COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP LODGE 1 FORT PITT	:	
	:	
	:	Case Nos. PF-C-18-26-W
v.	:	PF-C-18-52-W
	:	
CITY OF PITTSBURGH	:	

PROPOSED DECISION AND ORDER

On February 21, 2018, the Fraternal Order of Police Lodge 1 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Pittsburgh (City or Employer), alleging that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by repudiating an agreement between the FOP and the City and unilaterally requiring police officers involved in a critical incident to immediately submit to questioning by County investigators without Union representation. The charge was docketed at PF-C-18-26-W. On March 12, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on June 20, 2018, if necessary.

On April 20, 2018, the FOP filed a second charge of unfair labor practices with the Board against the City, alleging that the City also violated Section 6(1)(a) and (e) of the PLRA by refusing to provide information requested by the FOP in connection with its request to reopen the current collective bargaining agreement, as well as a request to commence bargaining for a new contract. The charge was docketed at PF-C-18-52-W. On May 21, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on September 12, 2018, if necessary.

After several continuances, including two at the City's request and over the FOP's objection, both charges were eventually consolidated for hearing purposes.[1] The hearing ultimately ensued on June 26, 2019, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The FOP filed a post-hearing brief on November 12, 2019. The parties then jointly requested the matter be held in abeyance on November 15, 2019, pending issuance of an Act 111 interest arbitration award. On February 6, 2020, the FOP requested that the abeyance order be lifted, and the matter proceed to decision. As a result, the briefing schedule was reinstated, and the City filed a post-hearing brief on March 3, 2020. The FOP sought, and was granted, leave to file a reply, which the Board received on March 12, 2020. The City did not file a response to the FOP's reply brief, despite being provided an opportunity to do so.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

[1] The consolidation actually included a third charge by the FOP, which was docketed at PF-C-18-79-W, and which has since been withdrawn.

FINDINGS OF FACT

1. The City of Pittsburgh is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)

2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 5)

3. The FOP is the exclusive bargaining representative for a unit of police employes at the City. (Joint Exhibit 2)

4. The FOP and the City are parties to a collective bargaining agreement (CBA) effective January 1, 2010 through December 31, 2014. The FOP and the City reached an impasse in collective bargaining for a successor agreement and proceeded to interest arbitration, which resulted in a July 25, 2016 interest arbitration award for the term of January 1, 2015 through December 31, 2018. (Joint Exhibits 1, 2)

5. Section 4 of the CBA provides, in relevant part, as follows:

> ...Except in an emergency situation, the Chief of Police, Deputy Chief, Assistant Chiefs and Commanders will notify and provide a copy to the Union, at least 15 days prior to implementation of any change in the Rules and Regulations of the Bureau, and any new General Order. This notice is to provide the Union with a chance to review and, if desired, to discuss the order or regulation in question with Police Administration...
>
> The Union shall be notified in writing by the City of all new hires, promotions or terminations which occur in the bargaining unit, as well as any changes which materially affect the job status of members of the bargaining unit within fifteen (15) calendar days subsequent to such event.
>
> The City may, as its sole discretion, subcontract any work presently performed by the bargaining unit. The City will engage in meet and discuss with the Union prior to taking any such action.

(Joint Exhibit 2)

6. In 2015 or 2016, the FOP and the City negotiated to agreement terms for Order Number 12-10, which resulted in a March 8, 2016 policy entitled "Critical Incidents involving Police." The policy provided, in relevant part, as follows:

> **DEFINITIONS**
>
> Critical Incidents – Any incident in which a [police] officer is involved, while acting in an official capacity, which causes critical bodily injury or death. Critical incidents would include, but are not limited to:
>
> Intentional and accidental shootings, including police tactical incidents involving SWAT, whether a hit or miss;

Intentional and accidental use of any other dangerous or deadly weapons, including less-lethal firearms;

Attempts by police officers to make arrests or to otherwise gain physical control for a law enforcement purpose;

Any fatal or critical bodily injury to a person in police custody or to a person who is a passenger of a police vehicle, such as ride-along, emergency transports, etc.;

Any fatal or critical bodily injury to a person who is involved in a collision with a police vehicle;

Any fatal or critical bodily injury to a person during a police vehicle pursuit, to include persons in the suspect vehicle, persons in vehicles that have collided with the suspect, or pedestrians;

Any fatal or critical bodily injury to a Pittsburgh Police K-9...

THE INVOLVED OFFICER(S)

...The involved officer(s) shall be directed to provide an on-scene Public Safety Statement, under Garrity. The *initial responding supervisor* shall *immediately* ask a series of questions (refer to supervisor's directive) to establish the level of danger that may still exist and to assist investigators with gathering relevant evidence.

Note: The evidence collected as a result of the Public Safety statement may be vital for establishing that the officer(s) was properly exercising lawful authority as defined in Pennsylvania statutes...

A criminal investigation will be conducted by the VCU [Violent Crime Unit].

Except for officer-involved shootings, the criminal investigation interview will commence promptly after the critical incident.

In most circumstances, the VCU personnel will not interview the involved officer(s) during the first 48 hours following an officer-involved critical incident causing critical bodily injury or death. Exceptions may occur where a compelling need exists for a timelier interview. Only the Chief, or his designee, may make this decision. The reasons for such decision shall be communicated to the officer(s) and their FOP representatives in the rare occasion this occurs.

Note: *The 48-hour delayed interview applies only to the officer(s) directly involved in the deployment of deadly force, unless otherwise directed by the Chief of Police.*

Representatives of the Allegheny County District Attorney's Office, the Fraternal Order of Police (FOP) and legal counsel, if requested by the officer, will be present.

> VCU personnel will not provide the "Garrity Rule" to the involved officer(s) during the criminal investigation.
>
> Miranda warnings shall be given to the involved officer(s) of a critical incident prior to conducting an interview related to the criminal investigation. *This is to protect the rights of the officer, and does not suggest that investigators believe criminal liability is likely.*
>
> Representatives from the Office of Professional Standards (OPS) or the Office of Municipal Investigations (OMI) will not be present at any interview conducted as part of the criminal investigation...
>
> Following the criminal investigation, an Administrative Review will be promptly conducted by OPS.
>
> If no criminal charges apply, the Major Crimes Commander will advise the OPS Commander accordingly and provide a case file.
>
> Representatives from OPS, the FOP, and the FOP attorney may be present during any interview conducted as part of the administrative investigation.
>
> Neither investigative personnel nor representatives from the DA's office will be present during any interview conducted as part of the administrative review.
>
> The "Garrity Rule" will be provided to the involved officer(s) by sworn personnel assigned to the OPS.
>
> The involved officer(s) statement provided under "Garrity" will not be shared with VCU personnel, the DA's office personnel, or any other agency involved in the criminal investigation...

(N.T. 15-16, 28-29, 35-36, 57, 133; Union Exhibit 4)(Emphasis in original)

7. On October 3, 2017, the City held a meeting with a number of Allegheny County officials, as well as the FOP President and counsel, during which the City presented the FOP with a draft Memorandum of Understanding (MOU) between the City and County regarding critical incidents. FOP President Robert Swartzwelder testified that the essence of the MOU between the City and County was that police officers involved in critical incidents would now be taken immediately to County headquarters for a compelled interview with County police and without Union representation, in contravention of their bargained-for agreement with the City. (N.T. 23-26)

8. The FOP did not agree to these proposed changes and instead voiced a number of objections to the same, which were memorialized in a subsequent email to the City's lawyer on November 1, 2017. The FOP did not receive any response from the City. (N.T. 23-28; Union Exhibit 6)

9. On January 11, 2018, two bargaining unit police officers were involved in a critical incident. When Swartzwelder arrived on the scene, he learned that the County had taken over the investigation from the City homicide investigators and that the City was transporting the two bargaining unit members to the County police headquarters in City managerial personnel

vehicles. This was the first time the FOP learned of the change from the March 2016 policy entitled "Order Number 12-10." (N.T. 28-32)

10. Swartzwelder immediately went to County headquarters where the two bargaining unit employes were placed in rooms. Swartzwelder was not permitted to enter the rooms to represent the employes during their criminal investigatory interviews with County personnel, like he was previously permitted to do under Order Number 12-10. Nor did the employes have legal representation with them. Swartzwelder was allowed to briefly talk to them prior to the interviews. The County recorded the interviews with audio and visual devices. (N.T. 32-34)

11. Following the interviews, Swartzwelder spoke to the City's Deputy Chief of Police, Thomas Stangrecki, about the policy change and requested documentation. On January 15, 2018, Stangrecki forwarded to the FOP a copy of an MOU between the City and County for investigations of critical incidents. (N.T. 34-35; Union Exhibit 7)

12. Swartzwelder testified that under the previous policy contained in Order Number 12-10, the officers involved in critical incidents were given a 48-hour waiting period before providing a statement. He also noted that officers were given Garrity warnings[2] before being compelled to give a public safety statement immediately after the incident.[3] And, he testified that officers were always permitted to have Union and/or legal representation during the interviews. The MOU between the City and County changed all of these aspects of the negotiated agreement between the FOP and the City. (N.T. 35-37; Union Exhibits 4, 7)[4]

13. Specifically, the MOU between the City and County provides, in relevant part, as follows:

> All City officers who were directly involved in the Critical Incident and/or the deployment of deadly force which caused the serious bodily injury or death, will be transported to the County's facilities for interview and evidence collection.
>
> The County shall conduct all interviews related to the Critical Incident, and shall conduct the initial interview of any officer who discharged his/her weapon or was otherwise directly involved in the Critical Incident. The union representative of the officers involved in the Critical Incident may observe the

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[2] "Garrity warnings" are warnings given to police officers, who are the subject of an internal investigation, that their answers will not be used in any criminal prosecution, while also warning the subject of the investigation that the refusal to answer questions may be grounds for termination. Pennsylvania State Troopers Ass'n v. PLRB, 71 A.3d 422, 426 fn. 5 (Pa. Cmwlth. 2013) citing Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616 (1967).

[3] The record shows that the public safety statement relates to very preliminary questions regarding the number of injuries, outstanding suspects and where they fled, and whether the suspects are armed. (Union Exhibit 4).

[4] The MOU also provided for County investigators to actually perform the critical incident investigations instead of the City's bargaining unit employes in the violent crime unit. (N.T. 37-39).

> interview from the observation area but may not be physically in the interview room for any interview of those officers...
>
> Nothing in this MOU shall be construed to supersede employer policies, applicable collective bargaining agreements, state, or federal law.

(Union Exhibit 4)

14. On February 23, 2018, Swartzwelder asked to reopen the CBA pursuant to Section 18(S), which provides for reopeners in various circumstances. The FOP sought to reopen the CBA with respect to various terms and conditions of employment. (Joint Exhibit 1, 2)

15. By email dated March 10, 2018, Swartzwelder requested various documents from the City related to an interest arbitration proceeding between the City and the IAFF Local No. 1. The requested documents included transcripts of the proceedings, exhibits offered or relied upon by the interest arbitration panel, and any documents concerning the approval of the award by the Act 47 coordinators. (Joint Exhibit 1)

16. On March 28, 2018, Swartzwelder served the City with the FOP's request to commence bargaining for a new contract term beginning January 1, 2019. (Joint Exhibit 1)

17. The City did not provide the information requested by the FOP, which resulted in the April 20, 2018 charge docketed at PF-C-18-52-W. (Joint Exhibit 1)

18. The City acknowledged a responsibility to provide the requested information to the FOP and that it violated the PLRA in this particular case by failing to do so. (Joint Exhibit 1)

19. The City stipulated that it will respond to the FOP's request for information in future situations. (Joint Exhibit 1)

DISCUSSION

In PF-C-18-26-W, the FOP argues that the City violated Section 6(1)(a) and (e) of the PLRA[5] and Act 111 by repudiating the negotiated agreement under Order 12-10 between the City and FOP, and unilaterally requiring police officers involved in critical incidents to immediately submit to questioning by County investigators without Union representation. The City contends that the charge should be dismissed because the delegation of a criminal investigation to another law enforcement agency is not a mandatory subject of bargaining.

It is well settled that the Board exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000). Where a breach of contract is alleged, interpretation of collective

[5] Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

bargaining agreements typically is for the arbitrator under the grievance procedure set forth in the parties' collective bargaining agreement. *Id.* at 649. However, the Board will review an agreement to determine whether the employer has clearly repudiated its provisions because such a repudiation may constitute both an unfair labor practice and a grievance. *Id.*

In this case, the FOP has sustained its burden of proving that the City clearly repudiated the bargained-for agreement under Order 12-10. Indeed, the March 8, 2016 policy entitled "Critical Incidents involving Police" expressly provides that "...the VCU personnel will not interview the involved officer(s) during the first 48 hours following an officer-involved critical incident causing critical bodily injury or death."[6] Likewise, the policy provides that "[r]epresentatives of the Allegheny County District Attorney's Office, the Fraternal Order of Police (FOP) and legal counsel, if requested by the officer, will be present." Nevertheless, despite these provisions, the record shows that the City entered into an MOU with the County, which altered these requirements, beginning with the January 11, 2018 critical incident involving two bargaining unit employes. To be sure, on that date, the City immediately transported the two bargaining unit officers in City managerial vehicles to County headquarters where the employes were subjected to criminal investigatory interviews with County investigators and not permitted to have FOP or legal representation present in the interrogation rooms with them. This was a clear repudiation of the bargained-for agreement contained in the March 8, 2016 policy, which explicitly allows a 48-hour waiting period prior to the interview, as well as the presence of FOP and legal representatives.[7]

The City, instead of arguing that it did not repudiate the bargained-for agreement in Order 12-10, contends that the charge should be dismissed because the delegation of a criminal investigation to another law enforcement agency is not a mandatory subject of bargaining. Specifically, the City asserts that the delegation and corresponding interviews involved with the criminal investigation by the County do not impact any terms or conditions of employment. Further, the City maintains that, to the extent these matters could be construed as impacting terms and conditions of employment, they are far outweighed by the City's interest in turning over these highly sensitive investigations to an outside law enforcement agency. The City's argument, however, is unavailing.

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[6] The policy does provide for exceptions where a compelling need exists for a timelier interview and that the Chief, or his designee, can make this decision. (Union Exhibit 4). However, the City has not raised this provision as a defense to the charge here.

[7] There was record evidence contained in a grand jury report, which was apparently released to the public by the District Attorney, and which the FOP entered into the record as a Union Exhibit, purporting to show that the March 2016 policy was unilaterally implemented by the City's prior Chief of Police, and not a negotiated agreement. Notwithstanding these statements in the grand jury report, both witnesses in this matter, including Swartzwelder and Stangrecki, each testified credibly and persuasively that the March 2016 policy was, in fact, a bargained-for agreement between the City and FOP. Furthermore, the City has not even argued or put on any evidence that the March 2016 policy was unilaterally implemented, and therefore, not the result of a bargained-for agreement between the parties. As a result, it must be concluded that the March 2016 policy resulting in Order 12-10 was a bargained-for agreement between the parties.

While the City certainly has a significant and compelling interest in ensuring transparency of government and furtherance of the public trust, especially in such highly traumatic and emotionally charged circumstances involving these critical incidents, the question of whether such an issue on these facts represents a mandatory subject of bargaining or a managerial prerogative is of no consequence. Indeed, it is well settled that where a public employer voluntarily negotiates a matter of managerial prerogative, and includes that agreement in the parties' collective bargaining agreement, it shall be bound for the duration of the contract even though the matter was only a permissive subject of bargaining, not subject to a bargaining duty at the time of the agreement. Scranton School Board v. Scranton Federation of Teachers, 365 A.2d 1339 (Pa. Cmwlth. 1976); FOP Delaware Lodge 27 v. Springfield Township, 42 PPER 20 (Final Order, 2011).[8] Therefore, even assuming the City is correct that the delegation of a criminal investigation to an outside law enforcement agency is a managerial prerogative, the City is still bound by the agreement it reached with the FOP contained in Order 12-10.

Nor is it a defense for the City to point to an ordinance enacted in 1996 purportedly mandating the City to refer the criminal investigation of an officer involved shooting to another law enforcement agency. As the FOP noted at the hearing, the City has no power to enact ordinances which are contradictory or inconsistent with a state statute, such as the PLRA or Act 111. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996). Indeed, a public employer may not use a local ordinance as a guise to avoid its Act 111 duty to bargain. *Id.* In fact, the City had a duty to rescind the 1996 ordinance, to the extent it allegedly mandates the investigation be performed by an outside agency, when it reached the bargained-for agreement contained in Order 12-10 with the FOP.

In its post-hearing brief, the City cites to several cases from other jurisdictions, including Illinois State Police v. Fraternal Order of Police Troopers Lodge 41, 751 N.E.2d 1261, (Appellate Court of Illinois, Fourth District, 2001), City of New York v. Uniformed Fire Officers Ass'n, Local 854, AFL-CIO, 263 A.D. 2d 3 (1999), and Prince George's County Police Civilian Employees Ass'n v. Prince George's County, 135 A.3d 347, 206 L.R.R.M. (BNA) 3125, (Court of Appeals of Maryland, 2016) for the propositions that employers cannot by contract give employes procedural rights and benefits regarding criminal investigations or bargain to limit the authority of another public agency empowered to investigate activities that bear upon the performance of official actions. Likewise, the City also cites Upper Gwynedd Township Police Ass'n v. Upper Gwynedd Township, 33 PPER ¶ 33133 (Final Order, 2002) as further support for its claim that the question of whether a police officer engaged in criminal conduct cannot be said to relate to the terms or conditions of employment.

[8] The City has not raised any argument regarding the fact that the bargained-for agreement contained in the March 2016 policy and Order 12-10 lacked an expiration date. In any case, the Board has held that the fact that an agreement does not specify a duration or expiration does not render the agreement nonbinding. Springfield Township, 42 PPER 20 (where there is no express expiration, the Board will permit evidence of changed circumstances to establish an intervening event that supersedes the agreement; provided the intervening event was not contemplated by the parties when reaching the agreement). The City has not offered any evidence of changed circumstances or an intervening event, which could supersede the bargained-for agreement in Order 12-10.

However, those cases are all inapposite and not persuasive here. First of all, the record in the instant matter does not show that the County asserted jurisdiction over the investigations of these critical incidents, like the outside law enforcement agency did in Upper Gwynedd Township, as to essentially divest the City from jurisdiction of these matters. To the contrary, the record here shows that the City willfully sought out and subcontracted these investigations to the County, as evidenced by the MOU between the City and County. And, at least one Hearing Examiner has held that the City, as the public employer which entered into the subcontract for the performance of this bargaining unit work, thereby retained control over the work to be done by the subcontractor. FOP Lodge 85 v. Commonwealth of Pennsylvania, 21 PPER ¶ 21115 (Proposed Decision and Order, 1990) citing Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth. 1989); St. Clair Area School District, 20 PPER ¶ 20176 (Final Order, 1989). Moreover, the MOU between the City and the County expressly provides that "[n]othing in this MOU shall be construed to supersede employer policies, applicable collective bargaining agreements, state, or federal law." As such, the City has explicitly contracted with the County to abide by the bargained-for agreement contained in Order 12-10 with regard to the investigation of any critical incidents.[9]

In any event, the Board's decision in Upper Gwynedd Township is even more readily distinguishable to this case, and therefore, not controlling here. In Upper Gwynedd Township, the Board found that Weingarten rights[10] did not attach to three union representatives who tried to assist an employe in a criminal investigation by an outside law enforcement agency when the employe himself never requested assistance. The Board there simply concluded that interrupting an interview of a fellow union member conducted by an outside agency as part of a criminal investigation is not protected activity under the PLRA or Act 111. Significantly, the Board noted that there was no evidence that the county in that case, which was the outside law enforcement agency, was working as an investigative arm or as an agent of the township employer when it interviewed the employe. Rather, the police chief for the township employer actually disclaimed any involvement. This is in stark contrast to the instant matter where the City specifically subcontracted with the County to perform these investigations.

What is more, the cases cited by the City from other jurisdictions appear to rely heavily on the existence of statutory provisions, which apparently conflicted with the contractual provisions of the parties. The City, however, has not identified any statutory provisions in this matter which even arguably conflict with the matters covered by Order 12-10. And, even if the City could single out some statutory provision to allegedly support its claim, the Pennsylvania Supreme Court has held that it will not

[9] Similarly, any claim by the City, which was raised at the hearing, but not in the post-hearing brief, that it was contractually privileged to subcontract the bargaining unit work of performing these investigations, must also fail. Although the CBA permits the City to subcontract bargaining unit work, there is no authority for the proposition that the City may also repudiate a separately bargained-for agreement between the parties mandating certain conditions for these investigations. Indeed, the FOP does not dispute the City's right to subcontract the work. Instead, the FOP simply insists that the City abide by the bargained-for agreement in Order 12-10, which the City expressly agreed to do in its MOU with the County.

[10] NLRB v. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975).

allow a public employer to enter into agreements and include terms which raise the expectations of those concerned, and then subsequently refuse to abide by those provisions on the basis of its lack of capacity to do so. Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 391 A.2d 1318 (Pa. 1978). Such a proposition would invite discord and distrust and create an atmosphere wherein a harmonious relationship would virtually be impossible to maintain. *Id.* at 1322. Even if a collective bargaining agreement violates a statutory provision, this does not excuse the public employer from its duty to bargain in good faith. Wilkes-Barre Township Police Benevolent Ass'n v. Wilkes-Barre Township, 878 A.2d 977 (Pa. Cmwlth. 2005). Good faith bargaining requires that questions as to the legality of proposed terms of a collective bargaining agreement should be resolved by the parties to the agreement at the bargaining table. *Id.* at 984 citing Pittsburgh Joint Collective Bargaining Committee, *supra.* As a result, the City's argument must be rejected, and the City must be found to have violated Section 6(1)(a) and (e) of the PLRA.[11]

Finally, in PF-C-18-52-W, the FOP alleged that the City violated Section 6(1)(a) and (e) of the PLRA by refusing to provide information requested by the FOP in connection with the FOP's request to reopen the current CBA and commence bargaining for a new contract. It is well settled that an employer has a duty to provide requested information to the union, which is relevant to the union's policing of the collective bargaining agreement, even where no grievance is pending. Bristol Township, 27 PPER ¶ 27046 (Proposed Decision and Order, 1996). The standard for relevance is a liberal discovery type standard that allows the union to obtain a broad range of potentially useful information. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987).

Here, the record shows that the FOP requested various documents from the City related to an interest arbitration proceeding between the City and the bargaining representative for its fire employes, which included transcripts of the proceedings, exhibits offered or relied upon by the interest arbitration panel, and any documents concerning the approval of the award by the Act 47 coordinators. The FOP sought these documents in connection with its February 2018 request to reopen the CBA, as well as its March 2018 request to commence bargaining for a new contract. However, the City did not provide the information requested by the FOP. The City has not argued that the information was irrelevant or that the FOP was somehow not entitled to any of the documents. Instead, the City acknowledged that it has a responsibility to provide the requested information to the FOP and that it will respond to the FOP's request for information in future situations. Accordingly, the City must be found to have violated Section 6(1)(a) and (e) of the PLRA.

CONCLUSIONS

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

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

[11] Based on this disposition, there is no need to reach the FOP's impact bargaining portion of the charge.

2. The FOP 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 City has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA in PF-C-18-26-W and PF-C-18-52-W.

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 City 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 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) Immediately reinstate Order 12-10 as previously set forth in the March 2016 policy entitled "Critical Incidents Involving Police" and rescind the MOU between the City and the County, to the extent it is inconsistent therewith, restore the status quo ante, and make whole any bargaining unit employes who have been adversely affected due to the City's unfair labor practices;

(b) Immediately provide the information requested to the FOP;

(c) 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;

(d) 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

(e) 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 8th day of May, 2020.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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v.	:	PF-C-18-52-W
	:	
CITY OF PITTSBURGH	:	

AFFIDAVIT OF COMPLIANCE

The City of Pittsburgh 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 by immediately reinstating Order 12-10 as previously set forth in the March 2016 policy entitled "Critical Incidents Involving Police" and rescinding the MOU between the City and the County, to the extent it is inconsistent therewith, restoring the status quo ante, and making whole any bargaining unit employes who have been adversely affected due to the City's unfair labor practices; immediately providing the information requested to the FOP; 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.

_____

Signature/Date

_____

Title

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

_____

Signature of Notary Public