

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CHAMBERSBURG BOROUGH

v.

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 1813 :

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Case No. PF-C-11-174-E

**PROPOSED DECISION AND ORDER**

On December 23, 2011, Chambersburg Borough (Borough) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the International Association of Fire Fighters, Local 1813 (Union or Local), alleging that the Union violated Sections 6(2)(d) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in *pari materia* with Act 111 of 1968.

On February 13, 2012, the Secretary of the Board notified the parties that she declined to issue a Complaint and Notice of Hearing because the Borough's specification of charges failed to state a cause of action under Sections 6(1)(d) and (e) of the PLRA.

On March 5, 2012, the Borough filed exceptions to the Secretary's decision not to issue a complaint. On March 20, 2012, the Board remanded the matter to the Secretary with the direction to issue a complaint.

On April 16, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which June 18, 2012 in Harrisburg was assigned as the time and place of hearing.

The hearing was held as scheduled and consolidated for hearing with Case No. PF-C-12-40-E, a charge filed by the International Association of Fire Fighters, Local 1813 against the Borough.

The hearing was held as scheduled at which time all parties were afforded an opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

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 International Association of Firefighters Local 1813 is a labor organization under Act 111. It is also an affiliate organization of the International Association of Firefighters. (N.T. 13-14, Joint Stipulation 1)
2. The Local represents a bargaining unit of all full-time paid firefighters employed by the Fire Department ("Department") of the Borough. (N.T. 13-14, Joint Stipulation 2)
3. There are currently twenty-one (21) bargaining unit members. (N.T. 13-14, Joint Stipulation 3)
4. The Borough is a public employer under Act 111. (N.T. 13-14, Joint Stipulation 4)
5. The Local and the Borough are parties to a collective bargaining agreement ("CBA") whose effective dates are January 3, 2007 through the first full pay period of January, 2012. (N.T. 13-14, Joint Stipulation 5)
6. The parties are currently involved in an interest arbitration proceeding under Act 111 to secure a successor agreement. (N.T. 13-14, Joint Stipulation 6)
7. Patrick Martin is a fifteen (15) year full-time paid firefighter for the Borough and holds the position of shift captain in the Borough Fire Department. He also is the elected President of the Local. (N.T. 13-14, Joint Stipulation 7)
8. Scott McNew is the current elected Vice President of the local, and a bargaining unit employee. (N.T. 43, 96, 264)

9. The Department provides a host of emergency services, including basic life support services and fire suppression, for the Borough through its full-time paid firefighters represented by the Local. (N.T. 13-14, Joint Stipulation 8)
10. Volunteer firefighters who volunteer their services at one of four volunteer fire companies also provide some of those services. (N.T. 13-14, Joint Stipulation 9)
11. The Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2, and the Franklin Fire Company No. 4 are volunteer membership organizations. (N.T. 13-14, Joint Stipulation 10)
12. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2, and the Franklin Fire Company No. 4 are not paid employees of the Department. (N.T. 13-14, Joint Stipulation 11)
13. The Franklin Fire Company entered into a Mutual Aid Agreement with the Borough. The Franklin Fire Company is housed in its own building located within the Borough and owns and operates its own fire apparatus equipment. (N.T. 13-14, Joint Stipulation 12, Joint Exhibit A)
14. The Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, and the Junior Hose Truck Company No. 2 have not entered into Mutual Aid Agreements with the Borough. These companies are housed in Borough-owned stations located in the Borough. These companies utilize the Borough-owned fire apparatus equipment. (N.T. 13-14, Joint Stipulation 13)
15. The Franklin Fire Company has approximately 74 active volunteers who provide volunteer fire services. Of those, 24 are members of the IAFF. Fourteen volunteers respond to calls in the Borough. Twelve (12) of these 14 are IAFF members. (N.T. 109, 129)
16. The Cumberland Valley Hose Company has only one (1) active volunteer who provides volunteer fire services. That one volunteer is not a member of the IAFF. (N.T. 157-158, Union Exhibit 4)
17. The Goodwill Fire Company No. 3 has six (6) active volunteers who provide volunteer fire services. None of the active volunteers at this company are members of the IAFF. (N.T. 163-164, Union Exhibit 4)
18. The Junior Hose Truck Company No. 2 has four (4) active volunteers who provide volunteer fire services. None of the active volunteers at this fire company are members of the IAFF. (N.T. 152, Union Exhibit 4)
19. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 and the Franklin Fire Company No. 4 are not paid employees of those volunteer fire companies for which they provide volunteer fire services. (N.T. 11, 150, 156, 161, 205, Union Exhibit 6)
20. None of those four volunteer fire companies have any paid employees. (N.T. 150, 156, 161, 205, Union Exhibit 6)
21. A person who wishes to become an active volunteer of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 must fill out an application with the Borough of Chambersburg. (N.T. 284, Borough Exhibit 16)
22. A person who wishes to become an active volunteer of the Franklin Fire Company must fill out an application with that volunteer fire company. (N.T. 284, Borough Exhibit 16)
23. Each of the four volunteer fire companies, not the Borough, decides who can become a member of their respective volunteer fire company. (N.T. 149, 156, 160, 203)
24. The members of each of the four volunteer fire companies elect the officers of their respective volunteer fire company. (N.T. 149, 156, 160, 203)
25. One does not need to be an IAFF member in order to volunteer for one of the volunteer fire companies which provide volunteer firefighting services to the Borough. (N.T. 132, 150, 146, 160)

26. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 and the Franklin Fire Company No. 4 may choose not to provide volunteer fire services for any reason or no reason at all. (N.T. 56, 95)
27. On the Borough website, Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 are all mentioned as volunteer fire companies of the Chambersburg Fire Department but the Franklin Fire Company is not. (N.T. 61)
28. The Chambersburg Fire Department does not have administrative control over the volunteers of the Franklin Fire Company, but can only recommend discipline to the administration of the Franklin Fire Company. (N.T. 251, 278)
29. The Chambersburg Fire Department does have administrative control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 The Borough may discipline an active volunteer from one of these three volunteer fire companies, and that discipline may include a written warning or suspension. (N.T. 251, 271)
30. The Chambersburg Fire Department sometimes has command and control over the active volunteers of the Franklin Fire Company, and sometimes it does not. Whether or not the Chambersburg Fire Department has command and control over the active volunteers of the Franklin Fire Company is determined by whether or not the emergency occurs in an assigned area of the Chambersburg Fire Department or the Franklin Fire Company. The assigned area of the Franklin Fire Company is the Townships of Guilford, Hamilton and Greene-all outside the Borough of Chambersburg. (N.T. 272-273, 276)
31. The Chambersburg Fire Department sometimes has command and control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 as the active volunteers are housed in one of the two stations of the Chambersburg Fire Department and are transported to emergencies on the Department's apparatus. (N.T. 269)
32. The IAFF is a voluntary membership organization, and bargaining unit employees represented by the IAFF are not obligated to join the IAFF. (N.T. 183, 220)
33. To become a member of the IAFF, a person must work as a paid fire fighter for a public or private sector employer whose employees are organized by the IAFF. He or she must also agree to join the union. (N.T. 183, 220)
34. Membership in the IAFF includes benefits and obligations. (N.T. 13-14, Joint Stipulation 14)
35. Membership in the IAFF allows the fire fighters to vote for officers of their respective unions. It also allows them to vote for officers of any state affiliate of the IAFF, such as the Pennsylvania Professional Fire Fighters Association. (N.T. 197, 220-221)
36. Membership in the IAFF also obligates the fire fighters to abide by the IAFF Constitution and Bylaws, which enumerates the benefits and obligations of members of the IAFF. (N.T. 187, 221, Union Exhibit 5)
37. Bargaining unit employees who are not members of the IAFF are still protected by the terms and conditions of employment-including salary, pension, and health care-secured through a collective bargaining agreement (or the terms set by the employer in Right to Work States) between the local union and the employer. Nor are bargaining unit employees who are not IAFF members subject to termination from their employment. (N.T. 122, 143, 169, 220)
38. Loss of membership in the IAFF does mean loss of voting rights, and the loss of incidental benefits which varies based on which local union represents the bargaining unit employees where the firefighter is employed. (N.T. 123, 145, 177, 220-221)
39. Under the IAFF Constitution and Bylaws, any member of the IAFF may file internal union charges against another IAFF member who engages in misconduct. (N.T. 266)
40. Those charges are reviewed by three Vice Presidents of the IAFF if requested by the charged party. If the three Vice Presidents find that the charge has merit, or if the charged party does not request review of the internal union charges, then a Trial Board is impaneled by the local union where the firefighter is a member. If the internal union charges are upheld by the Trial Board, it may impose a penalty which

includes a temporary or permanent suspension in membership status in the IAFF. (N.T. 171-172, 199-200)

41. Article XV, Section 1(J) of the IAFF Constitution states that misconduct for an IAFF member includes “[e]ngaging in conduct detrimental to the best interests of the Association or its subordinate union which places or tends to place them in disrepute with other labor organizations, employers or the public.” (N.T. 186, Union Exhibit 5, p. 50)
42. Article XV, Section 1(N) states that misconduct for an IAFF member includes “[w]orking a secondary job part-time, paid on call, volunteer or otherwise as a firefighter, emergency medical services worker, public safety or law enforcement officer, or as a worker in a related service, whether in the public or private sector, where such job is within the work jurisdiction of any affiliate or which adversely impacts the interest of any affiliate or the IAFF.” (N.T. 186, Union Exhibit 5, p. 51)
43. The Local and the Borough had two negotiation sessions for a successor agreement to the CBA. At both sessions, Jeffrey Stonehill, the Borough Manager, indicated that the Borough intends to layoff some of its paid firefighters and have those services performed by volunteers firefighters. (N.T. 224-225)
44. Article 28 of the CBA states, “In the event, however, that the Borough elects to exercise this right, it will provide the Union with 9 months’ notice before implementing any Fire Department reductions. ” (N.T. 21, Borough Exhibit 6)
45. The Local and the Borough have engaged in negotiations for a successor agreement to the CBA. (N.T. 13-14, Joint Stipulation 15)
46. On July 25, 2011, William F. McLaughlin, President of Borough Council, sent a letter to President Martin which stated that “effective nine (9) months from the date of this notice, the Borough will either simply decrease its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to other potential fire service providers.” (N.T. 13-14, Joint Stipulation 16, Joint Exhibit B)
47. The Borough passed a budget for fiscal year 2012 which only provides funding for its full complement of full-time, paid firefighters until July 1, 2012. The budget does not provide funding for eight of the twenty-one (21) full-time paid firefighters after July 1, 2012. (N.T. 13-14, Joint Stipulation 17)
48. On August 12, 2011, President Martin sent a letter in response to Borough Council President’s July 25, 2011 letter in which he challenged the Borough’s announcement of impending layoffs, as well as the sufficiency of the notice under Article 28 of the CBA. (N.T. 227, Union Exhibit 9)
49. The Executive Board determined that a letter should be sent to IAFF members informing them of their obligations under the IAFF Constitution and Bylaws. (N.T. 13-14, Joint Stipulation 18)
50. On October 24, 2011, President Martin had a “friendly” meeting with the volunteer Fire Chief of the Franklin Fire Company, Mark Trace, about the current situation regarding proposed layoffs of the paid firefighters by the Borough. In a memorandum memorializing that meeting, Trace states that the Local will be sending out approximately 200 letters to IAFF members who reside in Franklin County or a portion of Cumberland County. He further states:

Local 1813 will be sending out letters to roughly 200 union firefighters living in Franklin and part of Cumberland Counties REQUESTING that you do not volunteer on calls in the Boro of Chbg. This request does not concern you riding calls other than those calls inside the Boro of Chbg and is not a formal charge of any kind. Due to IAFF regulations/policies/procedures, your local union will receive a copy. Again this is a request out of respect for your union brother and not a formal charge of any type. NOW with that being said, if you continue to volunteer on runs into the Boro, Local 1813 will file formal charges with the IAFF to have disciplinary actions taken against you. I am not a lawyer or big union contract guy but I believe that the worst of those charges would be that you loose [sic] your union card.

This leaves you with a decision to make. Do you or do you not ride calls into the Boro? As the Fire Chief, I promise you that you will not receive disciplinary action from the Franklins if you choose not to respond on calls into the Boro of Chbg.

(N.T. 125, Borough Exhibit 9)

51. On October 26, 2011, President Martin sent a letter that notified some IAFF members that “the Borough informed our membership that it intends to reduce the Chambersburg Fire Department’s career staffing or transfer much of the primary responsibility for fire fighting and suppression to potential fire service providers.” (N.T. 13-14, Joint Stipulation 19, Joint Exhibit C.)
52. The letter goes on to state, “I respectfully request your support as a member of the International Association of Fire Fighters, and ask that you adhere to the constitution and By-Laws of our great union by refraining from providing volunteer firefighting services to the Borough of Chambersburg.” (N.T. 13-14, Joint Stipulation 20)
53. President Martin sent the letter to approximately 200 IAFF members who reside in Franklin County and the southern portion of Cumberland County. (N.T. 228, 230)
54. None of the volunteers at the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 received the letter because they were not IAFF members. (N.T. 231)
55. Twenty-four (24) IAFF members who provide volunteer fire services for the Franklin Fire Company were sent President Martin’s letter. (N.T. 231)
56. Art Martynuska, President of the Pennsylvania Professional Fire Fighters Association (PPFFA) and President Martin testified that an IAFF member violates the IAFF Constitution if he or she provides volunteer fire services to a municipality which is considering laying off its paid firefighters who are represented by the IAFF. (N.T. 189-190, 197-198, 232)
57. On or about November 4, 2011, David Finch, Assistant Borough Manager sent a memorandum to President Martin stating, in pertinent part, that the Borough was “currently investigating an allegation of misconduct on [his] part, specifically, that on October 26, 2011, you sent a letter to volunteer firefighters in the area who are IAFF members to request that they refrain from ... providing volunteer firefighter services to the Borough of Chambersburg.” (N.T. 13-14, Joint Stipulation 21, Joint Exhibit D)
58. The November 4, 2011 memorandum goes on to schedule a pre-disciplinary conference for Thursday, November 10, 2011. (N.T. 13-14, Joint Stipulation 22)
59. The pre-disciplinary conference was rescheduled for November 14, 2011. Fire Chief William M. Fitzgerald, Assistant Borough manager David Finch, President Martin, and counsel for the Local were in attendance. (N.T. 13-14, Joint Stipulation 23)
60. On November 17, 2011, David Finch sent a memorandum to President Martin in which he stated that the Borough was considering terminating his employment, and notified him that the Borough Council will meet to consider such termination. (N.T. 13-14, Joint Stipulation 24, Joint Exhibit E.)
61. David Finch sent another undated letter to President Martin informing him, in pertinent part, that “a Loudermill hearing will take place on December 5, 2011 at 6:00 pm. before Town Council.” (N.T. 13-14, Joint Stipulation 25, Joint Exhibit F.)
62. David Finch sent another undated letter to President Martin informing him, in pertinent part, that the December 5, 2011 meeting of Borough Council was rescheduled for January 30, 2012 at 6:00 p.m. (N.T. 13-14, Joint Stipulation 26, Joint Exhibit G.)
63. On January 30, 2012, President Martin read a prepared statement to the Borough Council. (N.T. 13-14, Joint Stipulation 28, Joint Exhibit I.)
64. Martin’s letter stated, in relevant part:

We have come to the point tonight over a letter that was sent to members of the International Association of Fire Fighters, from IAFF Local 1813 under my signature as President, reminding those members of the IAFF Constitution and Bylaws requirements concerning volunteer firefighting. The letter was not

written while I was on duty and was by no means meant for public consumption. It was merely an internal Union matter.

At no time did I or any other member of Local 1813 ask any non-IAFF member or for that matter any individual fire department to discontinue or limit fire service. Additionally, and despite a claim to the contrary in one of the Borough's charges, my letter was not sent to any member of the Chambersburg Fire department. Further, my letter did not state that any person must cease volunteering within the Borough, nor do I have the authority to compel that. The choice of whether to volunteer was left entirely up to the individual.

I do regret, however, that my communication to my fellow IAFF members caused concern among the Borough Council. That was not my intent, and I apologize that my letter has caused such a commotion.

(N.T. 13, 15-16, Joint Exhibit I)

65. On or about February 1, 2012, Councilman McLaughlin sent a letter to President Martin informing him that the Town Council had voted to suspend him for two hundred and forty (240) hours as a result of his October 26, 2011 letter. The letter states the statutory reasons for Mr. Martin's suspension. (N.T. 13-14, Joint Stipulation 29, Joint Exhibit J.)
66. Councilman McLaughlin specifically cites Martin's letter as the Borough's grounds for suspending him. He says the letter was:

Engaging in conduct unbecoming an officer and neglect of an official duty due to Martin's actions of:

- a. Encouraging, sanctioning, supporting, and suggesting a secondary boycott which interferes with the normal work of the department.
- b. Calling, instituting, maintaining or conducting an unlawful strike or boycott against the Borough.
- c. Neglect of duty to properly control, manage, and direct volunteer firefighters.
- d. Improper exercise of supervisory and personnel management over the subordinate volunteer firefighters.

(N.T. 13, 15-16, Joint Exhibit J)

67. On February 2, 2012, President Martin received a copy of Councilman McLaughlin's letter. (N.T. 13-14, Joint Stipulation 30)
68. On February 10, 2012, Martin appealed the Chambersburg Borough Council's decision to the Borough of Chambersburg Civil Service Commission. (N.T. 13-14, Joint Stipulation 31, Joint Exhibit K.)
69. On February 27, 2012, the Chambersburg Borough Civil Service Commission held a hearing to review the discipline imposed on Mr. Martin by Chambersburg Town Council. The Commission upheld the charges in a decision dated May 25, 2012. (N.T. 13-14, Joint Stipulation 32, Joint Exhibit M.)
70. On March 1, 2012, the Local informed the Borough that it was requesting binding grievance arbitration regarding the Borough's decision to suspend Mr. Martin. A hearing has been scheduled for August 30, 2012. (N.T. 13-14, Joint Stipulation 33, Joint Exhibit N.)
71. On or around April 21, 2012, Scott McNew, Vice President of the Local and a paid firefighter within the Chambersburg Fire Department, sent letters to at least 11 members of the Franklin Fire Company who are also members of the IAFF, preferring internal IAFF charges against such members, in furtherance of Martin's October 26, 2011 letter. (N.T. 13-14, Joint Stipulation 38, Joint Exhibit Q)

72. On May 8, 2012, the Chambersburg Town Council filed for preliminary injunctive relief in the Franklin County Court of Common Pleas against the Local, Martin, and McNew, seeking the court to require the Defendants to cease encouraging, sanctioning, and supporting a secondary boycott of volunteer fire fighting services of the Chambersburg Fire Department. (N.T. 13-14, Joint Stipulation 39, Joint Exhibit R)
73. On May 8, 2012, the Honorable Richard J. Walsh granted the motion and ordered the Local, Martin, and McNew to "cease and desist from encouraging, sanctioning, and supporting a secondary boycott of volunteer fire services in the Chambersburg Fire Department." (N.T. 13-14, Joint Stipulation 40, Joint Exhibit S)
74. On May 10, 2012, the preliminary injunction hearing was continued by joint motion of the parties with the preliminary injunction order remaining in effect. (N.T. 13-14, Joint Stipulation 41, Joint Exhibit T.)
75. The Franklins have the only heavy Rescue Squad (capable of extricating occupants from burning buildings or trapped vehicles) in the Borough. (N.T. 279-280)
76. On average, 14 members of the Franklin Fire Company respond to calls within the Borough and, on average, 12 of those 14 volunteers are also IAFF members. (N.T. 109)
77. The volunteers members of the Franklin Fire Company, who are IAFF members, generally are better trained than the other volunteer members of the Franklins. (N.T. 110)
78. The 12 IAFF members who are members of the Franklin Fire Company are also paid employes of larger municipal departments in Virginia, of the District of Columbia and of federal installations. (N.T. 110)
79. The CBA includes various references to paid fire fighters responsibilities as to volunteer fire fighters. (N.T. 13-14, Joint Exhibit U)
80. Martin is the President of the Local and is a paid firefighter in the Fire Department. (N.T. 219)
81. Martin's position with the Fire Department is that of a shift captain. (N.T. 219)
82. One of Martin's duties as a shift captain is to oversee and be responsible for the control, management and direction of career and volunteer firefighters. (N.T. 91, 284, Borough Exhibit 4)
83. Chief Mark Trace of the Franklin Fire Company received Martin's October 26, 2011 letter, and was outraged and upset by the letter because Mr. Martin was requesting IAFF members who were volunteers not to respond to calls in the Borough. (N.T. 111, 112)
84. Trace understood from the letter that if he volunteered in the Borough, disciplinary action could be taken against him, which could result in loss of IAFF membership. (N.T. 113-114)
85. Trace is a paid firefighter for the Washington, D.C. fire department and a member of IAFF Local 36, which is the union for that department. He understood that if he lost IAFF membership, he would not lose his job, health care or pension benefits. But he could lose disability, dental, eye, and legal assistance benefits through the IAFF. (N.T. 115, 122-123)
86. Jason Kuehler, Assistant Fire Chief of the Franklin Fire Company, is a paid firefighter in Alexandria, Virginia and an IAFF member. He also received Martin's October 26, 2011 letter. (N.T. 138)
87. Kuehler thought Martin's letter was asking him to stop volunteering. Kuehler also understood the letter to threaten discipline, including expulsion from the IAFF, if he did not comply with Martin's letter. (N.T. 141)
88. Kuehler's employment in Alexandria is not governed by a collective bargaining agreement. There is no union in place at the worksite. However, he testified that if he lost his union card, he would lose the ability to get AFLAC insurance at a reduced rate and participate in various charitable activities of the IAFF. (N.T. 145)
89. John Lenhart, also a member of the Franklin Fire Company, a paid firefighter for Fairfax County, Virginia and an IAFF member. There is no collective bargaining agreement covering his employment. Lenhart

received a copy of Mr. Martin's October 26, 2011 letter and he interpreted the letter as requesting him not to volunteer in the Borough. (N.T. 173)

90. Lenhart testified that, as a result of his continued volunteering, he has faced ridicule at work. If Lenhart loses his IAFF membership, he would lose the opportunity to obtain eye care and other benefits through the IAFF. (N.T. 177)
91. In addition to his letter, Martin contacted several Union Presidents of IAFF members who provided volunteer firefighting services in the Borough. Martin informed the Union Presidents that their members were endangering paid firefighter jobs in the Borough by providing such volunteer firefighting services. (N.T. 40, 284, Borough Exhibit 1)

## DISCUSSION

The Borough's charge of unfair labor practices alleges that IAFF Local 1813 violated the PLRA as read in *pari materia* with Act 111 by engaging in a "secondary boycott" in violation of Section 6(2)(d) of the PLRA. It also alleges that the Union called for, instituted, maintained, and conducted a boycott of volunteer fire fighting services against the Borough in violation of Section 6(2)(e) of the PLRA.

The Borough complains that on October 26, 2011, IAFF Local 1813 President Patrick Martin sent a letter to approximately 200 IAFF members residing in Franklin County and southern Cumberland County reminding them that the IAFF Constitution and Bylaws required them to refrain from volunteering for Chambersburg Borough's Fire Department at a time when the Borough had just announced that it was planning to use volunteers to replace paid firefighters. Local Vice President McNew later followed up this reminder by filing charges against the IAFF members who volunteered.

### Section 6(2)(d) Allegation

The Borough contends that Martin, McNew and the Local's actions constitute prohibited and unlawful secondary activity. Martin admitted in his October 26, 2011 letter, and at the hearing in this case, that he intentionally sent the letter in the midst of a labor dispute with the objective of making sure that the IAFF volunteers who received the letter would not continue to volunteer in the Borough's Fire Department with the goal of hindering and preventing the Borough from obtaining the continued use of volunteer firefighters' services in the Borough. Martin admitted that his goal was to pressure the Borough to abandon its plans and to adopt those of the Local.

Section 6(2)(d) of the PLRA states:

- (2) It shall be an unfair labor practice for a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employee or for employees acting in concert:
  - (d) To engage in a secondary boycott, or to hinder or prevent by threats, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder or prevent by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

There are no PLRB decisions on Section 6(2)(d) in the police and firefighter setting, particularly with these unique facts, where volunteers are urged not to work out of respect for the union bylaws. The only Section 6(2)(d) charges addressed by the PLRB were cases decided on jurisdictional grounds. See **Ashbourne Transportation**, 15 PPER ¶15140 (Final Order, 1984) (Board upheld dismissal of charges alleging union engaged in secondary boycott on the grounds the union was not a "labor organization" under the PLRA and therefore, the Board lacked jurisdiction to consider the charge); **International Brotherhood of Firemen and Oilers, Local 1201**, 15 PPER ¶15210 (Final Order, 1984) (same).

While there are no Board decisions on Section 6(2)(d) and Section 6(2)(e) on the merits, the Board has heard unfair practice charges asserted against a union under Section 1201(b)(7) of PERA for allegedly engaging in a secondary boycott. Section 1201(b)(7) states:

- (b) Employe organizations, their agents, or representatives, or public employes are prohibited from:
  - (7) Engaging in, or inducing or encouraging any individual employed by any person to engage in a strike or refusal to handle goods or perform services; or threatening, coercing or restraining any person where an object thereof is to

- (i) force or require any public employer to cease dealing or doing business with any other person or
- (ii) force or require a public employer to recognize for representation purposes an employee organization not certified by the board.

43 P.S. § 1101.1201(b)(7).

The Board has found that this “section of the Act is modeled after Section 8(b)(4)(B) of the National Labor Relations Act [(“NLRA)]. **IBF&O Local 1201**, 15 PPER ¶15191 (Proposed Decision and Order, 1984)(citing and discussing **Beaver County Education Association**, 1 PPER ¶68 (Final Order, 1971) and **Philadelphia Federation of Teachers, Local 3**, 15 PPER ¶15012 (Final Order, 1983).

Recognizing that Section 8(b)(4) of the NLRA informs our understanding of Section 1201(b)(7), Hearing Examiner Timothy Tietze reasoned that a secondary boycott under PERA involves “actions taken by a union, in furtherance of that union’s dispute with the primary employer, against another employer, called a secondary or neutral employer. These secondary boycott actions involve two employers, the primary and the secondary (or neutral) employer.” **SEPTA v. TWU Local 234**, 30 PPER ¶130054 (Proposed Decision and Order, 1999), 31 PPER ¶131035 (Final Order, 2000). The Board has held that “Section 1201(b)(7) of PERA applies to a secondary boycott situation only if the object of the threat, restraint or coercion is to force the public employer to cease dealing with another person.” **PLRB v. International Brotherhood of Firemen and Oilers, Local 1201**, 16 PPER ¶116056 (Final Order, 1985)

The Local’s brief directs us to pay special attention to the facts of **IBF&O, Local 1201**. *Id.* In that case, the union, which represented public school employes, was engaged in a strike against the School District of Philadelphia. Pen-Del Coach Lines, Inc. (Pen-Del) was a private employer who provided bus services for the school district as well as private schools. Pen-Del filed an unfair labor practice charge against the union, alleging that union picketers threatened, coerced or restrained Pen-Del employes from performing bus runs. In reaching its conclusion, the Board explained:

Pen-Del argues that the portion of Section 1201(b)(7) prohibiting “[e]ngaging in, or inducing or encouraging any person to engage in a strike or refusal to handle goods or perform services” is sufficient in and of itself to constitute an unfair practice. Pen-Del would fall within the definition of “person” pursuant to section 301(10) of PERA. The Union’s picketing activities certainly encouraged Pen-Del’s employes to refuse to perform services. We cannot accept Pen-Del’s view, however. If we read this portion of (b)(7) as a separate unfair labor practice, then any union would be guilty of an unfair labor practice during any primary strike or boycott, or even by suggesting such activity. Accordingly, we believe that the first clause must be read in conjunction with either subpart (i) or subpart (ii). **See** 1 Pa. C.S. § 1923(b). (punctuation shall not control the intention of the General Assembly). The language of subpart (i) requires that the object of the activity is to force the *public employer* from doing business with any person but at Pen-Del. The object was to stop Pen-Del from providing any bus services either for the School District or for private schools. It is apparent that the Union hoped to place pressure on the School District through its picketing of Pen-Del. The object, however, was not to stop the School District from doing business with Pen-Del, but rather to apply increased pressure to the School District to accept the Union’s position with regard to a strike settlement. The object of the picketing, then, was not to have the School District cease doing business with Pen-Del, but rather to force the School District to accept the Union’s position with regard to a strike settlement. The object of the picketing, then, was not to have the School District cease doing business with Penn-Del, but rather to apply increased pressure to the School District through picketing of Pen-Del’s premises. The situation exemplified by this case is not prohibited by the language of Section 1201(b)(7).

The General Assembly could have tracked the language in the NLRA and allowed the object of the secondary activity to be any “person” which would have included Pen-Del (or any other private employer within the definition of section 301(10), rather than just “any *public employer*”), but chose not to do so. Based on our statutory interpretation, we hold that Section 1201(b)(7) of PERA applies to a secondary boycott situation only if the object of the threat, restraint or coercion is to force the *public employer* to cease dealing with another person. Thus the Hearing Examiner’s conclusion will be reversed.

**Id.** (italics in original) (footnotes omitted).

Because the union's alleged secondary boycott was directed at Pen-Del, a private, not a public, employer, the Board found it was not prohibited by PERA, and reversed the Hearing Examiner's decision. In footnote 9, the Board further explained that it "is cognizant that we have previously ruled that no cause of action exists in a mixed public-private employer situation for secondary boycott activity pursuant to Section 600 [PLRA]...Regrettably, the activity in the instant case does not seem to have been contemplated when either PERA or PLRA was drafted." *Id.* Consequently, the Board recognized that there can be no successful secondary boycott case under either the PLRA or PERA when one employer is private and the other is public.

Additionally, the Board has recognized under Section 1201(b)(7) of PERA that the employer against whom the secondary boycott is directed must be separate and independent from the primary employer, and it must not be allied with the primary employer. **SEPTA**, 30 PPER ¶130054 (Proposed Decision and Order, 1999). In considering whether the secondary employer is separate and independent, the Board will consider the secondary employer's organizational structure in relation to the primary employer. *Id.* It will also consider whether the secondary employer is fiscally independent from the primary employer. *Id.* In considering whether the secondary employer is allied with the primary employer, the Board will apply the "ally doctrine." Under this doctrine, "a neutral employer may be stripped of its neutral status (1) if it performs 'struck work' for the employer, i.e., work that it otherwise would not perform absent a strike, or (2) if the two employers become so closely intertwined as to function essentially as a single entity." *Id.* (quoting **Boich Mining Co. v. NLRB**, 139 LRRM 2451, 2452 (CA 6, 1992))

The Local points out that the only reason that a public employer which employs firefighters may file an unfair labor practice charge against its firefighters, its officers, and/or their union under Sections 6(2)(d) and 6(2)(e) is because our Supreme Court held that the PLRA must be read in *pari materia* with Act 111. The PLRA, as written, only applies to private sector employers and private sector employees. In light of that fact, it makes no sense for such public employers to be given greater rights to file such unfair labor practice than those public employers governed by PERA. For these reasons, the standards outlined by the Board in interpreting the secondary boycott provision under the PLRA. Applying the PERA standard in this matter makes particular sense given the fact that Articles 2(D) and 2(F) of the Collective Bargaining Agreement is nearly identical to language found in PERA, including PERA's provision against secondary boycotts. See Joint Exhibit U, Article 2(F).

The Borough argues that a National Labor Relations Board decision provides guidance. In **Local P-575, Amalgamated Meat Cutters & Butcher Worksmen**, 188 N.L.R.B. 5, 76 LRRM 1273 (1971), union leaders asked that their members refrain from providing voluntary overtime work, based on a union dispute with the employer. The NLRB held that the request was designed to cause the employer to capitulate to union demands, and as such, even though such work was voluntary (meaning non-mandatory), the actions by the union in asking that their members cease from voluntarily providing such work, was an unlawful activity. The NLRB determined that it is not the voluntary nature of the assignment which dictates whether such activity is unlawful, but rather the union's purpose underlying the action.

The Borough argues that simply because volunteers were at issue in the present case does not matter. It contends that the PLRA does not, in Section 6(2)(d), draw a distinction between paid or volunteer persons when considering a secondary boycott. Nor does it make a distinction between paid or volunteer service providers. Section 6(2)(d) of the PLRA is broad in scope, in that it states, in part, that it is an unfair labor practice for a labor organization to "conspire to hinder or prevent *by any means whatsoever*, the obtaining, use or disposition of matters, equipment or services." (emphasis added by Borough).

The Local argues that **Local P-575** is not dispositive and that the Borough's arguments should be rejected. The Local sets forth several persuasive arguments to reach the conclusion that it has not violated Section 6(2)(d) of the PLRA.

First, the Local points out that the Borough's brief makes it clear that at issue is only the conduct of the Local's representatives toward the volunteers at the Franklin Fire Company who were IAFF members. However, the Franklin Fire Company is not an employer. It is a 501(c)(3) non-profit, charitable organization with no employees. Its volunteers do not receive a salary for providing volunteer fire services. They may choose not to provide volunteer fire services to the Franklin Fire Company for any reason or no reason at all. Consequently, the Borough cannot establish a secondary boycott because federal and state law, as set forth above, requires that a secondary boycott must involve action directed against an employer or the employees of an employer.

Second, the Local points out that given that the Franklin Fire Company is not an employer, it follows that it is also not a public employer. Nor are the volunteers of the Franklin Fire Company public employees of the volunteer fire company. Thus, the actions of the Local's representatives cannot be seen as a secondary boycott because the Board has found that a secondary boycott may only occur in the public sector when the actions of the union are directed against a secondary employer which is a public employer. There is no case law for the proposition that a secondary

boycott exists under the PLRA when the conduct is directed against a private employer. **IBF&O, Local 1201**, 15 PPER ¶15191. In light of the fact that public employers of firefighters and police officers only have the right to file such an unfair labor practice charge as a result of the Supreme Court holding that the PLRA must be read in *pari materia* with Act 111, PERA's standard for analyzing whether a union has engaged in a secondary boycott should apply for the PLRA.

Third, the Local argues that even assuming that the Borough could overcome the hurdle of showing that the Franklin Fire Company is an employer and its volunteers are employees, its unfair labor practice must fail because the Franklin Fire Company is not separate and independent from the Borough Fire Department. The Borough has admitted that the Franklin Fire Company is part of the Borough Fire Department. The Borough also offered testimony on the various ways that the Franklin Fire Company is an integral part of the Borough Fire Department. (Joint Stipulation ¶12) The Borough Manager testified that the volunteer firefighters were the "most important" part of the Fire Department.

Fourth, assuming the Franklin Fire Company is not separate and independent from the Fire Department, the record contains substantial evidence that the Department is allied with the Franklin Company. Both are involved in a single purpose: protecting the public from fire hazards and other emergencies. Sometimes the volunteers work beside the paid firefighters of the Borough Fire Department. In such cases, the volunteers might find themselves under the command and control of the officers of the Franklin Fire Company. The Mutual Aid Agreement places responsibilities for aiding paid firefighters on Borough calls. These facts show that the Franklin Fire Company is an ally of the Fire Department. With these facts, the Borough lacks grounds for filing an unfair labor practice charge alleging a secondary boycott based on speech directed at some volunteers at the Franklin Fire Company.

Finally, it is necessary to address the impact of the May 8, 2012 decision of the Honorable Richard J. Walsh of the Franklin County Court of Common Pleas, ordering the Local, Martin, and McNew, to "cease and desist from encouraging, sanctioning, and supporting a secondary boycott of volunteer fire services in the Chambersburg Fire Department." On May 10, 2012, the preliminary injunction hearing was continued by joint motion of the parties with the preliminary injunction order remaining in effect.

The court declared the existence of a secondary boycott. I have not been provided with a discussion accompanying the court's order. With all due respect to the court, the law, as set forth above, does not support the court's conclusion that the Local engaged in a secondary boycott. Accordingly, the court's decision is not binding on the Pennsylvania Labor Relations Board.

### **Section 6(2)(e) Allegation**

As stated above, President Martin of Local 1813 requested that IAFF members who volunteer their firefighting services in the Borough "refrain from providing volunteer firefighting services to the Borough of Chambersburg." The Borough alleges that Martin's letter was a clear call for a secondary boycott, in violation of Section 6(2)(e) of the PLRA.

Section 6(2)(e) of the PLRA states:

- (2) It shall be an unfair labor practice for a labor organization, or any office or officers of a labor organization, or any agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert:
  - (e) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.

43 P.S. § 211.6(e). PERA has a similar provision. 43 P.S. § 1101.1201(b)(6). As discussed above, the Local did not engage in an illegal boycott under the PLRA.

There are no PLRB decisions on what constitutes a "jurisdictional controversy" under PERA or the PLRA. However, Section 8(b)(4)(D) of the NLRA offers an explanation of what such a controversy entails. Section 8(b)(4)(D) states:

- (b) It shall be an unfair labor practice for a labor organization or its agents—
  - 4(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce to engage in, a strike, or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles,

materials, or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

- (D) forcing or requiring an employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board for determining the bargaining representative for employees performing such work.

29 U.S.C. § 158(b)(4)(D). The NLRA makes clear that a jurisdictional controversy involves employees of one labor organization trying to force an employer to assign certain work to them rather than employees of another labor organization. It is appropriate for the Board to look to the NLRB and federal courts for guidance in interpreting Pennsylvania collective bargaining statutes. **Millcreek Twp. School District v. PLRB**, 631 A. 2d 734, 738 n. 10 (Pa. Cmwlth. 1993), *alloc. denied* 537 Pa. 626, 641 A. 2d 5909 (1994).

Under that legal standard, the Local was not involved in a jurisdictional controversy. The Local was not attempting to secure work from employees of another labor organization. The volunteers, as stated above, are not employees of the Franklin Fire Company. Nor were the volunteers members of another labor organization which was having a dispute with the Local over certain bargaining unit work. Instead, the Local was simply reminding the volunteers who were IAFF members of their obligations under the IAFF Bylaws and Constitution.

The Borough claims that Martin's admission during this hearing that he viewed the Borough as the "jurisdiction" of the paid members of the Chambersburg Fire Department constitutes evidence that this was a jurisdictional controversy. However, as set forth above, the legal test for a jurisdictional controversy requires more than the testimony Martin provided in this case. His testimony will not be considered as evidence that this is jurisdictional controversy.

Given that the Local was not engaged in a secondary boycott and that the Local was not engaged in a jurisdictional controversy with the volunteers of the Franklin Fire Company, the Borough has failed to establish a violation of Section 6(2)(e) of the PLRA.

### CONCLUSIONS

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

1. Chambersburg Borough is an employer under Section 3(c) of the PLRA as read in *pari materia* with Act 111.
2. The International Association of Fire Fighters, Local 1813 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 International Association of Fire Fighters, Local 1813 has not committed unfair labor practice under Sections 6(2)(d) 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 charge is dismissed and the complaint rescinded.

**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 thirtieth day of January, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner