



By Christopher P. Gerber, Esq., and Brian C. Conley, Esq.
Siana Bellwoar

Targeting Reductions in the Municipal Police Workforce

Take Careful Aim

Local law enforcement in the Commonwealth faces unprecedented challenges as costs for professional police services continue to rise while municipal budgets suffer from stagnant or waning tax bases.

Since police departments typically represent the largest expense in a municipal budget, their workforce often becomes a target of cost cutting by officials dealing with diminishing revenues.

The decision to cut police jobs is not an easy one. There is the impact on the officers themselves as well as the fact that the primary functions of government are to protect the health, safety, and welfare of the public.

Against this backdrop, the initial inquiry is: *which level of government* should provide police services to your municipality?

Boroughs are not required to have local police; rather, they may receive services at no cost from the state police if they choose. However, state police cannot enforce local ordinances, like curfews and parking restrictions, and may be impeded from timely responding to calls for service due to geography.

Boroughs also have the option of contracting with neighboring municipalities for police service. However, this option is not always attractive when considering a real or perceived lack of control over the officers, disagreements over the cost and scope of coverage and a desire to serve the borough residents with their *own* department.

These factors may compel municipalities to form their own police forces, which is authorized by the Borough Code.ⁱ

Once a borough council forms a police department, regardless of the size of the workforce, the council is obligated, in its role as the final policymaker, to ensure that the department is operated in a lawful and efficient manner and staffed with adequately trained, supervised, and equipped personnel.

With the lion's share of police budgets consisting of personnel costs, the reduction of the workforce can result in a substantial cost savings and may appear, on its face, to be a silver bullet to end a budget crisis.

But before furloughing officers, council members should look at the actual cost savings and whether cuts might create an unacceptable risk of liability because of a lack of resources

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necessary to operate a safe and efficient department. Conducting a police management study by a qualified police consultant or through the PA Department of Community and Economic Development may be the best way to gather the necessary information.

A meaningful study should clarify whether savings could be achieved without furloughs. For example, a police consultant may suggest ways to obtain grants, save on overtime and equipment, and improve the efficiency of operations.

The borough should also consider involving all relevant stakeholders in this process, especially the chief of police who is in the best position to comment on the law enforcement issues facing the community.

Is Furlough the Right Answer?

Officials of a borough with three or more full-time police officers must follow Section 1190 of the Borough Code when furloughing officers. The main point of this section is that furloughs will be carried out by starting with the officer last appointed to the force.

Additionally, “[i]n the event the police ... shall again be increased, the employees furloughed shall be reinstated in the order of their seniority in the service.”ⁱⁱ

A borough with fewer than three officers must comply with Section 813 of the Police Tenure Act, which also provides for the furlough of police officers. “If there are any employees eligible for retirement under the terms of any retirement or pension law, then such reduction in numbers shall be made by retirement ... If the number of paid employees in the police force eligible to retirement is sufficient to effect the necessary reduction in number, or if there are no persons eligible for retirement, or if no retirement or pension fund exists, then the reduction shall be effected by furloughing the man or men, including probationers, last appointed.”ⁱⁱⁱ

Importantly, a borough may reduce its workforce for economic reasons so long as it makes the decision in good faith, i.e. due to budgetary constraints or financial difficulties. In the event the borough cannot prove an actual cost savings through the furlough of officers, a court could find that the borough acted in bad faith and reinstate the furloughed officer(s).^{iv}

It should be noted that the measurement of savings is not based on the number of officers employed; it is based upon the number of actual hours worked on behalf of the municipality.

While a municipality may reduce costs by reducing the number of full-time police officers and replacing them with part-timers,

if the number of hours worked increases or stays the same, the municipality has likely opened itself up to union grievances or private lawsuits.

The law does not permit a reduction in force for *any* reason, or no reason at all. Therefore, the borough should have a valid reason, supported by financial data. A police management study could be especially helpful in this regard.

A well-defined goal, together with open and honest discussion of the issues requiring a reduction in force during council meetings, could go a long way to validate the necessity of furloughs in the eyes of the public and the media.

If the borough has a collective bargaining agreement, then it



must bargain over the *impact* of furloughs with the union. Such impact bargaining would likely include the rehiring process in the event of a subsequent force expansion, letters of recommendation, continuation of health insurance benefits, cessation of pension benefits, treatment of accrued and unused personal, sick, and vacation leave, and severance payments.

Borough officials should be careful not to make any statements, verbally or in writing, that could

demonstrate bad faith, disparaging the union, or making discriminatory remarks at or near the time of furloughs. This could fuel claims of anti-union animus and would not play well before a court, an arbitrator, or the press.

Council would be well-advised to consult with qualified legal counsel on how to implement a bona fide reduction in force in a lawful and strategic manner.

About the Authors: EMC
Christopher P. Gerber, Esq., and

Brian C. Conley, Esq., are attorneys with Siana Bellwoar. Gerber can be reached at 610-321-5500, Ext. 114, or cpgerber@sianalaw.com. Conley can be reached at 610-321-5500, Ext. 146, or bcconley@sianalaw.com. Visit www.sianalaw.com to learn more. ^B

ⁱ 8 Pa.C.S.A. § 1121.

ⁱⁱ 8 Pa.C.S.A. § 1190(d).

ⁱⁱⁱ 53 P.S. § 813.

^{iv} *Strathen v. Borough of Etna*, 631 A.2d 754 (Cmwlth. Ct. 1993).

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