COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL #319	:	
v.	:	Case No. PF-C-02-56-E
CITY OF LANCASTER	:	

FINAL ORDER

The International Association of Firefighters, Local #319 (IAFF) filed timely exceptions on June 25, 2003 with the Pennsylvania Labor Relations Board (Board) to a Proposed Decision and Order (PDO) of June 5, 2003. The IAFF argues in its exceptions, that the hearing examiner erred in concluding that the City of Lancaster (City) did not violate Act 111 or Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). Following an extension of time, the IAFF timely filed its supporting brief on July 25, 2003, and the City timely responded on August 25, 2003. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

8. After the City's agreement that Section 2 remained in the contract, Carol Roland, Chief Financial Officer, adjusted her calculations for longevity increases. Under her prior calculations, without Section 2, the January 1, 2001 longevity increase for Thomas Marinaro was 4.0 percent, (N.T. 80), and after Section 2 was factored in, Mr. Marinaro received 4.25 percent. (Exhibit U-7).

DISCUSSION

The IAFF filed a Charge of Unfair Labor Practices on April 24, 2002, alleging that the City failed to comply with its settlement of a grievance concerning the longevity pay provisions of the collective bargaining agreement. As found by the hearing examiner, Article XII of the parties' prior collective bargaining agreement, effective January 1, 1997 through December 31, 1999, provided for longevity pay as follows:

> Section 1 – In addition to the annual salary set forth above, each member of the Fire Force shall be paid Ninety-five Dollars ($95) per year after four (4) years of service up to a maximum of One Thousand Five Hundred Ninety Dollars ($1,590) in 1995. In 1996 longevity pay will be increased to One Hundred Five Dollars ($105) to a maximum of One Thousand Eight Hundred and Forty Dollars ($1,840) per year.
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> Section 2 – The first pay will begin on January 1st of the year following the completion of four (4) years of service.

(Finding of Fact No. 3). On July 14, 2000, an interest arbitration award altered the longevity pay provisions for the successor contract by providing that

> Longevity. Effective January 1, 2001, the existing longevity pay system shall be replaced as follows:
>
> (a) Effective January 1, 2001, each firefighter shall be paid one quarter of one percent (0.25%) of his/her annual base salary for each year of service on the force beyond four (4) years.
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> (b) Effective July 1, 2001, the longevity payment shall be retroactive to the third year of service. Therefore, beginning after four years of service, a Firefighter shall receive one-half (1/2) of one percent (1%) of pay, with an additional one quarter (1/4) percent for each year thereafter.
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> (c) Effective January 1, 2002, the longevity payment shall be retroactive to the second year of service. Therefore, beginning after four (4) years of service, a Firefighter shall receive three quarters (3/4) of one percent (1%) of pay, with an additional (1/4) for each year thereafter.
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> (d) Effective July 1, 2002, the longevity payment shall be retroactive to the first year of service. Therefore, beginning after four (4) years of service, a Firefighter shall receive one percent (1%) of pay, with an additional one quarter (1/4) for each year thereafter.

(Finding of Fact No. 4).

A dispute arose concerning the City's calculation of longevity pay under the terms of the arbitration award. To resolve this dispute, IAFF filed a grievance on January 22, 2002, alleging that the City "violated the longevity clause of the contract[,]" and requested "reimbursement for all bargaining unit members." The first and second steps of the grievance process were consolidated and heard on February 5, 2002. The City denied the grievance on the basis that the July 14, 2000 interest arbitration award replaced Section 2 of the 1997-1999 contract. (Finding of Fact No. 5). After discussing the issue with its attorney (and partial arbitrator) the City, on February 6, 2002, rescinded its reasons for the denial, and acknowledged that Section 2 of the prior agreement remained in effect following the interest arbitration award. (Finding of Fact No. 6).

The hearing examiner found that although the City agreed to the application of Section 2, the City had not agreed upon a calculation of longevity pay. Therefore, the hearing examiner concluded that there was no complete settlement to the grievance, and thus, no unfair labor practice.

The IAFF argues in the exception that the hearing examiner overlooked the purpose and basis for the grievance. The IAFF asserts that the grievance was filed because after July 1, 2001, the City was

paying .25% less in longevity pay than it should have under the interest arbitration award, and contends that the .25% difference is attributable to the competing positions of whether Section 2 of the predecessor contract remained viable. Once the City agreed that Section 2 was applicable, the IAFF asserts that there was no dispute over the calculations, and that the City had to have adopted IAFF's figures.

We disagree, and sustain the hearing examiner's conclusion that there simply was no complete settlement or adjustment of the January 22, 2002 grievance. First, there is no basis on this record to disturb the hearing examiner's credibility determinations, and his acceptance of the City's testimony that there was no agreement regarding the precise calculation of longevity pay. See Crestwood School District v. Crestwood Education Association, 32 PPER ¶32050 (Final Order, 2001) (the Board will not disturb the hearing examiner's credibility determinations absent compelling circumstances). The statement of Jeffrey Pierce, fire chief, made in response to questions by the hearing examiner, that he would assume that the IAFF's calculations would be correct if Section 2 was in the new contract, does not amount to an admission conceding to the IAFF's calculation of longevity pay. Contrary to IAFF's assertion, whether or not Section 2 of the prior contract applied, is not dispositive of the resolution of the grievance. In fact, there is no contention here that the City had reneged on its acknowledgement that Section 2 of Article XII was applicable to the longevity pay provisions. Even with this concession, however, several issues remain regarding the interpretation and calculation of the longevity pay that are yet unresolved.

Following the City's acquiescence on February 6, 2002, that Section 2 was incorporated into the new agreement, the parties met in April to seek to reconcile their respective calculations in light of the impact of Section 2. However, even though the parties were then in agreement over the terms of the overall contract, and the City adjusted its calculation, the parties remained unable to come to a consensus on the computation. For instance, Ms. Roland testified that after she revised her calculations to incorporate Section 2, her calculation for the new semi-annual longevity pay adjustment effective July 2001, was nevertheless .25% less than Mr. Marinaro's calculation. She explained that Section 1 is intended to provide an employe with a .25% wage increase for each year of service, and when the anniversary date is made retroactive to January 1st, a payment of an additional .5% on July 1, 2001, would result in double the intended increase since the employe already received half of that wage adjustment in January. The Union's calculations on the other hand, indicate that per Section 1 of the award an additional .5% wage increase on July 1, 2001 is required to make the longevity pay retroactive to the third year of service.

Thus, there are contractual interpretation questions outstanding regarding the substantial changes to Section 1 made by the July 14, 2000 interest arbitration award, and there is obviously the need for an interpretation of the proper calculation of the semi-annual longevity pay adjustments under Section 1 of the interest arbitration award. An arbitrator, not the Board, should address these types of questions. See Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194, 389 A.2d 577 (1978). Accordingly, the Board cannot find, as fact, that the parties

had reached an agreement over the grievance such that the City's actions can fairly be deemed in violation of a grievance settlement.

After a thorough review of the exceptions and all matters of record, the Board concludes that the IAFF has not established that the City committed an unfair labor practice in violation of Act 111 and Section 6(1)(a) and (e) of the PLRA. Accordingly, the Board will sustain the decision of the hearing examiner dismissing the IAFF's charge of unfair labor practices.

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 to the Proposed Decision and Order of June 5, 2003 are hereby dismissed, and the Proposed Decision and Order, as modified herein, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, Member, this sixteenth day of September 2003. 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.