

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JENKINTOWN POLICE BENEVOLENT ASSOCIATION :
: :
v. : Case No. PF-C-25-6-E
: :
JENKINTOWN BOROUGH :

FINAL ORDER

Jenkintown Borough (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 (d) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, when it furloughed police officer Edward Titterton because he engaged in known 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 Borough and Association are parties to a collective bargaining agreement (CBA) effective January 1, 2020 to December 31, 2023. (FF 4). A successor CBA had recently been ratified at the time of the hearing on May 29, 2025, although not before Officer Titterton's furlough on December 31, 2024. (FF 9, 18, 26).

Edward Titterton was first employed as a part time Borough police officer from 2010 to 2014. He returned in 2016 as a full time Borough officer where he remained until his dismissal on December 31, 2024. (FF 5). Officer Titterton was active with the Association, although not with a formal leadership position. He described his role as a "director" with the Fraternal Order of Police in Montgomery County (FOP), wherein Officer Titterton would relay information from FOP executives to the Association, and conversely present the FOP with Association grievances and unfair labor practices allegedly committed by the Borough. The FOP would then assist the Association with legal representation and litigation support. (FF 6). Officer Titterton filed at least three unfair labor practice charges against the Borough with the Board in February, July, and October of 2024.¹ (FF 7).

Thomas Scott has been the Borough's Chief of Police since April 2022. (FF 19). Chief Scott testified at the hearing that, during his time as Chief, there were serious concerns as to the fiscal health of the Borough and to the sustainability of the police department. (FF 20). Along with the Borough Council and other Borough officials, Chief Scott participated in the Borough's monthly public meetings throughout 2024 and helped draft the Borough's 2025 budget. (FF 17, 22). In at least one of these public meetings in February 2024, the Chief made a presentation on behalf of the Borough that detailed how the police department budget was interfering with the funding of other services, and also proposed disbanding the police department in favor

¹ Case numbers PF-C-24-12-E, PF-C-24-71-E, and PF-C-24-90-E.

of a merger. (FF 13). In October 2024, the Borough received a Police Cost to Benefit Analysis from the Commonwealth Department of Community and Economic Development (DCED analysis). (FF 21, 22). The Borough held a public meeting to discuss the DCED analysis in late October or early November, after which Chief Scott recommended to the Borough Council that Officer Titterton be involuntarily furloughed.² (FF 22, 25). By letter dated December 17, 2024, the Borough Council President informed Officer Titterton that he was to be furloughed effective December 31, 2024. (FF 8).

Also within this budget season, a full-time Borough police officer, Officer Jaworski, was expected to retire and leave the department at the start of 2025. (FF 12, 27). Another full-time police officer, Officer Sangree, was told by Chief Scott in November 2024 that the Borough was considering involuntarily furloughing him as well. (FF 28). In February 2025, Officer Sangree subsequently left Borough employment to take a job with another municipality. (FF 12). Each of these officers had an annual base salary of approximately \$105,000, not inclusive of benefits, longevity pay, and overtime. (FF 12, 27). Chief Scott testified that the projected police budget for 2025 did not factor in Officer Jaworski's salary and benefits, but Officer Sangree's 2025 salary was in the budget. (FF 27, 28). When Officer Sangree left in early 2025, the Chief admitted that this salary line was then available in the budget. (FF 29).

During 2023 and 2024, the Borough maintained ten full-time officers and the Chief, plus the addition of a part-time officer for a brief period in 2024. (FF 10). In late 2023, the Borough's published calculation for base officer salaries was projected at \$844,200 by the end of the 2023 calendar year while listing base officer salaries of \$867,988 for the upcoming 2024 year. (FF 9) In late 2024, the Borough's year-end projection for the 2024 calendar year was \$983,829 with only \$816,077 listed for the upcoming year 2025. (FF 11).

The Association filed its Charge of Unfair Labor Practices on February 10, 2025, 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 furloughing Officer Titterton in retaliation for filing Charges against the Borough. On February 27, 2025, 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 May 29, 2025, at which time all 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 (d) of the PLRA when it unlawfully discriminated against Officer Titterton.³ In so concluding, the

² The Borough's Civil Service rules require that the most recent hire be laid off first. At the end of 2024, Officer Titterton was the Borough's most recent police officer hire. (FF 25).

³ 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.").

Hearing Examiner found that Officer Titterton's involuntary furlough was motivated by anti-union animus and that the Borough's purported non-discriminatory explanation for his dismissal was unpersuasive to overcome the finding of discrimination. As a remedy, the Hearing Examiner ordered the Borough to immediately reinstate Officer Titterton and make him whole, including backpay.

An employer commits an unfair labor practice under Section 6(1)(d) of the PLRA when it discriminates against an employee for filing affidavits, petitions, or complaints with the Board. 43 P.S. § 211.6(1)(d); FOP, Lodge 5 v. City of Philadelphia, 38 PPER 184 (Final Order, 2007). To establish such a violation, the charging party must show that the employee was engaged in protected activity, the employer knew of the protected activity, and that the employer engaged in an adverse employment action motivated by an anti-union animus. Duryea Borough v. PLRB, 862 A.2d 122, 126 (Pa. Cmwlth. 2004). In identifying anti-union animus, the Pennsylvania Supreme Court has stated that the "motive creates the offense." PLRB v. Ficon, 254 A.2d 3, 5 (1969). An employer may rebut a claim of discrimination under Section 6(1)(d) by proving that the adverse employment action was based on valid, non-discriminatory reasons. Duryea Borough, supra. An inadequate explanation for an employer's action will support a finding that it was pretextual. Lehigh Area School District v. PLRB, 682 A.2d 439 (Pa. Cmwlth. 1996).

In this matter, there is no dispute that the Association sufficiently proved the first two elements of a discrimination complaint. Chief Scott testified that he was aware of Officer Titterton's protected activity in filing three Charges with the Board against the Chief and the Borough in February, July, and October of 2024 shortly before his involuntary furlough. It is to the Hearing Examiner's conclusion that the termination was motivated by an anti-union animus that the Borough initially challenges. Where an employer's motive may not be easily discernible, it may be based on inferences drawn from the evidentiary record. Lancaster County v. PLRB, 124 A.3d 1269 (Pa. 2015), *citing* St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977). The Board may rely upon such inferences in determining the employer's motive for its adverse action against an employee. *Id.*; PLRB v. Sand's Restaurant Corp., 240 A.2d 801 (Pa. 1968) (the Board may examine the credibility of the employer's explanation for the discharge in determining whether the employer had an improper motive). Further, when examining the totality of the circumstances, a hearing examiner's finding of pretext and rejection of the employer's proffered reasons for its actions can support an inference of unlawful motivation. *See* International Union of Operating Engineers, Local 66 v. Connoquenessing Township, 41 PPER 47 (Final Order, 2010); Somerset Area Education Association v. Somerset Area School District, 37 PPER 1 (Final Order, 2005); National Union of Hospital and Health Care Employees, District 1199P v. Lehigh County, 19 PPER ¶ 19071 (Final Order, 1988). Thus, any inferences drawn from the record that are supported by substantial evidence, coupled with the fact finder's refutation of an employer's proffered explanation as pretextual, is adequate to uphold a finding of unlawful motive. Lancaster County, supra. at 1292-93.

The Hearing Examiner's finding of a discriminatory motive will be upheld if the factual findings are supported by substantial and legally credible evidence, and the legal conclusions drawn from those facts are reasonable, and not capricious, arbitrary or illegal. Abington Transportation Association v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1990). Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufmann Department Stores, Inc., 29 A.2d 90,

92 (Pa. 1942); Lycoming County v. PLRB, 943 A.2d 333, n. 20 (Pa. Cmwlth. 2007). Further, the Hearing Examiner's function is to resolve conflicts in evidence, make findings of fact from conflicting evidence, and draw inferences from those findings of fact. Kaufmann Department Stores, supra. The Board defers to the credibility determinations of its Hearing Examiners who observe the manner and demeanor of the witnesses during the testimony. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections (Pittsburgh SCI), 34 PPER 134 (Final Order, 2003). The Hearing Examiner may accept or reject the testimony of any witness in whole or in part. Id.; International Association of Firefighters Local 840 v. Larksville Borough, 48 PPER 82 (Final Order, 2017).

Turning to the Borough's first set of exceptions addressing the Hearing Examiner's conclusion that Officer Titterton's termination was unlawfully motivated, the Board finds sufficient, substantial evidence in the record to support this finding. Officer Titterton testified that the Chief had previously called the parties' collective bargaining agreement "immoral", that Chief Scott had publicly stated that the Association had "fleeced" the Borough, and had publicly presented the benefits of disbanding the police department in favor of other Borough services. The Hearing Examiner, in examining the timeline of events and totality of these circumstances, noted that the Chief's general animus against the Association predated Officer Titterton's filed Charges and many of his grievances, but that Officer Titterton's protected Board-related activity towards and against Chief Scott seemed to exacerbate the anti-union sentiment. The Hearing Examiner specifically found that "the Chief's disdain for the [Association] was readily apparent in his demeanor at the hearing." (PDO at 6).⁴ The Hearing Examiner also determined that the timing of Officer Titterton's furlough supported the inference of unlawful motive. Indeed, Officer Titterton's two most recent appearances pursuing Charges of Unfair Labor Practice before a Board hearing examiner were on November 25, 2024 and December 13, 2024, mere days before Officer Titterton was made aware of the Borough's decision to terminate his employment.

In rebuttal of these inferences, the Borough argues that the timing of the two most recent hearings is coincidental and had nothing to do with the decision to furlough Officer Titterton. We see no justification to overturn the Hearing Examiner's reasonable conclusion, supported by substantial, legally credible evidence, that the timing of events gave rise to an inference of unlawful motive. The Borough further claims that the Hearing Examiner improperly based the inference of unlawful motive on Chief Scott's protected free speech. In support, the Borough cites to National Labor Relations Board cases that the Chief's stated belief that the CBA is immoral, his public statements on behalf of the Borough that the Association has

⁴ Borough Exceptions 6 and 9 specifically object to the Hearing Examiner's purported reliance on testimony and evidence from a separate hearing with the parties in PF-C-24-12-E. Officer Titterton testified in the present matter to the Chief's statement that the CBA was immoral and unethical. Officer Titterton's testimony in this hearing and on this subject was not objected to by the Borough or challenged on cross examination. Moreover, Officer Titterton's testimony was similar to that of Sergeant Sulpizio in that prior hearing, and neither did Chief Scott address, nor otherwise deny, this specific statement in his own testimony in the instant matter. Because the Hearing Examiner's findings are supported by the record in this case, the Borough's exceptions in this regard are dismissed.

fleeced the Borough, and proposing the disbandment of the department as a potential fiscal solution for the Borough, are his own personal opinions and cannot form the basis of an unfair labor practice. To be sure, the Chief is a managerial employe under the PLRA, and as such, by definition, his statements and opinion are those of the Borough. 43 P.S. §211.3(c); PLRB v. Cadman, 87 A.2d 643 (Pa. 1952). Indeed, it is beyond peradventure that a manager's stated anti-union beliefs to an Association member ("the CBA is immoral") or to the community at large ("the Association has fleeced the Borough") can, and may lawfully, be used by the Board to infer the employer's motive.⁵

The Borough next excepts to the Hearing Examiner's rejection of its proffered reason for Officer Titterton's termination of employment.⁶ In the PDO, the Hearing Examiner plainly identifies the Borough's asserted non-discriminatory purpose for Officer Titterton's termination of employment as "the Borough's fiscal sustainability issues". (PDO at 7). The relevant legal framework establishing that an employer may rebut a claim of discrimination under Section 6(1)(d) by proving that the adverse employment action was based on valid, non-discriminatory reasons is correctly stated and applied. See Duryea Borough, *supra*. Indeed, the Borough's exceptions do not dispute the applicable law or the Hearing Examiner's findings. Rather, the Borough asserts that improper weight was assigned to the evidence.

In this regard, the Borough claims that Chief Scott's testimony regarding the budget should be credited and accepted as fact. It is well established that it is a Board hearing examiner's role to gather evidence, often conflicting, make findings of fact from this evidence, and draw inferences therefrom. See Kaufmann Department Stores, *supra*. In so doing, the Hearing Examiner is free to accept or reject the testimony of any witnesses and assign such weight as deemed appropriate. *Id.*; Department of Corrections (Pittsburgh SCI), *supra*. Indeed, "absent the most compelling of circumstances", the Board defers to the credibility determinations of its Hearing Examiners who observe the manner and demeanor of the witnesses. *Id.* We find no such circumstances here and will not disturb the credibility determinations and weight that the Hearing Examiner assigned to the budgetary and fiscal testimony provided by Officer Titterton and Chief Scott.

The Hearing Examiner explained his credibility determinations noting that the Borough only presented fiscal testimony through Chief Scott rather than any Council Member, Manager, or similar competent witness that could

⁵ As recognized by the Pennsylvania Supreme Court in Cadman,

There can be no doubt that a man endowed with such authority was speaking 'in the interest of' his employer when he told the men that a union would not be tolerated. It is therefore unnecessary for us to probe the niceties of the law of Agency and decide whether Cappeli had actual authority from Cadman or whether he in fact transmitted his knowledge of union activities to Cadman. Within the meaning of the statute, Cappeli's words were the words of the employer.

Cadman, 87 A.2d at 644.

⁶ The Borough's claim on exceptions that Chief Scott's "immoral" comments were made in the context of contract negotiations in regard to a specific CBA provision regarding training are not present in this evidentiary record, lacks evidentiary support, and has been waived. 34 Pa. Code §95.98(a)(2).

speak to the Borough's overall fiscal sustainability rather than just that of the police department. Further, the record showed that with the resignation of Officer Sangree, there remained allocated and unused funds in the police department budget for a police officer. Moreover, considering the "problem[] in light of [the Chief's] other credibility issues" noted by the Hearing Examiner, the Board cannot conclude that the Hearing Examiner abused his discretion in rejecting the Borough's testimony and evidence regarding the budget. (PDO at 8, n. 9). The Hearing Examiner specifically addressed the Borough's evidence in support of their alleged lawful motivation, and after due consideration, the Hearing Examiner made the determination that "the Borough's argument [as to legitimate, non-discriminatory reasons] is not convincing". (PDO at 7-8). Thus, having concluded that the inferences drawn from the record by the Hearing Examiner are supported by substantial evidence, and the permissible rejection of the Borough's proffered reason as pretextual, the Board finds that there is no basis to reverse the Hearing Examiner's finding of a violation of Section 6(1)(a) and (d) of the PLRA. See Lancaster County, supra. Accordingly, the Borough's exceptions concerning this issue are dismissed.

Lastly, the Borough excepts to the Hearing Examiner's direction to reinstate Officer Titterton and make him whole with full backpay and compensation from January 1, 2025, with interest. The Borough claims there is no legal authority or precedent for the Board to direct reinstatement and a make-whole order for a violation of Section 6(1)(a) and (d) of the PLRA. We agree. Section 8(c) of the PLRA provides that "[i]f ... the board shall determine that ... [a respondent] engaged in ... any such unfair labor practice, the board shall ... take such reasonable affirmative action, including reinstatement of employes, discharged in violation of clause (c) of subsection (1) of section six of this act, with or without back pay, as will effectuate the policies of this act." 43 P.S. § 211.8(c). The plain language of this statute only permits the Board to order reinstatement, with or without backpay, of an employe discharged through unlawful discrimination under Section 6(1)(c). Lancaster Yellow Cab & Baggage v. PLRB, 88 A.2d 866 (Pa. 1952). Because no unfair labor practice under Section 6(1)(c) has been charged or found in this matter, the Board therefore sustains the Borough's exception with regard to the Hearing Examiner's direction to reinstate Officer Titterton and make him whole.⁷

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the Borough committed an unfair labor practice in violation of Section 6(1)(a) and (d) of the PLRA and Act 111 when it furloughed Officer Titterton in retaliation for his engagement in protected activity. The Board shall sustain in part and dismiss in part the exceptions and affirm the Proposed Decision and Order as modified.

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

⁷ Based on the disposition of this issue, the Board need not address the Borough's remaining exception concerning the Hearing Examiner's remedy.

that the exceptions filed by Jenkintown Borough are hereby sustained in part and dismissed in part, that the Order on page 9 of the August 21, 2025 Proposed Decision and Order is hereby modified in accordance herewith, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the Borough 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. Cease and desist from discharging or otherwise discriminating against an employee because he has filed charges or given testimony under the PLRA and Act 111;

3. Take the following affirmative action which the Board finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Post a copy of the Proposed Decision and Order and Final 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 Final 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.

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.

