

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IAFF LOCAL 319 :
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 v. : Case No. PF-C-18-43-E
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 CITY OF LANCASTER :
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PROPOSED DECISION AND ORDER

On March 27, 2018, the International Association of Fire Fighters, Local Union 319 (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Lancaster (City or Employer), alleging that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally negotiating a deal with a bargaining unit employe to allow the employe to revoke his election into a deferred retirement option program (DROP) and retire approximately five months later than he was required to do so when the collective bargaining agreement provides that a decision to enter the DROP is irrevocable.

On April 23, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on June 29, 2018, in Harrisburg, if necessary. On May 9, 2018, the City filed an Answer, denying all material averments contained in the specification of charges. The hearing was subsequently continued to July 30, 2018 at the Union's request and without objection by the City.

The hearing ensued on July 30, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The City filed a post-hearing brief on October 15, 2018. The Union filed a post-hearing brief on October 17, 2018.

The 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 Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 7)
3. The Union is the exclusive bargaining representative for a unit of firefighters employed with the City. (Union Exhibit 1)
4. The Union and the City were parties to a collective bargaining agreement (CBA), which was effective through December 31, 2017. The parties recently reached an agreement for a successor CBA commencing in 2018. (N.T. 14-15; Union Exhibit 1)

5. On July 14, 2000, an Interest Arbitration Panel issued an award establishing the wages, hours, and terms and conditions of employment for the bargaining unit employees effective January 1, 2000. (Union Exhibit 2)

6. The Panel retained jurisdiction with regard to pension benefits and convened an additional hearing date on September 6, 2001, along with executive sessions on October 11 and 18, 2001, after which the Panel entered an award in December 2001 stating in relevant part as follows: "[e]ffective immediately upon the issuance of this Award, the City...shall adopt a DROP for the members of the bargaining unit, in the form described in Appendix 'A' of this Award..." (Union Exhibit 2)

7. Appendix "A" of the award expressly provided, in relevant part, as follows:

Eligibility

Any active member of the bargaining unit shall be eligible to join DROP at any time after reaching age fifty-one (51) and completing twenty-five (25) years of service. Participation in DROP is voluntary.

DROP Accounting

Subject to the "Proviso" stated above and incorporated herein by reference, for the first three years of participation DROP accounts shall be credited with the monthly pension that was payable at the time of the DROP election, plus employee contributions made thereafter with interest...

Upon participation in DROP, an employee's pension benefits shall be frozen; that fact notwithstanding, DROP participants shall contribute to their pensions at a rate equal to the then prevailing wage.

Term of Election

The initial DROP election is for a three year period, or age sixty (60), if sooner. If employment ends at any time during the first three (3) years of the DROP period, except for attaining age sixty (60), the election is permanently revoked; in that event, the pension at retirement is calculated as if DROP had never been elected.

If a participant does not retire at the end of the initial three year DROP period, their total DROP participation shall not exceed (5) years...

Form of Distribution of the DROP Account

The DROP account is to be paid at retirement as a lump sum...

(Union Exhibit 2)

8. The City appealed the interest award all the way up to the Commonwealth Court, which denied the City's appeal and affirmed the award. (Union Exhibit 3)

9. The City subsequently incorporated the elements of the DROP, which were a result of the interest award, into the City Code, which provides in Section 64-26(F) (1), in relevant part as follows:

An Active Fire Fighter who has attained the age of 51 and completed 25 Years of Service may elect to participate in the DROP, continue employment with the City, and defer receipt of the retirement benefit under the Fund by filing a written application with the City.

In addition to filing a written application electing to participate in the DROP, an eligible Active Fire Fighter must do the following:

Execute an irrevocable written election to participate in the DROP that states the date on which the Member's participation in the DROP will terminate...

(Union Exhibit 4)

10. Article 35, Section 11 of the CBA provides, in relevant part, as follows:

Any Fire Fighter who chooses to terminate DROP participation (retire) prior to the original DROP termination date given at the time of DROP election, shall provide the City with a minimum of ninety (90) days notice prior to the amended DROP termination date. Failure to provide the City with ninety (90) days notice prior to the amended DROP termination date will result in the Fire Fighter's DROP election being revoked. In that event, the pension at retirement is calculated as if DROP had never been elected. If extenuating circumstances exist, the City maintains the discretion to waive this requirement. In all cases, the final decision of whether or not to waive this requirement rests with the City.

(Union Exhibit 1)

11. Ken Barton has been a Battalion Chief in the Fire Department since August 2016. Prior to that time, he held the rank of Captain. Barton obtained his promotion to Battalion Chief following an arbitration award, which sustained a 2011 grievance by the Union, protesting the City's elimination of the Battalion Chief rank, and directing the City to fill vacancies in the position, if the City still required performance of the position's duties. (N.T. 26-27, 46; Union Exhibits 5-7)

12. Barton had previously entered the DROP on March 5, 2013. His pension was thus frozen based on his Captain's salary at the time. He was aware of the Union's grievance challenging the elimination of the Battalion Chief position when he chose to enter the DROP. (N.T. 27-28, 58)

13. Barton separately approached the City and the Union sometime in late 2016 about potentially revoking his DROP election date.¹ The Union President Kevin Ressler and the City Business Administrator Patrick Hopkins engaged in numerous discussions regarding the issue for many months afterwards, most of which were by email. The Union never agreed to the change and voiced multiple objections. (N.T. 29-35, 49-50; Union Exhibits 8-11, City Exhibit 1)

14. By Ordinance dated February 27, 2018, the City changed the DROP qualifications by creating an exception for a certain class of employees: "a firefighter who elected into the [DROP]...at the rank of Captain in the calendar year 2013 shall be eligible to revoke their (sic) current DROP election and elect into the DROP at their (sic) current rank of Battalion Chief, assuming such individuals held the rank of Captain in 2013 and at the time of their (sic) election under this section hold the rank of Battalion Chief." (Union Exhibit 12)

15. Following the City's approval of the Ordinance, Barton revoked his election into the DROP and reentered as of August 2016, the date of his promotion to Battalion Chief. (N.T. 78)

DISCUSSION

The Union has charged the City with violating Section 6(1)(a) and (e) of the PLRA² and Act 111 by unilaterally permitting an employe to revoke his DROP election date even after the Union had objected to such a change. The City contends that the charge should be dismissed because the irrevocability of the DROP election was never bargained by the parties, and the City was therefore free to change the ordinance to permit revocability without negotiating with the Union. The City also defends the charge on the grounds that the Union waived any right to negotiate over the revocability of Barton's DROP election.

Section 1 of Act 111 provides, in pertinent part, as follows:

Policemen or fireman employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, **retirement, pensions, and other benefits**, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

43 P.S. § 217.1 (emphasis added).

¹ Barton testified that the revocation would have the effect of increasing his monthly annuity under the pension, while decreasing his lump sum payment. (N.T. 61).

² 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 employes in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

In City of Erie v. PLRB, 32 A.3d 625, 682 (Pa. 2011), the Pennsylvania Supreme Court stated that "Act 111 expressly and broadly requires that the parties must bargain over legal mandatory subjects of bargaining, such as pension benefits, before a party may unilaterally change such benefits. This fundamental mandate of labor law is applicable regardless of whether the collective bargaining agreement expressly mentions such benefits; whether they have been incorporated into the agreement by reference; or whether the agreement is silent on that mandatory subject of bargaining."

In this case, the Union has sustained its burden of proving that the City violated Section 6(1)(e) of the PLRA. Indeed, the record shows that the parties are subject to a CBA, which permits employees to enter a DROP in connection with their eventual receipt of pension benefits. The City incorporated the elements of the DROP into the City Code, which indicates that a Fire Fighter must execute an irrevocable written election to participate in the DROP that states the date on which the Member's participation in the DROP will terminate. Despite this fact, the record also shows that the City adopted an Ordinance dated February 27, 2018, which permitted Barton to revoke his election into the DROP and reenter as of August 2016, the date of his promotion to Battalion Chief, over the Union's objection. This constitutes a clear refusal to bargain on behalf of the City in violation of the PLRA and Act 111.

As previously set forth above, the City defends the charge on the grounds that the irrevocability of the DROP election was never bargained by the parties, and the City was therefore free to change the ordinance to permit revocability without negotiating with the Union. This argument, however, was rejected by the Court in City of Erie. It is of no consequence whether the original ordinance providing that the written election to enter the DROP be irrevocable was ever bargained, or whether that irrevocability was incorporated into the CBA, because the DROP is a legal benefit. Therefore, the City was required to bargain with the Union before changing the terms and conditions of employment, mandating that the DROP election be irrevocable.

The City also maintains that permitting Barton to revoke his DROP election did not constitute a benefit change of the type subject to collective bargaining. Specifically, the City claims that it simply allowed Barton to access a benefit to which he was already entitled under the CBA, the ability to retire with a pension based on his rank. However, in doing so, the City clearly bypassed the Union as the certified bargaining representative of the employees in the unit and reached a deal with an individual employe, which altered that employe's terms and conditions of employment for a mandatory subject of bargaining. This is a clear violation of the PLRA and Act 111.

Finally, the City contends that the Union waived its bargaining rights here by permitting Barton to approach the City and negotiate on his own behalf. However, the record shows that, while the Union may have been willing to discuss the issue with the City and explore options for an agreement, the Union never agreed to the change in the DROP, and actually voiced multiple objections after a certain point. Nevertheless, the City proceeded to change the DROP on February 27, 2018 and allowed Barton to revoke his election and reenter the DROP as of his promotion date in August 2016. As a result, the City has clearly committed unfair labor practices and will be directed to restore the status quo ante by returning Barton to the

pension benefits he would have been entitled to under his March 2013 DROP election date.³

CONCLUSIONS

The 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 Union 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 (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 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 refusing to bargain with the representatives of its employees;

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 February 27, 2018 Ordinance changing the terms of the DROP pension benefit for employees, as well as the City's unilateral agreement with Barton, and restore the status quo ante by adjusting Barton's lump sum payment, and adjusting his annuity payments, on a prospective basis only, consistent with his prior election under the DROP in March 2013;

(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

³ Of course, Barton will not be required to pay back any amounts he received under the change in the DROP benefits pursuant to the City's unfair labor practices.

(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 13th day of February, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IAFF LOCAL 319

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v.

Case No. PF-C-18-43-E

CITY OF LANCASTER

AFFIDAVIT OF COMPLIANCE

The City of Lancaster hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately rescinding the February 27, 2018 Ordinance changing the terms of the DROP pension benefit for employes, as well as the City's unilateral agreement with Barton, and restored the status quo ante by adjusting Barton's lump sum payment, and adjusting his annuity payments, on a prospective basis only, consistent with his prior election under the DROP in March 2013; 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

