

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

BOYERTOWN BOROUGH POLICE :  
DEPARTMENT :  
 :  
v. : Case No. PF-C-06-175-E  
 :  
BOYERTOWN BOROUGH :

**PROPOSED DECISION AND ORDER**

On December 6, 2006, the Boyertown Borough Police Department (Union or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Boyertown Borough (Borough or Respondent) alleging that the Borough violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111.

On February 21, 2007, the Secretary of the Board issued a complaint and notice of hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and April 12, 2007 in Allentown was assigned as the time and place of hearing if necessary. The hearing was necessary and was held as scheduled, at which time all parties in interest were afforded a full 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. That Boyertown Borough is an employer within the meaning of the Pennsylvania Labor Relations Act.
2. That Boyertown Borough Police Department is the exclusive, recognized bargaining representative for the unit consisting of Boyertown Borough police officers pursuant to Act 111 of 1968 and the Pennsylvania Labor Relations Act.
3. That in 2003, the Borough and the Union engaged in collective bargaining that resulted in the signing of a collective bargaining agreement for the years 2004 and 2005 on December 1, 2003. (N.T. 10, 11, Complainant's Exhibit A)
4. That as a result of the collective bargaining in 2003, on or about December 29, 2003, the Borough enacted Resolution No. 12-29-03A relating to pension contributions. Resolution No. 12-29-03A specifically provides:

WHEREAS, the Borough and the Police Officers have *collectively bargained* over wages and benefits for the police officers for the calendar years 2004 and 2005; and

WHEREAS, *as a result of such bargaining*, the Borough has agreed to eliminate the Police Officers' contributions to the Plan for the calendar years 2004 and 2005.

(Emphasis added by Hearing Examiner)

(N.T. 11, 18, Complainant's Exhibit B)

5. That on April 18, 2005, the Union placed the Borough on notice of its intention to begin collective bargaining and negotiations for compensation, hours, working conditions, retirement, pensions and other benefits pursuant to Act 111 for the fiscal years 2006 and beyond. (N.T. 11, 19, Complainant's Exhibit C)

6. That the parties proceeded to collectively bargain without either side requesting any change in the agreement that had previously been negotiated that provided that the officers were not required to contribute to their pension plan. (N.T. 23)

7. That despite collective bargaining, the parties reached an impasse and proceeded to an arbitration hearing. An Act 111 interest arbitration hearing was held on June 26, 2006 after which an Act 111 interest arbitration award was issued for the contract period from January 1, 2006 to December 31, 2008. The Act 111 arbitration award did not change anything relating to the officers' contributions to the pension plan. The award specifically states:

"All existing provisions in Act 111 Awards and collective bargaining agreements not modified by this Award shall remain as is."

(N.T. 11, 23-24, Complainant's Exhibit G)

8. That after the issuance of the arbitration award, the Borough, without collective bargaining, unilaterally enacted Resolution No. 11-06-06 on November 6, 2006, requiring officer contributions to pensions in the amount of five percent (5%) of their monthly compensation. (N.T. 11, 18, Respondent's Exhibit B)

9. That in January, 2007, the Borough began deducting pension contributions. (N.T. 15)

10. That the Borough's police pension plan ordinance states in relevant part, at Section 33.2, Funding:

This plan is to be funded and maintained by any of the following methods, or a combination of each:

- A. Contributions by participants. All participants shall make contributions which shall be 5% of their total compensation but no more than 8% of their total compensation. Borough Council may, on an annual basis, by ordinance or resolution, reduce or eliminate contributions into the plan by participants. The Borough may, but need not, have an actuarial study performed prior to reducing or eliminating participants' contributions into the plan. [**Amended 12-29-2003 by Ord. No. 07-03**] (Bold in original)
- B. State aid.....
- C. Borough contributions.....
- D. Gifts, grants, devises or bequests.....
- E. Any other sums received or contributed to the Borough,...

(N.T. 11, Respondent's Exhibit 1)

#### DISCUSSION

The Union's charge of unfair labor practices alleges that on November 6, 2006, the Borough unilaterally changed the method of funding the police pension plan by enacting a resolution that added a five percent (5%) employe contribution, without first bargaining. The Borough then began deducting pension contributions from police officers' pay in January, 2007.

The subject of pensions is a matter set forth explicitly in Act 111 as a mandatory subject of bargaining. See Section 1 of Act 111, 43 P.S. 217.1. See also, Upper Chichester Township v. PLRB, 621 A.2d 1134 (Pa. Cmwlth. 1993). An employer that unilaterally changes the terms of a police pension plan violates its duty to bargain and commits an unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA and Act 111. See City of Coatesville, 12 PPER ¶12247 (Final Order, 1981), aff'd 465 A.2d 1073 (Pa. Cmwlth. 1983). An employer commits an unfair labor practice when it unilaterally increases the employe contribution rate to a pension plan. City of Coatesville, supra.

In the present case, the Borough has unilaterally changed the pension plan by imposing an employe contribution rate of five percent (5%) of monthly pay. The Borough did this shortly after the parties received an interest arbitration award that maintained the pension plan without an employe contribution. The Borough did not raise pension contribution rate issues in the interest arbitration proceedings.

There is no dispute there was a change in the rate of contribution, so the next question becomes whether the employer has satisfied its duty to bargain such a change.

The Borough argues that it is excused from bargaining over the change because it contends the specific details of the police pension plan, especially employe contribution rates, are not set forth in the parties' collective bargaining agreement. The Borough cites Plainfield Township Policemen's Association v. Pennsylvania Labor Relations Board, 695 A. 2d 984 (Pa. Cmwlth. 1997) for the proposition that before a duty to bargain arises the subject of bargaining must be in writing in a the collective bargaining agreement. This is far too expansive a reading of Plainfield Township Policemen's Association. A subsequent PLRB case explained how the Board would interpret the decision. In International Association of Fire Fighters v. City of Reading, 31 PPER ¶ 31057 (Final Order, 2000) the PLRB found that the city's unilateral establishment of certain personnel rules could constitute an unfair labor practice because some of the rules changed existing past practice and that an illegal change could be found even in those cases where the status quo was not set forth in writing in a collective bargaining agreement. 31 PPER 31057 at p. 143 (Footnote 4).

Even if the Borough's reading of Plainfield Township Policemen's Association is correct, the facts of the present case demonstrate that there was a written provision regarding the employe contribution rate that would keep the rate at zero. The writing is the interest arbitration award for the years 2006 to 2008 (Complainant's Exhibit G), which requires that provisions in prior agreements not modified by the interest arbitration award remain "as is." The prior agreement, for the years 2004-2005 (Complainant's Exhibit A), is referenced in the Borough's Pension Plan Resolution No. 12-29-03A (Complainant's Exhibit B) which established a zero contribution level.

Accordingly, the Borough was not excused from bargaining over a the increase in the contribution rate. The Borough was obligated to maintain the status quo in the pension plan once the interest arbitration process had concluded with an award.

It is well accepted in the Act 111 setting that the parties' latest interest arbitration award is the equivalent of a collective bargaining agreement. The interest arbitration award becomes the parties' contract when the parties are unable to form a contract on their own. See, e.g. City of Bethlehem v. Pennsylvania Labor Relations Board, 621 A.2d 1184 (Pa. Cmwlth. 1993), citing the PLRB's Final Order discussing the two ways for an a public employer to change a mandatory subject of bargaining: actual bargaining or "pursuant to the provisions of an interest arbitration award." Id at 1187.

The Borough also contends that that Act 600 excuses the Borough from bargaining an increase in an employe contribution rate. The Borough's position, if taken to its logical end, would allow an employer to impose even higher contributions on employes than were done here. In this case, without even an actuarial report justifying the imposition of an employe contribution, the Borough blindsided the employes by implementing a five percent (5%) contribution rate. Under the Borough's argument, what would stop the Borough from unilaterally establishing an annual contribution rate of eight percent (8%)? Such unilateral increases to the contribution rate are antithetical to the impasse resolution procedures set forth in Act 111, a law designed to provide prompt resolution of contract disputes and stability of labor relations for the duration of the contract. This proposed decision and order keeps in place the terms of the interest arbitration award rendered for the parties for the duration of the three-year award.

#### CONCLUSIONS

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

1. That the Borough is an employer within the meaning of Section 3(c) of the PLRA.
2. That the Department is a labor organization within the meaning of Section 3(f) of the PLRA.
3. That the Board has jurisdiction over the parties hereto.
4. That the Borough has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the examiner

HEREBY ORDERS AND DIRECTS

that the Borough shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Cease and desist from refusing to bargain collectively with the representatives of its employes.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

- (a) Rescind Resolution No. 11-06-06, dated November 6, 2006;

- (b) Reimburse to police employes the sums deducted from their pay since January 1, 2007 for pension purposes, with interest. The interest rate shall be at the rate of six per cent (6%) per annum.

- (c) Return to the status quo that existed for the police pension plan prior to November 6, 2006.

- (d) Post a copy of this decision and order within five (5) days of the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

- (e) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and 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 pursuant to 34 Pa. Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this thirty-first day of August, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner