

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CAPITAL CITY LODGE NO. 12, :
FRATERNAL ORDER OF POLICE :
 :
v. : Case No. PF-C-09-94-E
 :
CITY OF HARRISBURG :

FINAL ORDER

The Fraternal Order of Police, Capital City Lodge No. 12 (FOP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 5, 2010, to a Proposed Decision and Order (PDO) issued on September 17, 2010, in which the Hearing Examiner concluded that the City of Harrisburg (City) did not violate Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). Following an extension of time granted by the Secretary of the Board, the FOP filed a brief in support of its exceptions on November 8, 2010. The City filed a response to the exceptions on November 29, 2010, and pursuant to an extension of time granted by the Secretary, filed a brief in support of its response on December 9, 2010.

The Hearing Examiner made Findings of Fact which, for purposes of the exceptions, are summarized as follows. The FOP represents a bargaining unit of City police officers. The FOP has in the past bargained directly with the Mayor and his administration for wages, hours and working conditions for the police officers. On two of those prior occasions, the FOP bargained with then-Mayor Stephen Reed for changes to the police pension plan. On both of those occasions, City Council passed an ordinance containing the agreed upon changes to the police pension ordinance.¹

In 2008, pursuant to the reopener clause in the 2004-2010 contract, the Mayor's office and the FOP reopened contract negotiations. As a result, they reached an extension agreement affecting wages and pensions that is effective through December 2015. On November 13, 2008, Mayor Reed signed the contract extension agreement. The Chief of Police, the Controller and the Solicitor also signed the extension agreement at about the same time as the Mayor.²

After the agreement was signed, David H. Killick, consulting actuary with Conrad Siegel Actuaries, submitted his actuarial study of the proposed pension plan changes to Robert Kroboth on January 29, 2009.³ Mr. Kroboth was the City's Chief Business Administrator at the time, and is also the Chairman of the Police Pension Board. In his capacity as Business Administrator, Mr. Kroboth did not sign the contract extension agreement until March 9, 2009, after he reviewed the actuarial study of the proposed pension plan changes.

On March 9, 2009, Detective Jason Brinker, the President of FOP, Lodge 12, met with Mayor Reed and Mr. Kroboth. During that meeting, Mayor Reed and the FOP agreed to delay the submission of the changes to the pension ordinance to City Council until the Summer of 2009. On June 5, 2009, Mr. Kroboth submitted a draft ordinance containing the proposed pension changes to the Public Safety Committee of City Council and requested Council action by June 23, 2009. In July 2009, the Public Safety Committee held a public hearing on the pension benefit amendment. The bill to amend the police pension plan ordinance did not make it out of committee. To date, City Council has not enacted the ordinance or adopted the pension plan changes to which the Mayor and the FOP agreed on November 13, 2008.

¹ The FOP has never bargained directly with City Council for a collective bargaining agreement.

² Except for the pension changes, the City has implemented all other contract changes in the November 13, 2008 contract extension agreement.

³ The proposed pension plan changes contained in the November 13, 2008 contract extension agreement would cost the City an additional \$514,000 in annual contributions to the police pension plan.

The Hearing Examiner further found that under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205)⁴, a cost study is required to inform City officials of the financial impact of proposed changes in employe pension benefits. Specifically, Section 305 of Act 205 provides as follows:

(a) Presentation of cost estimate.—Prior to the adoption of any benefit plan modification by the governing body of the municipality, the chief administrative officer of each pension plan shall provide to the governing body of the municipality a cost estimate of the effect of the proposed benefit plan modification.

. . . .

(e) Contents of cost estimate.—Any cost estimate of the effect of the proposed benefit plan modification shall be complete and accurate and shall be presented in a way reasonably calculated to disclose to the average person comprising the membership of the governing body of the municipality, the impact of the proposed benefit plan, the modification on the future financial requirements of the pension plan and the future minimum obligation of the municipality with respect to the pension plan.

53 P.S. § 895.305(a) and (e). Consistent with Act 205, the City's pension plan ordinance, at Section 2-707.65, provides in relevant part as follows:

Prior to the adoption of any benefit plan modification by the City, the Pension Board shall provide to the City a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by the Plan's Actuary, which estimate shall disclose to the City the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future minimum obligation of the City with respect to the Plan.

The Hearing Examiner determined that because the actuarial study of the proposed pension plan changes did not exist when the Mayor, Chief of Police and Controller signed the contract extension agreement on November 13, 2008, the agreement violated Act 205 and Section 2-707.65 of the City Ordinance. Accordingly, the Hearing Examiner concluded that because the pension provisions of the contract extension agreement were entered into unlawfully, there was no violation of Section 6(1)(a) and (e) of the PLRA by the City Council's failure to implement those changes.

The Hearing Examiner also found that Section 2-307.5 of the City Ordinance enacted in 1970 states, in relevant part, as follows:

Contract administration for the City, heretofore vested in Council, shall be vested in the Mayor and Department of Administration, to be exercised in accordance with the procedures adopted by the Mayor. The exception shall be the award of no-bid contracts for professional services. Due to the sensitive and controversial nature of these contracts, coordination with and approval by the City Council is required.

However, the Hearing Examiner determined, based on the holding of another case involving the City of Harrisburg, Moore v. Reed, 559 A.2d 602 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 527 Pa. 657, 593 A.2d 428 (1991), that the City Ordinance did not divest City Council of its legislative and statutory authority over ratification of contract provisions addressing employe pension benefits. In this regard, the Hearing Examiner found that the Third Class City Code⁵ expressly provides for City Council's oversight of the pension benefits and the pension ordinance. The Hearing Examiner noted that Section 4301 of the Third Class City Code provides, in relevant part, as follows:

⁴ Act of December 18, 1984, P.L. 1005, No. 205.

⁵ Act of June 23, 1931, P.L. 932, Art. XLIII, as amended, 53 P.S. § 39301.

Cities shall establish, by ordinance, a police pension fund, to be maintained by an equal and proportionate monthly charge against each member of the police force . . . which fund shall at all times be under the direction and control of council but may be committed to the custody and management of such officers of the city or citizens thereof, or corporations located therein, as may be designated by council, and applied, under such regulations as council may, by ordinance, prescribe, for the benefit of such members of the police force . . .

53 P.S. § 39301. Accordingly, the Hearing Examiner concluded that the City Council did not violate Act 111 or Section 6(1)(a) and (e) of the PLRA when it exercised its statutory right to decide not to enact an Ordinance effecting the changes to the police pension plan agreed to between the Mayor and the FOP.

On exceptions, the FOP argues that under Section 413(c) of the Third Class City Code, and Section 2-307.5 of the City Ordinance, the Mayor had the authority to bind the City, and Council, to the contract extension agreement with the FOP. Therefore, the FOP argues that the Hearing Examiner erred in failing to find that the City committed an unfair labor practice by refusing to implement the changes to the police pension ordinance.

Section 413(c) of the Third Class City Code provides, in relevant part, that "[a]ll bonds, note, contracts and written obligations of the city shall be executed on its behalf by the mayor and the controller." 53 P.S. §41413(c). The City Ordinance of 1970, provides, in relevant part, that "[c]ontract administration for the City, heretofore vested in Council, shall be vested in the Mayor and Department of Administration..."

However, the Commonwealth Court in Moore, supra, squarely addressed the extent of the Mayor's authority to bind the City under Section 2-307.5 of the City Ordinance and Section 413(c) of the Third Class City Code, and found it to be limited. In Moore, the Court held that "the term 'execute' means to discharge the ministerial duties relating to contracts and does not embrace negotiations." Moore, 559 A.2d at 604. As the Hearing Examiner explained, the Court in Moore went on to hold as follows:

[A]lthough administrative acts are within the purview of the Mayor's authority, legislative action is solely within the province of the City Council. Moore, 559 A.2d at 603. In this regard, ... "[t]he authority to negotiate a valid and binding contract for a municipality is vested in the City Council. It is a legislative function. Without the assent of City Council, the municipality is not bound." [Id.,] 559 A.2d at 603 (emphasis added).

(PDO at 5). Accordingly, under neither the City Ordinance, nor the Third Class City Code, did the Mayor have the authority to bind the City Council in its legislative function of deciding whether to ratify an agreement between the FOP and the Mayor pertaining to police pension benefits.

Moreover, as the Pennsylvania Supreme Court recently noted in Reed v. Harrisburg City Council, 995 A.2d 1137 (Pa. 2010), where the General Assembly wishes to vest specific authority in either a city council or the mayor, it does so expressly by statute. Indeed, where a city ordinance runs afoul of the General Assembly's vesting of authority in one or the other branch of city government, the city ordinance must yield to the state statute. Id. In this regard, we agree with the reasoning and conclusion of the Hearing Examiner, in stating as follows:

Under the Third Class City Code, the enactment of pension plans and pension plan modifications is clearly within the province of the City Council. Section 4301 provides that "[c]ities shall establish, by ordinance, a police pension fund." 53 P.S. § 39301. City Council is the governing body with the power and authority to pass an ordinance and legislate. Section 4301 further provides that the pension fund "shall at all times be under the direction and control of council but may be committed to the custody and management of such officers of the city or citizens thereof, or corporations located therein, as may be designated by council, and applied, under such regulations as council may, by

ordinance, prescribe, for the benefit of such members of the police force." Id. (emphasis added). The law clearly requires that City Council control and regulate by ordinance the police pension fund and, where Council delegates the administration of the fund, such administration must be in accordance with rules and regulations established by City Council. In accordance with Section 4301, the Harrisburg City Council established a pension fund by ordinance and the administrative functions of the fund are executed by a police pension board. Significantly, while Section 4301 of the Third Class City Code preserves City Council's authority over regulating the terms and conditions of the police pension fund and permits the delegation of ministerial duties, it does not delegate any legislative responsibilities to the Mayor. The terms, policies and modifications of the police pension fund must at all times be presented to, voted upon, and enacted into legislation by the City Council.

(PDO at 6).

Under the Third Class City Code, legislative action by the City Council was required to effectuate the pension provisions of the contract extension agreement. Act 111 specifically contemplates that pursuant to law there may be the need for legislative action to ratify certain provisions of a collective bargaining agreement.⁶ Because, as a matter of law, action by City Council is required to implement changes to the police pension plan, the November 13, 2008 agreement between the Mayor and the FOP could only have been a tentative agreement with respect to those pension terms. Accordingly, the City Council's failure to ratify the pension changes set forth in the November 13, 2008 contract extension agreement, cannot constitute an unfair labor practice under Act 111 or the PLRA. City of McKeesport Wage and Policy Committee v. City of McKeesport, 31 PPER ¶31130 (Final Order, 2000).

After a thorough review of the exceptions and all matters of record, we agree with the Hearing Examiner's conclusion that the City did not violate Act 111 or Section 6(1)(a) and (e) of the PLRA when City Council failed to enact an ordinance to change the police pension plan consistent with the contract extension agreement entered into by the Mayor and FOP on November 13, 2008.⁷ Accordingly, the exceptions filed by the FOP are dismissed, and the PDO shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Fraternal Order of Police, Capital City Lodge No. 12 are hereby dismissed, and the September 17, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-fifth day of January, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

⁶ Section 4 of Act 111 provides, in relevant part, as follows:

In the case of disputes involving political subdivisions of the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the appropriate lawmaking body within one month after the agreement is reached by way of collective bargaining.

43 P.S. §217.4.

⁷ The FOP also raises an exception challenging the Hearing Examiner's determination that the contract extension agreement violated Act 205. The FOP's exception in this regard is, however, premised on the Mayor having the authority to bind the City Council to changes to employee pension benefits. As we have concluded that under the Third Class City Code, the City did not commit an unfair labor practice when the City Council failed to enact an ordinance to modify the police pension benefits consistent with a tentative agreement entered into by the Mayor, we need not reach the issue of whether Act 205 was violated.