COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| BRISTOL BOROUGH POLICE BENEVOLENT ASSOCIATION | : | |
| v. | : | Case No. PF-C-24-95-E |
| BRISTOL BOROUGH | : | |

**PROPOSED DECISION AND ORDER**

On November 4, 2024, the Bristol Borough Police Benevolent Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Bristol Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by refusing to proceed to interest arbitration on September 23, 2024, over the impact of the Borough's decision to lay off a bargaining unit employe.

On December 3, 2024, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the matter to conciliation, and directing a hearing on March 12, 2025, if necessary. The hearing ensued, as scheduled, on March 12, 2025, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence.[1] The parties each filed separate post-hearing briefs in support of their respective positions on April 24, 2025.

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

FINDINGS OF FACT

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

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

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

4. The Association and the Borough are parties to a collective bargaining agreement (CBA) effective January 1, 2020 through December 31, 2025. (Joint Exhibit 2)

5. Article 26 of the CBA, which is entitled "Minimum Manpower," provides, in relevant part, as follows:

> The Borough shall maintain an active full[-]time police department complement of ten (10) full[-]time police officers, which shall include the Chief of Police. Any and all vacancies shall be filled within ninety (90) days.

[1] This matter was originally assigned to Hearing Examiner Jack E. Marino, Esquire, but was subsequently reassigned to the undersigned hearing examiner prior to the hearing.

(Joint Exhibit 2)

6. Kevin DiPaolo was employed as a police officer with the Borough for 15 years, seven years part-time and eight years full-time, until he was laid off on February 21, 2024. At the time he was laid off, he was not offered any severance or continuing medical benefits, nor was he advised regarding any recall or pension rights he may have had. (N.T. 7-8)

7. By letter dated February 23, 2024, Sergeant James Ellis, who was Secretary Treasurer of the Association, demanded to bargain over the effects of Officer DiPaolo's layoff with the Borough. (N.T. 9-10; Union Exhibit 1)

8. By letter dated March 13, 2024, the Borough's attorney, Jeffrey Garton, Esquire, indicated the following, in relevant part, to the Association:

> Dear Gentlemen,
>
> I received a copy of your letter addressed to the Council President and the Mayor associated with demanding bargaining over the effects of Officer DiPaolo's layoff.
>
> On what premise do you believe that there is any bargaining obligation on the part of the Borough to bargain over a layoff that was within the rights of the Borough to do.
>
> Please advise...

(N.T. 11; Union Exhibit 2)

9. By letter dated March 20, 2024, Attorney Sean Welby, Esquire, indicated the following, in relevant part, to Attorney Garton:

> Dear Mr. Garton[,]
>
> Your correspondence of March 13, 2024...has been sent to me for response. As to the issue of a municipality's obligation to bargain the effects of a layoff, I would direct your attention to Mt. Carmel Township, 23 PPER ¶ 23204 (Proposed Decision and Order, 1992); Foster Township, 21 PPER ¶ 21106 (Proposed Decision and Order, 1990); Emporium Borough, 20 PPER ¶ 20177 (Proposed Decision and Order, 1989).
>
> Please advise as to whether your client will honor the demand to bargain the effects made by the [Association] at your earliest opportunity...

(N.T. 11-12; Union Exhibit 3)

10. In late June 2024, the parties met for an unrelated grievance arbitration proceeding, after which they discussed the impact issues of Officer DiPaolo's layoff, including ways in which to return him to work, as well as continuing pay and benefits. There was no agreement reached at that time. (N.T. 12-13, 16)

11. By letter dated September 16, 2024, Attorney Welby indicated to Borough Council President Ralph DiGuiseppe the following, in relevant part:

> Dear Mr. DiGuiseppe:
>
> As you know, the [Association] demanded bargaining over the effects of the [] decision to lay off a bargaining unit member several months ago.
>
> We have not reached agreement, nor even received a counteroffer. The conclusion that we have reached impasse is inescapable. We therefore have no choice but to demand interest arbitration on this issue. I will serve as the arbitrator appointed by the [Association]. The issue in dispute is how to address the effects of the decision to lay off a bargaining unit member.
>
> Please identify your arbitrator within five (5) days of the date of this correspondence...

(N.T. 13; Union Exhibit 4)

12. By letter dated September 23, 2024, Attorney Garton indicated the following, in relevant part, to Attorney Welby:

> Dear Mr. Welby:
>
> I am in receipt of a copy of the letter you forwarded to Ralph DiGuiseppe, President of the...Borough Council dated September 16, 2024. It was apparently received at Borough Hall on Wednesday, September 18, 2024.
>
> Your prior correspondence to my attention identified two (2) proceedings wherein the [Board] stated that employers in those two (2) matters had an obligation to bargain with the union with respect to layoffs.
>
> I see nothing within the confines of the current [CBA] requiring the Borough to mediate or arbitrate the effects of a decision to lay off a bargaining unit member.
>
> If your intent is to file, the appropriate proceeding with the [Board] please do so. If you insist on trying to appoint an Arbitrator, I would suggest to you that I will be filing an injunction with the Court of Common Pleas of Bucks County indicating that there is no basis and/or authority to do so.
>
> Please advise...

(N.T. 13-14; Union Exhibit 5)

13. By letter dated September 26, 2024, Attorney Garton indicated to Attorney Welby that the Borough was prepared to return Officer DiPaolo to the Borough's police department in exchange for an agreement by the Association to eliminate several provisions of the current CBA, including *inter alia* those related to compensatory time, overtime, holidays, minimum complement, and a minimum manning requirement. This was not acceptable to the Association. (N.T. 14-16; Union Exhibit 6)

14. By letter dated January 31, 2025, Attorney Garton also communicated an offer, which consisted of two months of health insurance to

resolve the impact bargaining demand, following a conciliation between the parties' attorneys. This was also not acceptable to the Association. (N.T. 14-18; Union Exhibit 7)

DISCUSSION

The Association has charged the Borough with violating Section 6(1)(a) and (e) of the PLRA[2] and Act 111 by refusing to proceed to interest arbitration on September 23, 2024, over the impact of the Borough's decision to lay off Officer DiPaolo. The Association does not question the Borough's underlying decision or authority to implement the layoff itself. Instead, the Association specifically claims that the layoff caused a severable, demonstrable impact on the bargaining unit, which gave rise to a bargaining obligation on the part of the Borough regarding those impact issues. The Association asserts that the parties reached impasse over those impact issues in September 2024, at which point the Association demanded interest arbitration, and the Borough subsequently refused. The Borough, meanwhile, contends that the charge should be dismissed because the Borough satisfied any impact bargaining obligation it may have had by engaging in good faith discussions with the Association and making offers, to which the Association never responded. The Borough likewise maintains that the charge should be dismissed because the Association did not file a grievance, alleging a violation of the CBA, and that the CBA contains no requirement to arbitrate the impact of a layoff. The Borough relies on the Minimum Manning provision in Article 26 of the CBA as authority for the layoff, and apparently also as a shield against the demand for interest arbitration.

It is well-settled that the size of an employer's workforce and the total number of police officers it wishes to employ is an inherent managerial prerogative. Schuylkill Haven Borough v. Schuylkill Haven Police Officers Ass'n, 914 A.2d 936 (Pa. Cmwlth. 2006). However, the Board has long held that the impact of an employer's decision to eliminate those positions is bargainable. Perkiomen Township, 14 PPER ¶ 14259 (Final Order, 1983). Indeed, the Board's hearing examiners have repeatedly and consistently applied this rule for many years. *See* Mt. Carmel Township Police Officers Ass'n v. Mt. Carmel Township, 23 PPER ¶ 23204 (Proposed Decision and Order, 1992)(an employer may satisfy its impact bargaining obligation through contract provisions outlining the steps it will follow to deal with the concerns of furloughed employes, covering such matters as recall rights, order of recall, and coverage of benefits while on furlough); Officers of Emporium Borough Police Dept. v. Emporium Borough, 20 PPER ¶ 20177 (Proposed Decision and Order, 1989)(proper subjects of impact bargaining include alternatives to layoff or the impact upon the furloughed employe's wages, recall rights, termination pay, severance pay, etc.); United Steelworkers of America v. East Taylor Township, 21 PPER ¶ 21002 (Proposed Decision and Order, 1989), 21 PPER ¶ 21056 (Final Order, 1990)(layoffs and demotions give rise to an impact bargaining obligation on behalf of the employer).

The Commonwealth Court has adopted a four-part test for a prima facie cause of action when a public employe alleges a refusal to bargain over the impact of a matter of managerial prerogative. Lackawanna County Detectives'

[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.

Ass'n v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). First, the employer must lawfully exercise its managerial prerogative. Second, there must be a demonstrable impact on wages, hours, or working conditions, matters that are severable from the managerial decision. Third, the union must demand to negotiate these matters following management's implementation of its prerogative. And fourth, the public employer must refuse the union's demand. *Id.* at 794-795.

In this case, the Association has met all four elements for a successful impact bargaining claim. The record shows that the Borough lawfully exercised its managerial prerogative when it laid off Officer DiPaolo on February 21, 2024. There is little doubt that the layoff caused a demonstrable and severable impact on the employe's wages, hours, and working conditions. At the time he was laid off, DiPaolo was not offered any severance or continuing medical benefits, nor was he advised regarding any recall or pension rights he may have had. The Borough does not argue that these matters are inseverable from the underlying decision to furlough DiPaolo, nor could such a claim be supported by the record. As the Board and its hearing examiners have recognized for decades, requiring an employer to bargain these matters would in no way negate the underlying decision to furlough the employe in the first instance. The record further shows that the Association demanded to bargain over the effects of Officer DiPaolo's layoff with the Borough on February 23, 2024, which was after the Borough had lawfully exercised its managerial prerogative. And, the Borough subsequently refused the Association's demand on September 23, 2024, when the Borough refused to proceed to interest arbitration over the impact of the layoff decision.

The Borough's arguments to the contrary are unavailing. The Board and the Commonwealth Court have long held that an Act 111 employer's collective bargaining obligation includes the duty to proceed to binding interest arbitration during the term of a collective bargaining agreement if the parties' negotiations reach impasse, which specifically includes an obligation to bargain over the impact or effects of a managerial prerogative decision. Salisbury Township v. PLRB, 27 PPER ¶ 27076 (Pa. Cmwlth. 1996); FOP Washington Lodge 17 v. City of Easton, 22 PPER ¶ 22122 (Final Order, 1991); IAFF Local 22 v. City of Philadelphia, 28 PPER ¶ 28100 (Final Order, 1997). In City of Easton, the Board rejected the same argument advanced by the Borough here, that the Association was required to submit the dispute to grievance arbitration during the term of the collective bargaining agreement because the agreement contains no obligation to proceed to interest arbitration. In that case, the Board recognized the well settled rule that the availability of a contractual grievance arbitration mechanism assertedly broad enough to encompass a dispute does not oust the Board of jurisdiction to redress unilateral changes in negotiable matters by an employer and specifically dismissed the city employer's contention that a distinction should be made regarding impact bargaining claims. 22 PPER at 280.

Similarly, here, the Association is not precluded from bargaining over the impact of the Borough's layoff of Officer DiPaolo by resorting to Act 111's interest arbitration provisions simply because of the availability of the contractual grievance procedure. Nor does it matter that the CBA allegedly lacks any requirement to arbitrate the impact of a layoff. What the Borough overlooks is that its duty to bargain is statutory in nature and applies to ***any*** changes in wages, hours, or working conditions irrespective of whether these collective bargaining rights of the employes arise during the term of a collective bargaining agreement or negotiations over a new

collective bargaining agreement. City of Philadelphia, *supra*. Furthermore, the Borough does not identify any purported contractual provisions outlining the steps it will follow to deal with the concerns of furloughed employes, such as recall rights, order of recall, or coverage of benefits while on furlough. The Borough relies on Article 26 of the CBA, which simply contains a minimum manning requirement of ten full-time active police officers. Unfortunately for the Borough, however, its reliance on this provision is misplaced, as the minimum manning requirement does not address the impact or effects of a layoff and does not serve as evidence that the parties have already negotiated such matters. Simply stated, the CBA's lack of any provisions addressing the impact of layoffs is evidence, in and of itself, that the Borough has a duty to bargain such matters to agreement or submit the dispute to interest arbitration. *See* City of Easton, *supra*, (under Act 111, interest arbitration is an extension of the collective bargaining process; an employer does not fulfill its bargaining obligation with the employe representative until the parties reach an agreement, or in the absence of an agreement, submit the dispute to interest arbitration).

Finally, the Borough's contention that it satisfied any impact bargaining obligation it may have had by engaging in good faith discussions with the Association and making offers, to which the Association never responded, is also without merit. While the record shows that the Borough did, indeed, engage in impact bargaining with the Association initially, the Borough then subsequently refused to complete the Act 111 dispute resolution process once the parties reached impasse. The Association demanded impact bargaining in February 2024. The parties communicated regarding the Borough's potential bargaining obligation with regard to impact in March 2024. The parties then met in late June 2024, for an unrelated grievance arbitration proceeding, after which they discussed the impact issues of Officer DiPaolo's layoff, including ways in which to return him to work, as well as continuing pay and benefits. There was no agreement reached at that time. By September 16, 2024, the Association had still not even received a counteroffer and declared impasse. The Borough's subsequent offers to resolve the impact issues on September 26, 2024, and January 31, 2025, are of no consequence, since the Act 111 dispute resolution process had already been invoked and the parties remained at impasse.

Section 4 of Act 111 provides, in relevant part, as follows: "...For purposes of this section, an impasse or stalemate shall be deemed to occur in the collective bargaining process if the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within thirty days after collective bargaining proceedings have been initiated..." 43 P.S. § 217.4. Moreover, the collective bargaining process is deemed to have begun once a party has requested collective bargaining under Section 3 of Act 111, irrespective of whether the parties actually meet to discuss the terms and conditions of employment. Salisbury Township, 27 PPER at 168. If the parties have not reached a written agreement indicating the settlement of the issue in dispute within 30 days after the date that collective bargaining was requested, and one of the parties demands that the matter be submitted to interest arbitration, the other party must comply with that demand or be found liable for an unfair labor practice for refusing to proceed to interest arbitration. *Id.*

The timeline set forth above shows that the Association requested collective bargaining over the impact of Officer DiPaolo's layoff on February 23, 2024. And the parties had not reached a settlement of the issue in dispute by way of a written agreement within 30 days after those collective

bargaining proceedings were initiated. Thus, the parties were at impasse under Section 4 of Act 111, and the Borough's subsequent refusal to proceed to interest arbitration was a clear unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA.[3] Accordingly, the Borough will be directed to proceed to interest arbitration to resolve the issues in dispute surrounding the impact of the employe's layoff.

**CONCLUSIONS**

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

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

2. The 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 Borough has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

**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 Borough 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 submit the above issues in dispute to interest arbitration and comply with the Act 111 dispute resolution procedure;

(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;

[3] The Borough has not raised any argument that the Association's September 16, 2024 demand for arbitration was untimely under Section 3 of Act 111, which provides that "...any request for arbitration...shall be made at least one hundred ten days before the start of [the political subdivision's] fiscal year." As such, this argument has been waived.

(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 30th day of June, 2025.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

The Borough 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 immediately submitted the above issues in dispute to interest arbitration and complied with the Act 111 dispute resolution procedure; 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