

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of the Impasse	:	
	:	
Between	:	Fact Finder's Report and Recommendations
	:	
Fraternal Order of Housing Police	:	PLRB Case No. PERA-F-11-229-E
	:	
and	:	
	:	
Philadelphia Housing Authority	:	

Before: Lawrence S. Coburn
Fact Finder

Appearances:

For the FOHP:

Tucker Law Group
By: Douglas K. Jenkins, Esquire

For the PHA:

Ballard Spahr LLP
By: Kenneth M. Jarin, Esquire
John P. McLaughlin, Esquire

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I. Background

This case involves a dispute between Fraternal Order of Housing Police (“FOHP”) and Philadelphia Housing Authority (the “PHA”) concerning certain provisions of their New Collective Bargaining Agreement. Their Current Collective Bargaining Agreement had a term of April 1, 2002 through March 31, 2008. The FOHP is the certified bargaining agent for all Housing Police officers employed by the PHA.

The parties, with the assistance of a mediator from the Pennsylvania Bureau of Mediation, engaged in collective bargaining negotiations but ended up in an impasse. By order dated August 16, 2011, the Pennsylvania Labor Relations Board (“PLRB”) appointed me as Fact Finder pursuant to Section 802 of the Public Employee Relations Act, Act 195 of 1970. My role as Fact Finder is to ascertain the positions of the parties with respect to their negotiations and to make findings and recommendations as to how they might resolve their differences. To that end, I conducted a fact-finding hearing on September 12, 2011 at the offices of counsel for the PHA, where both parties had the opportunity to present documentary evidence and testimony, and to submit arguments in support of their respective positions.

II. The Issues

The issues, as framed in the parties’ submissions, are as follows:

1. Article 62, Duration of Agreement.
2. Article 8, Sections C, D - Union Representatives. Number of Union Executive Officer Board members permitted to conduct Union business, and number of days allowed per month.
3. Article 9, Grievance Procedure. Suspension of alleged violation pending decision and loser pays all.
4. Article 10 , Transfers. Define "emergency" under which PHA may avoid giving five-day notice of transfer.
5. Article 12, Seniority, Section D. Amend Section D to allow officers with ten or more years of service to be provided with five years of post retirement medical benefits.
6. Article 13, Probationary Period. Reduce to ninety days the probationary period for newly hired officers.
7. Article 14, Section D, Clothing Allowance. Monthly maintenance allowance; annual clothing maintenance allowance; detectives' attire.
8. Article 15, Hours of Work.
 - a. Replace last sentence in first paragraph with language requiring "exigent circumstances" to change detectives' schedules.
 - b. Remove language creating 7:00 p.m. to 3:00 a.m. shift.
9. Article 17, Personal Leave. Carryover of unused personal leave.
10. Article 18, Holidays. Add Easter for Christians and agnostics and an alternative religious holiday for others.
11. Article 19, Vacation.
 - a. Officers with 20 full years' service or more earn 2.5 days per month for a total of 25 days per year.
 - b. Remove submission periods and replace with three weeks' notice, except in emergencies.
12. Article 21, Sick Leave. Remove "sick check."
13. Article 22, Injury on Duty Payments. Delete/Enhance.
14. Article 23, Life Insurance. Increase benefit.
15. Article 24, Pension.
 - a. Freeze benefits and create new defined contribution plan.
 - b. Eliminate requirement that an employee be "permanently and totally" disabled to qualify for service-connected disability benefits.
16. Article 26, Court Duty. Increase amount of guaranteed minimum time for court time; time spent attending court or court preparatory sessions counts as time worked.
17. Article 27, Military Leave. 15 paid military leave days; pension contribution to continue during military leave; continue accrual of sick, vacation and personal leave while on military leave.
18. Article 28, Funeral Leave. Add two days annually for the funeral of any law enforcement officer serving in the City of Philadelphia.
19. Article 29, Medical Insurance. Employee Premium Contributions for Keystone HMO.
20. Article 30, Overtime. Overtime pay rate; compensatory time.
21. Article 31, Shift Differential. Amount of differential.
22. Article 32, Contracting and Layoff.
 - a. Definition of "emergency."
 - b. No layoffs as a result of subcontracting or transfer of work.
23. Article 35, Wages.
 - a. Retroactivity.
 - b. Amount of increase(s).
24. Article 36, Longevity. Increase longevity pay to \$600.00.
25. Article 37, Legal Services Fund. Increase monthly contribution to \$22.00/full time employee.
26. Article 40, discrimination. Add "union affiliation."
27. Article 41, Tuition. Increase tuition reimbursement to \$2,500.00.
28. Article 43, Two Person Patrols. Add provision relating to two-officer patrol cars.
29. Article 45, Reimbursement for Damages or Loss of Personal Property or Equipment. Increase reimbursement to \$250.00.
30. Article 47, Qualifying time. Add provision relating to employees who fail to qualify.
31. Article 51, Radio Communication. Add provision requiring the PHA to provide functioning radios.
32. Article 56, Union Activity Payment. Add to list of Union representatives.
33. Article 57, Layoffs. Eliminate.
34. Article 63. No Strikes or Lockouts. Eliminate.

III. Introduction

A. Factual Background

Over the last several years, the size of the bargaining unit has declined markedly from about 350 employees to 28 employees currently. This reduction in the size of the unit has been effectuated as the number of contract security guards has increased. The United States Department of Housing and Urban Development (“HUD”), which provides most of the revenues for housing authorities across the country like PHA, has reduced substantially its funding of the PHA, and the reductions are expected to continue to accelerate due to the reductions in federal funding to federal agencies like HUD.

The reduction of the number of housing police officers at the PHA has been repeated elsewhere in the United States. For example, the Chicago Housing Authority has eliminated its housing police, and the Boston Housing Authority substantially reduced the size of its housing police. On the other hand, the New York City Housing Authority, in whose housing a disproportionately high percentage of New York City residents live, has retained a robust housing police force.

The parties, whose relationship has been strained with the steady reduction in the number of bargaining unit members, have had difficulty reaching a New Collective Bargaining Agreement. Indeed, the parties have been working without a contract since April 1, 2008. Meanwhile, bargaining unit members have received no pay increases since the expiration of the Current Collective Bargaining Agreement and PHA has been saddled with a continuing obligation to maintain an antiquated and expensive defined benefit pension plan and an HMO insurance plan for which bargaining unit employees make no premium contributions.

The parties reached impasse, in my view, primarily due to surrounding economic conditions and policy considerations beyond the parties’ immediate control which the PHA perceives as limiting significantly its flexibility in negotiating a New Collective Bargaining Agreement. For example, the recession over the last few years has resulted in a reduction in revenues from HUD, and management of the PHA will be undergoing a review to determine the extent to which, and the circumstances under which, it might continue to employ housing police officers.

The impasse in negotiations is centered over the duration or term of the New Collective Bargaining Agreement, the wage package, pension issues, employee contributions toward the HMO premiums, and various contractual language proposals. The PHA has proposed, among other things, a one-year contract, a wage freeze, no retroactive wage increases, a new defined contribution pension plan, and a 4% employee contribution toward the HMO plan. The FOHP, on the other hand, pointing out that other bargaining units already have had retroactive wage increases and significant wage increases over a five-year term, has proposed 4.5% wage increases retroactively and prospectively over a five-year contract term. In addition, the FOHP has proposed numerous language changes to the contract.

Set forth below is a brief discussion of two legal arguments raised by the PHA, followed by a list of the various issues, the parties’ positions on the issues, and my findings and recommendation as to each. In my recommendations, I have tried to accommodate the legitimate concerns of both parties, necessarily leaving them both with less than what they seek.

B. Preliminary Legal Arguments

1. Timeliness of Submission of FOHP’s Statement of Issues.

The PHA argues that I should not include in my Report any issues raised by the FOHP, because its list was not submitted to me or served on the PHA until after the expiration of the mandatory five-day period. § 95.61(e) of the Rules and Regulations of the Pennsylvania Labor Relations Board (the “Board”) provides that the fact finding panel, in this case me, will issue written notice to the parties of the time and place of the hearing:

- (e) Immediately following the appointment [of the fact-finding panel], the Board will notify the panel members and all parties of the appointment, requesting the panel to proceed with the holding of hearings, giving due notice of the time and place of the hearing in writing to all parties.

I did so by letter dated August 29, 2011, which I emailed to counsel for the parties. Then, because of a request by the PHA, I changed the time of the hearing, and notified the parties of the change by letter dated August 31, 2011, which I again emailed to counsel for the parties.

§ 95.62 of the Board's Rules and Regulations requires the parties, within five days of receipt of "notice" from the panel, to file with the panel and serve on each other written statements of the issues in dispute:

Within 5 days of receipt of notice from the panel, the parties shall file with the panel written statements of the issues in dispute, a copy of the current collective bargaining agreement, if any, and a summary of the position of the party regarding each unresolved issue. A copy of the statements shall be served upon the other party. The matters to be considered by the panel should be limited to those set forth in the statements.

I interpret § 95.62 to require the parties to file with the fact-finder and to serve on each other their written statements of the issues in dispute within five days of receipt of the notice of hearing from the panel. Indeed, the only "notice from the panel" is the notice of hearing time and date. In this case, I emailed to counsel for the parties the revised notice of hearing on August 31, 2011. The FOHP filed with me and served on PHA its statement of the issues on September 8, 2011. Because a weekend and holiday (Labor Day) fell between August 31 and September 8, I find that the FOHP filed and served its written statement of issues within five business days (September 1, 5, 6, 7 and 8) of receipt of the revised notice of hearing on August 31.

But even if the submission by FOHP was not technically within the five-day limit, I find that the PHA was not thereby prejudiced. The FOHP's statement of issues was a repetition of what had been presented to the PHA at the bargaining table last spring. Because the FOHP's statement of issues created no surprises for the PHA and any delay in the transmission did not prejudice PHA, I will not foreclose the FOHP from having its issues considered in this Report.

2. Proposed Retroactive Wage Increases.

The PHA objects to the FOHP's proposed retroactive wage increases for fiscal years 2008, 2009 and 2010, arguing that I do not have jurisdiction to include in my Report recommendations for fiscal years prior to the current one, fiscal year 2011, which ends on March 31, 2012. In support, the PHA cites Section 802 of the Public Employe Relations Act, which provides that, if the no collective bargaining agreement has been reached after mediation has commenced and no later than 180 days prior to the "budget submission date," the Board may appoint a fact-finding panel which, after a hearing, will make findings of fact and recommendations:

Once mediation has commenced, it shall continue for so long as the partes have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than one hundred thirty days prior to the "budget submission date," the Bureau of Mediation shall notify the Board of this fact. Upon receiving such notice the board may in its discretion appoint a fact-finding panel which panel may consist of either one or three members. If a panel is so designated or selected it shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement the panel shall make finding sof fact and recommendations . . .

I interpret that provision to deprive me, as the fact-finding panel, of jurisdiction to consider proposals by either party with respect to fiscal years prior to the current fiscal year, which commenced on April 1, 2011 and ends on March 31, 2012. Moreover, because a fact-finding panel was not convened for fiscal years 2009, 2010 or 2011, I would have no jurisdiction to make findings of fact or recommendations with respect to those years. Accordingly, I decline to issue findings of fact or make recommendations with respect to any fiscal year prior to the current fiscal year.

C. Findings and Recommendations.

1. Article 62. Duration of Agreement.

a. The Parties' Positions.

The PHA has proposed a one-year term for the New Collective Bargaining Agreement, claiming that a longer term would unduly restrict the flexibility it needs to shape the future relationship with the FOHP. In

particular, the PHA states that, in the ensuing year, it will be reviewing its options, ranging from: (1) restructuring contract language to make it feasible to continue to employ housing police officers to (2) phasing out altogether the employment of housing police officers.

The FOHP, on the other hand, emphasizes that existing contract language has not prevented the PHA from reducing the complement of bargaining unit members from about 350 to 28. In addition, pointing to the recent history of the parties' failure to reach a New Collective Bargaining Agreement, the FOHP argues that a five-year term makes sense for the parties. Furthermore, the FOHP cites the fact that the PHA recently entered into multi-year agreements extending to March 31, 2014 with its other bargaining units.

b. Findings.

Because of economic uncertainties and the PHA's need for flexibility, I am reluctant to recommend a multi-year term, as proposed by the FOHP. Instead, I find that a one-year contract, from April 1, 2011 to March 31, 2012, as proposed by the PHA, to be more appropriate under all the circumstances.

c. Recommendation.

I recommend that Article 62 of the New Collective Bargaining Agreement be amended to show that its term is for one year, from April 1, 2011 to March 31, 2012.

2. Article 8, Sections C, D - Union Representatives. Number of Union Executive Officer Board members permitted to conduct Union business, and number of days allowed per month.

a. The Parties' Positions.

Article 8, Section C of the Current Collective Bargaining Agreement provides that the Union President, Vice President and Secretary may each take two days off per month for the conduct of union business. Pointing to the drastic reduction in the size of the bargaining unit, the PHA proposes that the number of officers permitted to take off two days per month be reduced from three to two. In further support, the PHA claims that, with the reduction in the size of the unit, it is all the more difficult to schedule officers when three officers are permitted to take two days per month to perform union business.

The FOHP, on the other hand, citing the significant reduction in the number of stewards, proposes to increase the number of listed officers from three to four (to include the Treasurer), and to increase the number of days per month from two to five. In addition, the FOHP proposes to amend Article 8, Section D to provide that the Treasurer, like the other three listed officers, will be assigned have a Monday through Friday work schedule on a regular work shift of their selection.

b. Findings.

I find that there is no compelling reason to change the existing language.

c. Recommendation.

I recommend that the parties' respective proposals to amend Article 8, Sections C and D not be incorporated in the New Collective Bargaining Agreement.

3. Article 9, Grievance Procedure. Suspension of alleged violation pending decision, and loser pays all.

a. The Parties' Positions

The FOHP proposes to amend Article 9 to provide that, when a grievance is filed alleging that the contract has been violated, the PHA be required to suspend the alleged violation pending a resolution of the issue. As a counterbalance, the FHOP has proposed to add a provision that the loser would pay the cost of the arbitration hearing.

(1) Findings.

I find, in my experience, the proposed language relating to suspension of the alleged violation to be very unusual, and would tip the balance of power in favor of the Union whenever a grievance were to be filed. Moreover, I find that, although the proposed loser-pay-all provision would discourage the FOHP from filing frivolous grievances, the suspension of alleged violation language potentially would unduly infringe on the PHA's ability to manage its operations. That is particularly true because it often takes a year or more to schedule an arbitration hearing and receive a decision.

(2) Recommendations.

I recommend that the FOHP's proposal to amend Article 9 not be incorporated into the New Collective Bargaining Agreement.

4. Article 10, Transfers. Define "emergency" under which PHA may avoid giving five-day notice of transfer.

a. The Parties' Positions.

The FOHP proposes that the word "emergency" be defined in Article 10 to clarify the nature of an emergency that would permit PHA to avoid giving employees five days' notice before transferring them. The PHA opposes the proposed change as unnecessary.

b. Findings.

No evidence was presented to suggest that the lack of definition of "emergency" in Article 10 has posed a problem for the parties. Accordingly, I find no compelling reason to change the existing language.

c. Recommendation.

I recommend that Article 10 of the New Collective Bargaining Agreement not be amended to include a definition of the word "emergency."

5. Article 12, Seniority, Section D. Officers with ten or more years of service to be provided with five years of post retirement medical benefits.

a. The Parties' Positions.

The FOHP proposes to amend Article 12, Section D to provide officers with ten or more years of service with five years of post-retirement medical benefits. For cost reasons, the PHA opposes the proposal.

b. Findings.

In these difficult economic times, I find it inappropriate to impose on the PHA the additional financial burden of the PHA's proposal.

c. Recommendation.

I recommend that Article 12, Section D of the New Collective Bargaining Agreement not include the provision proposed by the FOHP.

6. Article 13, Probationary Period. Reduce probationary period for newly hired offices to ninety days.

a. The Parties' Positions

The FOHP proposes to reduce the duration of the probationary period, currently at six months, as set forth in Article 13, to ninety days. The PHA opposes the proposed change.

b. Findings.

I find that, particularly because the PHA has been reducing the ranks of the bargaining unit, and not hiring new officers, there is no compelling reason to reduce the duration of the probationary period for newly hired employees.

c. Recommendation.

I recommend that Article 13 of the New Collective Bargaining Agreement not be amended to include the change proposed by the FOHP.

7. Article 14(D), Clothing Allowance. Monthly maintenance allowance; annual clothing maintenance allowance; detectives' attire.

a. The Parties' Positions

The FOHP proposes to increase the monthly uniform maintenance allowance from \$44.00 to \$55.00, and the annual clothing maintenance allowance from \$600.00 to \$700.00. In addition, the FOHP proposes that Article 14 be amended to provide the following provision relating to detectives' attire:

Detectives' attire will be plainclothes only; except where the detective volunteers to work a detail in uniform. Other than volunteering to wear the uniform of the day, the detectives will display their badges on their outmost garment for identification purposes and wear "police arm bands."

The PHA opposes the proposals, citing the added expense.

b. Findings

I find no compelling reason to recommend that Article 14 be amended to include the changes proposed by the FOHP, particularly in light of the added costs to the PHA.

c. Recommendation.

I recommend that Article 14 of the New Collective Bargaining Agreement not be amended to include the changes proposed by FOHP.

8. Article 15, Hours of Work.

a. Replace last sentence in first paragraph with language requiring "exigent circumstances" to change detectives' schedules.

(1) The Parties' Positions.

The last sentence of the first paragraph of Article 15 currently allows the PHA to modify shift assignments "as needed." The FOHP proposes to eliminate that sentence and replace it with the following language:

PHA reserves the right to change the schedules or assignments for detectives only for exigent circumstances and only after all other uniformed police personnel are utilized for assignments, i.e. patrol.

The PHA opposes the change as an inappropriate infringement on its management prerogatives.

(2) Findings.

No evidence was presented establishing that the existing language has been problematic. Accordingly, I find that there is no compelling reason to amend Article 15 of the New Collective Bargaining Agreement, as proposed by the FOHP.

(3) Recommendation.

I recommend that Article 15 of the New Collective Bargaining Agreement not be amended to include the FOHP's proposal.

b. Remove language establishing 7:00 p.m. to 3:00 a.m. shift.

(1) The Parties' Positions

Article 15 of the Current Collective Bargaining Agreement establishes a 7:00 p.m. to 3:00 a.m. shift. The FOHP proposes to eliminate the language establishing that shift, primarily because of the danger to officers, as it is a high-danger time of night. In addition, the FOHP points out that working that shift makes it difficult to function during the day. The PHA opposes the proposal on the ground that it would interfere with its management prerogatives.

(2) Findings.

I find it inappropriate for me to make a recommendation regarding a management function such as the establishment or abolition of shifts.

(3) Recommendation.

I recommend that Article 15 of the New Collective Bargaining retain the existing reference to the establishment of the 7:00 p.m. to 3:00 a.m. shift.

9. Article 17, Personal Leave. Carryover of unused personal leave.

a. The Parties' Positions

Article 17 of the Current Collective Bargaining Agreement provides that officers are entitled to four personal leave days per year, with no more than one personal leave day to be taken in any three-month period. Personal leave days may not be carried over from one three-month period to the next or from year to year. The FOHP proposes that Article 17 be amended to permit officers to carry over unused personal leave from three-month period to three-month period and from year to year. The PHA opposes the proposal.

b. Findings.

I find that the FOHP's proposal would impose additional costs on the PHA and would have an adverse impact on the scheduling of officers, which would be inappropriate, particularly in these difficult economic times.

c. Recommendation.

I recommend that Article 17 of the New Collective Bargaining Agreement not be amended to include the FOHP's proposed changes.

10. Article 18, Holidays. Add Easter for Christians and agnostics and an alternative religious holiday for others.

a. The Parties' Positions.

The FOHP proposes to add a 13th holiday to the list of paid holidays in Article 17: Easter for Christians and agnostics and an alternative religious holiday for employees of different faiths. The PHA opposes the proposal.

b. Findings.

I find it inappropriate to add a paid holiday during these difficult economic times.

c. Recommendation.

I recommend that Article 18 of the New Collective Bargaining Agreement not be amended to provide for a new paid holiday, as proposed by FOHP.

11. Article 19, Vacation.

a. Officers with 20 full years' service or more earn 2.5 days per month for a total of 25 days per year.

(1) The Parties' Positions.

Article 19, Section A of the Current Collective Bargaining Agreement sets forth a grid showing the number of vacation days earned by employees with various years of service. Employees with more than 10 years, but fewer than 25 years of service, earn $1\frac{2}{3}$ days of vacation per month, for a total of 20 days per year. Employees with more than 25 years of service earn $2\frac{1}{12}$ days per month, for a total of 25 days per year. The FOHP proposes that employees with 20 full years of service or more earn $2\frac{1}{2}$ vacation days per month, for a total of 25 days per year. The PHA opposes the proposal.

(2) Findings.

I find that, in these difficult economic times, it would be inappropriate to enhance vacation benefits for bargaining unit employees.

(3) Recommendation.

I recommend that Article 19, Section A of the New Collective Bargaining Agreement not be amended to include the enhancement proposed by the FOHP.

12. Article 21, Sick Leave. Remove "sick check."

a. The Parties' Positions.

Article 21, Section B of the Current Collective Bargaining Agreement provides that the PHA has the right to make a "sick check" upon an employee while he/she is using sick leave. The FOHP has proposed to eliminate the entire provision. The PHA opposes the elimination of the provision.

b. Findings.

I find that there was no evidence presented to show that the "sick check" provision has caused a problem for bargaining unit employees. I therefore find that it would be inappropriate to remove it.

c. Recommendation.

I recommend that Article 21, Section B not be eliminated from the New Collective Bargaining Agreement.

13. Article 22, Injury on Duty Payments - Delete/Enhance.

a. The Parties' Positions.

The PHA proposes to discontinue Injury on Duty ("IOD") payments required for up to twelve months (including extensions) by Article 22, Section B. IOD payments represent the difference between Worker's Compensation payments and the employee's normal and regular net pay. In support, the PHA cites the fact that other unions with which the PHA has collective bargaining agreements agreed recently to eliminate IOD payments: AFSCME District Council 33, Local 934 and the Building and Construction Trades Council of Philadelphia. The PHA also notes that Worker's Compensation provides a substantial monetary benefit to employees who are injured on the job. Moreover, the PHA argues that lengthening the period of

IOD benefits would be likely to cause some officers to remain out of work longer than if they had an incentive to earn more money at work.

The FOHP, on the other hand, proposes to make various enhancements to the provision, requiring, for example, payment of IOD benefits for up to two years instead of the existing one year, or up to five years in the case of officers injured in apprehension of a suspect, or shot stabbed or otherwise assaulted. In support, the FOHP cites the dangers associated with the job, as bargaining unit members have been shot on several occasions while on the job. According to the FOHP, the dangers have increased as the size of the bargaining unit has decreased. Furthermore, the FOHP is concerned that, if IOD payments were discontinued, officers would have an incentive to return to work too soon, jeopardizing the health and the safety of themselves and others.

b. Findings.

I find that the members of this bargaining unit have a more dangerous job than those in the bargaining units that recently agreed to eliminate IOD payments, which gives me reason to consider not recommending the elimination of IOD payments. Moreover, I find that the other bargaining units have entered into multi-year agreements, which I have not recommended for this bargaining unit, further distinguishing this bargaining unit from the others, and justifying the retention of Article 22, Section B for an additional year. I also find that, in this economic climate, it would be inappropriate to enhance the IOD benefits as proposed by the FOHP.

c. Recommendation.

I recommend that Article 22, Section B of the New Collective Bargaining Agreement not be changed.

14. Article 23, Life Insurance. Increase benefit.

a. The Parties' Positions

The FOHP proposes to amend Article 23 to increase life insurance coverage from \$50,000.00 to \$200,000.00. The PHA opposes the proposal.

b. Findings.

In the current economic climate, I find it inappropriate to increase the amount of life insurance coverage.

c. Recommendation.

I recommend that Article 23 of the New Collective Bargaining Agreement not be amended to incorporate the FOHP's proposal to increase life insurance coverage.

15. Article 24, Pension.

a. Freeze benefits and create new defined contribution plan.

(1) The Parties' Positions

The PHA proposes that Article 24 be amended to freeze the existing defined benefit pension plan and replace it with a defined contribution pension plan into which employees would contribute 5.5% of gross earnings and PHA would make matching contributions on behalf of each employee in the amount of 3.5% of their gross earnings. In support, the PHA claims that it is proposing what most public employers in the region are doing, or have done. In addition, PHA cites the fact that the other unions with which it has a bargaining relationship all have agreed to this proposal. The FOHP opposes the change in pension plans and proposes instead to maintain the existing defined benefit pension plan. In response to the PHA's argument that other unions have agreed to its proposal, the FOHP states that those unions, unlike FOHP, were offered wage increases for multiple years.

(2) Findings.

I find that it is reasonable, in accordance with the trend away from defined benefit pension plans and toward defined contribution pension plans, to freeze the defined benefit pension plan and to replace it prospectively with the defined contribution pension plan, as proposed by the PHA. I also find that, the PHA's pension proposal is reasonable in the context of the wage increase for bargaining unit members that I have recommended below.

(3) Recommendation.

I recommend that Article 24 of the New Collective Bargaining Agreement be amended to provide that: (1) the current defined benefit pension plan be frozen; and (2) effective April 1, 2011, all bargaining unit employees will be enrolled in the PHA Defined Contribution Plan, to which employees will contribute 5.5% of their gross earnings and the PHA will make matching contributions equal to 3.5% of each employee's gross earnings.

- b. Eliminate requirement that an employee be "permanently and totally" disabled to qualify for service-connected disability benefits.

(1) The Parties' Positions

The FOHP proposes to eliminate the requirement in the current defined benefit pension plan that, in order for employees to qualify for service-connected disability benefits, they must be "permanently and totally" disabled. The FOHP proposes instead that employees qualify for service connected disability benefits if, as a result of the performance of their job duties and not as a result of their own wrongful conduct, they become permanently incapacitated from performing the duties of their job. The PHA opposes the proposal.

(2) Findings.

I find no compelling reason at this time to redefine the qualifications for service-connected disability benefits.

(3) Recommendation.

I recommend that the New Collective Bargaining Agreement not include the FOHP's proposed changes to the qualifications for service-connected disability benefits.

16. Article 26, Court Duty. Increase guaranteed minimum time for court time; time spent attending court or court preparatory sessions counts as time worked.

a. The Parties' Positions

The FOHP proposes that Article 26 be amended to provide for an increase in the guaranteed minimum court time from three hours to four hours of premium compensation. In addition the FOHP proposes to add a provision that time spent attending court or court preparatory sessions counts as work time. The PHA opposes the proposed changes.

b. Findings.

I find that it is not appropriate to impose of the PHA at this time the increased costs associated with the FOHP's proposals.

c. Recommendation.

I recommend that Article 26 of the New Collective Bargaining Agreement not be amended to contain the changes proposed by the FOHP.

17. Article 27, Military Leave. 15 paid military leave days; pension contribution to continue during military leave; continue accrual of sick, vacation and personal leave while on military leave.

a. The Parties' Positions

The FOHP proposes that Article 27 be amended to provide that all officers may receive fifteen paid military leave days (not necessarily consecutive), that pension contributions will continue to be paid by PHA, and sick, vacation and personal leave will continue to accrue for the duration of military leave while the officer is on active duty. In support, the FOHP urges that it is important to honor those who serve in our military. The PHA opposes the proposal, stating that it complies with all U.S. laws regarding military leave.

b. Findings.

I find that existing Article 27 provides for up to 15 paid days of military leave for annual training or encampment. I also find that it would be inappropriate at this time for the PHA to be obligated to undertake the obligations proposed by the FOHP.

c. Recommendation.

I recommend that Article 27 of the New Collective Bargaining Agreement not be amended to include the changes propose by the FOHP.

18. Article 28, Funeral Leave. Add two days annually for the funeral of any law enforcement officer serving in the City of Philadelphia.

a. The Parties' Positions

The FOHP proposes to amend Article 28 to provide two days annually for the funeral of any law enforcement officer serving in the City of Philadelphia. The PHA opposes the proposal.

b. Findings.

In these difficult economic times and with the diminished size of the bargaining unit, I find it inappropriate to afford two extra days off annually to officers.

c. Recommendation.

I recommend that Article 28 of the New Collective Bargaining Agreement not be amended to include the provision proposed by the FOHP.

19. Article 29, Medical Insurance. Employee Premium Contributions for Keystone HMO.

a. The Parties' Positions.

Article 29 of the Current Collective Bargaining Agreement requires the PHA to provide Keystone HMO free of charge to bargaining unit members, but requires employees to pay 5% of the cost of the premium of the Personal Choice Plan, plus 25% of the cost of any increase in monthly rates of the Personal Choice Plan. Currently, 22 of the 28 members of the bargaining unit are enrolled in Keystone HMO. The PHA proposes that Article 29 to be amended to require employees enrolled in Keystone HMO to pay 4% of the premium. In support, the PHA points to the fact that the other unions with which it has a bargaining relationship have agreed to the proposal. The FOHP opposes the proposal, in part because, unlike the FOHP, the other unions also were able to negotiate substantial wage increases.

b. Findings.

I find that, with the increasing costs of healthcare coverage, the trend among employers, both public

and private, is for employees to contribute a share of the premiums. Particularly because the other unions with which PHA has a bargaining relationship agreed to the PHA's proposal to require those enrolled in Keystone HMO to contribute 4% of the premium, I find that it is appropriate for this bargaining unit to do so as well. In response to the FOHP's objections, I find that, in light of the proposed wage increase below, it is fair to impose this premium contribution requirement on bargaining unit members.

c. Recommendation.

I recommend that Article 29 of the New Collective Bargaining Agreement be amended to provide that employees who are enrolled in Keystone HMO be required to pay 4% of the premium, retroactive to April 1, 2011.

20. Article 30, Overtime. Overtime pay rate; compensatory time.

a. The Parties' Positions

The FOHP proposes two changes to Article 30: (1) to include the shift differential in the rate at which overtime is computed; and (2) to include a compensatory time provision. The PHA opposes the changes.

b. Findings.

I find no compelling reason to recommend the proposed changes to Article 30, particularly because the proposed changes could raise the PHA's costs during these difficult financial times and could make scheduling of officers more difficult.

c. Recommendation.

I recommend that Article 30 of the New Collective Bargaining Agreement not be amended to include the changes proposed by the FOHP.

21. Article 31, Shift Differential. Amount of differential.

a. The Parties' Positions.

Article 31 of the Current Collective Bargaining Agreement provides for a \$.35 per hour shift differential for the 4:00 p.m. to midnight shift, \$.45 per hour for the midnight to 8:00 a.m. shift, and \$.40 per hour for the "fourth" shift. The FOHP proposes that Article 31 be amended to provide for a 4% shift differential for shifts having a majority of hours between 11:00 p.m. to 7:00 a.m., and a 2% differential for shifts having a majority of hours between 3:00 p.m. and 11:00 p.m. The PHA opposes the changes.

b. Findings.

I find that, in these difficult economic times, there is no compelling reason to increase the shift differentials, as proposed by the FOHP.

c. Recommendation.

I recommend that Article 31 of the New Collective Bargaining Agreement not be amended to include the changes proposed by the FOHP.

22. Article 32, Contracting and Layoff.

a. Definition of "emergency."

(1) The Parties' Positions

Article 32 of the Current Collective Bargaining Agreement provides that the PHA may not contract out work, other than security services, unless an emergency exists. The FOHP proposes that “emergency” be narrowly defined as follows:

Where a state of emergency is declared by the State, Local or Federal Government.

The PHA opposes the change to Article 32.

(2) Findings.

I find that no evidence was presented to support a need to change the existing language.

(3) Recommendation.

I recommend that Article 32 of the New Collective Bargaining Agreement not be amended to include the definition of “emergency” as proposed by the FOHP.

b. No layoffs as a result of subcontracting or transfer of work.

(1) The Parties’ Positions

The FOHP proposes that a new sentence be added to Article 32 that would provide that no employee (current or future) may be laid off as a result of sub-contracting or transfer of the work described in the first paragraph of Article 32 (“security guard services”). The reason for the proposal is that the FOHP has seen the number of its members diminish as the number of security guards, who are performing some work that has been performed by bargaining unit employees, increase. The PHA opposes the proposal, claiming that it would infringe on a fundamental management right.

(2) Findings.

I find that the FOHP’s proposal is understandable in light of the diminution of the number of bargaining unit members, but that it would unduly restrict the PHA in the management of its operations.

(3) Recommendation.

I recommend that Article 32 of the New Collective Bargaining Agreement not be amended to include the restriction proposed by the FOHP.

23. Article 35, Wages.

a. Retroactivity.

(1) The Parties’ Positions.

The PHA takes the position that retroactive wage increases, as proposed by the FOHP, are beyond my authority to include in this Report. The FOHP contends that my jurisdiction extends to prior fiscal years.

(2) Findings.

As discussed above, I find the PHA’s position to have merit.

(3) Recommendation.

I make no recommendation regarding retroactive wage increases relating to prior fiscal years.

b. Amount of increase(s).

(1) The Parties' Positions.

The FOHP proposes that bargaining unit members receive a 4.5% wage increase annually on April 1. The PHA counters by proposing that wages be frozen for the one-year term of the New Collective Bargaining Agreement, from April 1, 2011 through March 31, 2012.

(2) Findings.

I find that the bargaining units represented by AFSCME District Council 33, Local 934 and AFSCME District Council 47, Local 2187 received a 2.5% wage increase for the current fiscal year, from April 1, 2011 through March 31, 2012, having received 2.5% wage increases for each of the previous two years. I also find that the FOHP bargaining unit received no wage increases during the previous two years. Accordingly, I find it appropriate and fair for the PHA to provide for the one-year term of the New Collective Bargaining Agreement a 7.5% increase to the base rate for each classification.

(3) Recommendation.

I recommend that Article 35 of the New Collective Bargaining Agreement be amended to provide as follows:

A. The base rate for each classification covered by the Agreement shall be increased by 7.5%, retroactive to April 1, 2011.

24. Article 36, Longevity. Increase longevity pay to \$600.00.

a. The Parties' Positions

The FOHP proposes to increase longevity pay from \$400.00 to \$600.00. The PHA opposes the proposal.

b. Findings.

I find that, in these difficult economic times, it would be inappropriate to increase the amount of longevity pay.

c. Recommendation.

I recommend that Article 36 of the New Collective Bargaining Agreement not be amended to include the increase to the amount of longevity pay as proposed by the FOHP.

25. Article 37, Legal Services Fund. Increase monthly contribution to \$22.00/full time employee.

a. The Parties' Positions.

Article 37, Section A of the Current Collective Bargaining Agreement provides that, effective April 1, 1998, the PHA is required to contribute \$12.00 per month into a Group Legal Fund for each full-time employee in the bargaining unit. The FOHP proposes that the monthly contribution amount be increased to \$22.00.

b. Findings.

I find that it would be inappropriate during these difficult economic times to increase the contribution rate to the Group Legal Fund, as proposed by the FOHP.

c. Recommendation.

I recommend that Article 37, Section A of the New Collective Bargaining Agreement not be amended to incorporate the FOHP's proposed increase to the monthly contribution rate to the Group Legal Fund.

26. Article 40, discrimination. Add “union affiliation.”

a. The Parties’ Positions

Article 40 of the Current Collective Bargaining Agreement prohibits the PHA and the FOHP from discriminating against any employee or applicant for employment because of race, religion, creed, color, national origin, age, or sex. The FOHP proposes to add “union affiliation” to the protected categories. The PHA opposes the proposal.

b. Findings.

I find that the proposed change has merit, particularly because the PHA agreed in its recent agreements with AFSCME District Council 33, Local 934 and AFSCME District Council 47, Local 2187 to include such a provision.

c. Recommendation.

I recommend that Article 40 of the New Collective Bargaining Agreement add “union affiliation” to the list of categories protected from discrimination.

27. Article 41, Tuition. Increase tuition reimbursement to \$2,500.00.

a. The Parties’ Positions

Article 41 of the Current Collective Bargaining Agreement provides that an employee shall be granted tuition reimbursement up to \$1,500.00 per fiscal year under certain conditions. The FOHP proposes to increase the amount to \$2,500.00. The PHA opposes the change.

b. Findings.

I find that in these difficult economic times it would be inappropriate to increase the tuition reimbursement amount, as proposed by the FOHP.

c. Recommendation.

I recommend that Article 41 of the New Collective Bargaining Agreement not be amended to include increased tuition reimbursement, as proposed by the FOHP.

28. Article 43, Two Person Patrols. Add provision relating to two-officer patrol cars.

a. The Parties’ Positions

Article 43 of the Current Collective Bargaining Agreement specifically addresses foot patrols at certain named projects. It also provides that no employee will be required to respond to a complaint until he has been accompanied by a back-up officer. The FOHP proposes that Article 43 be amended to provide that at least four two-officer patrol cars will be available in the North Division at all times and at least three two-officer patrol cars will be available in the South Division at all times. Further, the FOHP proposes that no officer will ever be assigned as a solo detail. In support, the FOHP cites the dangers associated with the job. The PHA opposes the proposal, claiming that the proposed restrictions would infringe on management’s right to assign the workforce.

b. Findings.

I find that, at the present time, it would be inappropriate to amend Article 43 to include the FOHP’s proposal.

c. Recommendation.

I recommend that Article 43 of the New Collective Bargaining Agreement not be amended to include the language proposed by the FOHP.

29. Article 45, Reimbursement for Damages or Loss of Personal Property or Equipment. Increase reimbursement to \$250.00.

a. The Parties' Positions

Article 45 of the Current Collective Bargaining Agreement provides for reimbursement by the PHA of up to \$125.00 for loss or damage to certain equipment on the job. The FOHP proposes to increase the maximum reimbursement amount to \$150.00. The PHA opposes the proposal.

b. Findings.

I find it inappropriate to increase the maximum reimbursement amount, as proposed by the FOHP, during these difficult economic times.

c. Recommendation.

I recommend that Article 45 of the New Collective Bargaining Agreement not be amended to incorporate the increased maximum reimbursement amount, as proposed by the FOHP.

30. Article 47, Qualifying time. Add provision relating to employees who fail to qualify.

a. The Parties' Positions

Article 47 provides that an employees will be tested to be qualified to handle weapons proficiently, safely and responsibly, and further provides that, if employees do not qualify with a weapon on the first attempt, they will be afforded a second opportunity, normally within one week.. The FOHP proposes that Article 47 be amended to provide that an employee who fails to qualify shall be assigned to desk duty until the employee is able to return to the range. The FOHP further proposes that the employee may take two weeks before returning to the range, at which time the employee will have 30 working days to qualify. The PHA opposes the proposed changes.

b. Findings.

I find that no evidence was presented to support a need to change the existing language.

c. Recommendation,

I recommend that the Article 47 of the New Collective Bargaining Agreement not be amended to include the language proposed by the FOHP.

31. Article 51, Radio Communication. Add provision requiring the PHA to provide functioning radios.

a. The Parties' Positions.

Article 51 of the Current Collective Bargaining Agreement requires, among other things, that the PHA maintain a list of direct dial telephone numbers to the Philadelphia Police Department Radio Room consoles. The FOHP proposes to add a new provision requiring the PHA to provide employees on patrol duty with a fully-charged and operationally-functioning radio that transmits and receives on all bands and frequencies utilized by the PHA. The PHA opposes the proposal.

b. Findings.

I find that providing functioning radios to officers is essential to their safety and ability to perform their jobs. I also find that there was no evidence that the PHA has failed to provide officers with functioning radios, and that therefore there is no need to impose the proposed language on the PHA.

c. Recommendation

I recommend that Article 51 of the New Collective Bargaining Agreement not be amended as proposed by the FOHP.

32. Article 56, Union Activity Payment. Add to list of Union representatives.

a. The Parties' Positions.

Article 56 of the Current Collective Bargaining Agreement provides that three FOHP representatives are entitled to be paid a certain hourly rate for dealing with the PHA in negotiations, grievances or representation of the FOHP including arbitration. The FOHP proposes to increase the number of such representatives to four, and allow other Executive Board officers to be substituted. The PHA opposes the proposal.

b. Findings.

I find that, given the reduction in the size of the bargaining unit, it would be inappropriate to increase the number of FOHP representatives to be paid for performing Union business.

c. Recommendation.

I recommend that Article 56 of the New Collective Bargaining Agreement not be amended to include the changes proposed by the FOHP.

33. Article 57, Layoffs. Eliminate.

a. The Parties' Positions.

Article 57 of the Current Collective Bargaining Agreement, a standard clause found in most collective bargaining agreements, authorizes the PHA to lay off employees in accordance with seniority and the Personnel Policy Manual. The FOHP proposes that Article 57 be eliminated to avoid additional layoffs of bargaining unit members. The PHA opposes the proposal, claiming that the right to lay off employees is a fundamental management prerogative.

b. Findings.

I find that, in the current economic climate, where the PHA may believe that further layoffs of bargaining unit members are necessary, it would be inappropriate to eliminate Article 57. Further, I find that management's right to lay off employees is a fundamental management right.

c. Recommendation.

I recommend that Article 57 not be eliminated from the New Collective Bargaining Agreement.

34. Article 63. No Strikes or Lockouts. Eliminate.

a. The Parties' Positions.

Article 63 of the Current Collective Bargaining Agreement provides that the PHA may not lock out employees, and the FOHP may not engage in a strike, for the duration of the Agreement. The FOHP proposes that Article 63 be eliminated from the New Collective Bargaining Agreement. The PHA opposes the elimination of the provision.

b. Findings.

I find that it would be inappropriate to eliminate Article 63, which is a standard clause promoting the resolution of disputes through discussions and final and binding arbitration.

c. Recommendation.

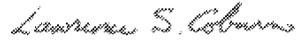
I recommend that Article 63 not be eliminated from the New Collective Bargaining Agreement.

IV. Conclusion

Having addressed all the issues in the dispute that were put before me at the hearing, I conclude that a reasonable resolution to the impasse would include the above recommendations.

I call the parties' attention to my cover letter, which outlines their responsibilities to advise the PLRB that they accept or reject my report's recommendations.

Respectfully submitted,



Lawrence S. Coburn

September 26, 2011