

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

JENKINTOWN POLICE BENEVOLENT ASSOCIATION :  
:  
v. : Case No. PF-C-24-12-E  
:  
JENKINTOWN BOROUGH & THOMAS SCOTT :

**FINAL ORDER**

Respondents Jenkintown Borough and Police Chief Thomas Scott (collectively Borough) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on September 10, 2025, challenging a Proposed Decision and Order (PDO) issued on August 21, 2025. In the PDO, the Board's Hearing Examiner concluded that the Borough violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, by issuing three police officers unsatisfactory annual performance evaluations because they engaged in protected activity. Following an extension of time granted by the Secretary of the Board, the Borough filed a brief in support of the exceptions on October 10, 2025. The Jenkintown Police Benevolent Association (Association) filed a response and brief to the Borough's exceptions on October 30, 2025.

The findings relevant to the exceptions are as follows. The Association is the exclusive bargaining representative of the Borough's police officers. (FF 3). The Borough and Association are parties to a collective bargaining agreement (CBA) effective January 1, 2020 to December 31, 2023. (FF 4). Negotiations for a successor agreement began at the end of 2023 and at the time of the hearing on December 13, 2024, the parties had still not negotiated a successor agreement through Act 111's dispute resolution processes. (FF 6).

In addition to Chief Thomas Scott, there are three Borough police officer employees pertinent to this matter.<sup>1</sup> At the time of the hearing, Anthony Matteo has been an officer with the Borough for 12 years. Officer Matteo is President of the Association and one of three lead negotiators on the successor CBA negotiations that began in late 2023. (FF 5, 21). Albert Sulpizio has been a Borough police officer for approximately 19 years and has been a sergeant for the last 11 years. While not engaged in the 2023 successor CBA negotiations, Sergeant Sulpizio describes himself as "heavily involved" with the Association and testified that he had recently filed several grievances against the Borough with the Association's approval. (FF 23, 27). Cory Murtagh has been an officer with the Borough for approximately 14 years and is also a member of the Montgomery County SWAT Team. Officer Murtagh is Vice President of the Association and another of the lead contract negotiators. (FF 42, 44).

Chief Scott has been Borough Chief of Police since April 1, 2022 and is the sole managerial employe. (FF 51). In January 2024, Chief Scott

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<sup>1</sup> The Borough Police Department consists of a chief, sergeant, and nine patrol officers. The police chief is not part of the Association bargaining unit. (FF 51).

individually conducted 2023 annual performance evaluations for Officers Matteo, Sulpizio, and Murtagh. Each officer disputed their overall evaluation score for 2023. (FF 7, 17, 24, 36, 43).

Chief Scott met with Officer Matteo on January 11, 2024 to give him his performance evaluation. (FF 7). Officer Matteo's 2023 overall evaluation score was 119 out of 200 possible points, or 59.5%, which is an "unsatisfactory" score. (FF 15). After an appeal by Officer Matteo, the Chief changed two ratings from a 3 to a 4 with the effect of raising Officer Matteo's overall evaluation score to a 60.5% "satisfactory" level. (FF 17-19). Officer Matteo testified that he believed his outspoken union activity as Association President and as a negotiator in the recent successor CBA negotiations had "a lot" to do with the Chief's unsatisfactory ratings and comments. (FF 21).

Chief Scott met with Sergeant Sulpizio on January 31, 2024 and provided him with his performance evaluation. (FF 24). Sergeant Sulpizio received an "unsatisfactory" score and he contested many specific performance ratings within the evaluation. (FF 25-26, 28-32, 34-35, 37). Sergeant Sulpizio testified at the hearing that he believes that he was being punished for his engagement in protected activities. (FF 27, 29, 37).

Chief Scott met with Officer Murtagh in January 2024 to give him his performance evaluation. (FF 43). Although Officer Murtagh received a "satisfactory" score, he disputed specific performance ratings. (FF 43-50). Officer Murtagh testified that he feels he was being penalized for his union activity. (FF 48).

Chief Scott testified at the hearing that his 2023 assessment scores for Officers Matteo, Sulpizio, and Murtagh were based solely on their performance and not on their Association activities. (FF 58, 63). Chief Scott also testified to his non-discriminatory reasoning for many of the disputed negative scores. (FF 52-55, 57-63).

The Association filed its Charge of Unfair Labor Practices on February 9, 2024, as amended on March 15, 2024, alleging that the Borough violated Section 6(1)(a), (b), (d), and (e) of the PLRA, as read *in pari materia* with Act 111, by unilaterally implementing employee performance evaluations and issuing unsatisfactory reviews intended to harass the bargaining unit employees in retaliation for their protected activity. On April 19, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to a Hearing Examiner and directing a hearing. The hearing was held on December 13, 2024. The parties were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. The parties each filed post-hearing briefs in support of their respective positions.

In the PDO, the Hearing Examiner concluded that the Borough committed an unfair labor practice under Section 6(1)(a) and (c) of the PLRA when it unlawfully discriminated against Officers Matteo, Sulpizio, and Murtagh.<sup>2</sup> In

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<sup>2</sup> The Hearing Examiner noted that the Association did not pursue or present argument to its allegations that the Borough violated Section 6(1)(b) and (e) of the PLRA and dismissed these claims of unfair labor practices. No exceptions have been filed to that decision. 34 Pa Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived.").

so concluding, the Hearing Examiner found that Chief Scott's negative performance reviews constituted discipline motivated by anti-union animus. Notably, the Hearing Examiner also determined in the PDO that the Association had properly presented a claim under Section 6(1)(c) of the PLRA, although the Association had not filed its original or Amended Charge of Unfair Labor Practice under that clause. The Hearing Examiner reasoned in the PDO that, to the extent unlawful discrimination was charged by the Association, the allegations represented a claim of discrimination for general protected activity under Section 6(1)(c) and not protected activity before the Board under Section 6(1)(d), and that the Borough was given notice of a general discrimination claim. (PDO at 10, n. 4).

The Borough's exceptions center on the Hearing Examiner's finding of unlawful discrimination on the part of Chief Scott. Specifically, the Borough asserts that the Hearing Examiner erred in finding anti-union animus on the part of the Chief by giving improper weight to certain evidentiary findings while dismissing others, failing to consider legitimate non-discriminatory reasons for the negative performance reviews to rebut a *prima facie* finding of discrimination, and erroneously considering Chief Scott's protected speech to infer animus against the officers.

Because the alleged unfair labor practice frames the jurisdiction of the Board, the Board must first *sua sponte* address the Hearing Examiner's determination that the Association properly alleged a charge under Section 6(1)(c) of the PLRA. See Lancaster Yellow Cab & Baggage v. PLRB, 88 A.2d 866 (Pa. 1952) (an employer charged under the PLRA is entitled to notice of the specific clause or clauses it is alleged to have violated); Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 50 PPER 85 (Final Order, 2019) (allegation that PSP violated duty to bargain contained only in specification of charges is insufficient to adequately charge a violation of Section 6(1)(e) where union did not select a violation of Section 6(1)(e) on the face of the charge form and failed to reference Section 6(1)(e) in its specification of charges); West Whiteland Township Police Association v. West Whiteland Township, 32 PPER ¶ 32127 (Final Order, 2001) (where a charge did not specify an enumerated clause under Section 6 of the PLRA, respondent employer was prejudiced through a lack of notice in order to prepare an adequate defense); Bucks County Clerk of Courts, 25 PPER ¶ 25039 (Final Order, 1994) (complainant's charge alleging constructive discharge under Section 1201(a)(3) of PERA, but only enumerating unfair practice under Section 1201(a)(1), (2), and (4), was properly dismissed).

Upon review of the Charge and the amendment thereto in this matter, the Association's filings do not reveal specific allegations of a violation of Section 6(1)(c) of the PLRA. Section 95.31(b)(3) of the Board's Rules and Regulations states:

The charge shall include the following information:

...

(3) A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and *reference to the specific provisions of the act alleged to have been violated.*

34 Pa. Code § 95.31(b) (3) (emphasis added).

The Board agrees with the Borough's assertion in its post-hearing brief that the Association never alleged a violation of Section 6(1)(c) of the PLRA. While an allegation under Section 6(1)(c) of the PLRA covers a broad range of protected activities, including filing and testifying before the Board,<sup>3</sup> it does not follow that the inverse is also true for allegations of Section 6(1)(d) of the PLRA. A reading of the plain language in the relevant clauses makes clear that Section 6(1)(d) applies to retaliatory actions based solely on employee filings or testimony with the Board. Such narrow circumstances cannot be expanded to include public employer discrimination regarding any protected activity, but rather is statutorily limited to filing and testifying before the Board. See North Wales Borough Police Department v. North Wales Borough, 38 PPER 3 (Proposed Decision and Order, 2006) (where a union's proffered evidence aligned with Section 6(1)(c) instead of the charged 6(1)(d), the elements to establish a general discrimination charge are not incorporated within the more specific clause (d) of the PLRA).

As noted, the Association's Charge, as amended, charged the Borough with engaging in an unfair labor practice under Section 6(1)(a), (b), (d), and (e) of the PLRA by selecting boxes for the applicable subsection and clauses. Nothing in the Association's Charge or Amended Charge, the attached Specification of Charges, the enclosed exhibits, nor the signed cover letter from Association counsel to the Board Secretary included any reference to Section 6(1)(c) of the PLRA. The Board finds its decision in Pennsylvania State Troopers Association, supra., to be particularly relevant here. In that case, the complainant association inadvertently selected subsection and clause boxes on its charging document alleging that the employer violated Section 6(1)(c) of the PLRA, rather than Section 6(1)(e). The Board Secretary dismissed the charge for failing to state a cause of action under the charged violation, Section 6(1)(c). The complainant association filed exceptions, arguing that the included specification of charges clearly addressed a violation of the PSP's duty to bargain so that the Board and employer were given adequate notice of its cause of action. The Board held that a mere recitation of factual allegations, no matter how detailed, is insufficient to establish a cause of action without identifying the clause ostensibly violated anywhere within the Charge. Id.

As a result, the Board cannot find that the Association timely alleged a charge under Section 6(1)(c) of the PLRA.<sup>4</sup> After a thorough review of the exceptions and all matters of record, the Board was without jurisdiction to find a violation of Section 6(1)(c) of the PLRA. As to the enumerated clauses charged by the Association, the claims made under Section 6(1)(b) and (e) were properly dismissed by the Hearing Examiner, and it is undisputed that no evidence was proffered to find a Borough violation under Section 6(1)(d) of

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<sup>3</sup> Teamsters Local 429 v. Lebanon County and Lebanon County Sheriff, 32 PPER ¶ 32006 (Final Order, 2000), citing Mayview State Hospital, 17 PPER ¶ 17221 (Proposed Decision and Order, 1986).

<sup>4</sup> Indeed, any attempt by the Association to amend the Charge after the six-week statute of limitations would have been dismissed as untimely. Pennsylvania State Troopers Association, supra.; Greater York Professional Fire Fighters and EMTs v. Spring Garden Township, 41 PPER 5 (Final Order, 2010); 43 P.S. § 211.9(e).

the PLRA. Moreover, because there were no allegations by the Association nor finding made in the PDO to support that the alleged 6(1)(a) violation was anything but a derivative violation, the claims under Section 6(1)(a) must similarly be dismissed. Accordingly, the Association's Charge must be dismissed, and the Complaint issued thereon rescinded.

The Board therefore makes the following:

#### CONCLUSIONS

CONCLUSIONS 1 through 3 of the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSIONS 4 and 5 are vacated and set aside and the following additional conclusion is made:

6. The Borough has not committed unfair labor practices in violation of Section 6(1)(a), (b), (d), or (e) of the PLRA.

#### 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 August 21, 2025 Proposed Decision and Order is hereby vacated and set aside. It is further Ordered that the Charge of Unfair Labor Practices be and hereby is dismissed, and the Complaint issued thereon is rescinded.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Gary Masino, Chairman, and Albert Mezzaroba, Member, this sixteenth day of June, 2026. 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.