COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LOWER SAUCON TOWNSHIP POLICE OFFICERS ASSOCIATION	:	
	:	Case No. PF-C-21-76-E
v.	:	
LOWER SAUCON TOWNSHIP	:	

PROPOSED DECISION AND ORDER

On August 26, 2021, the Lower Saucon Township Police Officers Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Lower Saucon Township (Township or Employer), alleging that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally modifying the mortality table used to calculate the Township's minimum municipal obligation to its pension plan, thereby reducing the Township's contributions to the plan.

On October 13, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on January 27, 2022, if necessary. The hearing ensued, as scheduled, on January 27, 2022, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.[1] The Township filed a post-hearing brief on March 21, 2022. The Association filed a post-hearing brief on March 22, 2022.

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

FINDINGS OF FACT

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

2. The Association is a labor organization under Act 111, as read *in pari materia* with the PLRA. (N.T. 7)

3. The Association is the exclusive bargaining representative for a unit of police employes of the Township. (Association Exhibit 1, 2)

4. At the time of the charge, the Association and the Township were parties to a collective bargaining agreement (CBA) effective January 1, 2018 to December 31, 2021. (Association Exhibit 1)

5. The Township has enacted an Ordinance, which covers the "Uniformed Employee Pension" in Article II of Chapter 38. Section 13(B)(4) of the Ordinance provides that "[a] participant shall not be required to contribute to the pension fund during the term of the uniform contract with the Township unless an actuarial study requires the contribution." (N.T. 26-27; Association Exhibit 3)

[1] The hearing was held virtually in light of the ongoing Covid-19 pandemic.

6. Chapter 38 Section 14 of the Ordinance, which covers "Contributions" provides: "(A) Police Officers shall contribute 5% of their monthly compensation to the plan; (B) The Township Council may, on an annual basis by resolution, reduce or eliminate payments into the fund by police officers." (N.T. 27; Association Exhibit 3)

7. The CBA provides in Section F(4) that "Employees shall not be required to contribute to the Pension Fund during this Agreement unless an actuarial study finds that they are required." (N.T. 27-28; Association Exhibit 1)

8. The CBA also provides in Section F(11) as follows:

> The Township shall not be required to contribute any amount to the Fund in order to maintain the actuarial soundness of the Fund. Officers will be required to contribute the following percentages of their annual wages to maintain the actuarial soundness of the Fund, as determined by the Township Actuary:
>
> January 1, 2018 – 2.5%
> January 1, 2019 – 2.5%
> January 1, 2020 – 2.5%
> January 1, 2021 – 2.5%

(N.T. 28; Association Exhibit 1)

9. The CBA further provides in Section F(10) as follows:

> No further amendment(s) to the Plan shall be made unless such change is mutually agreeable to the Township and a majority of the Employees covered by the agreements, and such mutual agreement is reduced to writing and so signed by said majority of Employees and the Township.

(N.T. 28-29; Association Exhibit 3)

10. In 2021, the parties were actively negotiating the terms of a successor agreement. (N.T. 25)

11. On July 21, 2021, the Township Council voted 5-0 at a public meeting to modify the mortality tables it uses for its pension actuarial assumptions following a June 9, 2021 recommendation from the Pension Advisory Committee, which resulted in a decrease in the amount of the Township's minimum municipal obligation, as well as a savings for the Township. (N.T. 29-31, 55, 58-59; Association Exhibit 4, 6, Township Exhibit 7, 8, 9)

12. The Township did not bargain with the Association over the modification of the mortality tables or the resulting savings that flowed from that modification. (N.T. 31-32)

13. Eventually, on October 27, 2021, the parties executed a successor agreement effective January 1, 2022 to December 31, 2026, which maintained the same terms governing pensions from the 2018-2021 CBA. (N.T. 29, 32; Association Exhibit 2)

DISCUSSION

The Association has charged the Township with violating Section 6(1)(a) and (e) of the PLRA[2] and Act 111 by unilaterally modifying the mortality table used to calculate the Township's minimum municipal obligation to its pension plan, thereby reducing the Township's contributions to the plan. The Township contends that the charge was untimely under the PLRA and that it was acting within its managerial prerogative when it unilaterally modified the mortality table since that is an administrative aspect of the plan.

Section 9(e) of the PLRA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes operational and serves to guide the conduct of employes, even though no employes may have been disciplined or corrected for failure to abide by the directive. *Id.*

In this case, the record shows that the Association's charge was timely filed under the PLRA. Although the Township's Pension Advisory Committee voted in favor of recommending the modification to the mortality table on June 9, 2021, the Township's full Council did not actually take action on the recommendation and pass the motion until July 21, 2021. The Association filed the instant charge on August 26, 2021, which was well within the PLRA's six-week limitations period. As the Association points out, the clock did not begin to run on June 9, 2021 when the Township's Pension Advisory Committee voted on its recommendation because mere statement of future intent to engage in activity, which arguably would constitute an unfair labor practice, does not constitute an unfair labor practice for engaging in that activity. Upper Gwynedd Township, at 264. In fact, the Board would have dismissed any charge by the Association which predated the July 21, 2021 action by the full Township Council as prematurely filed since it would have been prior to actual implementation of the alleged modification. City of Allentown, 19 PPER § 19190 (Final Order, 1988). As such, the Township's argument regarding the timeliness of the charge is rejected.

Turning to the merits of the underlying dispute, the parties are split over whether the modification of the mortality table is a mandatory subject of bargaining or an inherent managerial prerogative under the PLRA and Act 111. However, while the charge itself may have been timely filed, it is not necessary for the Board to even reach this question, as the record shows that the charge has now become moot with the October 2021 execution of a new collective bargaining agreement. The Board has long held that a unilateral implementation charge of unfair labor practices is rendered moot by

[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.

resolution of the bargaining impasse through execution of a successor agreement. Temple University, 25 PPER ¶ 25121 (Final Order, 1994). In determining whether alleged past violations of bargaining obligations occurring during negotiations should be heard, the Board considers as paramount whether its involvement after a successor agreement has been reached, is appropriate under the facts of any particular case. AFSCME District Council 33 and Local 159 v. City of Philadelphia, 36 PPER 158 (Final Order, 2005). In this regard, the Board distinguishes between those charges where the employes continue to suffer the residual effects of an unlawful, unilateral change to wages, hours and working conditions, which are typically not moot, as opposed to those involving bargaining tactics which do not result in affirmative relief to the employes, but rather cease and desist orders, which are generally mooted by the parties' entry into a collective bargaining agreement. *Id.* (citing Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District, 29 PPER ¶ 29180 (Final Order, 1998)(holding that the charge was not moot because the employer failed to present evidence that the new agreement addressed the matters involved in the unfair practices charge). Of course, even if a charge is technically moot, it may be decided when the issue presented is one of great public importance or is one that is capable of repetition yet evading review. Association of Pennsylvania State College and University Faculties v. PLRB, 8 A.3d 300, 305 (Pa. 2010).

As set forth above, the Township made a unilateral change to the mortality table it uses for its pension actuarial assumptions on July 21, 2021, which resulted in a decrease in the amount of the Township's minimum municipal obligation, as well as a savings for the Township. At that time, the parties were actively negotiating the terms for a successor agreement. The Association then filed the instant charge on August 26, 2021, alleging a violation of the Township's statutory bargaining obligation.[3] However, the parties subsequently agreed on the terms for a successor agreement and executed the CBA on October 27, 2021, thereby resolving the ongoing impasse. Indeed, the successor agreement contained the same provisions governing pensions that the parties included in their previous contract. The Association has not presented any argument whatsoever for why the charge should not be rendered moot, consistent with the two well-settled exceptions to the mootness doctrine. To that end, I am unable to conclude that the instant charge involves an issue of great public importance or one that is capable of repetition yet evading review, as any subsequent change would certainly be subject to a new charge. What is more, the record shows that the Township's modification of the mortality table did not result in a change to employe contributions or pension benefits, such that any employe has suffered ongoing or residual harm. (N.T. 37-38, 52-53).

The Association maintains in its post-hearing brief that the bargaining unit members have a vested interest in ensuring the ongoing financial health of the pension fund, since they are only required to contribute to the fund when actuarily required. However, the record is devoid of any evidence that the pension fund is now less stable financially or not actuarially sound, such that the employes are suffering residual effects of the Township's

[3] Although the Association argues in its post-hearing brief that the Township also violated Section F(10) of the CBA by unilaterally modifying the mortality table, the Association did not allege in the specification of charges that the Township committed an unfair labor practice by repudiating the CBA. Thus, the Board is without jurisdiction to entertain such an averment now.

unilateral action. In addition, the Association suggests that it may have been able to bargain a lesser contribution for the employes than the current 2.5% rate had the Township not acted unilaterally. Despite this contention, the Association could have easily preserved the issues raised in its charge by simply not entering into the successor agreement, pending the outcome of the charge. *See* Upper Bucks County Technical School Education Ass'n v. Upper Bucks County Technical School, 52 PPER 16 (Proposed Decision and Order, 2020)(citing TAUP Local 4531 AFT v. Temple University, 40 PPER 129 (Proposed Decision and Order, 2009)(the union controls mootness by choosing to agree or disagree to a contract during litigation). The Association nevertheless made a choice to enter into the successor agreement, which clearly addressed the employe contributions and maintained the same 2.5% rate for each year of the contract. (Association Exhibit 2). While the Township's July 2021 action may have forced the Association to bargain out from a *fait accompli*, the simple fact remains that the Association voluntarily agreed to the terms of the new CBA and chose to enter the agreement prior to litigating the charge to conclusion.[4] After receiving the benefit of that bargain, the Association cannot now come before this Board and ask for what it potentially gave up in bargaining. AFSCME District Council 33 and Local 159 v. City of Philadelphia, 36 PPER 95 (Proposed Decision and Order, 2005)(citing Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991)). To be sure, the Board has consistently and unequivocally recognized that where there is no ongoing loss of employe wages or benefits, charges of unfair labor practices alleging unlawful unilateral action during negotiations are rendered moot once the parties have reached a successor collective bargaining agreement. Faculty Federation of Community College of Philadelphia Local 2026 AFT, AFL-CIO v. Philadelphia Community College, 51 PPER 17 (Final Order, 2019). Accordingly, the charge must be dismissed as moot.

CONCLUSIONS

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

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

2. The Association 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 charge is dismissed as moot.

ORDER

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

[4] Furthermore, the new CBA does not include any provision to indicate that the parties agreed to preserve the issues presented in the charge for adjudication before the Board. (Association Exhibit 2).

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices is dismissed and the complaint is rescinded.

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 7th day of June, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner