

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MCADOO POLICE ASSOCIATION :  
 :  
 v. : Case No. PF-C-05-148-E  
 :  
 MCADOO BOROUGH :

**FINAL ORDER**

The Borough of McAdoo (Borough) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 25, 2006, challenging a May 12, 2006 Proposed Decision and Order (PDO), in which the Hearing Examiner concluded that the Borough violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by failing to pay the neutral arbitrator's cancellation fees incurred in an interest arbitration proceeding which was resolved by the parties reaching a successor collective bargaining agreement after continuances of scheduled hearing dates. The McAdoo Borough Police Association (Association) filed a timely brief in response to the exceptions on June 14, 2006.

The facts leading up to the Borough's exceptions are summarized as follows. The Borough and the Association selected an interest arbitration panel for the outstanding issues for a successor agreement for the police bargaining unit. Thereafter, at the Borough's request, and over the objections of the Association with Borough counsel acknowledging responsibilities for the neutral arbitrator's cancellation fees, the arbitration panel continued hearings on short notice. After the second continuance, the neutral advised that there would be no further continuances. On the eve of the hearing date, Borough counsel and the Union reached an agreement on the outstanding issues, and Borough counsel advised the neutral arbitrator to cancel the hearing. In connection with the agreement, the Union's attorney advised Borough's counsel of the need to pay the neutral arbitrator for his cancellation fees incurred for the Borough's continuances. The Borough, however, did not pay the neutral arbitrator. Instead, the Union paid the neutral arbitrator's bill in full, and filed an unfair labor practice charge with the Board seeking reimbursement from the Borough for interference with its right to interest arbitration as protected by 6(1)(a) of the PLRA, and for the Borough's alleged violation of Section 8 of Act 111, which provides in relevant part that "[t]he compensation of the other two arbitrators, as well as all stenographic and other expenses incurred by the arbitration panel in connection with the arbitration proceedings, shall be paid by the political subdivision...."

The Secretary of the Board issued a Complaint and Notice of Hearing. Following a hearing, the Hearing Examiner dismissed the Association's claims under Section 6(1)(a) for interference with the Association's right to interest arbitration, but determined that because Section 8 of Act 111 involved the statutory arbitration process, the Borough's refusal to pay the neutral was a violation of its good faith bargaining duties in violation of Section 6(1)(e) of the PLRA.

In its exceptions and supporting brief, the Borough primarily argues that the Association was not the aggrieved party in this creditor dispute, and that the neutral arbitrator, the real party in interest, did not testify against the Borough. The Borough also claims that the hearing examiner erred in relying on the testimony of the Association's arbitrator, and that the evidence presented did not prove that the Borough knew of the neutral arbitrator's cancellation fees or was otherwise aware of the arbitrator's billing statements.

After review of the exceptions and the relevant case law, we are compelled to hold, contrary to the Hearing Examiner, that payment of arbitration fees under Section 8 of Act 111 is not part and parcel of the collective bargaining obligation owed by the public employer to the employees' representative and thus does not, in and of itself, give rise

to an unfair labor practice under Section 6(1)(a) and (e) of the PLRA as alleged here by the Association. The bargaining obligation under Section 6(1)(a) and (e) of the PLRA, however, is owed to employees and their representative, not the arbitrators. An employer's refusal to comply with the impasse resolution processes under Act 111 leading up to an agreement or award with the union clearly violates the PLRA. Borough of Nazareth v. Pennsylvania Labor Relations Board, 534 Pa. 11, 626 A.2d 493 (1993). In this regard, the employer's statutory collective bargaining obligation to the union under the Act 111 processes, which leads up to an agreement or award, is fulfilled with the issuance of an interest arbitration award. Indeed, interest arbitration is to result in finality with the award, such that the obligations of the interest arbitration panel are normally dissolved when an award is issued. Derry Township v. Pennsylvania Labor Relations Board, 571 A.2d 513, 516 (Pa. Cmwlth. 1989). Any obligation of the employer under Section 8 of Act 111 to compensate the neutral arbitrator after an award is issued is not an obligation or duty owed to the union, and thus does not give rise to an unfair labor practice under Section 6(1)(e) of the PLRA.

Furthermore, our review of the statutory scheme of Act 111 is that under Section 8, the compensation of the neutral arbitrator shall be paid by the political subdivision. The record here clearly shows that the Borough has declined to pay the neutral arbitrator's cancellation fees for hearings continued on the eve of the scheduled hearing dates. In response to this circumstance, the Association paid the neutral arbitrator and has sought to obtain reimbursement from the Borough by way of this charge of unfair labor practices.

We do not believe that the failure of the political subdivision to pay the expenses of the neutral arbitrator authorizes a union to pay the neutral arbitrator's bill and utilize the Board's unfair labor practice jurisdiction to recoup that payment from the political subdivision. Our review of the statutory scheme does not authorize such a practice, and for the Board here to endorse this practice would frustrate the provisions and policy of Act 111. Moreover, we do not believe that the bargaining and interest arbitration process is well served by authorizing the union to effectively act as the collection agent for the neutral arbitrator as against the political subdivision. Any such process would invite compromise of the arbitrator's neutrality in subsequent proceedings in a manner contrary to the express provisions and policy of Act 111. While the Board certainly does not condone a party's failure to comply with a statutory mandate to compensate the arbitrator, the appropriate procedure, consistent with the provisions and policy of Act 111, is for the neutral arbitrator to proceed directly against the party not in compliance with the law.

Accordingly, after a thorough review of the exceptions and all matters of record, for the above stated reasons, the Board concludes that the Borough has not violated Section 6(1)(a) and (e) of the PLRA, and shall sustain the Borough's exceptions.

#### CONCLUSIONS

CONCLUSIONS 1 through 3 of the Proposed decision and order are affirmed and incorporated herein by reference.

CONCLUSION 4 is vacated and set aside.

5. The Borough has not committed unfair labor practices under Section (6)(1)(a) and (e) of the PLRA.

#### 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 exceptions filed by McAdoo Borough are hereby sustained, the Order on pages 5 and 6 of the May 12, 2006 Proposed Decision and Order, finding and concluding that the Borough

committed an unfair labor practice, is hereby vacated and set aside. The Board further orders and directs that the Charge of Unfair Labor Practices is dismissed and the Complaint issued thereon is hereby rescinded.

SEALED, DATED and MAILED 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 fifteenth day of August, 2006. 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.

JAMES M. DARBY, MEMBER, DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION IN THIS CASE.