COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IAFF LOCAL 319	:	
	:	
v.	:	Case No. PF-C-21-79-E
	:	
CITY OF LANCASTER	:	

PROPOSED DECISION AND ORDER

On September 21, 2021, the International Association of Fire Fighters Local 319 (Local 319 or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Lancaster (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 refusing to comply with an information request that was necessary and relevant to the enforcement of the collective bargaining agreement.

On November 10, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on December 16, 2021, if necessary. On November 22, 2021, the City filed an Answer to the Complaint, denying all material allegations contained in the charge. On December 7, 2021, the hearing was continued to March 21, 2022 at the Union's request and without objection from the City.

On March 17, 2022, the parties agreed to enter joint stipulations of fact in lieu of appearing for an evidentiary hearing. The Board also received the jointly executed stipulations of fact on March 17, 2022. The parties thereafter each filed separate post-hearing briefs in support of their respective positions on April 20, 2022.

The Hearing Examiner, on the basis of all matters and documents of record, makes the following:

FINDINGS OF FACT

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

2. Local 319 is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. Local 319 is the exclusive bargaining representative for a unit of fire employes working at the City. (Joint Exhibit 1)[1]

4. The City's Fire Bureau has 74 uniformed personnel. (Joint Exhibit 1)

5. The City Fire Bureau chain of command, in ascending order, is Fire Fighter, Lieutenant, Captain, Battalion Chief, Deputy Chief, and Chief. The positions of Chief and Deputy Chief are excluded from the bargaining

[1] The joint stipulation of facts has been marked as Joint Exhibit 1. The parties also attached email threads from September and December 2021, which have been marked as Joint Exhibits 2 and 3, respectively.

unit. The City currently has no Deputy Chief, so the Battalion Chiefs report directly to the Chief. (Joint Exhibit 1)

6. Until January 14, 2022, Scott Little held the position of Chief. On that day, Battalion Chief Todd Hutchinson was appointed Interim Fire Chief. (Joint Exhibit 1)

7. Geoffrey Stone is the President of Local 319 and holds the rank of Fire Fighter within the City's Fire Bureau. (Joint Exhibit 1)

8. By email dated September 1, 2021, Stone indicated the following, in relevant part, to City Administrator Patrick Hopkins:

> Pursuant to my status as the exclusive collective bargaining representative[,] I'm asking for all correspondence (via text, email, letter or otherwise) between the [C]hief and individual bargaining unit member [sic] from January 1, 2021 – [t]o [p]resent...

(Joint Exhibit 1, 2)

9. By email dated September 14, 2021, Stone indicated the following, in relevant part, to Hopkins:

> I'm reaching out again as [I] sent the original message below on the 1st of September. I will wait till the 24th to hear a response back[,] other wise [sic] [I] will advise our lawyer to file unfair labor practice [sic] in [H]arrisburg...

(Joint Exhibit 1, 2)

10. By email dated September 14, 2021, Hopkins responded to Stone, in relevant part, as follows:

> I was on vacation when you emailed and just got back in the office yesterday. I have reviewed your request and believe it is overly broad. You are not entitled to "all correspondence (via text, email, letter or otherwise) between the [C]hief and individual bargaining unit member [sic] from January 1, 2021 – [t]o [p]resent." If you care to clarify specifically what documents you are asking about, please do so and then we can respond accordingly...

(Joint Exhibit 1, 2)

11. By email dated September 16, 2021, Stone responded to Hopkins, in relevant part, as follows:

> I don[']t want to waste any more time. [S]o are you denying my request for the [sic] what [I] asked? If so [I] will be moving forward with the [unfair labor practice]. Just want to know a [sic] your official answer...

(Joint Exhibit 1, 2)

12. By email dated September 16, 2021, Hopkins responded to Stone, in relevant part, as follows: "Correct. The answer I provided previously is the City's response." (Joint Exhibit 1, 2)

13. By email dated September 16, 2021, Stone again responded to Hopkins, in relevant part, as follows: "Copy. Also [I'd] like to get this contract signed and taken care of this year." (Joint Exhibit 1, 2)

14. On September 21, 2021, Local 319 filed the instant charge of unfair labor practices with the Board. The City subsequently filed an Answer thereto. (Joint Exhibit 1)

15. By email dated December 1, 2021, Stone indicated the following, in relevant part, to Hopkins:

> Since my original request was to be [sic] too overly broad [I've] been advised to narrow it down some by our lawyer. So I am asking again for all correspondence between the fire chief and battalion chiefs from [January] 1 2021 till present...

(Joint Exhibit 1, 2)

16. By email dated December 1, 2021, Hopkins responded to Stone, in relevant part, as follows:

> Your request remains overly broad. You are not entitled to see or be copied on every communication between the fire chief and the battalion chiefs. If you are able to clarify specifically what documents you are seeking and how they are relevant to fulfilling the union's bargaining duties, please do so and we can respond accordingly.

(Joint Exhibit 1, 3)

17. By email dated December 1, 2021, Stone responded to Hopkins, in relevant part, as follows:

> The request is not overly-broad [sic]. In fact, in response to your earlier claim of over-breadth, I narrowed the request to only those communications between the Chief and Battalion Chiefs within the time limit previously provided.
>
> The information is necessary and relevant to Local 319's enforcement of the collective bargaining agreement, and monitoring for potential breaches of same.
>
> Given the fact the union has limited its request to a specific time-period (since January 1, 2021) and has now further limited its request to only those communications between the Chief and [Battalion Chiefs], this should be an easy request to fill. As there is nothing privileged or confidential in these communications, there should be no further problem in providing the requested information...

(Joint Exhibit 1, 3)

18. By email dated December 2, 2021, Hopkins responded to Stone, in relevant part, as follows:

> As I had explained previously, you are only entitled to documents to the extent they are relevant to fulfilling the union's bargaining duties. You have not narrowed your request to any particular open grievance, subject of bargaining, or other matter related to your union responsibilities, and you are not entitled to an unfounded fishing expedition. Please be guided accordingly...

(Joint Exhibit 1, 3)

19. By email dated December 2, 2021, Stone responded to Hopkins, in relevant part, as follows:

> Copy see you on the 16th[.] [A]lso while [I] have your attention[,] are we going to do something about this contract and books because this will also turn into an unfair labor practice after [January] 1...

(Joint Exhibit 1, 3)

DISCUSSION

Local 319 has charged the City with violating Section 6(1)(a) and (e) of the PLRA[2] and Act 111 by refusing to comply with an information request that was necessary and relevant to the enforcement of the collective bargaining agreement. Specifically, Local 319 maintains that the information sought is presumptively relevant because it will show whether there has been any direct dealing between the Chief and the bargaining unit members on mandatory subjects of bargaining or grievance settlements, both of which would impact the negotiation process. The City, for its part, contends that the charge should be dismissed because the Union's information requests are overly broad and unrelated to fulfilling its bargaining duties. The City asserts that the requests appear to be a fishing expedition designed to circumvent Stone's rank and make him privy to all communications between the Chief and Stone's superior officers. The City further posits that the Union already has access to the requested information through its bargaining unit members.

It is well settled that an employer is generally obligated to provide relevant information requested by the union, which the union needs to intelligently carry out its grievance handling and collective bargaining functions. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Corrections, 17 PPER ¶ 17072 (Proposed Decision and Order, 1986), 18 PPER ¶ 18057 (Final Order, 1987). 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). There is no requirement that a grievance

[2] 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.

actually be pending at the time the information is requested. North Hills Education Ass'n v. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998). Information that pertains to employes in the bargaining unit is presumptively relevant. *Id.* When a union requests information relating to the wages, hours, and working conditions of the employes it represents, the information is presumptively relevant and must be provided unless the employer shows that the information is not relevant or cannot reasonably be provided. Robinson Township Police Ass'n v. Robinson Township, 31 PPER ¶ 31025 (Proposed Decision and Order, 1999). However, when a union requests information relating to the employer's financial condition or the wages, hours, and working conditions of non-bargaining unit employes, the information does not have to be provided unless the union shows why the information is relevant. York City Employees' Union v. City of York, 37 PPER 174 (Final Order, 2006). If the record contains substantial and legally credible evidence that the union requested relevant information and the employer improperly denied the request, the employer must be found in violation of its bargaining obligation. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Corrections, *supra*.

In this case, the Union has sustained its burden of proving that the City violated the PLRA and Act 111 by refusing to comply with the Union's September 2021 information request. The Union's information request from September 2021 sought all correspondence between the Chief and individual bargaining unit members from January 1, 2021 to the present. Although the City contends that the Union's requests were overbroad and unrelated to fulfilling its bargaining duties, it cannot be seriously disputed that the information sought pertains to the employes in the bargaining unit and their working conditions. Indeed, the Union is specifically seeking communications between the individual unit members and their manager or boss. As such, the information must be deemed presumptively relevant under the Board's caselaw, and the Union was under no duty to specify to the City why it needed the information. Nor has the City demonstrated on the record how the information is not relevant or that it cannot reasonably be provided. As the Union argues in its post-hearing brief, the information will show whether there has been any direct dealing between the Chief and the bargaining unit members on mandatory subjects of bargaining or grievance settlements, both of which would impact the negotiation process. To that end, when a union requests correspondence between managerial employes and individual bargaining unit members as part of an information request, it should be readily apparent to the employer that the union is investigating potential unfair labor practices, which may have occurred as a result of or in connection with those communications, or a potential grievance, as such alleged direct dealing would almost certainly violate the recognition clause of a collective bargaining agreement. Consequently, the City had a good faith bargaining obligation to furnish the information to the Union and committed an unfair labor practice when it refused to do so.

In its post-hearing brief, the City maintains that providing all of the Chief's communications would interfere with the City's chain of command. In particular, the City claims that, since Stone holds the rank of Fire Fighter, which is the lowest rank in the chain of command, he is not entitled to have input or knowledge into discussions among more senior personnel. The City asserts that the Union's information request essentially amounts to a demand that the Union or Stone be copied on every communication the Chief sends. In essence, this is a confidentiality argument that the Chief's communications contain private information, which the Union is not entitled to see. However, the City never raised this issue with the Union when the request was

made, nor did the City ever make a reasonable attempt to accommodate the Union's request for the information.

The Board has recognized that, just as a union does not have an unfettered right to any information that it deems relevant to its bargaining obligation, an employer's confidentiality interests do not give it the absolute right to deny the union the requested information. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Revenue, Office of Inspector General, 22 PPER ¶ 22069 (Final Order, 1991). The employer must make a good faith effort to accommodate its confidentiality interests with the union's need for information. *Id.* If the employer has a legitimate and substantial confidentiality interest and proposes a means of accommodating its interests with those of the union, and the union fails to make a counterproposal, the union may risk dismissal of an unfair practice charge even if the employer's proposed accommodation is not the best possible accommodation. *Id.* This is a matter the parties should negotiate over; if they bargain in good faith but are unable to reach agreement on an accommodation of the respective interests and an unfair practice charge is filed, it may then be necessary for the Board to balance the respective interests to determine if the employer's conduct is an unfair practice. *Id.* However, where the record does not show an offer by the employer to the union to accommodate its need for the information, the Board need not balance the respective interests of the parties or even decide the issue of whether the employer had a legitimate and substantial confidentiality interest in not turning over the requested information. *Id;* AFSCME District Council 85 v. Erie County, 37 PPER 171 (Proposed Decision and Order, 2006)(even if the union had sought confidential information, the county would have been obligated to make a reasonable attempt to accommodate the union, which it clearly failed to do). The Board will not necessarily take on the role of crafting an appropriate accommodation of the respective interests, as this is ideally a matter of good faith negotiation between the parties. Commonwealth of Pennsylvania, Dept. of Revenue, *supra.*

In the instant matter, the record shows that the City did not make a good faith effort to accommodate its alleged confidentiality interests with the Union's need for the information. Instead, the City simply refused to provide the information, even after the Union attempted to narrow its information request in December 2021. In light of the City's refusal to make an offer to the Union to accommodate its need for information, it is not necessary for the Board to even reach the question of whether the City had a legitimate and substantial confidentiality interest in not turning over the requested information, much less balance the respective alleged interests of the parties. Therefore, the City's confidentiality argument must be rejected.

The City further posits in its post-hearing brief that it was not required to provide the requested information to the Union because the Union allegedly already has access to all of the requested information since Stone can obtain the communications from the bargaining unit members themselves. However, the Board has already rejected this argument in PSSU Local 668 SEIU AFL-CIO v. Chester County & Chester County Court of Common Pleas, 33 PPER ¶ 33159 (Proposed Decision and Order, 2002), wherein the Hearing Examiner held that an employer violates its statutory obligation to bargain in good faith by refusing to provide the exclusive representative of its employes with readily available requested information that it needs to properly represent the bargaining unit, even though the information is available elsewhere. The City does not argue that the requested information is not readily available.

Indeed, the City has a good faith bargaining obligation to provide requested relevant information to Local 319. Thus, it is of no consequence whether the information is available elsewhere. Accordingly, this argument by the City must also fail.

Finally, the City submits in its post-hearing brief that requiring the City to search for nearly a year of the Chief's communications to determine what is responsive would present an unnecessary and undue burden on the City, as there could potentially be thousands of such communications. Once again, however, the City did not raise this alleged issue with the Union when the Union made the information request. Nor did the City make an offer to accommodate the Union's need for the information. Similar to the City's obligation to accommodate its confidentiality interests with the Union's need for the information, espoused in Commonwealth of Pennsylvania, Dept. of Revenue, *supra,* at least one Hearing Examiner has opined that if producing relevant requested information would be unduly burdensome, the employer may not categorically refuse to provide the information, but rather the parties must bargain over the same. PSCOA v. Commonwealth of Pennsylvania, Dept. of Corrections (SCI Dallas), 37 PPER 24 (Proposed Decision and Order, 2006)(citing Indiana Area Education Ass'n v. Indiana Area School District, 35 PPER 103 (Proposed Decision and Order, 2004). Here, the record shows that, instead of attempting to bargain the issue with the Union, the City simply refused to provide the requested information in direct contravention of its good faith bargaining obligation. As a result, the City has clearly committed an unfair labor practice and will be directed to immediately provide the requested information.

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 political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. Local 319 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 and Act 111.

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 provide the requested information to the Union;

(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 24th day of June, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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v.	:	Case No. PF-C-21-79-E
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AFFIDAVIT OF COMPLIANCE

The City of Lancaster 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 providing the information requested to the Union; 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