

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GENERAL TEAMSTERS, CHAUFFEURS & HELPERS LOCAL 249 :
v. : Case No. PF-C-11-59-W
OAKMONT BOROUGH :

PROPOSED DECISION AND ORDER

On April 14, 2011, General Teamsters, Chauffeurs and Helpers Local Union 249, a/w International Brotherhood of Teamsters (Local 249), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that Oakmont Borough (Borough) violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to interest arbitrate an unresolved dispute regarding a deferred retirement option plan. On May 10, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on June 8, 2010, if conciliation did not result in a resolution of the charge by then. On May 13, 2011, the hearing examiner continued the hearing because of a scheduling conflict on his part. On May 26, 2011, the Borough filed an answer to complaint alleging, among other things, that it was under no obligation to interest arbitrate as charged. On June 17, 2011, the hearing examiner held the hearing and afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On August 15, 2011, Local 249 filed a post-hearing memorandum of law by deposit in the U.S. mail, and the Borough filed proposed findings of fact and conclusions of law and a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On March 8, 1994, the Board certified Local 249 as the exclusive representative of a bargaining unit that includes police officers employed by the Borough. (Case No. PF-R-93-82-W)

2. By letter dated August 21, 2009, the chair of an interest arbitration panel sent to the other members of the panel (Robert Eberle, Esquire, the partial arbitrator for Local 249, and Robert A. Shoop, Jr., Esquire, the partial arbitrator for the Borough) a draft interest arbitration award covering the bargaining unit. In his cover letter, the chair wrote as follows:

"You will see that I did not deal with the DROP issue. I reviewed the Union's proposals and I did not find a specific proposal on the DROP. This finding does not preclude the parties from meeting after this award is issued to attempt to resolve this matter outside the Act 11[1] process."

(N.T. 22-23; Union Exhibit 6)

3. After the chair received the concurrence of both partial arbitrators and issued the award, the parties entered into a five-year collective bargaining agreement effective January 1, 2008. (N.T. 23, 25-26; Union Exhibits 7-9)

4. Article VII, paragraph C, of the collective bargaining agreement provides that "[t]he parties agree that Article VII concerning pensions may be re-opened for negotiations in the event that the Legislature amends existing statutes or enacts any new statutes governing Police Pensions." (N.T. 25-26; Union Exhibit 9)

5. By letter dated November 22, 2010, Local 249's president (Joseph Rossi, Jr.) wrote to the Borough's manager (Bruce C. Jamison) that "Local 249 hereby invokes its right under Article VII (C) of the CBA to immediately reopen Article VII for negotiations." (N.T. 42, 63-64, 94-95; Union Exhibit 19)

6. By letter dated March 2, 2011, Mr. Rossi, referencing "**Re-opener under Article VII(C) re Police Pension,**" wrote to Mr. Jamison that "the Union hereby submits this matter to binding interest arbitration." (N.T. 49-50; Union Exhibit 22)

7. As of the date of the hearing (June 17, 2011), the Borough had not responded to Mr. Rossi's letter of March 2, 2011. (N.T. 50)

DISCUSSION

Local 249 has charged that the Borough committed unfair labor practices in violation of sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to interest arbitrate an unresolved dispute regarding a deferred retirement option plan. According to the Association, support for the charge may be found in Salisbury Township v. PLRB, 672 A.2d 385 (Pa. Cmwlth. 1996), where the court held that an employer's refusal to interest arbitrate an unresolved dispute involving a pension matter violated those very sections of the PLRA as read in pari materia with Act 111.

The Borough contends that the charge should be dismissed for three reasons: (1) because resolution of the parties' dispute requires an interpretation of a reopener provision in their collective bargaining agreement that under Capitol Police Lodge No. 85, FOP v. PLRB, 10 A.3d 407 (Pa. Cmwlth. 2010), only an arbitrator may provide, (2) because Local 249 has not properly invoked the reopener provision in the collective bargaining agreement and (3) because during the interest arbitration proceedings leading up to the collective bargaining agreement the neutral arbitrator left "the DROP issue" for resolution by the parties "outside the Act 11[1] process." According to the Borough, Salisbury Township is distinguishable on the facts and therefore not controlling because, unlike here, the union in that case properly invoked a reopener provision dealing with the pension matter.

Salisbury Township is, however, directly on point. In that case, the union demanded interest arbitration of the pension matter after the parties had not reached an agreement within 30 days of its request to negotiate the matter under a reopener provision in their collective bargaining agreement. The court held that the employer committed unfair practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to interest arbitrate, explaining as follows:

"If the parties have not reached a written agreement indicating the settlement of the issue in dispute within thirty days after the date that collective bargaining was requested, and one of the parties demands that the matter be submitted to interest arbitration, the other party must comply with that demand. A refusal to proceed to interest arbitration constitutes an unfair labor practice. Borough of Nazareth v. Pennsylvania Labor Relations Board, 534 Pa. 11, 626 A.2d 493 (1993)."

672 A.2d at 388. Here, the record similarly shows that Local 249 demanded interest arbitration of the deferred retirement option plan after the parties had not reached an agreement within 30 days of its request to negotiate the matter under a reopener (findings of fact 4-6). Thus, Salisbury Township is controlling. Accordingly, by refusing to comply with Local 249's demand for interest arbitration (finding of fact 7), the Borough must be found to have committed unfair labor practices as charged.

None of the Borough's contentions in defense of the charge compels a contrary result.

First, in contending that resolution of the parties' dispute requires an interpretation of the reopener provision in their collective bargaining agreement that only an arbitrator may provide, the Borough raises a contractual privilege defense that under Capitol Police Lodge No. 85, FOP, would support dismissal of a charge alleging a unilateral change to a mandatory subject of bargaining but under Salisbury Township does not support dismissal of a charge alleging a refusal to interest arbitrate, as here. As the court explained in Salisbury Township,

"[u]nder Act 111, a party must comply with a demand to submit an issue to interest arbitration even if that party believes the issue to be an improper subject of bargaining. The determination of whether an issue is bargainable and subject to

arbitration must be decided by the arbitrators in the first instance. See Office of Administration v. Pennsylvania Labor Relations Board, 528 A.2d 472, 598 A.2d 1274 (1991)."

Id. at n. 4. Thus, the Borough's first contention provides no defense to the charge.

Second, in contending that Local 249 has not properly invoked the reopener provision in the collective bargaining agreement, the Borough raises an issue of arbitrability that under Salisbury Township may not be decided by the Board but must be decided in interest arbitration. Thus, the Borough's second contention provides no defense to the charge.

Third, the fact that during the interest arbitration proceedings leading up to the collective bargaining agreement the neutral arbitrator left "the DROP issue" for resolution by the parties "outside the Act 11[1] process" (finding of fact 2) is irrelevant as under Salisbury Township the propriety of the issues submitted to interest arbitration is for the panel of arbitrators rather than the Board to decide. Thus, the Borough's third contention provides no defense to the charge.

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 an employer under section 3(c) of the PLRA as read in pari materia with Act 111.

2. Local 249 is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.

3. The Board has jurisdiction over the parties.

4. The Borough has committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Borough shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed in the PLRA as read in pari materia with Act 111.

2. Cease and desist from refusing to bargain collectively with the representative of its employees.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PLRA as read in pari materia with Act 111:

(a) Submit to Local 249 in writing an offer to proceed to interest arbitration;

(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 its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit of compliance.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-second day of August 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner