute that Officer McCoy was subsequently charged with, and disciplined for, the offense of neglect of duty on August 11, 2016, for which he received a ten-day suspension without a reckoning period.

As stated by the Hearing Examiner, the record merely establishes that the Township does not apply reckoning periods to all disciplinary offenses. At best, reckoning periods have been applied to verbal or written reprimands, but not disciplinary suspensions. The Association has failed to present evidence to support the finding of an established past practice concerning the Township's application of reckoning periods for all disciplinary matters including serious infractions where suspensions were imposed. See Commonwealth of Pennsylvania, Pennsylvania State Police, supra (no past practice found where the employer did not apply one-year requirement for preference transfers to officers holding positions in internal affairs division); McCandless Police Officers Association v. Town of McCandless, 21 PPER ¶ 21071 (Proposed Decision and Order, 1990)(no past practice found where employer did not consistently apply same method in computing vacation days for officers with twenty years of service); City of Pittsburgh, supra (no past practice found where employer did not consistently award two paid days off to officers working as field training officers). Therefore, the Association has failed to meet its burden of proving by substantial, credible evidence that the Township unilaterally changed the alleged practice of applying reckoning periods to all offenses when imposing discipline. Id.

Accordingly, the Hearing Examiner properly concluded that the Township did not violate Section 6(1)(a) or (e) of the PLRA when it imposed a ten-day suspension on Officer McCoy without applying a reckoning period for prior suspensions. After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Lower Moreland Township Police Benevolent Association are hereby dismissed, and the May 25, 2017 Proposed Decision and Order be and the same is hereby 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this nineteenth day of September, 2017. The Board hereby authorizes the Acting Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.