## COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 293

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v. : Case No. PF-C-07-3-W

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CITY OF ERIE

#### FINAL ORDER

The City of Erie (City) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on January 22, 2008, challenging a Proposed Decision and Order (PDO) issued on January 4, 2008. In the PDO, the Board Hearing Examiner concluded that the City violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unilaterally rescinding a Partial Lump Sum Distribution Option (PLSDO) pension benefit without first having negotiated with the International Association of Fire Fighters, Local 293 (IAFF). The IAFF timely filed a brief in opposition to the exceptions on February 11, 2008.

The relevant findings of the Hearing Examiner are based on the parties' joint stipulation of facts and supporting exhibits, and are summarized as follows. On May 15, 2004, the City enacted an amendment to Article 149.09 of the Codified Ordinances of the City of Erie to provide a PLSDO pension benefit for City firefighters. Thereafter, the parties negotiated a collective bargaining agreement (CBA), effective January 1, 2005 through December 31, 2007. Article X1, Section 1 of the CBA carried over a provision on pensions from the previous CBA, that stated as follows:

The Firemen's Pension Fund shall be governed in accordance with the provisions of statutes of the Commonwealth of Pennsylvania and City of Erie ordinances or regulations now presently in effect and promulgated.

(emphasis added).

On November 27, 2006, the Auditor General of the Commonwealth of Pennsylvania issued an audit report criticizing and describing as illegal certain aspects of the PLSDO that pertained to the election of state aid for the City's police and fire pensions. In response, on or about December 20, 2006, the City enacted Ordinance 75-2006, which repealed the PLSDO provision contained in Article 149.09 of the Codified Ordinances of the City of Erie. The City did not bargain with the IAFF over its removal of the PLSDO from the firefighter pension plan.

On exceptions, the City argues that the Hearing Examiner erred in finding that the PLSDO was incorporated into the terms of the existing collective bargaining agreement. The City argues that in order for a particular pension benefit to be binding under the holding of Upper Chichester Township v. PLRB, 621 A.2d 1134 (Pa. Cmwlth. 1993), that benefit must be separately and expressly negotiated into the terms of a collective bargaining agreement. Otherwise, according to the City, under Plainfield Township Policemen's Association v. PLRB, 695 A.2d 984 (Pa. Cmwlth. 1997) a municipality is free to act unilaterally to modify those benefits. In that regard, the City contends that the language of Article XI, Section 1 was carried over from earlier contracts, and that the PLSDO is not expressly negotiated into the CBA. Thus, the City claims that because the PLSDO was enacted outside the terms of the collective bargaining agreement, Plainfield Township applies, and its rescission need not be bargained.

<sup>&</sup>lt;sup>1</sup> The PLSDO permitted retiring Firefighters to receive a lump-sum payment upon retirement in exchange for a reduced monthly pension benefit, and was structured so that the City would not forfeit state funding for PLSDO participants.

We note that the City's exceptions raise the same claims that it presented to the Hearing Examiner in its post-hearing brief. We have thoroughly reviewed the PDO, and adopt, herein, the Hearing Examiner's discussion of the arguments being raised by the City. In this regard, as noted by the Hearing Examiner, the City simply fails to acknowledge that Section 1 of Act 111 expressly mandates that pensions are a mandatory subject of bargaining. The unique facts of <u>Plainfield Township</u>, wherein the collective bargaining agreement made no mention of pensions, distinguishes it from other cases, such as the one presently before the Board, where the CBA makes specific reference to pensions. *E.g.* Upper Chichester Township, supra.

The January 1, 2005 - December 31, 2007 CBA included Article XI, Section 1, entitled "FIREMEN'S PENSION FUND", which provided that "[t]he Firemen's Pension Fund shall be governed in accordance with the provisions of statutes of the Commonwealth of Pennsylvania and City of Erie ordinances or regulations now presently in effect and promulgated." As of the CBA's effective date, the amendment to the City's codified ordinances provided for a PLSDO pension benefit for firefighters. Accordingly, the PLSDO pension benefit was "presently in effect and promulgated" when the City and the IAFF entered into the CBA. The Hearing Examiner's finding that the PLSDO was incorporated into the CBA is clearly supported by substantial evidence of record, and will not be disturbed.

Directly on point to the City's contention that each pension benefit must be separately expressed in a collective bargaining agreement is Montgomery Township Police Officers v. Montgomery Township, 37 PPER 140 (Final Order, 2006). In Montgomery Township, the Board held that a general integration clause providing that "all other matters previously in force and not changed by the terms of this contract" was sufficient to incorporate pension terms that had been set forth in existing municipal ordinances. Montgomery Township, 37 PPER at 436. The Board found no unfair labor practice in Montgomery Township because the employer had complied with the pension terms set forth in municipal ordinances as those ordinances were incorporated into the collective bargaining agreement. See also Boyertown Borough Police Department v. Boyertown Borough, 38 PPER 182 (Final Order, 2007), appeal pending. Whereas here, despite the fact that the PLSDO was "in effect and promulgated", as stated in the CBA, the City unilaterally rescinded that pension benefit through Ordinance 75-2006. As the Commonwealth Court held in Borough of Geistown v. PLRB, 679 A.2d 1330, 1333 (Pa. Cmwlth. 1996), "a local ordinance may not be used as a 'guise' … to sidestep Act 111…."

The holdings of Montgomery Township, and the Hearing Examiner's decision in this case, are supported by the Commonwealth Court's opinion affirming the Board in Wilkes-Barre Township v. PLRB, 878 A.2d 977 (Pa. Cmwlth. 2005). In Wilkes-Barre, the collective bargaining agreement generally stated that a retiree's pension benefits would be based on "gross pay", which was undefined in the contract. The Commonwealth Court agreed with the Board's holding that the township violated its bargaining obligation by unilaterally enacting an ordinance that defined "gross pay" in accordance with the recommendations of an Auditor General's report. The township's new definition was inconsistent with existing ordinances regarding calculation of pension benefits. The Board and the Commonwealth Court held that the township unlawfully changed pension terms without having bargained with the union. See Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000) (employer's repudiation of a bargained-for agreement is an unfair labor practice).

Similarly here, the 2005-2007 CBA plainly stated that the Firemen's Pension Fund shall be governed in accordance with the City ordinances then in effect. The City's attempt to exclude the PLSDO from "ordinances or regulations now presently in effect and promulgated" under the terms of the CBA is subject to negotiations under Act 111. Thus, the City's unilateral rescission of the existing PLSDO ordinance was a change to the CBA in violation of its duty to collectively bargain with the IAFF. See Wilkes-Barre Township, supra.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the City violated its statutory obligation under Act 111 and Section 6(1)(a) and (e) of the PLRA to negotiate changes to employe pension benefits with the IAFF. Accordingly, the Board shall dismiss the City's exceptions and make the PDO final.

#### 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 by the City of Erie are hereby dismissed, and the January 4, 2008 Proposed Decision and Order, be and hereby is made absolute and final.

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 eighteenth day of March, 2008. 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.

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CITY OF ERIE

### AFFIDAVIT OF COMPLIANCE

The City of Erie (City) hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act and Act 111; that it has rescinded Ordinance 75-2006, the December 20, 2006 repeal of the Partial Lump Sum Distribution Option (PLSDO); that it has reimbursed the pension fund for any administrative costs incurred by the fund as a result of enactment of Ordinance 75-2006; that it has made whole any employe who was detrimentally affected by the enactment of Ordinance 75-2006; that it has posted copies of the Final Order and Proposed Decision and Order within five (5) days from receipt of the Final Order in a conspicuous place readily accessible to its employes and had the same remain so posted for a period of ten (10) consecutive days; and that it has served a copy of this affidavit of compliance upon the International Association of Fire Fighters, Local 293.

	Signature/Date
	Title
SWORN AND SUBSCRIBED to before me The day and year first aforesaid	

Signature of Notary Public