

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

On February 9, 2024, the Jenkintown Police Benevolent Association (Association or Union) filed a charge of unfair labor practices, as amended on March 15, 2024, with the Pennsylvania Labor Relations Board (Board) against Jenkintown Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a), (b), (c), and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally implementing employee performance evaluations, which were intended to harass the bargaining unit employees, in retaliation for their protected activity, and without bargaining with the Association. The Association alleged that the evaluations occurred on various dates throughout January 2024.

On April 19, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on July 17, 2024, if necessary. After two continuances, the hearing ensued on December 13, 2024, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on March 24, 2025. The Borough filed a post-hearing brief in support of its position on March 25, 2025.

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

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

3. The Association is the exclusive bargaining representative for a unit of police employees at the Borough. (Joint Exhibit 1)

4. The Association and the Borough were parties to a collective bargaining agreement (CBA) effective January 1, 2020 to December 31, 2023. (Joint Exhibit 1)

5. Anthony Matteo has been a police officer with the Borough for 12 years. He currently serves as a Field Training Officer (FTO) and as Officer in Charge (OIC) for his squad, after previously serving as a K-9 Officer for five years. He is also the President of the Association. (N.T. 15-16)

6. Officer Matteo testified that the parties began negotiating for a successor agreement to the 2020 to 2023 CBA in late 2023. He indicated that, at the time of the hearing, the parties had yet to begin the Act 111 proceedings for that successor agreement. (N.T. 16-17)

7. On January 11, 2024, Officer Matteo received an annual performance evaluation for 2023 from Chief Thomas Scott, with which Officer Matteo took issue. (N.T. 17; Union Exhibit 2, 3)

8. Under the category of Personal Characteristics, Officer Matteo specifically disputed his rating of 3, on a scale of 1 to 5,¹ for the subcategory of "maintains good attendance and observes working hours." He felt the rating to be unfair because he gets to work an hour early every day to help the prior shift if a late call comes out and to prepare himself for his shift. He also goes out onto the street if necessary and only took two sick days in 2023. (N.T. 17-18; Union Exhibit 2)

9. Under the category of Personal Characteristics, Officer Matteo also disputed his rating of 2 for the subcategory of "team player-maintains a productive working relationship with fellow officers, encourages cooperation and collaboration, does his/her fair share of work." He felt he was a team player, that he does what he is asked to do, helps out where it is needed, and never tells anyone that he cannot do so. (N.T. 18-19; Union Exhibit 2)

10. Under the category of Personal Characteristics, Officer Matteo further disputed his rating of 2 for the subcategory of "professional development/commitment-exhibits a dedication to improve knowledge and skills through training and education." For the most part, if he sees a training that he wants to go to, he puts in for it. He does monthly legal training updates on the computer, along with MPOETC updates during his shift. (N.T. 19-20; Union Exhibit 2)

11. Under the category of Productivity/Crime Prevention, Officer Matteo disputed his rating of 2 for the subcategories of "addresses community concerns through citizen contacts; directed patrols and park and walks," "maintains acceptable levels of traffic enforcement," and "maintains acceptable levels of criminal enforcement." (N.T. 21-22; Union Exhibit 2)

12. Officer Matteo explained that he makes citizen contacts on every shift, whether or not it is documented, by stopping at restaurants and parks and engaging with the people there. He also stopped by special events a few times in 2023, such as the summer music festival. He was unsure what he was being compared to for the acceptable levels of traffic and criminal enforcement. He described pulling over motorists for speeding, as well as running a stop sign or red light. He has the discretion to release motorists with simply a warning, which may be written or verbal. He does not have the authority to arrest someone for a misdemeanor without witnessing the offense. He did not fail to arrest anyone for a felony, which he observed, in 2023. (N.T. 22-25)

13. Under the category of Leadership Qualities, Officer Matteo disputed his rating of 2 for the subcategory of "commitment to departmental goals-committed to the goals of the department and fulfilling the police

¹ The record shows that a rating of 1 represents "unsatisfactory," with 2 being "below expectation needs improvement," 3 as "at expectation," 4 as "above expectation," and 5 as "superior." (Union Exhibit 2).

department's mission statement." He took issue with this rating because he felt that he was never against the goals of the department or its mission. (N.T. 26-27; Union Exhibit 2)

14. Officer Matteo described how the issue of disbanding the police department arose sometime in 2023, which he opposed. He directed the Union's lawyer to speak at a public meeting on that issue. (N.T. 28)

15. Officer Matteo's overall score for his 2023 evaluation was 59.5 percent, which was unsatisfactory. (N.T. 28; Union Exhibit 2)

16. Chief Scott indicated the following, in relevant part, at the end of Officer Matteo's 2023 evaluation in a section entitled "Areas of Growth:"

[Officer] Matteo was again not a productive officer in his traffic enforcement or criminal enforcement activities. [Officer] Matteo would benefit from seeking additional training in crisis intervention, patrol activities, and leadership training if he wants to succeed in his professional career. A commitment to the cultural change from a reactive policing model to a proactive policing model will benefit [Officer] Matteo in his performance. Documentation of all performance indicators has affected the unsatisfactory performance for the evaluation period. [Officer] Matteo was disciplined for an incident involving several officers within the Department. As part of this evaluation, a performance improvement plan will be developed for [Officer] Matteo to succeed in 2024.

(N.T. 28-29; Union Exhibit 2)

17. On January 15, 2024, Officer Matteo filed an appeal of his 2023 evaluation with Chief Scott. (N.T. 29-30; Union Exhibit 3)

18. On February 2, 2024, Chief Scott issued a response to Officer Matteo's appeal, which amended the scores for two subcategories. Specifically, the Chief changed his rating of 3 to a rating of 4 for the subcategory of "maintains good attendance and observes working hours." The Chief acknowledged that Matteo did show up for work early and regularly responded to calls for service to relieve officers from having to stay late for those calls. The Chief also stated that Matteo's use of sick time prevented the score from being raised to a 5. (N.T. 30-31; Union Exhibit 3, 4, 5)

19. Chief Scott also raised Officer Matteo's rating of 3 for the subcategory of "works to engage the community outside of normal patrol duties; attends police department sponsored community events, community meetings" to a 4 in the appeal response based on Officer Matteo's performance with the "Letters to Santa" project. As a result, the Chief issued an amended evaluation for 2023, which raised Matteo's score to 60.5 percent, which was satisfactory. The Chief also indicated that there would not be a performance improvement plan. (N.T. 29-31, 33-34; Union Exhibit 4, 5)

20. Chief Scott refused to change all the other remaining scores that Officer Matteo disputed in his appeal. As part of that response, the Chief provided a rebuttal for each section and score that was disputed. In his rebuttal for the subcategory of "team player-maintains a productive working relationship with fellow officers; encourages cooperation and collaboration;

does his/her fair share of work," the Chief specifically indicated the following, in relevant part:

...When looking at your overall performance and the status you hold as an FTO and the President of the [Association], there would be a higher expectation of you because you hold that informal leader role...

(N.T. 31; Union Exhibit 4).

21. Officer Matteo testified that he believed the Chief's rebuttal was based on his Union activity. He described being outspoken and one of the lead negotiators for the Union, along with Officer Cory Murtagh and Detective Sanger. (N.T. 31-32)

22. On cross-examination, Officer Matteo admitted that Chief Scott indicated he would benefit from an increase in enforcement activity and community engagement in his 2022 evaluation, and that he should seek additional training for FTO, crisis intervention, and leadership. He agreed that he did not do additional training for FTO, crisis intervention, or leadership in 2023. (N.T. 35-37; Borough Exhibit 7)

23. Albert Sulpizio has been employed by the Borough as a police officer since 2006. He was promoted to the rank of sergeant in 2014, which he currently holds. While he was not part of the current negotiating committee, he was a member of that committee for three prior negotiations. He testified that he has been heavily involved with the Union for the past several years, about which he is vocal and makes it well known. (N.T. 53-55)

24. On January 31, 2024, Chief Scott provided Sergeant Sulpizio with his annual performance evaluation for 2023, which Sergeant Sulpizio disputed. (N.T. 56-57, 72; Union Exhibit 6, 7)

25. Under the category of "Scheduling and Coordinating," Sergeant Sulpizio disputed his rating of 2 in the subcategory of "coordinates and organizes the efforts of subordinates so as to provide for maximum efficiency." Sergeant Sulpizio testified that he strives to ensure that reports, correspondence, and crime patterns are thoroughly reviewed and shared with subordinates. He described how he reviews and approves reports before they are uploaded into the Borough's records management system (RMS). (N.T. 56-58; Union Exhibit 6)

26. Under the category of "Personnel Management," Sergeant Sulpizio disputed his rating of 2 for the subcategory of "constantly strives to maintain harmony among all employees of the department." He testified that he does his best to maintain harmony by exhibiting and promoting a positive attitude, along with professional and healthy working relationships, on a daily basis. He described treating everyone in the department fairly. (N.T. 58-59; Union Exhibit 6)

27. Sergeant Sulpizio filed several recent grievances, including one in late 2022, as well as others in 2023, which were supported by the other bargaining unit members. (N.T. 59)

28. Under the category of "Training and Instructing," Sergeant Sulpizio disputed his rating of 2 in the subcategory of "instructs

subordinates in changes and methods, procedures, equipment and techniques, and trains them where necessary." He testified that he always trains his subordinates to the best of his ability. He explained how he is the terminal agency coordinator for the police department, meaning that he keeps the officers updated on a daily basis on whatever information is necessary to run a successful police department. He was unaware of why he received a rating of 2. (N.T. 59-61; Union Exhibit 6)

29. Under the category of "Training and Instructing," Sergeant Sulpizio disputed his rating of 2 for the subcategory of "supports the department['s] training program in word and attitude." He testified that he supports the training program and that he has been flexible. He believed that he was being penalized for disagreeing with the Chief's claim that the Union's contract is immoral, unethical, and unfair. He subsequently indicated that the Chief made those comments during his January 31, 2024 evaluation meeting. (N.T. 61, 85-86; Union Exhibit 6)

30. Under the category of "Training and Instructing," Sergeant Sulpizio disputed his rating of 3 for the subcategory of "provides coaching, mentoring, and counseling support [sic] new officers." He testified that the Borough does not have any new officers. He described how he monitors the officers' activity and ensures that they conduct themselves in accordance with the Borough's policy. (N.T. 61-62; Union Exhibit 6)

31. Under the category of "Training and Instructing," Sergeant Sulpizio disputed his rating of 2 for the subcategory of "is interested in improving his/her own supervisory capacity through training." He testified that he has been accused of not attending trainings, but stated that he has attended numerous training sessions. He explained how he has been selective in his training requests, however, in light of the Borough's alleged financial position. He described how he went to training in 2023, which did not cost the Borough any overtime or scheduling issues. (N.T. 62-63; Union Exhibit 6)

32. Under the category of "Evaluating," Sergeant Sulpizio disputed his rating of 1 for the subcategory of "evaluates each of his/her subordinates as fairly, objectively, and impartially as possible." He testified that he evaluates his subordinates by monitoring their reports, along with what they do on the street. He described how he has been accused of giving employees high marks because of friendships or loyalty. He did evaluations for officers in 2022, but not in 2023. He was simply asked to provide input. He felt that this subcategory should have been inapplicable for him since he did not do annual evaluations in 2023. He did evaluate officers on a daily basis, but not as part of a formal annual performance evaluation. If he had an issue with an officer, he would go to them, person to person, and point out what they should be doing better. (N.T. 63-67; Union Exhibit 6)

33. Sergeant Sulpizio testified that, in 2023, he moved his schedule around to accommodate and work with every cop in the department, as well as to save the Borough on overtime. He described doing so in an effort to save jobs for the least senior officers, so that the Borough does not resort to furloughs. (N.T. 67-68)

34. Under the category of "Supervisory Reporting," Sergeant Sulpizio disputed his rating of 2 for each of the subcategories of "makes oral or written reports of conditions or facts which his/her superiors should be made

aware of" and "makes recommendations on all valid and appropriate matters relative to improvement of service." He testified that he has told the Chief that if he feels something is important, he will communicate it to the Chief and make recommendations. (N.T. 68-69; Union Exhibit 6)

35. Under the category of "Operational Economy," Sergeant Sulpizio disputed his rating of 2 for the subcategory of "recommends policy changes which might affect financial savings for the department." He reiterated how he has taken measures to avoid overtime expenses for the Borough with regard to scheduling and trainings. (N.T. 69-70; Union Exhibit 2)

36. On February 5, 2024, Sergeant Sulpizio filed an appeal of his 2023 evaluation with Chief Scott, to which the Chief never responded. (N.T. 71-72, 83; Union Exhibit 7)

37. On cross-examination, Sergeant Sulpizio acknowledged that the Chief indicated in his 2022 evaluation that leadership training and crisis intervention training would be beneficial for him. He admitted that he did not do those trainings in 2023. He described how he signed up for the crisis intervention training, but the Chief proposed a way to attend the training that allegedly violated the CBA. (N.T. 75-77; Borough Exhibit 3)

38. When asked whether he could have simply attended the training and then later grieved Chief Scott's conduct as violating the CBA, Sergeant Sulpizio replied "I'm not like that." He explained that he wanted to bring the issue to the Chief's attention prior to the training. He eventually conceded that he could have gone to the training. But he described being the type of person to address the potential grievance before the training in an upfront, honest, and sincere manner, since he knew it existed beforehand. (N.T. 77-79)

39. On cross-examination, Sergeant Sulpizio testified that the Chief postponed the training as a result of the dispute. He acknowledged that he never took the training following that postponement in 2023. (N.T. 79-80)

40. When asked if he was disciplined in 2023, Sergeant Sulpizio referred to his 2023 evaluation, which included a statement from Chief Scott that "[Sergeant] Sulpizio failed to provide feedback for evaluations and was disciplined for an incident that involved a failure to notify Command." He indicated that he never received that discipline and that he was still waiting at the time of the hearing. (N.T. 81-82; Union Exhibit 6)

41. On redirect examination, Sergeant Sulpizio testified that the Chief emailed him about the training dispute, indicating that if the parties cannot reach a compromise, the training would be postponed. He stated that he never heard anything back from the Chief regarding the training dispute. (N.T. 83)

42. Cory Murtagh has been employed as a police officer for approximately 14 years and serves as the Vice President of the Association. He is on the negotiating committee for the successor agreement. He testified that those negotiations did not go well because the Union was given a take-it or leave-it option from the Borough's attorney. He was also on the negotiating committee for the previous contract. In June 2023, he sent out the required notifications for Act 111 arbitration. At the time of the hearing, the parties were still waiting for an arbitration date since the proceedings had been continued several times. (N.T. 87-89, 112-114)

43. In January 2024, Officer Murtagh received an annual evaluation from Chief Scott for 2023, which Murtagh disputed. (N.T. 89-90; Union Exhibit 8)²

44. Under the category of "Personal Characteristics," Officer Murtagh disputed his rating of 2 for the subcategory of "professional development/commitment - exhibits a dedication to improve knowledge and skills through training and education." He described how he had 176 training hours for 2023, which he characterized as a lot. He noted that the vast majority of those hours were for his position on the Montgomery County SWAT Team. He asked during his evaluation what he could have done differently, and the Chief replied that he needed a wider variety of training that was not just tactical. (N.T. 89-92; Union Exhibit 2)

45. Under the category of "Productivity/Crime Prevention," Officer Murtagh disputed his rating of 2 for both subcategories of "maintains acceptable levels of traffic enforcement" and "maintains acceptable levels of criminal enforcement." He testified that he usually takes action if he sees someone commit a traffic offense, which means pulling over the motorist. He described how he issues a lot of warnings unless there is some aggravating factor, such as license or registration issues or repeat offenders. He also tries to make an arrest if he sees someone commit a crime. He explained that he does not know what more he can do to maintain criminal enforcement. He testified that he makes every effort to investigate the crimes that come across the reports he receives. He described being part of traffic details and how he prefers to patrol as part of his traffic enforcement work rather than sit and observe. (N.T. 92-96; Union Exhibit 8)

46. Under the category of "Leadership Qualities," Officer Murtagh disputed his rating of 2 for the subcategory of "informal leader - models behaviors that are consistent with the police department's core values; assists in the development of other officers." He testified that he leads by example every day and does the best job that he can to help everyone around him, whether or not it is his job to do. (N.T. 96-97; Union Exhibit 8)

47. Under the category of "Leadership Qualities," Officer Murtagh disputed his rating of 2 for the subcategory of "commitment to departmental goals - committed to the goals of the department and fulfilling the police department's mission statement." He testified that he does not know what the goals of the department are since he has committed his entire career to the

² The record is somewhat unclear regarding exactly when the Chief provided Murtagh with his 2023 evaluation. The Chief signed and dated the evaluation himself on December 31, 2023, which was the same for Officer Matteo and Sergeant Sulpizio. (Union Exhibit 8). Indeed, it appears that the Chief filled out the evaluation forms himself and signed them on December 31, 2023, and then sat down with each individual officer at later date to review the documents. The evaluation introduced at the hearing did not contain Murtagh's signature or a date therefor. As a result, I have drawn an inference that the Chief provided Murtagh with his evaluation in January 2024, which was consistent with the Chief's evaluation process for Matteo and Sulpizio. In any event, even if the Chief provided Officer Murtagh with his evaluation on December 31, 2023, which was consistent with the Chief's signature, the Association's February 9, 2024 charge was still timely filed within six weeks of that date.

Borough and does his part as much as anybody else. (N.T. 97; Union Exhibit 8)

48. Officer Murtagh also took issue with the Chief's statement in the 2023 evaluation that "[Officer] Murtagh would benefit from seeking training in leadership principles, crisis intervention, and other patrol related duties." He testified that he has SWAT training that is normally once a month, but which sometimes can be two to three days. He described how he works a lot of overtime, about 150 hours in 2023, and has other responsibilities in the department. He told the Chief and the Mayor during his evaluation that he does not know if he has the time to complete other trainings. He indicated that he does not know what else he could do. He felt that he was being penalized for his Union activity. (N.T. 97-99; Union Exhibit 8)

49. On cross-examination, Officer Murtagh acknowledged that, in his 2022 evaluation, Chief Scott indicated that he would benefit from additional training in leadership, policing strategies, crisis intervention, and investigations. He agreed that he had 27 hours of training in 2022 and 176 hours of training in 2023. He admitted that he did not complete any other trainings outside of what he is required to complete for 2023. (N.T. 100-101; Borough Exhibit 5)

50. On cross-examination, Officer Murtagh acknowledged that, in his 2022 evaluation, Chief Scott indicated that he would benefit from increased levels of enforcement activity and proactive engagement in the community. He agreed that his number of traffic stops for 2022 was more than his number for 2023. He admitted that he was not disciplined for any traffic stop deficiencies he may have had or for his evaluation score in 2023. (N.T. 101-106; Borough Exhibit 5, 9, 10)

51. Thomas Scott has been employed with the Borough as Chief of Police since April 1, 2022. He is not part of the bargaining unit at the Borough. He stated that the Borough has 11 officers, including nine patrolmen, one sergeant, and himself as Chief and the lone managerial employe. (N.T. 117-119)

52. Chief Scott testified that Officer Matteo, Sergeant Sulpizio, and Officer Murtagh were the only three officers at the Borough, who did not take the crisis intervention training that he had recommended for 2023. The Chief explained that he wanted to focus on crisis intervention as a departmental goal and the mental health issues that police officers face on a daily basis, which was covered in two classes offered by the Montgomery County Emergency Services, i.e., crisis intervention and advanced crisis intervention. (N.T. 131-133)

53. Chief Scott testified that Officer Murtagh is the Coordinator of Aggressive Driving Details and DUI enforcement. The Chief described how the Borough has had many speeding issues through the years and that he had discussions with the officers about addressing those issues. However, he indicated that almost none of the officers in the department followed through on enforcing that traffic activity, including Officer Murtagh who improved minimally, if it all, from 2022 to 2023. (N.T. 136-138)

54. Chief Scott testified that the goal for the department in 2023 was to be more proactive, to be more engaged, and to provide the safest community to Borough residents and visitors. The Chief discussed those goals

with the officers, beginning in 2022 at their first departmental meeting. (N.T. 143, 154)

55. Chief Scott testified that Officer Murtagh had a 50 percent decrease in criminal arrests from 2022 to 2023, which was concerning. The Chief explained that he wanted Officer Murtagh to bring back training and tactics from his SWAT position to implement them in the Borough and to help other officers grow professionally. The Chief indicated that Officer Murtagh did not appeal his evaluation score. (N.T. 146-150, 156; Borough Exhibit 11, 12)

56. Chief Scott testified that there were no promotional opportunities between 2022 and 2023. The Chief indicated that, at the time of the hearing, there were still no promotional opportunities in the department. (N.T. 164-165)

57. Chief Scott denied that he has higher expectations of Officer Matteo because of his Union activity. The Chief testified that anybody who takes on a leadership position with the Association is expected to want to work together with the Borough to improve conditions within the department. The Chief claimed that he mentioned Officer Matteo's Union position in the evaluation as a supplemental factor to Officer Matteo being listed as an FTO. The Chief did not feel that Officer Matteo performed at his best level as an FTO in 2023 based on Officer Matteo's performance conducting field training for a part-time employee, who was hired during that time. The Chief described how that new part-time employee struggled with her performance, which should not have happened. (N.T. 166-168)

58. Chief Scott testified that the scores he gave Officers Matteo and Murtagh in their 2023 evaluations were based on their performance and not on their Union activity. (N.T. 174)

59. Chief Scott did not deny stating that the contract was immoral and unfair. The Chief explained that he was referring to language in the CBA that apparently permits the officers to get paid for 12 hours in time when they go to an eight-hour training course. The Chief claimed that provision was not fair for the Borough. The Chief stated that he discussed the matter with the Borough Manager, as well as Officers Matteo and Murtagh, wherein the Chief claimed that the Borough cannot afford to pay 12 hours for eight hours of attendance at training. The Chief testified that he asked the Union officers to consider changing that provision. (N.T. 176-177)

60. Chief Scott testified that he thought the parties reached a verbal agreement regarding the training issue. The Chief indicated that he subsequently sent out a follow up email to the bargaining unit employees, indicating that compensation would be "time for time." The Chief described how the Borough would list it as rescheduled time, meaning the officers would get the time back so they could take off another day. The Chief insisted that he did not mandate the officers to take additional time off or take away four hours from their PTO banks. (N.T. 177-178)

61. Chief Scott testified that he did not direct Sergeant Sulpizio to refrain from evaluating the officers in 2023. The Chief indicated that he told Sergeant Sulpizio that he would like Sulpizio's feedback, but Sulpizio did not provide that feedback to him. The Chief stated that he values Sergeant Sulpizio's feedback. (N.T. 179-180)

62. Chief Scott testified that, in 2023, Sergeant Sulpizio had an incident in which he was the arresting officer for a DUI. The Chief described how he found out about the alleged incident from reading the report. The Chief claimed that Sergeant Sulpizio did not notify him, which was problematic because it was contrary to policy. The Chief also found the incident even more problematic because both arresting officers transported the suspect to Montgomery County Prison, meaning that there was nobody patrolling the Borough for that period. The Chief explained that this incident factored into the score he gave Sergeant Sulpizio on his 2023 evaluation. The Chief stated that he did not discipline Sergeant Sulpizio, but rather that he only gave Sulpizio a counseling. (N.T. 180-182)

63. Chief Scott testified that he did not consider Sergeant Sulpizio's Union activity when he evaluated Sulpizio in 2023. (N.T. 183)

DISCUSSION

The Union argues in its post-hearing brief that the Borough violated Section 6(1)(a) and (c) of the PLRA³ and Act 111 by issuing "terrible" evaluations to Sergeant Sulpizio and Officers Matteo and Murtagh, in retaliation for their protected activity.⁴ Specifically, the Union disputes many of the Chief's ratings for each of these bargaining unit employees and connects it to the Chief's alleged anti-union animus based on several statements of the Chief, purportedly revealing his true state of mind. The Borough, meanwhile, initially contends that the charge should be dismissed because the bargaining unit employees did not suffer any adverse employment action based on the evaluations. The Borough also submits that the charge should be dismissed because there is no evidence in the record indicating that the employees in question engaged in protected Union activity prior to receiving their 2023 performance evaluations. The Borough further maintains that the charge should be dismissed because the Union failed to show any discriminatory intent on behalf of the Borough in rendering the 2023 evaluations.

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 ¶

³ 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.

⁴ Although the Union checked off the box for a violation of Section 6(1)(d) of the PLRA on the charge form rather than Section 6(1)(c), a simple reading of the charge, as amended, clearly and unequivocally alleges that the Borough retaliated against those bargaining unit employees because of their general protected activity as Union leaders, and not because of their protected activity before the Board. As such, the Union properly alleged a charge under Section 6(1)(c) of the PLRA, and the Borough was undeniably on notice to defend the charge under Section 6(1)(c). However, the Union's post-hearing brief is devoid of any discussion regarding how the Borough violated Section 6(1)(b) or (e) of the PLRA. Therefore, the charge under Section 6(1)(b) and (e) will be dismissed.

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).

In this case, the Union has sustained its burden of proving the first two elements of the discrimination test under Section 6(1)(c) of the PLRA. The record shows that Officers Matteo and Murtagh, as President and Vice President of the Union, engaged in protected activity when they began negotiating for a successor agreement to the 2020-2023 CBA in late 2023 and eventually resorted to the Act 111 dispute resolution process. Likewise, the record shows that Union President Matteo opposed the Borough’s suggestion of disbanding the police department, which arose in 2023, and directed the Union’s lawyer to speak at a public meeting on the issue. The record further shows that Sergeant Sulpizio, while not a member of the negotiating committee, nevertheless filed several recent grievances, including one in 2022, as well as others in 2023. In fact, one informal grievance by Sergeant Sulpizio in 2023, in which he alleged that the Chief wanted to violate the CBA with regard to compensation for training days, seemed to particularly irk the Chief, as evidenced by the Chief’s subsequent comments during Sulpizio’s January 31, 2024 evaluation, which is further discussed below.⁵

The Borough’s knowledge of this protected activity is not in question. The Chief explicitly referred to Officer Matteo’s status as Union President in his February 2024 rebuttal to Matteo’s appeal of his evaluation and readily conceded in his testimony that he discussed Sulpizio’s informal

⁵ The Board has recognized that where an individual employee 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 conduct. 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)).

grievance regarding compensation for training days with President Matteo and Vice President Murtagh. If that were not enough, the credible testimony of Officer Murtagh shows that the negotiations for a successor agreement were contentious and that the Borough's attorney gave the Union a take-it or leave-it option. The Borough does not appear to dispute that it had knowledge of the Union's protected conduct and instead argues in its post-hearing brief that there is no evidence of protected conduct prior to the 2023 performance evaluations. This argument is clearly without merit, however, as the timeline set forth above demonstrates that the Union, and these bargaining unit employees, in particular, engaged in the described protected activity at various points in 2023 prior to receiving their 2023 evaluations in January 2024.

The Union has also sustained its burden of proving the final element of the discrimination test under Section 6(1)(c) of the PLRA, as the record clearly shows that the Borough was unlawfully motivated when it issued the annual evaluations to the three employees in question in January 2024. The first and most obvious factor supporting such a determination are the Chief's plain discriminatory statements. During the Chief's evaluation meeting with Sergeant Sulpizio on January 31, 2024, the Chief referred to the Union's contract as being "immoral, unethical, and unfair."⁶ In his February 2, 2024 response to Officer Matteo's appeal of the 2023 evaluation, the Chief expressly referred to Officer Matteo's status as Union President and specifically indicated that Officer Matteo was subject to "a higher expectation" because of this status. This is the very essence of animus and disparate treatment, as it shows that the Chief was treating Officer Matteo differently than the other officers simply because of his leadership position in the Union. The Chief's denial that he held Officer Matteo to a higher standard because of his Union position was simply not credible or persuasive. Indeed, in his very next breath, the Chief asserted that anybody who takes on a leadership position with the Union is expected to work together with the Borough to improve conditions in the department, which on its own may be somewhat innocuous. But when this statement is viewed in context with the Chief's previous remarks, it gives rise to the inference that the Chief does not take kindly to Union officials, who oppose him or have the audacity to challenge his authority.

On this point, the Chief further refuted his own denial and betrayed his animus in his February 2024 response to Officer Matteo's appeal when the Chief only raised Matteo's score from a 3 to a 4 for the subcategory of "maintains good attendance and observes working hours." How an employee who admittedly shows up for work an hour early every day only receives a 4 in this subcategory, and not a 5, is a mystery. The Chief claimed that Officer Matteo's use of two sick days prevented the 5 rating. However, this assertion is even more indicative of the Chief's unlawful motive because it shows that the Chief was retaliating against Officer Matteo for using a contractually earned and collectively bargained-for benefit, as set forth in the CBA. (Joint Exhibit 1). The Chief did not claim or allege that Officer Matteo demonstrated any sort of pattern of sick leave abuse or that Officer Matteo otherwise used that benefit improperly.

The Chief's animus is further demonstrated by his public remarks throughout 2023 that he wanted to disband the police department. That the Chief harbors unlawful motivation is undeniable on this record in light of his many anti-union statements. His disdain for the Union was also readily

⁶ When asked, the Chief did not deny making these statements.

apparent in his demeanor at the hearing. But that was not the only factor supporting a determination that the Borough was unlawfully motivated, as the timing of the Chief's actions also gives rise to an inference of anti-union animus.

The record shows that Officers Matteo and Murtagh, as President and Vice President of the Union, began negotiating for a successor agreement in late 2023, which quickly became contentious. Only a short while later, the Chief issued the negative performance evaluations in January 2024. Similarly, the record shows that Sergeant Sulpizio's informal grievance over the compensation for training days and the Union's opposition to the Borough disbanding the police department occurred sometime in 2023, which set the stage for the negative evaluations less than a year later in January 2024.

The third factor supporting a determination that the Borough was unlawfully motivated is the pretextual reasons offered by the Borough for its conduct. The Chief attempted to explain away the negative evaluations by citing to various alleged deficiencies in the performance of the three employees at issue. Unfortunately for the Borough, however, the Chief's testimony in this regard has not been accepted as credible or persuasive. To be sure, as detailed above, the Chief has plainly engaged in disparate treatment and made a number of obvious anti-union statements, which casts considerable doubt over his testimony in general and the reasons he offered for the negative evaluations. In fact, the record shows that one of the most significant reasons proffered by the Borough for the negative evaluations was the alleged failure of the three employees in question to attend certain training courses in 2023. But the credible evidence of record reveals that the parties had a dispute regarding the compensation for such trainings, after which the Chief demanded that the Union renegotiate a contractual provision and then postponed the trainings himself when the Union refused. The Chief then never got back to the officers about the training dispute.⁷ Thus, the Chief's subsequent negative ratings on the evaluations in January 2024 was simply more evidence of discriminatory intent, given that he was punishing the Union and the bargaining unit employees for trying to enforce a provision in their CBA.⁸

Finally, the Borough's argument that the charge should be dismissed because the bargaining unit employees did not suffer any adverse employment action is also without merit. For at least ten years now, the Board's hearing examiners, with Board approval, have repeatedly and consistently recognized that any written documentation designed to correct an employee's conduct constitutes discipline. East Allegheny Education Ass'n, PSEA/NEA v. East Allegheny School District, 47 PPER 55 (Proposed Decision and Order, 2015); FOTP Lodge 109 v. SEPTA, PERA-C-18-132-E (Proposed Decision and Order, 2020); FOP PA Conservation Police Officers Lodge 114 v. Commonwealth of

⁷ The Borough's assertion that Sergeant Sulpizio and the other bargaining unit employees should have simply attended the training and grieved the Chief's conduct later is unavailing. The Chief readily conceded that the training was not mandatory, (N.T. 196), and therefore, the officers cannot be characterized as insubordinate. What is more, the Chief himself decided to postpone the training in light of the dispute and then never revisited the issue with the bargaining unit employees.

⁸ Section VII of the CBA, which is entitled "Training," provides in relevant part that "[a]ny departmental approved and/or sanctioned training will be counted as a working day (i.e., 12 hours, according to the current schedule), for a minimum of eight (8) hours of training." (Joint Exhibit 1).

Pennsylvania, 55 PPER 20 (Proposed Decision and Order, 2023), *aff'd*, 55 PPER 60 (Final Order, 2024). Under this standard, the 2023 evaluations easily meet the definition of discipline, given that they are written documentation allegedly designed to improve performance. As a result, the Borough will be directed to purge the 2023 evaluations, and any mention thereto, from the personnel files of the three employees in question, along with the Board's usual cease and desist and posting remedies.

CONCLUSIONS

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

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Association 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 Borough has committed unfair labor practices in violation of Section 6(1)(a) and (c) of the PLRA.
5. The Borough has not committed unfair labor practices in violation of Section 6(1)(b) or (e) of the PLRA.

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 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 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 purge the personnel files of Officer Matteo, Sergeant Sulpizio, and Officer Murtagh, to include all paper and electronic copies and records, of any and all mention of or references to the 2023 evaluations;
 - (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 21st day of August, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

AFFIDAVIT OF COMPLIANCE

The Borough 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 purging the personnel files of Officer Matteo, Sergeant Sulpizio, and Officer Murtagh, to include all paper and electronic copies and records, of any and all mention of or references to the 2023 evaluations; 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