

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CAMP HILL BOROUGH POLICE ASSOCIATION :  
:  
v. : Case No. PF-C-24-1-E  
:  
BOROUGH OF CAMP HILL :

**PROPOSED DECISION AND ORDER**

On January 8, 2024, the Camp Hill Borough Police Association (Union or Association) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (PLRB or Board) against the Borough of Camp Hill (Borough or Employer) alleging that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111, when the Borough on January 1, 2024, after the expiration of the collective bargaining agreement between the parties, unilaterally changed the terms and conditions of employment by assessing pension contributions upon bargaining-unit members equal to 5% of their post-tax income.

On January 12, 2024, the Union filed an amended charge which included additional allegations in the specification of charges including the allegation that the assessed pension contributions had been deducted from bargaining-unit members' paychecks on January 5, 2024.

On March 11, 2024, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating May 8, 2024, in Harrisburg, as the time and place of hearing.

The hearing was necessary and continued twice with the agreement of the parties. The hearing was held on September 11, 2024, in Harrisburg, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on November 11, 2024. The Borough submitted a post-hearing brief on December 20, 2024.

The Hearing Examiner, based on all matters of record, makes the following:

**FINDINGS OF FACT**

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 7).

2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. The Union is the exclusive bargaining unit representative of Borough police officers. (N.T. 7; Joint Exhibit 1).

3. The parties were subject to a collective bargaining agreement (CBA) which, at the time of the hearing, had expired. The parties' last CBA had the effective dates of January 1, 2021, through December 31, 2023. At the time of the hearing, the parties were engaged in arbitration proceedings over a successor agreement. (N.T. 9-12, 15; Joint Exhibits 1, 2, 3).

4. On September 5, 2023, the Union submitted a letter to the Borough indicating the Union's intent to proceed to interest arbitration. The letter identified issues in dispute identified by the Union. The Union did not identify pension contributions as an issue in dispute. (Joint Exhibit 2).

5. On September 7, 2023, the Borough, through counsel, sent a letter to the Union's counsel which identified the issues in dispute identified by the Borough. The Borough did not identify pension contributions as an issue in dispute. (Joint Exhibit 3).

6. Prior to 2024, the Borough has never assessed employee contributions on police officers for the police officers' pension plan. (N.T. 13-14).

7. On the day before Thanksgiving, 2023, the police officers received a letter from the Borough which stated that starting on January 1, 2024 the Borough was going to assess five percent of a police officer's salary for pension contributions. (N.T. 13).

8. The Borough did assess the five percent pension contributions starting on January 1, 2024. The CBA had expired on December 31, 2023. (N.T. 14).

9. The Union did not agree to the implemented assessment of pension contributions. (N.T. 14).

#### DISCUSSION

The Union alleges that the Borough unilaterally implemented pension contributions upon bargaining-unit members during the status quo. An employer commits an unfair labor practice under sections 6(1)(a) and (e) of the PLRA as read *in pari materia* with Act 111 when it unilaterally changes a mandatory subject of bargaining. Act 111, by its express terms, mandates bargaining between an employer and a union over pensions and the issue of pension contributions is a mandatory subject of bargaining. Wilkes-Barre Twp., 35 PPER ¶ 137 (Final Order, 2004), aff'd, 878 A.2d 977 (Pa. Cmwlth. 2005), citing Section 1 of Act 111, 43 P.S. § 217.1.<sup>1</sup> Further, the law is clear that matters affecting pension plans that are sponsored by a public employer pursuant to a particular statute are likewise subject to bargaining. City of Allentown v. Local 302, International Association of Fire Fighters, 511 Pa. 275, 512 A.2d 1175 (1986); Hornesdale Borough, 25 PPER ¶ 25134 (Proposed Decision and Order, 1994). The Board has long held that a public employer's unilateral increase in pension contribution rates was unlawful. City of Coatesville, 12 PPER ¶ 12247 (Final Order, 1981).

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<sup>1</sup> 43 P.S. § 217.1 states:

Policemen or firemen employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

The Board enforces a static status quo. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), appeal denied, 871 A.2d 194 (2005); Upper Leacock Township, 43 PPER ¶ 72 (Final Order, 2011). An employer is obligated to maintain the status quo during contract hiatus while the parties are negotiating a successor agreement. Appeal of Cumberland Valley Sch. Dist., 483 Pa. 134, 394 A.2d 946 (1978). The status quo is the “last actual peaceable and lawful noncontested status which preceded the controversy.” Fairview School District v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, 454 A.2d 517, 520 (Pa. 1982); Middleburg Borough Police Officers Association v. Middleburg Borough, 53 PPER ¶ 2 (Final Order, 2021). The burden to establish a past practice as evidence that there was no change in the status quo rests with the employer as a defense to the charge of a failure to bargain in good faith. Chester Upland School District v. PLRB, 150 A.3d 143 (Pa. Cmwlth. 2016).

Moving to this matter, it is clear that the Borough changed the working conditions of the bargaining-unit members in the status quo period when, on and after January 1, 2024, it began assessing for the first-time a five percent pension contribution on bargaining-unit members’ after-tax salary. The CBA had expired on December 31, 2023. The record shows this was a change as, prior to January 1, 2024, the bargaining-unit members did not pay a 5% pension contribution.

The record shows this change was done unilaterally by the Borough. The Union never agreed to it. The Borough in its Brief at 3 argues: “The parties bargained over the 5% employee pension contribution, as evidenced by statements made by Union President Sgt. Fruhwirth during the hearing.” The Borough points to testimony by Fruhwirth at N.T. 56-57 that the topic of 5% pension contributions was brought up between the parties in discussions in September 2023 prior to the Union declaring impasse. However, the record does not support a finding that the Union agreed to the imposition of the 5% contribution on and after January 1, 2024 in the status quo period. Thus, while the issue was discussed, the record shows the Borough nevertheless implemented the change unilaterally. The bargaining obligation in Section 1 of Act 111 is not met by merely bringing up a topic in a meeting.

The evidence also does not support a conclusion that the implementation of the 5% pension contribution was a past practice such that there was no change in the status quo. Chester Upland School District, supra. Thus, the actions by the Borough are an unfair labor practice.

The Borough argues in its Brief at 5 that: “Even if the 5% pension contribution had not been negotiated, the Borough had a contractual privilege to assess the fee on bargaining unit officers.” In Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000), the Commonwealth Court affirmed the Board's use of the contractual privilege defense and stated:

The PLRB has recognized “contractual privilege” as an affirmative defense to a charge of unfair labor practices alleging a failure to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a “sound arguable basis” in the language of the parties' collective bargaining agreement, or other bargained for agreement, for the

claim that the employer's action was permissible under the agreement.

Id. at 651.

I find that the Borough cannot in this matter rely on any contractual privilege defense. A contractual privilege to change bargaining terms or a union's waiver of a right to bargain over mandatory terms does not extend into the status quo period following expiration of an agreement while the parties negotiate for a successor agreement. Northampton County, 47 PPER ¶ 90 (Final Order, 2016) ("Similarly here, [Northampton] County's purported contractual right to effectuate a change to healthcare for bargaining unit employes must cease upon expiration of the Interest Arbitration Award to ensure the fulfillment of the employes' statutory right to good faith bargaining over those benefits.") As explained by Hearing Examiner Pozniak: "[A]ny purported contractual privilege, like an alleged waiver, does not outlive the contract that contains it." Northampton County, 47 PPER ¶ 56 (Proposed Decision and Order, 2015).

Continuing, the Borough in its Brief at 8 makes what is, in essence, a waiver defense. The Borough argues that the Union agreed that the Borough had the right to waive or implement the 5% pension contribution fee and, thus, the Union had waived any right to bargain over the implementation of the 5% pension contribution.

As discussed above, a waiver of the right to bargain does not survive contract expiration and does not continue into the status quo period. Northampton County, 47 PPER ¶ 90 (Final Order, 2016). In this case, therefore, to the extent any waiver over the right to bargain over pension contributions existed, the waiver ended upon the expiration of the CBA on December 31, 2023.

For the above reasons, the Borough has violated Section 6(1)(a) and (e) of the PLRA and Act 111.

#### CONCLUSIONS

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

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The Borough has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA and Act 111.

#### ORDER

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

**HEREBY ORDERS AND DIRECTS**

that the Borough shall:

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

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

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

(a) Immediately rescind the five percent (5%) pension contributions implemented on and after January 1, 2024, restore the status quo ante, and make whole any bargaining-unit employes who have been adversely affected due to the Borough's unfair labor practices, together with six percent (6%) per annum interest;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(c) 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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

**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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of January, 2025.

**PENNSYLVANIA LABOR RELATIONS BOARD**

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Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CAMP HILL BOROUGH POLICE ASSOCIATION :  
v. : Case No. PF-C-24-1-E  
BOROUGH OF CAMP HILL :

**AFFIDAVIT OF COMPLIANCE**

The Borough of Camp Hill hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has immediately rescinded the five percent (5%) pension contributions implemented on and after January 1, 2024, restored the status quo ante, and made whole any bargaining-unit employees who have been adversely affected due to the Borough's unfair labor practices, together with six percent (6%) per annum interest; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

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Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public