

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED STEEL PAPER FORESTRY RUBBER :
MANUFACTURING ENERGY ALLIED INDUSTRIAL :
AND SERVICE WORKERS INTERNATIONAL :
v. : Case No. PF-C-12-90-W
MCDONALD BOROUGH :

PROPOSED DECISION AND ORDER

On April 22, 2013, I issued a proposed decision and order (PDO-1) dismissing the charge of unfair labor practices, filed by the United Steel Paper Forestry Rubber Manufacturing Energy Allied Industrial and Service Workers International (Union), with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that the Borough of McDonald (Borough) violated Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by engaging in bad faith bargaining for an initial collective bargaining agreement and by unilaterally changing terms and conditions of employment when the Police Chief issued a memo requiring part-time officers to provide a minimum of three days per week availability or lose scheduled days.

The Union timely filed exceptions to PDO-1, which were sustained by the Board. On June 18, 2013, the Board issued an Order Directing Remand to Hearing Examiner.

The examiner, based upon all matters of record, incorporates by reference the findings of fact set forth in PDO-1, and further makes the following additional findings of fact.

ADDITIONAL FINDINGS OF FACT

33. Ross McClellan, Mark Cummings and part-time officers John Tegley and Dan Kuzio attended the January 23, 2012, meeting on behalf of the Union. At every meeting, the Borough committee informed the Union that they were representatives of the whole Council. (N.T. 38, 137-138, 140-141, 208-211, 230).
34. Council Member Mike Lauderbaugh and Council Member Mike Schaal attended the January 23, 2012, meeting on behalf of the Borough. (N.T. 38-39, 45).
35. At the January 23, 2012, meeting, Mr. McClellan presented a draft proposal, one section at a time, with each section on a different page. This draft proposal did not contain any proposed wage provisions, which was reserved for Article 9 in that document. The parties did not agree on anything during the January 23, 2012, meeting. The Borough did not present any counterproposals at this time. (N.T. 40-44, 50, 96-97, 139, 211-213, 232-233; Union Exhibits 6 & 7).
36. On February 9, 2012, Mr. Lauderbaugh e-mailed Mr. McClellan that, at a February 6, 2012, Borough Council meeting, Council wanted more information before negotiations continued. The e-mail also reminded Mr. McClellan that he had not yet provided two pieces of information that he was supposed to provide, i.e., wage proposals and the Union's proposal regarding the full-timers' keeping their current contract. (N.T. 43; Union Exhibit 6).
37. On February 13, 2012, Mr. McClellan e-mailed his response to Mr. Lauderbaugh and informed him that the Union proposed honoring the full-timers' contract, including wages, until expiration, but reserved the right to renegotiate wages for the full time officers under the wage re-opener provision in that contract. Mr. McClellan also attached to that e-mail a draft document that included wage proposals under Article 9, which were omitted from the draft proposal presented to the Borough on January 23, 2012. (N.T. 47-49, 50-51, 96-97, 139-141, 179-180; Union Exhibits 7 & 8).

38. On February 15, 2012, Mr. Lauderbaugh e-mailed Mr. McClellan thanking him for forwarding the requested information and indicating that he would share the information with Council at the March Council meeting. (N.T. 51-52; Union Exhibit 7).
39. On March 8, 2012, following the March 5, 2012, Borough Council meeting, Mr. Lauderbaugh provided Mr. McClellan three dates in March that he was available for negotiations. (N.T. 49; Union Exhibit 7).
40. In March 2012, the parties met fact-to-face for the second time at the Borough Building. In attendance were McClellan, Tegley and Cummings on behalf of the Union and Schaal and Lauderbaugh on behalf of the Borough. No proposals were exchanged at the March meeting; nothing was discussed or negotiated. (N.T. 55, 141, 194, 213).
41. On April 4, 2012, Mr. Lauderbaugh e-mailed the Borough's proposal to Mr. McClellan. The Borough's proposal was based on the full-timers' contract and included the part-timers. The Borough representatives did not intend for all of the provisions of the full-timers' contract to apply to part-timers. It was a starting point for discussion. (N.T. 68-70, 96-97, 142, 217-219, 235-236, 238, 274-275; Union Exhibits 10 & 11).

42. The face page of the Borough's proposal states the following:

ATTACHED ARE THE BOROUGH BARGAINING COMMITTEES INITIAL PROPOSALS SUBJECT TO APPROVAL BY MAYOR AND COUNCIL OF McDONALD BOROUGH. THE BOROUGH RESERVES THE RIGHT TO ADD, MODIFY, CHANGE AND/OR DELETE ANY PROPOSAL, PROVISION OR TERM SET FORTH HEREIN, UNTIL FINAL APPROVAL BY MAYOR AND COUNCIL OF McDONALD BOROUGH. 4/4/12.

(N.T. 71; Union Exhibit 11).

43. On April 9, 2012, the Union e-mailed its counterproposal to Mr. Lauderbaugh. The Union's counterproposal consists of modifications to the Borough's proposal. The Union's changes are bolded and underlined. (N.T. 64-69, 73, 96-97; Union Exhibits 12 & 13a).
44. On April 13, 2012, Mr. McClellan e-mailed Mr. Lauderbaugh, in relevant part, as follows:

I would appreciate a response letting me no (sic) the status of our negotiations. I am looking forward to coming to an agreement as soon as possible; I don't think it is in the best interest of the Borough nor the Union to continue to drag out this process. Like I said in my previous email, I am fine with the email correspondence but if this is not working for you we will need to sit down and bargain. The Union has been very patient in working with you up to this point.

(Union Exhibit 13a).

45. The same day, Mr. Lauderbaugh responded, in relevant part, as follows:

I agree with you that it is not in the best interest of the Union or the Borough to drag this out, and I do not feel that this is being done. It might not be moving as fast as you want but unfortunately we all have other jobs and responsibilities, one person cannot make a decision for the entire Borough. I can sit down with you and agree or disagree on items but at the end of the day the ENTIRE McDonald Borough has to vote and agree, I am meeting with these individuals as the requests are made to try

and alleviate any hold up down the road some people are easier to get in touch with than others. Sorry you feel this way.

(N.T. 74-77, 143, 222; Union Exhibit 13a).

46. In this same e-mail, Mr. Lauderbaugh informed Mr. McClellan that the Borough would agree to Union recognition and the shift provisions; the Borough, however, would not agree to the Union Shop provision or the dues checkoff provision. (N.T. 224-225; Union Exhibit 13a).
47. On April 16, 2012, Mr. McClellan responded with Union proposal number two, reserved the right to discuss the dues checkoff and Union shop provisions at a later date, countered with its own wage increase proposal and requested a list of part time employes with length of service. (N.T. 74-77; Union Exhibit 13a).
48. On April 18, 2012, Mr. Lauderbaugh e-mailed a list of part-time officers and their hire dates. At this time, Mr. McClellan understood that Mr. Lauderbaugh had no authority to make any agreements. (N.T. 77-78, 143-144; Union Exhibits 13a & 13d).
49. On April 30, 2012, Mr. Lauderbaugh and Mr. McClellan exchanged more proposals. Mr. McClellan sought clarification regarding the Borough's intent to have either one wage rate for all part-time employees or to maintain the four-level progression for the part-time officers. (N.T. 82; Union Exhibit 13b).
50. At the May 24, 2012, meeting at the Borough Building, Mr. McClellan, Mr. Cummings, Mr. Kuzio and Mr. Tegley were present on behalf of the Union. Mr. Lauderbaugh and Mr. Schaal were present on behalf of the Borough. At that meeting, the parties' representatives discussed items on the contract proposal prepared by the Borough. Mr. McClellan placed sticky notes on his copy. At this point, the Union had abandoned the original proposal that it made in January 2012. (N.T. 91-93, 97-98, 148, 223; Union Exhibits 12 & 14).
51. On page three of the Union proposal marked as Union Exhibit 14, Mr. McClellan noted that Mr. Lauderbaugh did not agree to making police officers join the Union as a condition of employment or to the dues checkoff. (N.T. 92-93, 98-103; Union Exhibit 14).
52. Also during the May 24, 2012, meeting, the parties reviewed all sections of the proposed contract. Mr. McClellan proposed giving up the dues checkoff in exchange for agreeing to the Union shop clause. Either Mr. Lauderbaugh or Mr. Schaal told Mr. McClellan that they could not make that decision and they would have to discuss the matter with Council. (N.T. 93-95, 145).
53. Also during the May 24, 2012, meeting, Mr. McClellan and Mr. Lauderbaugh addressed wages for the full-timers and agreed that all part-timers would receive the same rate of pay. Mr. Lauderbaugh proposed a three percent wage increase for the part-timers in the first year and a four percent wage increase the following year, beginning January 2013. Mr. McClellan proposed a dollar amount that was for a greater amount than the three and four percent increases proposed by Mr. Lauderbaugh. (N.T. 103-104, 148-150).
54. After the May 24, 2012, meeting, Mr. Schaal understood that there were no agreements. Mr. Schaal and Mr. Lauderbaugh apprised Council members at Council meetings that negotiations were ongoing, but they had not presented Council with tentative agreements for a vote. Mr. Schaal expected to do more work on more provisions at more sessions. (N.T. 225-226, 230-231).
55. During e-mail exchanges and face-to-face meetings, Mr. Schaal and Mr. Lauderbaugh did not agree to anything so as not to limit their ability to negotiate later points of discussion. For Example, Mr. Schaal would not agree to

vacation time without being able to revisit vacation time when discussing wages. As of the May 24, 2012, meeting, the entire contract was still being negotiated and wages remained unresolved. Mr. Schaal understood that dialogue had not been exhausted on many items and nothing had been put to rest to present to Council. Often, the negotiators moved onto another subject just to move forward, but discussion on the subject had not been concluded. The items put aside during bargaining had not been mutually agreed upon. (N.T. 243-248, 252-253, 276).

56. Upon being hired by the Borough in the first week of June 2012, Mr. Gabriel initiated contact with the Union's organizer, Mr. Ornot, to initiate bargaining. Mr. Ornot directed Mr. Gabriel to Mr. McClellan. (N.T. 327-328).
57. Mr. McClellan set up the first negotiation session with Mr. Gabriel over the phone. This conversation was cordial. Mr. McClellan and Mr. Gabriel met at the Borough Building on June 20, 2012, and they were the only ones in attendance at this meeting. This meeting was also very cordial. (N.T. 120, 122-123, 152, 160, 306-307).
58. According to the Union, the unresolved issues as of May 24, 2012, were limited to the following:
 1. Page three of agreement: Union Membership and Dues check-off.
(Union proposes to remove check-off and leave membership)
 2. Page twenty eight of agreement: Arbitration Cost.
(Union proposes that the loser will pay)
 3. Wages: Borough's Final Offer (3% at signing, 4% Jan. 1, 2013)
Unions Final Offer (Total increase of \$3.37 before Jan. 1, 2013)

Both parties have agreed to arbitrate wages.

(Union Exhibit 16).

59. Mr. Gabriel and Mr. McClellan set up another meeting for July 31, 2012. (N.T. 123, 129-131, 181).
60. Mr. Lauderbaugh and Mr. Schaal did not at any time use the term "tentative agreement" and did not indicate that any provisions no longer needed to be discussed. (N.T. 147-148, 159, 268).
61. During the June 20, 2012, meeting, Mr. Gabriel asked Mr. McClellan to provide documentation confirming that there were tentative agreements for him to show Council. Mr. McClellan has not produced any documents to indicate that tentative agreements had been made on the part-timers or that the parties had agreed to honor the existing contract for the full-timers. On June 20, 2012, Mr. McClellan told Mr. Gabriel that there were no tentative agreements to present to Council for a vote. (N.T. 313-314, 322-323).
62. At the July 31, 2012, meeting, Mr. McClellan took the position that the Union was only willing to negotiate the three issues the Union deemed remaining. (N.T. 323, 333).
63. Schaal informed Mr. Gabriel prior to the July 31, 2012, meeting that the Borough did not want to negotiate piecemeal. There had to be a total package to take back for a vote. When Mr. McClellan told Mr. Gabriel that there was no package, Mr. Gabriel concluded that there was nothing totally or tentatively agreed to. Mr. Gabriel did not believe that bargaining should start all over; he believed that no tentative agreements had been made on all the points claimed by the Union. (N.T. 324).

64. Mr. Gabriel did not tell Mr. McClellan that the Borough would not negotiate unless the Union withdrew the unfair labor practice charge. (N.T. 322).

DISCUSSION

In its remand order, the Board concluded that I "failed to address [the] timely alleged unfair labor practice" alleging that "during June and July 2012 the Borough conducted its negotiations with the Union in bad faith by *inter alia*, engaging in regressive and surface bargaining. (Order Directing Remand to Hearing Examiner, PF-C-12-90-W). The Union alleges in its charge and amended charge that "by refusing to acknowledge the agreements previously reached by the parties, and by delaying in scheduling additional bargaining sessions, the Borough is engaging in bad faith and regressive bargaining in violation of the Act." (Specification of Charges, ¶ 3). In its post-hearing brief, the Union argued as follows:

After Councilman Lauderbaugh resigned, all of the tentative agreements which had been forged through months of meetings and email communications between the parties' representatives evaporated. The evidence established that the Borough falsely informed attorney Gabriel no tentative agreements had been reached. Gabriel himself testified to that and also related that the Borough failed to provide him with a copy of its April 4, 2012 full contract proposal to the Union, or even advise him the Borough's negotiators had submitted such a comprehensive proposal.

(Union's Post-hearing Brief at 36).

The issues on remand, therefore, are (1) whether the Borough's original contract negotiators, Mr. Lauderbaugh and Mr. Schaal, tentatively agreed to a package agreement of all but four items (i.e., Union membership; dues check-off; arbitration cost; and wages) and (2) whether the Borough refused to bargain in good faith by delaying bargaining or by reneging on alleged tentative agreements.

1. Bargaining

"Good faith" in collective bargaining cases means that the parties must make "a serious effort to resolve differences and reach a common ground." ***Appeal of Cumberland Valley School District***, 483 Pa. 134, 142, 394 A.2d 946, 950 (1978) (citation omitted). As quoted in the remand order, the Board, in ***PLRB v. Homer-Center School District***, 12 PPER ¶ 12169 (Final Order, 1981), set forth the standard for determining whether a party has bargained in good faith as follows:

Good faith bargaining cannot be discharged simply by counting the number of meetings between the parties or by weighing the amount of information exchanged during such negotiations. The ***totality of the circumstances of the bargaining procedure must be considered*** in determining whether good faith bargaining did in fact take place. If after examining all the circumstances one can reasonably conclude that one or the other party never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy, then good faith bargaining did not occur.

Homer-Center School District, 12 PPER at 262 (emphasis added). Accordingly, the Board has directed me to examine the totality of the circumstances to determine whether the Borough never intended to achieve an agreement, demonstrated unreasonableness or displayed a single-minded purpose to thwart the public policy of engaging in collective bargaining and reaching an agreement by allegedly reneging on tentative agreements and/or allegedly delaying bargaining. To determine the status and nature of negotiations in June and July 2012 and whether there were tentative agreements, it is necessary to examine the parties' collective bargaining efforts leading up to that period of time.

At every meeting, since the parties began negotiating in January 2012, the Borough bargaining committee, comprised of Mr. Lauderbaugh and Mr. Schaal, informed the Union that they could not agree to any portion of the matters that were discussed without approval from Council. On January 23, 2012, the parties met and reviewed a proposal drafted by Mr. McClellan. This proposal did not contain any wage provisions. The parties did not agree to any substantive provisions during this meeting and the Borough did not present any counterproposals.

On February 9, 2012, Borough negotiator Lauderbaugh contacted Mr. McClellan via e-mail and reminded him to provide wage proposals and information regarding the Union's position on full-timers' keeping their existing contract. Mr. McClellan responded via e-mail on February 13, 2012, informing Mr. Lauderbaugh that the Union proposed honoring the full-timers' existing contract, reserving the right to invoke the wage re-opener provision contained therein. Mr. McClellan's e-mail response also included wage proposals for the part-timers, omitted from his initial proposal. Mr. Lauderbaugh responded on February 15, 2012, via e-mail indicating that he would share the wage proposals and the proposal to maintain the full-timers' contract with Borough Council at the March 2012 Council meeting.

On March 8, 2012, following the March 5, 2012, Borough Council meeting, Mr. Lauderbaugh again contacted Mr. McClellan and provided him with three dates in March that he was available for negotiations. At this point, the Borough, through Mr. Lauderbaugh and Mr. Schaal, had been making good-faith efforts to contact and negotiate with the Union. It is important to bear in mind that the Borough Council Members and negotiators are part-time Borough officials who have other full-time responsibilities, as compared to the Union negotiators whose full-time responsibilities are to negotiate contracts for Union employees.

Later in March 2012, the parties met for the second time at the Borough Building. However, substantive proposals were not exchanged or discussed. Then on April 4, 2012, Mr. Lauderbaugh e-mailed a draft proposal to Mr. McClellan. Although this proposal was based on the full-timers' contract and included provisions for the part-timers, the record demonstrates that the Borough's representatives did not intend for all the provisions of the full-timers' contract to apply equally to the part-timers. The Borough's draft proposal served as a framework for negotiating individual, substantive provisions.

The face of the Borough's April 4, 2012, proposal expressly states in all capital letters that it is an **initial** proposal and that "THE BOROUGH RESERVES THE RIGHT TO ADD, MODIFY, CHANGE AND/OR DELETE ANY PROPOSAL, PROVISION OR TERM SET FORTH HEREIN, UNTIL FINAL APPROVAL BY MAYOR AND COUNCIL OF McDONALD BOROUGH." The clear import of this warning to the Union is that the proposal was not an offer for the Union to accept. Rather it was framework for discussion. Mr. McClellan understood this because less than one week later, on April 9, 2012, he e-mailed the Union's counterproposal to Mr. Lauderbaugh. The Union's counterproposal contains changes to the Lauderbaugh proposal that are bolded and underlined.

On April 13, 2012, four days after sending his counterproposal to the Borough, Mr. McClellan e-mailed Mr. Lauderbaugh stating, in relevant part, as follows:

I would appreciate a response letting me no [sic] the status of our negotiations. I am looking forward to coming to an agreement as soon as possible; I don't think it is in the best interest of the Borough nor the Union to continue to drag out this process. Like I said in my previous email, I am fine with the email correspondence but if this is not working for you we will need to sit down and bargain. The Union has been very patient in working with you up to this point.

(F.F. 44). The same day, Mr. Lauderbaugh responded explaining that he did not believe that anyone was dragging out negotiations and that he agreed that it was not in the best

interest of the parties to delay. He further explained that all the Council members had other jobs and indicated that contacting Council members to discuss contract proposals with them and having them return their opinions on those proposals is not something that can be done very quickly. Mr. Lauderbaugh concluded: "Sorry you feel this way."

This e-mail exchange indicates that Mr. McClellan believes that four days constitutes delay. Four days in the public sector, however, does not constitute delay or dragging out the process of collective bargaining where the Council members are part-time public officials with other full-time responsibilities. Moreover, Mr. Lauderbaugh exercised good faith in remaining in constant contact and communication with Mr. McClellan. Also, in this same April 13, 2012, response, Mr. Lauderbaugh provided Mr. McClellan with its first counterproposal after the initial draft proposal. The Borough's counterproposal provided that the Borough would agree to Union recognition as well as the shift provisions, but the Borough would not agree to the Union shop or the dues checkoff provisions.

On April 16, 2012, Mr. McClellan submitted Union counterproposal number two wherein he reserved the right to continue negotiating dues checkoff and Union shop, proposed wage increases and requested a list of part-time officers and their length of service. Within two days' time, on April 18, 2012, Mr. Lauderbaugh e-mailed a list of part-time officers and their hire dates. At this time, Mr. McClellan understood that Mr. Lauderbaugh did not have the authority to make any agreements, but Mr. Lauderbaugh had offered to agree to the Union recognition and the shift provisions.

On April 30, 2012, the parties exchanged more proposals and Mr. McClellan sought clarification regarding wage levels for part-timers. On May 24, 2012, the parties met at the Borough Building and used the Borough's April 4, 2012, written proposal to discuss contract terms. At that meeting, Mr. McClellan proposed giving up dues checkoff in exchange for Union Shop. That matter was not accepted or agreed to by Borough negotiators at that time. Also, during the May 24, 2012, meeting the parties discussed wages, but the parties did not agree to any wage proposals. Following the May 24th meeting, Borough negotiator Schaal understood that there were no agreements made, except for recognition and shift.

Mr. Schaal credibly testified that throughout e-mail and face-to-face negotiations, Borough negotiators intentionally avoided tentative agreements in order to preserve their ability to revisit matters, depending on the discussion of economic terms later in negotiations. Mr. Schaal credibly testified, by way of example, that Borough negotiators would not agree to vacation time without being able to revisit vacation time when discussing wages. He also credibly testified that, as of the end of the May 24, 2012, meeting, the entire contract was still being negotiated because wages were unresolved and nothing had been agreed to or put to rest. Mr. Schaal also credibly testified that, throughout negotiations, the parties moved forward to discuss another subject just to move forward but not because discussion had been concluded or an agreement had been reached on the prior subject.

In early June 2012, before that month's Council meeting, lead Borough negotiator, Mr. Lauderbaugh, resigned from Council, and Borough Council hired Christopher Gabriel, Esquire to assume the role of lead negotiator with the Union on behalf of the Borough. On June 20, 2012, Mr. Gabriel met with Mr. McClellan at the Borough Building. This meeting was very cordial and, after several phone calls, the parties set up another meeting for July 31, 2012. At the July 31, 2012, meeting, Mr. McClellan took the position that the Union was only willing to negotiate Union membership, dues checkoff, arbitration costs and wages.

At no time between January 23, 2012, and July 31, 2012, did Borough representatives use the term "tentative agreement" regarding any subject nor did they indicate that discussions had concluded on any subject. Mr. Gabriel asked Mr. McClellan to produce documentation to indicate that tentative agreements had been made with respect to the part-timers or with respect to honoring the existing contract for the full-timers. Mr. McClellan at no time produced any such documentation and told Mr. Gabriel that there was

no package agreement. Also, Mr. Schaal credibly testified that the Borough did not intend to negotiate piecemeal and that the Borough negotiators' goal was to take a complete package back to the Borough Council for a ratification vote. Consequently, Mr. Gabriel did not believe that bargaining should start all over; he simply believed that tentative agreements had not been made on all the points claimed by the Union.

After reviewing the totality of the circumstances, I find that the Union did not establish that the parties had a meeting of the minds tentatively agreeing to a package of substantive provisions for the Borough negotiators and the Union negotiators to take back for a ratification vote. The only substantive provisions that the Borough offered to agree to were the Union recognition and the part-time shift provisions in Article XVI. There are no markings on any contract proposals indicating that the parties tentatively agreed on any other provisions. The Borough was clear about its willingness to agree to the Union recognition and part-time shift provisions in Article XVI. However, given the explicit clarity with which the Borough negotiators offered to agree to these provisions, there is no evidence anywhere in the record indicating that the Borough tentatively agreed to anything else.

At a minimum, the term "tentative agreement" requires that both parties outwardly, clearly or affirmatively, express their mutual intent to agree upon a substantive contractual provision or package of provisions subject to the ratification vote and final acceptance of the public employer's governing body or the union's membership. This record is devoid of evidence of mutual assent to any substantive contract provisions, beyond the benign recognition and shift provisions. There are no "TA"s or initials on any of the contract provisions and the correspondence between the parties does not indicate mutual acceptance of any proposals or offers.

Also, on July 23, 2012, in response to Mr. McClellan's request for Act 111 interest arbitration, Borough Council President Marilou Ritchie sent a letter to Mr. McClellan informing him that the Borough appointed Mr. Gabriel as their partial arbitrator and that the Borough considered all issues to be in dispute. Ms. Ritchie stated that "[d]espite this notice, which is required by Act 111, **the Borough nevertheless looks forward to meeting with the Union in the near future in the hopes of resolving all issues and reaching an agreement.**" The Borough's willingness to continue bargaining with the Union and to proceed to interest arbitration, albeit over more issues than the Union wanted, demonstrates the Borough's efforts to bargain in good faith.

On July 31, 2012, Mr. Gabriel told Mr. McClellan at a meeting at the Borough Building that Council told him that there were no tentative agreements. The record supports Mr. Gabriel's position that there was no tentative agreement on all but three issues and that there was no agreement to apply the existing contract to the full-timers. The Borough negotiators did not agree to, and the Union did not assent to, a tentative package or set of agreements. I also credit Mr. Gabriel's testimony that he did not, at any time, refuse to negotiate unless the Union withdrew the charge.

Accordingly, under the totality of the circumstances, I conclude that the Borough and Union negotiators did not mutually agree upon a package of terms and conditions of employment that became ripe for a ratification vote. Therefore, the Borough did not unlawfully renege on any such non-existent agreements or engage in regressive bargaining. Moreover, the Borough did not refuse to bargain or engage in surface bargaining at any time prior to the filing of the amended charge. After examining all the evidence, I am unable to reasonably conclude that the Borough "never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy." *Homer-Center, supra*.

2. Unilateral Change

The Board's remand order has provided occasion for review of my previous analysis which included the Union's claim that the Borough unilaterally changed terms and conditions of employment when, on June 4, 2012, Chief Dorsey posted an amended memo requiring part-time officers to provide Sergeant Ahlborn with a minimum availability of

three days per week and providing that a failure to do so would result in not being scheduled. On June 5, 2012, Mr. McClellan received an e-mail from Council President Ritchie attaching the June 4, 2012, memo from Chief Dorsey. The original charge of unfair labor practices in this case was filed on July 23, 2012.

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). "[W]hether a claim is filed beyond the limitations period is a question of subject matter jurisdiction, which can be raised *sua sponte* by the Board at any time." *Reserve Township v. Teamsters, Local 249*, 32 PPER ¶ 32079 (Final Order, 2001).

The Union received actual notice of the Chief's alleged change in terms and conditions of employment on June 5, 2012. Six weeks from that date is July 17, 2012. The original charge was not filed until July 23, 2012. Accordingly, the charge is untimely with respect to the Chief's alleged change in terms and conditions of employment and that part of the charge must be dismissed for lack of subject matter jurisdiction. Alternatively, I also adopt my prior analysis and conclusion that the Chief's memo did not effectuate a change in terms and conditions of employment.

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

ORDER

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

HEREBY ORDERS AND DIRECTS

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighteenth day of July, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner