

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EASTON PROFESSIONAL FIRE FIGHTERS, :
IAFF LOCAL NO. 713 :
 :
v. : CASE NO. PF-C-21-80-E
 :
CITY OF EASTON :

PROPOSED DECISION AND ORDER

On September 14, 2021, the Easton Professional Fire Fighters, IAFF Local No. 713 (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Easton (City) independently violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (Act or PLRA), as read with Act 111. The Union specifically alleged that the Chief of the City's Fire Department (Department) unlawfully revoked his prior approval for 3 Union officers to take paid leave to attend a State Fire Fighters Convention, after the Union spent money for the Convention fees and accommodations. The Union further alleged that, post-revocation, the Chief unlawfully made permitting only 2 officers to take Union leave, pursuant to a Memorandum of Understanding (MOU), contingent on the Union's agreeing to job descriptions for extra-duty assignments, which is an unrelated issue being separately negotiated between by the parties.

On November 2, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of Friday, March 4, 2022, in Harrisburg. The parties agreed to conduct the hearing via Microsoft Teams video. During the hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On May 13, 2022, the Union filed its post-hearing brief. The City filed its post-hearing brief on June 24, 2022.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer and political subdivision within the meaning of Act 111, as read with the PLRA. (PF-C-20-36-E; Joint Exhibit 1; Union Exhibits A & B)
2. The Union is a labor organization within the meaning of Act 111, as read with the PLRA. (N.T. 13-14; Union Exhibits A, B, 2; Joint Exhibit 1)
3. In November 2018, the Union and the City entered into an MOU regarding paid time off for officers to attend conventions, meetings, seminars and workshops. (N.T. 16-17; Union Exhibit A)

The MOU provides, in relevant part, as follows:

Union Time: The City shall permit the Union up to a total of 10 days [a]nnually of paid leave for up to two firefighters to attend IAFF and PFFFA Conventions, conferences, workshops, meetings,

seminars and IAFF LODD services. With the exception of the IAFF Convention 3 Firefighters will be permitted. Time can be taken in half day increments and shall be permitted to be used as travel time.

1. It is understood that paid leave only applies where the attending firefighter was actually [s]chedule[d] to work as part of their normal shift rotation. Any time spent in conjunction with attending a conference when a firefighter is not scheduled to work as part of their normal shift shall not be treated as paid leave or compensable time for any purpose.

2. It is understood that no time off with or without pay shall be permitted for attendance at any regional union meetings.

. . . .

5. The Union shall give no less than 90 days notice to the Fire Chief and or the City Administrator to attend conferences, workshops, meetings and seminars.

6. This Settlement Agreement constitutes the entire agreement between the City and the Union. No oral statement of any person whatsoever shall in any way modify or otherwise affect the terms and provisions of this Settlement Agreement.

(Union Exhibit A)

4. In 2003, 2006, 2010 and 2013, the City at the time approved 3-4 officers to attend the State Convention. Prior to the 2018 MOU, there was a different MOU in place regarding paid Union leave. The same language limiting Union paid leave to 2 officers for state conventions was in the prior MOU in effect until 2018. (N.T. 17-18, 29-31)

5. At these conventions, firefighters review safety matters and best practices. Vendors demonstrate various types of tools and equipment. Presenters discuss and review legislation and talk to legislators about matters affecting firefighting. The benefits of attending inure to both the City and the Union members. (N.T. 18-19)

6. The Chief of the City's Fire Department is Henry Hennings. Chief Hennings became Chief, in January 2021, after serving as Deputy Chief and Acting Chief. Everyone in the Department is in the bargaining unit except the Chief and the Deputy Chief. The Deputy Chief position was vacant at all times relevant hereto. (N.T. 20-21, 61-62; Union Exhibit B, City Exhibit 2)

7. Jorge Rivera is the Union President; Chris Schnable is the Union Vice President; Ian Insley was the Union Secretary; and Alex Patetta is the Treasurer. (N.T. 21-23; Union Exhibit 2)

8. In April 2021, President Rivera received notification of the Pennsylvania Professional Fire Fighters Association State Convention, dated April 5, 2021. (N.T. 28; City Exhibit 1)

9. On June 11, 2021, then Union Secretary Ian Insley sent an email to Chief Hennings requesting approval for paid time off for himself, Chris Schnable and Alex Patetta to attend the State Convention from August 10, 2021

through August 13, 2021. President Rivera was already scheduled off for those days, and he did not need leave approval. (N.T. 19-23, 28-29, 31, 35; Union Exhibit 2)

10. Chief Hennings verbally told Secretary Insley that the paid Union leave for the 3 officers to attend the State Convention was approved. The Union immediately began paying for the convention fees and accommodations for the 3 officers approved for leave and President Rivera. The Pennsylvania Professional Fire fighters Association deposited the Union's check on June 21, 2021. (N.T. 23-27, 35, 45, 53; Union Exhibit 3; City Exhibit 3)

11. In July 2021, Officer Insley resigned as Union Secretary. Shortly thereafter, President Rivera appointed Firefighter Terrance Hand to be the new Union Secretary. On July 26, 2021, Secretary Hand emailed Chief Hennings informing the Chief that he was the newly appointed Union Secretary and requesting Union time off for the State Convention, instead of Officer Insley. (N.T. 27; Union Exhibit 4)

12. On July 28, 2021, Chief Hennings emailed Secretary Hand granting his Union time off to attend the State Convention. (Union Exhibit 5)

13. The 2018 MOU requires 90 days' notice to the Chief or the City Administrator, and it allows for only 2 officers to have paid leave for a state convention. (N.T. 29)

14. On August 3, 2021, Chief Hennings emailed President Rivera and Secretary Hand revoking his approval for any of the officers to attend the State Convention. The Chief's email states the following:

After reviewing the MOU (dated 11/30/18) for union excused time to attend the Pennsylvania State Convention [o]n August 11-13-21, your request is denied for the following reasons:

Since this is a state convention the Union can only request two (2) Fire Fighters be excused. Local 713 has requested 3 to be excused.

["]5. The Union shall give no less than 90 days notice to the Fire Chief and or the City Administrator to attend conferences, workshops, meetings and seminars.["]

Neither the City [A]dministrator or I have received proper notification or request of at least 90 days to attend.

(N.T. 43-44; Union Exhibit 6) (quoting the MOU)

15. Luis Campos is the City Administrator. (N.T. 33-34, 60-61)

16. The City permits individual firefighters to trade shifts with another firefighter if they want to be off when they are scheduled to be on duty, but it cannot be forced upon another firefighter to trade shifts. (N.T. 35, 66-67)

17. Also on August 3, 2021, President Rivera emailed Administrator Campos in which he stated the following:

I received an email this morning at 7:17, from the Chief stating that after review of the Union Time MOU that you and I negotiated

in 2018, that he is now denying FF [Firefighter] Hand, the [U]nion [S]ecretary union time for the State [C]onvention next week. He had already in writing approved this request in writing [sic], the CBA does not provide for rescinded approval of paid leave/union time. While I understand the reasons that he cited, this is not an acceptable practice and am perfectly fine doing such moving forward if he wishes but not for time he already approved. We are asking for the decision to be reconsidered, if not then we will be forced to file a grievance asking that FF Hand even though forced to work his shift, but in addition to be paid at the overtime rate for 24[]hrs and any related costs that the union has paid out for the convention since he was already approved to be off for paid union time. Furthermore apparently if this is how the city operates we will have to look at our next contract negotiations to start accruing union time, seeing as we saved the City a substantial amount of money last year by not using any, and now we are being denied it. Luis please lmk [i.e., let me know] your decision if possible by the end [of the] day so we can take the appropriate action.

(City Exhibit 3)

18. On August 4, 2021, Secretary Hand emailed Chief Hennings, in relevant part, as follows:

President Rivera asked me to reach out to you to figure out how to resolve the issue of our union time to attend the state convention.

On June 11, 2021, Secretary Insley made a request for 4 members to attend which you approved. [A]t that point, the Local made arrangements and paid for 4 members to attend. As I am now the [U]nion [S]ecretary you approved union time for me to attend in the place of Firefighter Insley.

The [U]nion had an agreement with you before we spent any money to attend the convention. It would have been impossible for me to request union time any earlier than I did because I have only been [S]ecretary for a little over a week.

Because the convention is next week it is important that we resolve this now. With your permission, we have made personal and professional arrangements for the convention. What is it that we need to do to ensure that we can continue with our plans to conduct next week's union business?

(Union Exhibit B)

19. Chief Hennings responded to Secretary Hand as follows:

I spoke with Jorge [President Rivera] yesterday. My simple resolution to this request was to have the [U]nion approve the extra duty position(s) job descriptions that I have sent previously, Jorge outright refused to accept those or even discuss the issue further. The Union had wrongfully requested more than 2 Union members be off to attend the PFFFA state convention. The Union had also failed to notify the City Administrator or myself ninety days in advance of their participation as per the MOU (attached).

I will again offer the following: The extra duty job descriptions to be accepted as presented to the [U]nion. If that is acceptable Two (2) members of the [U]nion would be excused for the PFFFA convention next week.

The members can still attend the convention but not be excused per the MOU, they will have to use trade time in order to do so.

(Union Exhibit B)

20. Secretary Hand had not seen a request for Union time off denied or revoked for improper notice before. Secretary Hand met with the Chief who admitted that he did not know about the rules of the MOU when he initially approved the leave. City Administrator Campos believes that Chief Hennings was unaware of the 2018 MOU when he made the decision to approve Union paid time off for 3 firefighters to attend the State Convention. (N.T. 44-45, 74-75)

21. The Union took the position that they should not have to negotiate the extra-duty job description issue to obtain the Chief's approval for Union time after he already gave the approval. The Union was steadfast on 4 firefighters attending the State Convention because the Union had already paid for the 4 firefighters, i.e., 3 delegates and an alternate. City Administrator Campos confirmed that the extra-duty job description issue was unrelated to the issue of Union paid time off for the State Convention. (N.T. 48-49, 75)

22. At some point, the Union approached City Administrator Campos after the Chief revoked permission for 3 firefighters to take paid Union leave for the State Convention, after which the Chief and Administrator Campos decided to permit 2 firefighters to take paid Union leave for the Convention. They also decided that, in the future, proper notice would have to be given and the number of firefighters permitted paid Union leave would be limited to 2 firefighters. (N.T. 64-65)

23. The Union ultimately received paid time off for 2 firefighters, Secretary Hand and Treasurer Patetta, to attend the State Convention. On August 6, 2021, Secretary Hand confirmed, in an email to Administrator Campos and Chief Hennings, stating, in relevant part, as follows: "As per my phone conversation a half hour ago with Chief Hennings we will be sending 2 members to next week's convention that required excused time off." Of the 3 originally approved for paid Union leave for the Convention, Vice President Schnable volunteered to be the member not to attend. (N.T. 32, 51-52, 66-68; Union Exhibit 7)

24. Ten minutes later, Chief Hennings emailed his response to Secretary Hand as follows: "I will make those changes in the officer's log. To be clear on this matter, only a one-time concession, and future requests must be timely provided. The lack of a timely request pursuant to the MOU is not to be deemed a modification of that MOU." (City Exhibit 2)

DISCUSSION

The Union argues that the City violated its bargaining obligation under Section 6(1)(a) and (e) of the PLRA by engaging in bad faith bargaining. The Union contends that the City bargained in bad faith when, around June 11, 2021, Chief Hennings agreed to allow three fire fighters to attend the State Convention using paid Union Time, rescinded that agreement almost two months later and one week before the State Convention, and then conditioned reinstating permission for only two officers to attend the State Convention on an entirely unrelated matter involving the job descriptions for extra-duty assignments. (Union Brief at 5-7).

The Union argues that Secretary Hand testified that he had never seen a request for Union Time denied due to lack of notice. (Union Brief at 6). However, there is no evidence indicating whether Union Time had been granted despite lack of notice since the new 2018 MOU was executed or since Chief Hennings became the Acting Fire Chief. With respect to the approval of more than two officers, the record does show that, in 2003, 2006, 2010 and 2013, the City approved 3-4 officers to attend the State Convention. However, those were approvals under a different MOU and a different Fire Chief. Although the terms of the former MOU contained the same language limiting paid Union Time to 2 officers for state conventions, there is insufficient evidence to conclude that it was a past practice to allow more than 2 Union officers to attend, and there is no evidence that any such practice survived the 2018 MOU, which reaffirmed the City's intent to limit the number to 2 officers and to ensure that the Union gave 90 days' notice.

In Washington County, 6 PPER 6105 (Final Order, 1975), the Board held that making tentative agreements contingent upon the outcome of unrelated litigation constituted a bargaining violation. In PASSHE v. APSCUF, 52 PPER 25 (Proposed Decision and Order, 2020), the examiner concluded that making the promotion to the position of head coach contingent on the candidate's acceptance of lower compensation was a bargaining violation where the right to certain compensation was agreed upon in, and prescribed by, the collective bargaining agreement. In Luzerne County Valley Crest Home, 33 PPER 33110 (Proposed Decision and Order, 2002), the examiner concluded that an employer's insertion of new issues into bargaining after a tentative agreement had been reached constituted bad faith bargaining.

The Chief's initial approval for 3 Union officers to attend the State Convention with less than 90 days' notice was not a negotiated agreement between the City and the Union. The Chief simply gave permission, based on the scheduled manpower complement, to allow the 3 Union officers to attend the Convention, without any knowledge of the MOU. When the Chief learned of the MOU, he believed that he was without authority to give 3 Union officers permission to attend the State Convention with less than 90 days' notice, and he believed that he had to revoke his permission to comply with the MOU that was collectively bargained with the Union by the City Administrator. At this point, the Chief had not violated any duty to bargain, nor did he bargain in bad faith. Indeed, the Chief was attempting to comply in good faith with the MOU, of which he was unaware at the time he initially granted permission for the 3 Union officers to attend the State Convention with less than 90 days' notice.

The question then becomes whether the Chief bargained in bad faith by using an unrelated issue, that the parties were separately bargaining, as leverage in giving back approval for 2 officers, instead of 3, and for waiving the 90-day notice requirement to use paid Union Time to attend the State Convention. I answer this question in the affirmative.

After revoking permission for anyone to attend the State Convention, the Chief entered into a negotiation with the Union to permit 2 officers to attend the State Convention using "Trade Time" contingent upon the Union's agreement to job descriptions for extra-duty assignments, which was an unrelated issue. In this manner, the Chief, and therefore the City, bargained in bad faith. The City Administrator, however, realized that the Chief was in error when he brought the job description matter into the discussion over the leave for the State Convention and negotiated a settlement with the Union to permit only the 2 Union officers allowed under the MOU, even though the 90 days' notice requirement had not been satisfied. City Administrator Campos' negotiated settlement with the Union mooted the Chief's bad-faith bargaining. United Transportation Union Local 1594 v. SEPTA, 37 PPER 119 (Final Order, 2006) (holding that bad faith bargaining charges are generally mooted by entering into a new agreement based on the rationale that continued litigation over alleged misconduct during negotiations, which have no present effects, unwisely focuses the parties' attention on a divisive past rather than a cooperative future). Accordingly, the bargaining charge is properly dismissed.

The Union also argues that the City's conduct constitutes an independent violation of Section 6(1)(a) of the PLRA as read with Act 111. The Board will find that an independent violation of Section 6(1)(a) has occurred where, in light of the totality of the circumstances, the employer's action has a tendency to coerce a reasonable employe in the exercise of protected rights. E.B. Jermyn Lodge No. 2 of the FOP v. City of Scranton, 38 PPER 104 (Final Order, 2007).

Under the totality of the circumstances in this case, a Union officer would not reasonably be intimidated or coerced in exercising routine collective bargaining rights. The Union approached the Chief for what the Union knew was more than it was entitled to receive under the MOU. The new Chief was unaware of the MOU and determined that it would be okay if 3 Union officers received paid Union Time for the State Convention. Only when the Chief became aware of the MOU did he revoke his permission for the leave because he believed he was without authority to give approval for 3 Union officers to attend the Convention, especially without 90 days' notice.

When the Union complained, first to the Chief, the Chief inappropriately attempted to bargain in bad faith. However, the Union brought the matter to the City Administrator who negotiated a settlement with the Union that was more in line with the MOU. The City has an obligation to follow the MOU; otherwise the MOU becomes a superfluous document and decisions about paid convention attendance become arbitrary, capricious, and unpredictable. Accordingly, any coercive effect that the Chief's brief bad-faith bargaining had on the Union leadership was outweighed by the City's interest in following the collectively bargained MOU, by the City Administrator's settlement of the Union's complaint, and by the Union's ability to send 2 Union officers on paid Union Time to attend the State Convention. A reasonable Union officer or bargaining unit member would not feel intimidated in exercising rights under the Act knowing the approachability of the City Administrator after he pursued a conciliatory

effort to resolve this dispute through good faith bargaining. Mr. Campos' behavior projected the message that the Union was welcome to come to him with its issues and he will negotiate in good faith towards a resolution; this hardly seems intimidating or coercive to Union officers or employees.

CONCLUSIONS

The hearing 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 a political subdivision within the meaning of the PLRA as read *in pari materia* with Act 111.
2. The Union is a labor organization within the meaning of the PLRA as read *in pari materia* with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City has not committed unfair labor practices within the meaning of Section 6(1) (a) or (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 and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed, the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be and become final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of June, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner