

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP WHITE ROSE LODGE 15 :
 :
 v. : Case No. PF-C-22-48-E
 :
 CITY OF YORK :

PROPOSED DECISION AND ORDER

On September 16, 2022, the Fraternal Order of Police White Rose Lodge 15 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of York (City or Employer), alleging that the City violated Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by issuing discipline to Sergeant Benjamin Praster on August 12, 2022, in retaliation for his protected activity. On November 9, 2022, the Secretary of the Board 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 directing a hearing on January 26, 2023, if necessary.

The hearing ensued, as scheduled, on January 26, 2023, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed separate post-hearing briefs in support of their respective positions on April 24, 2023.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 7)

2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 7-8)

3. The FOP is the exclusive bargaining representative for a unit of police employees at the City. (N.T. 12-13; City Exhibit 12)

4. The FOP and the City are parties to a collective bargaining agreement (CBA) effective January 1, 2019, through December 31, 2022, with yearly extensions thereafter. (City Exhibit 12)

5. Benjamin Praster has been a police officer for the City for approximately 12 years. He currently serves as a Sergeant and as the night shift supervisor. He has also served as the FOP President since February 2022. (N.T. 12-13)

6. By email dated June 23, 2022, the City's Police Commissioner Michael Muldrow addressed the City's Mayor and Council, as well as all sworn police officers and police civilian employees, and indicated in relevant part the following:

To: Our City Leadership

While I realize everyone is busy (and you don't always have time to attend our updates, or read the things we put out), and I know we (like every other community) have had some incidents and some losses that shook us to the core;

I wanted to take a second and make sure to share some "good news" (i.e., the kind of news that doesn't make headlines, and people don't always feel the need to post, share, or discuss)...[sic]

While everyone may not always agree with our "direction," and ANT [sic] loss of life will always be too much, the facts are:

When it comes to the comprehensive strategies (for attempting to curb "Gun Violence"), at a time when the Nation is seeing a 30% Rise...[sic]

Thanks to the comprehensive direction this community has committed to...[sic]

*Including:

- the GVI program
- to include bringing the "Credible Messenger" program (under Tiffany Lowe) online
- Youth Outreach Initiatives
- in field Mental Health services and resources
- Public Service Campaigns
- Consistent Community Outreach
- Increase [sic] emphasis on Diverse Hiring (In the Police force, in an effort to better reflect the community we're serving)
- target focused initiatives like "Operation Scarecrow" and the Gun Squad and Taskforce
- the Expanded [Violence Intervention Unit] Day & Night Teams
- Detective Bureau that works tirelessly
- the Patrol Division's "Guns First" efforts
- a renewed focus on Partnering with Community Stakeholders
- a Positive Attitude
- and Prayer...

Last Year's Gun Violence numbers we're [sic] DOWN from the previous years (before this leadership team) by approx [sic] 10%

And This Year, while Homicides appear to be up, it's important to *Note: 1/4 of them were actually being ruled as "Self-Defense" cases, and several aren't as result [sic] of "Shootings" (Domestic violence situations and issues that could occur anywhere)...

With that said, we are actually tracking DOWN for the year, and potentially looking at a 24% reduction in overall Gun Violence (thus far)

*ALL while building a "brand" that's fostering renewed trust, faith and confidence in this Department, City Government, and this Community.

With this in mind, I would like to take a second to THANK the men and women of this Department (who continue to come in, roll with the punches, put it all on the line, and do anything and everything we ask of them), THANK our partners for taking this journey with us, THANK YOU all for allowing me the room to lead with my heart (where God, this Department, and this Community need me to go), and last but not least - THANK YOU to the Community for buying in to what we're trying to do here.

I said it before and I'll say it again, we're not perfect (no one can ever be), but I think it's apparent that we're on the right track.

Sincerely,
Muldrow

(N.T. 13-14; Union Exhibit 1) (Emphasis & ellipses in original)

7. After receiving Commissioner Muldrow's email, Praster had a discussion with the FOP's executive board on June 23, 2022. (N.T. 14-15)

8. Praster testified that, during this period, the Commissioner had been sending a number of emails similar to his June 23, 2022 communication, which had a general theme of what a great job the police department was doing and that shootings were down. He described, however, how the City was on pace for a record number of homicides. He also explained how the City was having staffing issues, which were exacerbated by a number of administrative decisions, such that officers were being forced to work overtime every week, multiple times per week. He indicated that there was a morale problem in the department and that members were frustrated about receiving these emails in the face of so many problems. (N.T 15-16)

9. After discussing the issue with the FOP's executive board, Praster decided to respond to Muldrow's June 23, 2022 email. He drafted a response email the next morning and sent it to the FOP's executive board for approval. The FOP's executive board voted to approve the draft. (N.T. 16-17)

10. By email dated June 24, 2022, Praster replied all to Muldrow and indicated, in relevant part, the following:

City Council, Mayor Helfrich and the body of the department,

I don't know that I have ever been angrier reading an email than I was when I woke up yesterday to this email from the commissioner. That may seem a strange reaction to a pretty benign puff email. To understand my anger you have to know what happened this weekend.

I was the supervisor for night work this weekend and I came in to find my shift in the same state that it has been for the past couple months - minimum manpower and a third of those mandated officers. On Saturday we had a homicide, the city's 14th by my count. Not even halfway through the year and already matching last year's homicides.

Next I did what every manpower strapped supervisor does - looked for bodies. I told two officers on a detail they'd have to stay past their time to help out. One of the officers informed me that he was already mandated to work shift overtime in the morning and so had to leave. On Saturday day [sic] night there was one district car working for the entire City of York. The detectives came in and did their investigation and our guys got the crime scene shut down just before 7 am. As I was leaving I walked past the officer who I tried to mandate the night before. This is every weekend in the City now.

So when I woke up on Thursday to read an email saying that the department was doing tons of great work and gun crime is down - it was more than I could take. The commissioner has always had a loose relationship with the truth when it comes to promoting this department but this email is too far. There's barely a true sentence in it. I've been a patrol supervisor for the commissioner's entire tenure and I've never heard of "Guns First." Last week he had to cut the [Violence Intervention Unit]- which was already smaller than it's been historically - and yet the email says it's expanded. Self defense homicides shouldn't count? A store owner having to shoot a robber to defend his property is the ultimate failure of a police department.

And finally, the department has done an admirable job recruiting and hiring a talented diverse group of new officers, but they haven't been treated that way. They came out of the academy, got issued hand me down uniforms, had their training cut down and were put on the street to work every weekend in a dysfunctional patrol division. For all that they've hung in and show [sic] up everyday [sic] to work, I think the least they've earned is for you to do the same.

So I implore you Commissioner Muldrow: On Monday, wakeup put on a uniform, come to work, call your staff together and ask them "What is wrong and how do we fix it?" I assure you that's what this entire department is waiting for - not another emoji laden email telling us everything is fine when it's clearly not.

And if you won't do that City Council and the Mayor should come over here and take a closer look at what's really going wrong in their police department.

Benjamin Praster
President
Fraternal Order of Police Lodge 15

(N.T. 17-18; Union Exhibit 2)

11. Praster sent his June 24, 2022 email response at approximately 4:00 p.m. and was not at work or performing any duties on behalf of the City. (N.T. 18)

12. Praster testified that he sent his June 24, 2022 email response because he wanted to make it clear that the presentation that everything was fine in the department and that there were no problems was fundamentally misleading. He described how there were many problems at the time and how

the FOP had been urging the Commissioner numerous times, beginning in February 2022, to take action, but the Commissioner had refused. He explained how the FOP felt that they needed to call attention to these issues to the Mayor, the City Council, and everyone else on the email chain with the hope that it would prompt the Commissioner, the Mayor, or City Council to finally take action. (N.T. 19-21, 48)

13. Praster testified that the specific problems the police department was having at the time of his email involved staffing and manpower. He indicated that the City had removed a number of officers from patrol and placed them in specialty assignments, which exacerbated the problems and caused officers to be mandated repeatedly nearly every day. (N.T. 21-22)

14. Later that day, on June 24, 2022, Captain Matt Leitzel called Praster and ordered him to come into the police station, at which time Leitzel took Praster's badge and gun, and placed him on administrative leave pending an investigation. Leitzel told Praster he was being placed on administrative leave because of his earlier email. (N.T. 23-24)

15. On July 11, 2022, Praster underwent an interview with Inspector Michael Davis of the City's Internal Affairs Division. Praster consented to a recording of the interview, which was also subsequently transcribed. (N.T. 27-28; Union Exhibit 3)

16. During the July 11, 2022 Internal Affairs interview, Praster provided Davis with multiple examples of how the content of the Commissioner's June 23, 2022 email was misleading or false. (N.T. 31-32, 35-36; Union Exhibit 3)

17. The City did not take any steps to confirm whether the statements in Praster's June 24, 2022 email or during his July 11, 2022 Internal Affairs interview were true or false. (N.T. 162-163)

18. By letter dated August 12, 2022, Captain Leitzel indicated to Sergeant Praster, in relevant part, the following:

Dear [Sergeant] Praster:

This letter is formal notice that, under the Department's Code of Conduct, 1.8.1, you are being charged with the following offenses:

Unbecoming Conduct, General Order 1.8.1.IV.A.2;
Professional Relations, General Order 1.8.1.IV.B.19; and
Constructive Criticism, General Order 1.8.1.IV.B.36.

Your conduct in violating these rules justifies a maximum penalty of termination.

The specific conduct that forms the basis for these charges was set forth in the July 15, 2022 *Loudermill* Notice. Another copy is attached. As detailed in the enclosed *Loudermill* Notice, this Notice of Charges addresses your June 24, 2022, email, sent just after 4PM, to Police Commissioner Michael Muldrow, as well as to all members of City Council, all Sworn and Civilian members of the Police Department and Senior Staff of the City

Administration. Your July 20, 2022, *Loudermill* response claims that your conduct is protected based on your position as an FOP official. I must disagree.

The Department's Code of Conduct defines Unbecoming Conduct as: "Conduct unbecoming a member shall include any conduct which has a tendency to destroy public respect for police officers or other members and confidence in the operation of police services." During your July 11 interview, you admitted that you had thought through your response carefully which is why it took more than a day for you to send it. In that email, you wrote: "The Commissioner has always had a loose relationship with the truth when it comes to promoting this department, but this email is too far. There's barely a true sentence in it." You have called the Commissioner a liar in a blast email, not just sent to Commissioner Muldrow, but to City Council, all Sworn and Civilian members of the Police Department and Senior Staff of the City Administration. Such conduct cannot be ignored and does not fall within the scope of protected union activity.

As for the penalty, Commissioner Muldrow has recused himself from this process because he was the target of your disrespectful slur. After consultation among the remaining members of the Department's Senior Staff, we concluded that, while a lengthy suspension without pay is both appropriate and justified, all three violations be [sic] consolidated into a 2nd level offense. Our hope is that you will recognize your obligation to treat all members of this Department, regardless of rank, with dignity and respect.

Pursuant to the Code of Conduct, this Notice of Charges will also constitute your Written Reprimand and will remain in your personnel file until August 12, 2024. You are reminded that any repeat of a level-2 offense within the next two years will automatically result in that violation progressing to the next level offense...

(N.T. 37-38; Union Exhibit 4) (Emphasis in original)

19. Praster was not disciplined for making false statements to Inspector Davis during his July 11, 2022 interview with the Internal Affairs Division. (N.T. 38-39; Union Exhibit 4)

20. Praster testified that, after his June 24, 2022 email, the Commissioner took steps to address the problems Praster had been raising. He described how the Commissioner held a meeting the next day and started a number of initiatives, which included pulling two detectives out of the sex crimes unit and returning them to patrol. He also explained how there was an initiative to have the Captains redon their uniforms, return to the street, and answer calls. (N.T. 44-45)

21. After Praster was disciplined, he attended a labor-management meeting with Captain Daniel Lentz, along with FOP Vice President Shawn Wilson and FOP Treasurer Kathleen Nice. At the end of the meeting, the parties discussed Praster's June 24, 2022 email, which Lentz indicated was not constructive, but rather designed to tear down the Commissioner. Lentz also stated that the overall impression of the email was that the Commissioner was

not being truthful, but that the Commissioner's job was to embellish things and put the best face forward for the department. Praster asked Lentz if it would have been permissible for him to make the statements in a speech at a City Council meeting instead of using email, to which Lentz replied that Lentz thought that would be protected speech and not subject to discipline. (N.T. 45-47, 96-97)

DISCUSSION

The FOP has alleged that the City violated Section 6(1)(a) and (c) of the PLRA¹ and Act 111 by issuing discipline to Sergeant Benjamin Praster on August 12, 2022, in retaliation for his protected activity. Specifically, the FOP contends that Praster engaged in protected, concerted activity when he replied all to the Commissioner's email on June 24, 2022, which was the cause of the City's adverse employment action against Praster. The City, on the other hand, contends that it did not violate the PLRA or Act 111, and the charge should be dismissed, because Praster's June 24, 2022 email reply to the Commissioner was not protected under the PLRA.

To establish a violation of Section 6(1)(c) under the PLRA, the charging party must show that the employee was engaged in protected activity, the employer knew of that protected activity, and there was an adverse employment action motivated by anti-union animus. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, PA State Police, 33 PPER ¶ 33011 (Final Order, 2001). It is the motive for the adverse employment action that creates the offense under Section 6(1)(c). PLRB v. Ficon, 254 A.2d 3 (Pa. 1969). An employer may rebut a claim of discrimination under Section 6(1)(c) of the PLRA by proving that the adverse employment action was based on valid nondiscriminatory reasons. Duryea Borough Police Dept. v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004).

The Board has recognized that, in the absence of direct evidence, it will give weight to several factors upon which an inference of unlawful motive may be drawn. City of Philadelphia, 26 PPER ¶ 26117 (Proposed Decision and Order, 1995). The factors which the Board considers are: the entire background of the case, including any anti-union activities by the employer; statements of supervisors tending to show their state of mind; the failure of the employer to adequately explain the adverse employment action; the effect of the adverse action on unionization activities—for example, whether leading organizers have been eliminated; the extent to which the adversely affected employees engaged in union activities; and whether the action complained of was "inherently destructive" of employee rights. City of Philadelphia, supra, citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978). Although close timing alone is insufficient to support a basis for discrimination, Teamsters Local 764 v. Montour County, 35 PPER 12 (Final Order, 2004), the Board has long held that the timing of an adverse action against an employee engaged in protected activity is a legitimate factor to be considered in determining anti-union animus. Berks Heim County Home, 13 PPER ¶ 13277 (Final Order, 1982).

¹ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act... (c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization... 43 P.S. § 211.6.

In this case, the dispute hinges on whether Praster's June 24, 2022 email constitutes protected activity under the PLRA. If so, then the FOP must prevail because the City knew about the protected conduct and admittedly disciplined Praster for it on August 12, 2022, when it issued him the Notice of Charges. If not, then the City must prevail because the FOP will be unable to sustain even the first element of the three-part test under Section 6(1)(c) of the PLRA.²

Under Board law, an employee's criticism of the employer will lose the protection of the PLRA only if it is "offensive, defamatory, or opprobrious," and not if it is merely "intemperate, inflammatory, or insulting." Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 41 PPER 33 (Final Order, 2010); PSSU Local 668, SEIU v. Washington County, 23 PPER ¶ 23040 (Proposed Decision and Order, 1992), 23 PPER ¶ 23073 (Final Order, 1992); See also AFSCME District Council 85, Local 3530 v. Millcreek Township, 31 PPER ¶ 31056 (Final Order, 2000) (an employee's conduct will lose protection where it is so obnoxious or violent as to render the employee unfit for service). Statements which are critical of management and expressed in the form of an opinion are not defamatory, such that the statements lose protection under the Act. Ass'n of Clinton County Educators PSEA/NEA v. Keystone Central School District, 53 PPER 74 (Proposed Decision and Order, 2022).

In this case, the FOP has sustained its burden of proving that the City violated the PLRA and Act 111 by issuing discipline to Praster in retaliation for his protected activity. First of all, Praster engaged in protected, concerted activity under the PLRA when he replied to the Commissioner's email on June 24, 2022. The City clearly had knowledge of that protected activity, as the City's non-bargaining unit managerial personnel admittedly received the June 24, 2022 email. Likewise, the City took adverse employment action that was motivated by protected activity on August 12, 2022 when it issued discipline to Praster expressly because of his June 24, 2022 email.

The City contends that the charge should be dismissed because Praster did not engage in any protected, concerted activity under the PLRA. In particular, the City argues that Praster called the Commissioner a liar in his June 24, 2022 email, which was offensive, defamatory, and opprobrious. The City cites PSCOA v. Commonwealth of Pennsylvania, Dept. of Corrections, SCI Fayette, 40 PPER 70 (Proposed Decision and Order, 2009) for the proposition that insubordinate conduct, in the form of publicly mocking a superior officer in the presence of inmates, is not protected activity. According to the City, the facts at issue in SCI Fayette mirror the conduct here, as Praster was insubordinate to the extent he tried to publicly shame the Commissioner and undermine the command structure within the City's police department. The City concludes that Praster's intent was to call the Commissioner a liar in front of a high stakes audience to do maximum damage to the Commissioner's reputation. The City posits that Praster had the opportunity to bring his concerns to the biweekly staff meetings with senior personnel where the FOP was free to raise issues, but he instead chose to reply-all in his June 24, 2022 email. The City's arguments in this regard are unavailing.

² The FOP has neither alleged, nor argued that the August 12, 2022 discipline was in retaliation for any other alleged protected activity under the PLRA.

I am unable to conclude that SCI Fayette is somehow controlling in this matter. In SCI Fayette, the Board's hearing examiner concluded that the conduct of a corrections sergeant was insubordinate, and therefore, not protected under the Public Employe Relations Act, after the sergeant openly mocked and questioned a superior officer's directive and counseling of another employe instead of simply challenging the superior officer's imposition of discipline through the customary grievance procedure. This stands in stark contrast to the instant matter where Praster has neither questioned, nor implied that the orders and directives of the Commissioner should not be followed. While Praster's June 24, 2022 email may have been very critical of the Commissioner's prior email, it nevertheless retains the protection of the PLRA, as it was not offensive, defamatory, or opprobrious.

The Board has recognized that where an individual employe was attempting to enforce a collective bargaining agreement, seeking to induce group action, or acting on behalf of a group, when he protested alleged conduct by the employer, the activity is protected under Article IV of PERA.³ Teamsters Local Union No. 773 v. Stroud Township, 52 PPER 71 (Proposed Decision and Order, 2021) (citing Black-Knox Foundry & Mill Machinery, Inc. v. NLRB, 646 F.2d 113 (4th Cir. 1981)). The record here shows that Praster was undoubtedly acting on behalf of a group of employes when he sent his June 24, 2022 email reply to the Commissioner. Indeed, the text of the email itself and the testimony of Praster during the January 26, 2023 hearing clearly evidence an almost desperate tone, imploring the Commissioner to take seriously the staffing and manpower complaints of the bargaining unit police officers. In fact, the record shows that Praster actually drafted the June 24, 2022 email reply with the advice and consent of the FOP's executive board. Thus, Praster was acting as President of the FOP and on behalf of the bargaining unit members when he drafted and sent his June 24, 2022 reply email while he was not at work or performing any of his police duties on behalf of the City. As such, the June 24, 2022 email constitutes protected concerted activity on its face.

In arguing that the June 24, 2022 email lost the protections of the PLRA, the City focuses on just two sentences, which stated: "The commissioner has always had a loose relationship with the truth when it comes to promoting this department but this email is too far. There's barely a true sentence in it." (Union Exhibit 2). The City asserts that this language proves that Praster called the Commissioner a liar, such that his June 24, 2022 email became defamatory, and therefore, unprotected. Of course, in making this argument, the City leaves out the context of the remaining portions of Praster's June 24, 2022 email, including the sentence immediately preceding the two set forth above, which the City finds so objectionable. That sentence provided as follows: "So when I woke up Thursday to read an email

³ Section 401 of Article IV provides that "[i]t shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice..." 43 P.S. § 1101.401.

This is substantially similar to Section 5 of the PLRA, which governs this matter, and which provides that "Employes shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." 43 P.S. § 211.5.

saying the department was doing **tons of great work** and gun crime is down - it was more than I could take." (Union Exhibit 2) (emphasis added). This language obviously characterized the Commissioner's June 23, 2022 email as a subjective opinion, to which Praster was about to disagree.

To that end, Praster's June 24, 2022 email is replete with subjective and opinionated statements. Indeed, the June 24, 2022 email begins with "I don't know that I have ever been angrier reading an email than I was when I woke up yesterday to this email from the commissioner. That may seem a strange reaction to **a pretty benign puff email.**" (Union Exhibit 2) (emphasis added). That Praster characterized the Commissioner's email as puffery should have immediately put the reader on notice that he was also about to disagree with his-perceived exaggerations by the Commissioner. At that point, Praster continues on to describe his weekend shifts in a way that contradicts the Commissioner's portrayal of the situation in his June 23, 2022 email. Then, Praster goes on to question how the Commissioner arrived at some of his statistics by asking "[s]elf defense homicides shouldn't count?" As the FOP pointed out at the hearing, Praster never actually accused the Commissioner of lying at any point in his June 24, 2022 email. While that is certainly one potential implication from the June 24, 2022 email, it can also be fairly read to imply that the Commissioner's email is simply wrong, inaccurate, or not fully informed on all the details of how the department is operating. The last implication is easily gleaned from the penultimate paragraph of the June 24, 2022 email, wherein Praster states: "So I implore you Commissioner Muldrow: On Monday, wakeup put on a uniform, come to work, call your staff together and ask them 'What is wrong and how do we fix it?' I assure you that's what this entire department is waiting for - not another emoji laden email telling us everything is fine when it's clearly not."

In any event, the Board has held that questioning the honesty of a supervisory or management employe is not beyond the protection of the Public Employe Relations Act. PSSU Local 668, SEIU v. Washington County, 23 PPER ¶ 23040 (Proposed Decision and Order, 1992), 23 PPER ¶ 23073 (Final Order, 1992).⁴ In Washington County, the Board found that a union steward's conduct was still protected despite comments that a department director exhibited, among numerous other things, "craven and dishonest behavior." While there certainly must be a line between what employes can permissibly say, even when their statements are clearly expressed as opinions, and what they cannot before losing the protection of the PLRA, I am unable to conclude that Praster has crossed it in this case. Even Captain Lentz admitted to Praster during their labor-management meeting, that the Commissioner's job was to embellish things and put the best face forward for the department, which only confirms the point Praster was making in his June 24, 2022 email reply.⁵

⁴ While this case was decided under the Public Employe Relations Act, the same analysis applies to matters falling under the PLRA and Act 111, Pennsylvania State Trooper Ass'n, *supra*, as the language of Section 401 of PERA and Section 5 of the PLRA are substantially similar.

⁵ Although Lentz denied at the hearing that he told Praster that it would have been permissible for Praster to make his statements in a speech to City Council instead of using email, (N.T. 148-149), this testimony has not been accepted as credible. More importantly though, Lentz did not refute or contradict Praster's credible testimony that Lentz stated that the Commissioner's job was to embellish things and put the best face forward for the department.

Nor does it matter here that Praster made his comments publicly, as alleged by the City. In Joseph Brown v. West Reading Borough, 47 PPER 66 (Proposed Decision and Order, 2015), the Board's hearing examiner found that the union president's conduct of speaking in his capacity as president at multiple public meetings of the borough's council, during which he was highly critical of individually named borough council members, was nevertheless protected concerted activity under the PLRA. The same result must obtain here, where FOP President Praster replied-all to the Commissioner's email on June 24, 2022 and included the City's political leadership. Although Praster was certainly critical of the Commissioner in his June 24, 2022 reply email, his statements contained therein never reached the level of becoming offensive, defamatory, or opprobrious, much less so obnoxious or violent as to render him unfit for service. To the contrary, Praster's June 24, 2022 email was calculated to address legitimate and substantial Union concerns regarding staffing, manpower, and forced overtime, and never crossed the line into becoming abusive in any way.

On this point, Praster credibly and persuasively testified that the Commissioner had been sending numerous emails during this period, which were similar to his June 23, 2022 email, and which had a general theme of portraying how great the police department was doing. Praster convincingly described how the bargaining unit members were becoming frustrated about receiving these emails while they were facing such significant morale and staffing issues. Praster credibly testified that he sent his June 24, 2022 reply email to make it clear that the Commissioner's portrayal that everything was fine in the department was fundamentally misleading. He even described how the FOP had urged the Commissioner multiple times to take action, but the Commissioner had refused. As a result, the FOP felt that it had to call attention to these issues to the City's political leadership with the hope that doing so would finally prompt the Commissioner or the politicians to take action. This is not offensive, abusive, or opprobrious conduct. In fact, the June 24, 2022 email was not even intemperate, inflammatory, or insulting, which the Board has deemed permissible and still worthy of the PLRA's protection. The FOP was faced with a situation where its complaints were being largely ignored or dismissed repeatedly. To preclude the FOP from ever going public or over the Commissioner's head with its legitimate complaints under these circumstances would be inimical to the purposes of Section 5 of the PLRA. Notably, the FOP's calculation seemed to have the desired effect, at least in part, as the record shows that after Praster's June 24, 2022 email, the Commissioner finally took steps to address the problems Praster had repeatedly raised. The City has not separately justified its imposition of discipline against Praster by offering any potential dual motive here. Accordingly, it must be concluded that the City has committed unfair labor practices under Section 6(1)(a) and (c) of the PLRA. Therefore, the City will be directed to rescind the August 12, 2022 discipline and to make Praster whole for any losses he may have suffered as a result thereof.

CONCLUSIONS

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

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. The FOP 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 City has committed unfair labor practices in violation of Section 6(1)(a) and (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 examiner

HEREBY ORDERS AND DIRECTS

that the City 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 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 examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately rescind the August 12, 2022 discipline issued to Praster, purge any mention of the discipline from his personnel file, and to make Praster whole for any and all losses he may have sustained as a result of the City's unfair labor practices, together with six (6%) percent per annum interest;

(b) 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;

(c) 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

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 11th day of July, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP WHITE ROSE LODGE 15 :
 :
 v. : Case No. PF-C-22-48-E
 :
 CITY OF YORK :

AFFIDAVIT OF COMPLIANCE

The City of York hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (c) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately rescinding the August 12, 2022 discipline issued to Praster, purging any mention of the discipline from his personnel file, and by making Praster whole for any and all losses he may have sustained as a result of the City's unfair labor practices, together with six (6%) percent per annum interest; 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/Date

Title

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

Signature of Notary Public