

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MCADOO POLICE ASSOCIATION :  
 :  
 v. : Case No. PF-C-07-139-E  
 :  
 MCADOO BOROUGH :

**PROPOSED DECISION AND ORDER**

On October 17, 2007, the McAdoo Police Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that McAdoo Borough (Borough) violated sections 6(1)(a) and 6(1)(e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to name its arbitrator for an Act 111 interest arbitration. On October 29, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on November 26, 2007, if conciliation did not resolve the charge by then. The hearing examiner thereafter continued the hearing upon the request of the Borough and without objection by the Association. On December 5, 2007, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On February 1, 2008, the Association filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Effective January 1, 2000, the Borough and Teamsters Local Union No. 401 entered into a two-year collective bargaining agreement for full-time police officers employed by the Borough. (N.T. 7-8; Association Exhibit 1)

2. On August 30, 2001, the Board certified the Association as the exclusive representative of a bargaining unit comprised of all full-time and regular part-time non-managerial police officers employed by the Borough, including but not limited to the chief of police, sergeants and patrol officers. (Case No. PF-R-01-74-E)

3. Effective January 1, 2002, a panel of arbitrators issued a three-year interest arbitration award for the members of the bargaining unit. The award provided at paragraph six as follows:

**"UNIFORM ALLOWANCE AND EQUIPMENT:** The uniform allowance for full-time officers shall be \$400.00 effective January 1, 2003. Effective January 1, 2003, part-time officers shall be entitled to a uniform allowance of \$200.00. In addition and separate from any uniform allowance, each full and part-time police officer covered by the collective bargaining agreement and employed by the Borough shall be provided with soft body armor providing protection against threat level 2A or greater without charge to the officer's allowance for uniforms and equipment. The Borough shall replace each piece of body armor in accordance with the manufacturer's recommendations."

The award provided at paragraph seven as follows:

**"VACATIONS:** Effective January 1, 2003, the following vacation scale shall be implemented for all full-time officers:

\* \* \*

Upon completion of 20 years of service 4 weeks vacation[.]"

The award provided at paragraph eight as follows:

**"SICK LEAVE:** Full-time officers shall be granted eight (8) sick days per year and there shall be no limitation on accumulation."

(N.T. 8; Association Exhibit 2)

4. Effective January 1, 2005, the parties entered into a two-year collective bargaining agreement for the members of the bargaining unit. (N.T. 10; Association Exhibit 3)

5. By June 30, 2006, the Association's bargaining committee (Chief Russell A. Palmer and Officer Denise E. Pozza) wrote to the Borough's mayor (Stephen Holly) and a member of the Borough's council (Mary Labert) letters notifying them of "our intention to commence collective bargaining pursuant to Act 111 of 1968, for the contract period beginning January 1, 2007." Enclosed with each letter was a proposal as follows:

"Proposal List for three (3) year contract - 2007,2008,2009

Full Time Officers:

2007 - New Hires: Start at \$12.00/hr  
2008 - .[50] cent raise = \$12.50/hr  
2009 - \$1.00 raise = \$13.50/hr

Chief:

2007 - .25 cent raise = \$16.00/hr  
2008 - .15 cent raise = \$16.10/hr  
2009 - .05 cent raise = \$16.15/h[r]"

Also enclosed with each letter was a proposal as follows:

"Proposal List for three (3) year contract - 2007,2008,2009 For Part Time Officers:

Effective 01/01/2007:

- 1.) Uniform Allowance increased to \$250.00 (after one year of service)
- 2.) Three training days per year (after one year of service)
- 3.) Two new ANSI class 3 high visibility rain coats w/ reversible rain cap cover (size appropriate for officers).
- 4.) New mic for 104 so officers could make announcements while inside the cruiser
- 5.) New spotlight for 105

Rate of Pay:

\$1.00/hr raise effective 01/01/2007 = \$11.00/hr  
\$.50 cent/hr raise effective 01/01/2008 = \$11.50/hr  
\$.50 cent/hr raise effective 01/01/2009 = \$12.00/hr"

(N.T. 11, 30; Association Exhibit 4)

6. In September 2006, the Borough submitted a counter-proposal to the Association's bargaining committee as follows:

"McAdoo Borough Police Committee and Council  
Counter Proposals to the Police Association[']s proposal dated 7/26/2006 for three year contract - 2007, 2008, 2009

Full Time Officers:

2007 - \$12.00 per hour  
2008 - .25 cent raise = \$12.25 per hour  
2009 - .25 cent raise = \$12.50 per hour

\*\*\*Must check Contract (70%, 80%, 90% first three years)\*\*\*

Chief

2007 - .25 cent raise = \$16.00 per hour  
2008 - .15 cent raise = \$16.15 per hour  
2009 - .05 cent raise = \$16.20 per hour

Part time Officer:

2007 - .25 cent raise = \$10.25 per hour  
2008 - .25 cent raise = \$10.50 per hour  
2009 - .25 cent raise = \$10.75 per hour

Uniform allowance increased to \$250.00 after 600 hours after probation period is complete.

Three training days per year after 600 hours after probation period is complete.

Mic in 104 is repaired and working.

New spot light in 105 has been installed.

Council will purchase two new rain coats.

Section 22 of the Contract to read - An Officer will have five (5) working days within which to file a grievance as a result of a violation of the Collective Bargaining Agreement, excluding Holidays. Thus grievance will be filed with the Police Committee. The Committee shall have five (5) working days within which to file and answer to said grievance. If the Committee answer is not acceptable to the grievant, the grievant may present the grievance to the Borough Council. They have ten (10) days within which to answer and, if the answer is unacceptable, the grievant may proceed to have his/her grievance presented to the Borough Council and the Union Business Agent for resolution. If the grievance is not resolved, the matter shall be referred to an arbitration committee which shall consist of one (1) Employer, or their representative and one (1) employee or their representative. The two thusly selected shall first try to adjust the matter among themselves, and failing to agree, they shall within ten (10) days, mutually select a third person, a disinterested party, who shall act as the chairman of the Arbitration Committee and whose decision in the matter shall be final and binding on both parties. No strikes or lockouts to take place pending the decision of the Board of Arbitration. Decision to be rendered in ten (10) days after the case has been placed in the hands of the impartial chairman, provided however, that before any arbitration is to adjust the matter between themselves.

Any meetings with Council and the Union will be after working hours without pay.

Each section of the contract needs to be reviewed.

Council is requesting a complete and new contract.

\*\*\*\*If anyone on Council has any complaints, omissions, deletions, or additions please refer them to the Police Committee\*\*\*\*"

(N.T. 12; Association Exhibit 5)

7. On or about December 14, 2006, the Association's bargaining committee responded to the Borough's counter-proposal as follows:

**"Amendments & Approval to Recent Proposal:**

**Salaries:**

Chief: Agreed

Sergeant: position has been in all prior contracts- 2007=\$13.50, 2008=\$13.75, 2009=\$14.00

Full Time Officer(s): Agreed **UNLESS** the Officer has been employed by the Borough on a part time status & has passed his/her probation period then the Officer would get 100% of the starting salary.

Part Time Officer: Agreed

**Uniform Allowance:**

Uniform allowance increased to \$250.00 per calendar year. New hires are eligible for this allowance after being employed six months and having worked 600 hours thereafter.

\*The 600 hours will not start until they have completed the initial six month requirement\*

Mic repaired - ok  
Spot light replaced - ok  
Two new raincoats - ok

Section 22 of the Contract to Read - Agreed

Any meetings with Borough Council & the Union will be after working hours without pay - Agreed

Updated Consolidated Version of Current & Prior Contracts - Agreed

Who will be responsible for preparing new contract? We request that a party from both sides be present when the contract is updated."

(N.T. 13-15, 27, 30-31; Association Exhibit 6)

8. In February 2007, Ms. Labert asked Chief Palmer, "When are you going to have someone sit down with me and rewrite the contract?" Chief Palmer replied, "You're looking at that person." (N.T. 15-16)

9. In March 2007, Chief Palmer asked Ms. Labert, "When are we going to sit down and do this thing and get it done with?" She replied that she would get back to him. (N.T. 16)

10. By June 13, 2007, the Association's bargaining committee (Chief Palmer and Officer Jeffrey Wainwright) wrote to council's president (Brian Kolbush), Mayor Holly and the Borough's solicitor (Joseph P. Semasek, Esquire) a letter notifying them of "our intention to commence collective bargaining pursuant to Act 111 of 1968, for the contract period beginning January 1, 2008." Attached to the letter were "proposals for the contract year 2008-2009" as follows:

1. Wages and salary
2. Holidays
3. Vacations
4. Health Insurance
5. Life insurance
6. Overtime compensation
7. Mileage compensation
8. Pension
9. Sick leave. Personal days, critical incident counseling, funeral leave
10. Uniform allowance
11. Disability Income
12. Liability insurance
13. Grievance procedure
14. [L]ongevity payments
15. Agency shop
16. Officers Bill of rights
17. Training budget, Department weapons, Equipment budget"

(N.T. 25-26; Association Exhibit 10)

11. On June 13, 2007, the Borough's secretary (Lisa Klem) gave to Chief Palmer a draft of an "agreement" that Ms. Labert prepared without both parties being present. The draft included provisions from the collective bargaining agreement between the Teamsters and the Borough, the 2002-2005 interest arbitration award and the Borough's counter-proposal. The draft provided at paragraph eleven that "[a] \$250.00 Clothing allowance will be reimbursed each year to all full-time Officers[.]" The draft provided at paragraph 19 as follows:

"McAdoo Borough agrees to grant six (6) days sick leave per year to all full-time Police Officers under this Agreement. It is further agreed that employees may accumulate sick leave for a period of fifty (50) days."

The draft made no mention of part-time employees, soft body armor or four weeks vacation for full-time officers upon 20 years of service. (N.T. 17-23, 38; Association Exhibit 7)

12. By letter dated June 19, 2007, Attorney Semasek wrote to Chief Palmer as follows:

"Enclosed please find the Police Agreement and please note that the remaining terms and conditions of employment in the collective bargaining agreement that normally expired December 31, 2006 that are not specifically modified in this agreement shall continue in full force and effect for the term, January 1, 2007 through midnight December 31, 2009.

Council will be paying all of the back wages up to date immediately.

I am awaiting your signature so that I can have Council sign the same."

Enclosed with the letter was the "agreement" that Ms. Labert had prepared. (N.T. 24; Association Exhibit 8)

13. By letter dated June 25, 2007, the Association's bargaining committee (Chief Palmer and Patrolman Alfred Walsh) wrote to Attorney Semasek that "We of the McAdoo Police Assoc. reject that latest proposal sent from your office on 06-19-2007." (N.T. 24-25; Association Exhibit 9)

14. On September 5, 2007, Officer Wainwright gave to Ms. Klem a letter providing as follows:

"Pursuant to Act 111 of 1968, please be advised that, Lodge 13 Fraternal Order of Police representing the Police Bargaining Unit for the Mc[A]doo Police Department, hereby notifies you of their intention to proceed to binding arbitration for the contract period beginning January 1, 2007.

Enclosed please find the issues in dispute submitted on behalf of the Police Department. Please be advised that Lightman and Welby, 2705 North Front [S]t, Harrisburg, Pennsylvania 17110, 1-717-234-0111 will be the arbitrator for the Police. Please notify Lightman and Welby of the name and address of your arbitrator within five days."

(N.T. 32-33; Association Exhibit 11)

15. As of the date of the hearing, the Borough had not named its arbitrator. (N.T. 33)

#### DISCUSSION

The Association has charged that the Borough committed unfair labor practices under sections 6(1)(a) and 6(1)(e) of the PLRA as read in pari materia with Act 111 by refusing to name its arbitrator for an Act 111 interest arbitration. The Association contends that the Borough was obligated to name its arbitrator for the interest arbitration because the parties did not reach an agreement in negotiations for a new collective bargaining agreement.

The Borough contends that the charge should be dismissed because the negotiations resulted in a new collective bargaining agreement. According to the Borough, it was under no obligation to proceed to interest arbitration under the circumstances.

The circumstances under which an employer is obligated to proceed to interest arbitration for its police officers are set forth in section 4 of Act 111, which provides as follows:

"(a) If in any case of a dispute between a public employer and its policemen or firemen employes the collective bargaining process reaches an impasse and stalemate, or if the appropriate lawmaking body does not approve the agreement reached by collective bargaining, with the result that said employers and employes are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration.

For purposes of this section, an impasse or stalemate shall be deemed to occur in the collective bargaining process if the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within thirty days after collective bargaining proceedings have been initiated.

In the case of disputes involving political subdivisions of the Commonwealth, the agreement shall be deemed not approved within the meaning of this section if it is not approved by the appropriate lawmaking body within one month after the agreement is reached by way of collective bargaining.

\* \* \*

(b) The Board of arbitration shall be composed of three persons, one appointed by the public employer, one appointed by the body of policemen or firemen involved, and a third member to be agreed upon by the public employer and such policemen or firemen. The members of the board representing the public employer and the policemen or firemen shall be named within five days from the date of the request for the appointment of such board. If, after a period of ten days from the date of the appointment of the two arbitrators appointed by the public employer and by the policemen or firemen, the third arbitrator has not been selected by them, then either arbitrator may request the American Arbitration Association, or its successor in function, to furnish a list of three members of said association who are residents of Pennsylvania from which the third arbitrator shall be selected. The arbitrator appointed by the public employer shall eliminate one name from the list within five days after publication of the list, following which the arbitrator appointed by the policemen or firemen shall eliminate one name from the list within five days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the board of arbitration. The board of arbitration thus established shall commence the arbitration proceedings within ten days after the third arbitrator is selected and shall make its determination within thirty days after the appointment of the third arbitrator."

An employer commits unfair labor practices under sections 6(1)(a) and 6(1)(e) of the PLRA as read in pari materia with Act 111 if it refuses to proceed to interest arbitration in accordance with the provisions of section 4 of Act 111. Borough of Nazareth v. PLRB, 534 Pa. 11, 626 A.2d 493 (1993). An employer commits no such unfair practices, however, if it refuses to proceed to interest arbitration after the parties have reached an agreement in collective bargaining. Wilkins Township, 15 PPER ¶ 15121 (Final Order 1984). Once the parties reach an agreement in collective bargaining, the employer's only obligation is to sign a written copy of the agreement. City of McKeesport, 31 PPER ¶ 31130 (Final Order 2000); City of Chester, 25 PPER ¶ 25185 (Proposed Decision and Order 1994).

The charge must be dismissed because the parties reached an agreement in collective bargaining. As set forth in findings of fact 5-7, the record shows that during their negotiations for a collective bargaining agreement for 2007-2009 the parties exchanged proposals resulting in an agreement on or about December 14, 2006, when the Association accepted a counterproposal from the Borough. Thus, under the analysis set forth in Wilkins Township, supra, it is apparent that the Borough was under no obligation to proceed to interest arbitration.

The Association's contention that the Borough was under an obligation to name its arbitrator because the parties did not reach an agreement in collective bargaining is without merit. According to the Association, the parties were at an impasse because its acceptance of the Borough's counter-proposal was subject to a contingency that was never met. As the Association points out, upon accepting the Borough's counter-proposal, it made a "request that a party from both sides be present when the contract is updated" (Association Exhibit 6). As the Association also points out, it was not present when the Borough prepared a draft of their agreement (N.T. 38). When an offer is accepted subject to a contingency, there is no agreement if the contingency is not met. Northeastern Regional Police Board, 20 PPER ¶ 20179 (Proposed Decision and Order 1989). A close review of the record does not show, however, that the Association accepted the Borough's counter-proposal subject to a contingency "that a party from both sides be present when the contract is updated;" to the contrary, it simply shows that the Association made a request in that regard after having accepted the Borough's counter-proposal unconditionally. Thus, there is no basis for finding that the parties were at an impasse because the Association's acceptance of the Borough's counter-proposal was subject to a contingency that was never met.

Moreover, even if the Association's request were to be construed as a contingency for acceptance of the agreement, there still would be no basis for finding that the parties were at an impasse because the contingency was never met. In City of Chester, supra, where an employer reached an agreement subject to the contingency of ratification, a hearing examiner found that the employer was bound by the agreement because it did not exercise the contingency in a timely manner. As the hearing examiner in that case explained:

"As the City notes in its post-hearing brief, the duty to execute an agreement 'presupposes the existence of a collective bargaining agreement requiring only reduction to a written, executed contract.' Abington School District, 11 PPER ¶ 11176 (Nisi Decision and Order, 1980). Accordingly, the parties must possess a 'meeting of the minds' regarding the substance of the agreement before the duty to execute arises. Milk and Ice Cream Salesmen, Drivers, and Dairy Employees, Local Union No. 205, 4 PPER 52 (Nisi Decision and Order, 1974).

It is equally true that the parties may reserve the right to return a negotiated agreement to the respective principals for ratification. County of Erie, 10 PPER ¶ 10174 (Nisi Decision and Order, 1979). This right, however, does not bestow a further right to act in bad faith concerning the ratification process. Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991). Thus, 'actions taken pursuant to a reserved right of ratification must be closely examined to determine whether those actions are consistent with the requirements of good faith bargaining.' Richland School District, quoting NLRB v. Alterman Transport Lines, Inc., 587 F.2d 212 (5<sup>th</sup> Cir. 1979). The inability to adequately explain the reopening of a tentative agreement is also an indicia of bad faith. Richland School District.

In this case, it is not disputed that the City reserved the right to ratify the consolidated agreement. Once the draft of the agreement was prepared, however, the City was obligated to act within a reasonable time frame to exercise the right. See Waynesboro Area School District, 25 PPER ¶ 25054 (Proposed Decision and Order, 1994), 25 PPER ¶ 25118 (Final Order, 1994)(appeal pending). The City was also obligated to advise the FOP of the specific concerns which held up ratification. In discussions taking place in 1994 between Michael Whitlow, the City's labor counsel, and Thomas Kohn, the FOP's labor counsel, Mr. Whitlow made general references to a provision concerning promotions in the consolidated agreement. Otherwise there were no specified objections to the consolidated agreement. While there may be occasions where, in the course of compiling a consolidated agreement, substantive issues come to light, no such issues existed here. In fact, until the day prior to the hearing in this matter, the FOP was not aware of the specific problem raised by the City concerning the promotion provision. This problem, which involves a missing provision, could have been easily remedied had the City raised it in a timely manner. See Tussey Mountain School District, 8 PPER 332 (Nisi Decision and Order, 1977) (party doubting existence of agreement must come forward to explain its position)."

25 PPER at 477.

Under the analysis set forth in City of Chester, then, the Association had a reasonable amount of time to exercise whatever right it may have had to "be present when the contract is updated." As set forth in findings of fact 7-8, however, the record shows that approximately two months after the Association accepted the Borough's counter-offer a member of the Association's bargaining committee (Chief Palmer) offered a non-response when a member of the Borough's council (Ms. Labert) asked him, "When are you going to have someone sit down with me and rewrite the contract?" Although the record also shows that Chief Palmer subsequently asked Ms. Labert, "When are we going to sit down and do this thing and get it done with?" (N.T. 16), it is apparent that the Association did not timely exercise whatever right it may have had to "be present when the contract is updated." Moreover, although the record further shows that the Association was not present when Ms. Labert thereafter prepared a draft of the parties' agreement (N.T. 38) and that the draft was inaccurate in that it misstated the clothing allowance and sick leave for full-time officers and made no mention of part-time employees, soft body armor or four weeks vacation for full-time officers upon 20 years of service (compare

Association Exhibits 2, 5 and 6), the record does not show that the Association ever pointed out the inaccuracies to her. As the hearing examiner in City of Chester explained, inaccuracies of that sort may be easily remedied if raised in a timely manner. Accordingly, the same result as in City of Chester obtains.

According to the Association, the parties also were at an impasse because they had a genuine difference of opinion as to what they agreed to in collective bargaining as evidenced by the inaccuracies set forth in the draft Ms. Labert prepared. As the Association points out, "[i]f there are genuine differences of opinion" as to what the parties agreed to in collective bargaining, there is no basis for finding that an agreement was reached. Abington School District, 11 PPER ¶ 11126 at 303 (Final Order 1980)(construing analogous provisions of the Public Employee Relations Act). The mere fact that the draft of an agreement is inaccurate does not mean that an agreement was not reached, however. To the contrary, where, as here, the record shows that the parties exchanged written proposals, there is no basis for finding a genuine difference of opinion as to what they agreed to in collective bargaining. Id. In such a case, the employer is obligated to sign an accurate copy of the parties' agreement, City of McKeesport, *supra*; City of Chester, *supra*, but is not under an obligation to proceed to interest arbitration. Wilkins Township, *supra*.

#### CONCLUSIONS

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

1. The Borough is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The Association 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 Borough has not committed unfair labor practices under sections 6(1)(a) and 6(1)(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, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

#### 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 nineteenth day of February 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

Direct Dial  
717-783-3050

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February 19, 2008

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MCADOO BOROUGH  
Case No. PF-C-07-139-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE  
Hearing Examiner

Enclosure

cc: McAdoo Borough  
Joseph P. Semasek, Esquire