

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF :
FIRE FIGHTERS, LOCAL 1813 :
 :
v. : Case No. PF-C-12-94-E
 :
 :
CHAMBERSBURG BOROUGH :

PROPOSED DECISION AND ORDER

On August 6, 2012, the International Association of Fire Fighters, Local 1813 (Union or Local) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Chambersburg Borough (Borough) alleging that the Borough violated Sections 6(1)(a) and (c) of the Pennsylvania Labor Relations Act (PLRA) as read *in pari materia* with Act 111 of 1968.

On September 4, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which February 4, 2013 in Harrisburg was assigned as the time and place of hearing. On January 28, 2013, the Union and the Borough requested a continuance of the hearing to allow the hearing examiner time to issue a proposed decision and order (PDO) in two related cases, Case Nos. PF-C-11-174-E and PF-C-12-40-E. The examiner granted the Union's request. On January 30, 2013, the examiner issued PDOs in those cases, finding for the Union in both cases. On February 27, 2013, he scheduled a hearing in the present case for May 6, 2013.

The Borough filed exceptions in both cases. The Borough requested a continuance of the hearing until the Board decided its exceptions. The examiner continued the case to August 28, 2013, and again to November 21, 2013. On October 15, 2013, the Board dismissed the Borough's exceptions in both cases.

The hearing was held on the rescheduled date and at that time, all parties were afforded an opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

At the hearing, the parties submitted a Joint Stipulation of averments 1 through 15, with documents A through I. (N.T. 7) The parties also incorporated by reference the joint stipulations and the entire record in Case Nos. PF-C-11-174-E and PF-C-12-40-E.

On January 27, 2014 the Union filed a brief. On February 26, 2014, the Borough filed a brief.

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

FINDINGS OF FACT

1. The International Association of Firefighters Local 1813 is a labor organization under Act 111. It is also an affiliate organization of the International Association of Firefighters. (Proposed Finding of Fact (PFF) 1, 44 PPER 77 (Proposed Decision and Order, 2013), *aff'd* 45 PPER 50 (Final Order, 2013))¹

2. The Local represents a bargaining unit of all full-time paid firefighters employed by the Fire Department ("Department") of the Borough. (PFF No. 2)

¹ Unless otherwise stated, all cites to the PFF refer to the Proposed Decision and Order in **IAFF Local 1813 v. Chambersburg Borough**, PF-C-11-174-E, 44 PPER 77 (Proposed Decision and Order, 2013), *aff'd* 45 PPER 50 (Final Order, 2013). The proposed Decision and Order was upheld by the Board, which left the factual findings of the Hearing Examiner undisturbed.

3. There are currently twenty-one (21) bargaining unit members. (PFF No. 3)
4. The Borough is a public employer under Act 111. (PFF No. 4)
5. The Local and the Borough are parties to a collective bargaining agreement ("CBA") whose effective dates are January 3, 2007 through the first full pay period of January, 2012. (PFF No. 5)
6. The parties are currently involved in an interest arbitration proceeding under Act 111 to secure a successor agreement. (PFF No. 6)
7. Patrick Martin is a fifteen (15) year full-time paid firefighter for the Borough and holds the position of shift captain in the Borough Fire Department. He also is the elected President of the Local. (PFF No. 7)
8. Scott McNew worked for eight (8) years at the Chambersburg Fire Department as full-time firefighter in a relief position. McNew is the current elected Vice President of the local, and a bargaining unit employee. (N.T. 54, PFF No. 8)
9. The Department provides a host of emergency services, including basic life support services and fire suppression, for the Borough through its full-time paid firefighters represented by the Local. (PFF No. 9)
10. Volunteer firefighters who volunteer their services at one of four volunteer fire companies also provide some of those services. (PFF No. 10)
11. The Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2, and the Franklin Fire Company No. 4 are volunteer membership organizations. (PFF No. 11)
12. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2, and the Franklin Fire Company No. 4 are not paid employees of the Department. (PFF No. 12)
13. The Franklin Fire Company entered into a Mutual Aid Agreement with the Borough. The Franklin Fire Company is housed in its own building located within the Borough and owns and operates its own fire apparatus equipment. (PFF No. 13)
14. The Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, and the Junior Hose Truck Company No. 2 have not entered into Mutual Aid Agreements with the Borough. These companies are housed in Borough-owned stations located in the Borough. These companies utilize the Borough-owned fire apparatus equipment. (PFF No. 14)
15. The Franklin Fire Company has approximately 74 active volunteers who provide volunteer fire services. (PFF No. 15)
16. Of those, 24 are members of the IAFF. Fourteen volunteers respond to calls in the Borough. Twelve (12) of these 14 are IAFF members. (PFF No. 15)
17. The Cumberland Valley Hose Company has only one active volunteer who provides volunteer fire services. That one volunteer is not a member of the IAFF. (PFF No. 16)
18. Approximately twelve (12) Franklin Fire Company members respond to calls. On weekdays, approximately two-thirds to three-fourths of those twelve (12) are IAFF members and, on weekends, approximately one-half of those twelve (12) are IAFF members. (N.T. 144)
19. The Goodwill Fire Company No. 3 has six (6) active volunteers who provide volunteer fire services. None of the active volunteers at this company are members of the IAFF. (PFF No. 17)

20. The Junior Hose Truck Company No. 2 has four (4) active volunteers who provide volunteer fire services. None of the active volunteers at this fire company are members of the IAFF. (PFF No. 18)

21. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 and the Franklin Fire Company No. 4 are not paid employes of those volunteer fire companies for which they provide volunteer fire services. (PFF No. 19)

22. None of those four volunteer fire companies have any paid employes. (PFF No. 20)

23. A person who wishes to become an active volunteer of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 must fill out an application with the Borough of Chambersburg. (PFF No. 21)

24. A person who wishes to become an active volunteer of the Franklin Fire Company must fill out an application with that volunteer fire company. (PFF No. 22)

25. Each of the four volunteer fire companies, not the Borough, decides who can become a member of their respective volunteer fire company. (PFF No. 23)

26. The members of each of the four volunteer fire companies elect the officers of their respective volunteer fire company. (PFF No. 24)

27. One does not need to be an IAFF member in order to volunteer for one of the volunteer fire companies which provide volunteer firefighting services to the Borough. (PFF No. 25)

28. Volunteer firefighters of the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 and the Franklin Fire Company No. 4 may choose not to provide volunteer fire services for any reason or no reason at all. (PFF No. 26)

29. On the Borough website, Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 are all mentioned as volunteer fire companies of the Chambersburg Fire Department but the Franklin Fire Company is not. (PFF No. 27)

30. The Chambersburg Fire Department does not have administrative control over the volunteers of the Franklin Fire Company, but can only recommend discipline to the administration of the Franklin Fire Company. (PFF No. 28)

31. The Chambersburg Fire Department does have administrative control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3, the Junior Hose Truck Company No. 2 The Borough may discipline an active volunteer from one of these three volunteer fire companies, and that discipline may include a written warning or suspension. (PFF No. 29)

32. The Chambersburg Fire Department sometimes has command and control over the active volunteers of the Franklin Fire Company, and sometimes it does not. Whether or not the Chambersburg Fire Department has command and control over the active volunteers of the Franklin Fire Company is determined by whether or not the emergency occurs in an assigned area of the Chambersburg Fire Department or the Franklin Fire Company. The assigned area of the Franklin Fire Company is the Townships of Guilford, Hamilton and Greene-all outside the Borough of Chambersburg. (PFF No. 30)

33. The Chambersburg Fire Department sometimes has command and control over the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 as the active volunteers are housed in one of the two stations of the

Chambersburg Fire Department and are transported to emergencies on the Department's apparatus. (PFF No. 31)

34. The IAFF is a voluntary membership organization, and bargaining unit employees represented by the IAFF are not obligated to join the IAFF. (PFF No. 32)

35. To become a member of the IAFF, a person must work as a paid fire fighter for a public or private sector employer whose employees are organized by the IAFF. He or she must also agree to join the union. (PFF No. 33)

36. Membership in the IAFF includes benefits and obligations. (PFF No. 34)

37. Membership in the IAFF allows the fire fighters to vote for officers of their respective unions. It also allows them to vote for officers of any state affiliate of the IAFF, such as the Pennsylvania Professional Fire Fighters Association. (PFF No. 35)

38. Membership in the IAFF also obligates the fire fighters to abide by the IAFF Constitution and Bylaws, which enumerates the benefits and obligations of members of the IAFF. (PFF No. 36)

39. Bargaining unit employees who are not members of the IAFF are still protected by the terms and conditions of employment-including salary, pension, and health care-secured through a collective bargaining agreement (or the terms set by the employer in Right to Work States) between the local union and the employer. Nor are bargaining unit employees who are not IAFF members subject to termination from their employment. (PFF No. 37)

40. Loss of membership in the IAFF does mean loss of voting rights, and the loss of incidental benefits which varies based on which local union represents the bargaining unit employees where the firefighter is employed. (PFF No. 38)

41. Under the IAFF Constitution and Bylaws, any member of the IAFF may file internal union charges against another IAFF member who engages in misconduct. (PFF No. 39)

42. Those charges are reviewed by three Vice Presidents of the IAFF if requested by the charged party. If the three Vice Presidents find that the charge has merit, or if the charged party does not request review of the internal union charges, then a Trial Board is impaneled by the local union where the firefighter is a member. If the internal union charges are upheld by the Trial Board, it may impose a penalty which includes a temporary or permanent suspension in membership status in the IAFF. (PFF No. 42)

43. In some cases, the internal union charges are heard by another local other than the IAFF member's own local. (N.T. 100-01)

44. In the event the internal union charges are upheld by the trial board, the IAFF member may file an appeal to the decision. (N.T. 100)

45. The IAFF member filing the internal union charges can withdraw the charges simply by sending a letter indicating his intention to do so. (N.T. 102)

46. Article XV, Section 1(J) of the IAFF Constitution states that misconduct for an IAFF member includes "[e]ngaging in conduct detrimental to the best interests of the Association or its subordinate union which places or tends to place them in disrepute with other labor organizations, employers or the public." (PFF No. 41)

47. Article XV, Section 1(N) states that misconduct for an IAFF member includes "[w]orking a secondary job part-time, paid on call, volunteer or otherwise as a firefighter, emergency medical services worker, public safety or law enforcement officer, or as a worker in a related service, whether in the public or private sector, where such job is within the work jurisdiction of any affiliate or which adversely impacts the interest of any affiliate or the IAFF. (PFF No. 42)

48. The Local and the Borough had two negotiation sessions for a successor agreement to the CBA. At both sessions, Jeffrey Stonehill, the Borough Manager, indicated that the Borough intends to layoff some of its paid firefighters and have those services performed by volunteers firefighters. (PFF No. 43)

49. Article 28 of the CBA states, "In the event, however, that the Borough elects to exercise this right, it will provide the Union with 9 months' notice before implementing any Fire Department reductions. " (PFF No. 44)

50. The Local and the Borough have engaged in negotiations for a successor agreement to the CBA. (PFF No. 45)

51. On July 25, 2011, William F. McLaughlin, President of Borough Council, sent a letter to President Martin which stated that "effective nine (9) months from the date of this notice, the Borough will either simply decrease its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to other potential fire service providers." (PFF No. 46)

52. In fact, the Borough passed a budget for fiscal year 2012 which only provides funding for its full complement of full-time, paid firefighters until July 1, 2012. The budget does not provide funding for eight of the twenty-one (21) full-time paid firefighters after July 1, 2012. (PFF No. 47)

53. On August 12, 2011, President Martin sent a letter in response to Borough Council President's July 25, 2011 letter in which he challenged the Borough's announcement of impending layoffs, as well as the sufficiency of the notice under Article 28 of the CBA. (PFF No. 48)

54. The Executive Board determined that a letter should be sent to IAFF members informing them of their obligations under the IAFF Constitution and Bylaws. (PFF No. 49)

55. On October 24, 2011, President Martin had a "friendly" meeting with the volunteer Fire Chief of the Franklin Fire Company, Mark Trace, about the current situation regarding proposed layoffs of the paid firefighters by the Borough. In a memorandum memorializing that meeting, Trace states that the Local will be sending out approximately 200 letters to IAFF members who reside in Franklin County or a portion of Cumberland County. He further states:

Local 1813 will be sending out letters to roughly 200 union firefighters living in Franklin and part of Cumberland Counties REQUESTING that you do not volunteer on calls in the Boro of Chbg. This request does not concern you riding calls other than those calls inside the Boro of Chbg and is not a formal charge of any kind. Due to IAFF regulations/policies/procedures, your local union will receive a copy. Again this is a request out of respect for your union brother and not a formal charge of any type. NOW with that being said, if you continue to volunteer on runs into the Boro, Local 1813 will file formal charges with the IAFF to have disciplinary actions taken against you. I am not a lawyer or big union contract guy but I believe that the worst of those charges would be that you loose [sic] your union card.

This leaves you with a decision to make. Do you or do you not ride calls into the Boro? As the Fire Chief, I promise you that you will not receive disciplinary action from the Franklins if you choose not to respond on calls into the Boro of Chbg.

(PFF No. 50)

56. On October 26, 2011, President Martin sent a letter that notified some IAFF members that "the Borough informed our membership that it intends to reduce the Chambersburg Fire Department's career staffing or transfer much of the primary

responsibility for fire fighting and suppression to potential fire service providers." (PFF No 51)

57. The letter goes on to state, "I respectfully request your support as a member of the International Association of Fire Fighters, and ask that you adhere to the constitution and By-Laws of our great union by refraining from providing volunteer firefighting services to the Borough of Chambersburg." (PFF No. 52)

58. President Martin sent the letter to approximately 200 IAFF members who reside in Franklin County and the southern portion of Cumberland County. (PFF No. 53)

59. None of the volunteers at the Cumberland Valley Hose Company No. 5, the Goodwill Fire Company No. 3 and the Junior Hose Truck Company No. 2 received the letter because they were not IAFF members. (PFF No. 54)

60. Twenty-four (24) IAFF members who provide volunteer fire services for the Franklin Fire Company were sent President Martin's letter. (PFF No. 55)

61. After receiving President Martin's letter, there was a chart kept at the Franklin Fire Company that listed all the volunteer firefighters who continued to provide volunteer fire services within the work jurisdiction of the Fire Department. (N.T. 156-58; Union Ex. 1).

62. The chart had written at the top "Bad Boy List" and kept track of the number of times volunteer firefighters performed runs within the jurisdiction of the Local. The chart denoted this activity as "crossing the union line." (N.T. 158; Union Ex. 1).

63. Art Martynuska, President of the Pennsylvania Professional Fire Fighters Association (PPFFA), and President Martin testified that an IAFF member violates the IAFF Constitution if he or she provides volunteer fire services to a municipality which is considering laying off its paid firefighters who are represented by the IAFF. (PFF No. 56)

64. On or about November 4, 2011, David Finch, Assistant Borough Manager sent a memorandum to President Martin stating, in pertinent part, that the Borough was "currently investigating an allegation of misconduct on [his] part, specifically, that on October 26, 2011, you sent a letter to volunteer firefighters in the area who are IAFF members to request that they refrain from ... providing volunteer firefighter services to the Borough of Chambersburg." (PFF No. 57)

65. The November 4, 2011 memorandum goes on to schedule a pre-disciplinary conference for Thursday, November 10, 2011. (PFF No. 58)

66. The pre-disciplinary conference was rescheduled for November 14, 2011. Fire Chief William M. Fitzgerald, Assistant Borough manager David Finch, President Martin, and counsel for the Local were in attendance. (PFF No. 59)

67. On November 17, 2011, David Finch sent a memorandum to President Martin in which he stated that the Borough was considering terminating his employment, and notified him that the Borough Council will meet to consider such termination. (PFF No. 60)

68. David Finch sent another undated letter to President Martin informing him, in pertinent part, that "a Loudermill hearing will take place on December 5, 2011 at 6:00 pm. before Town Council." (PFF No. 61)

69. David Finch sent another undated letter to President Martin informing him, in pertinent part, that the December 5, 2011 meeting of Borough Council was rescheduled for January 30, 2012 at 6:00 p.m. (PFF No. 62)

70. On January 30, 2012, President Martin read a prepared statement to the Borough Council. (PFF No. 63)

71. Martin's letter stated, in relevant part:

We have come to the point tonight over a letter that was sent to members of the International Association of Fire Fighters, from IAFF Local 1813 under my signature as President, reminding those members of the IAFF Constitution and Bylaws requirements concerning volunteer firefighting. The letter was not written while I was on duty and was by no means meant for public consumption. It was merely an internal Union matter. At no time did I or any other member of Local 1813 ask any non-IAFF member or for that matter any individual fire department to discontinue or limit fire service. Additionally, and despite a claim to the contrary in one of the Borough's charges, my letter was not sent to any member of the Chambersburg Fire Department. Further, my letter did not state that any person must cease volunteering within the Borough, nor do I have the authority to compel that. The choice of whether to volunteer was left entirely up to the individual.

I do regret, however, that my communication to my fellow IAFF members caused concern among the Borough Council. That was not my intent, and I apologize that my letter has caused such a commotion.

(PFF No. 65)

72. On or about February 1, 2012, Councilman McLaughlin sent a letter to President Martin informing him that the Town Council had voted to suspend him for two hundred and forty (240) hours as a result of his October 26, 2011 letter. The letter states the statutory reasons for Mr. Martin's suspension. (PFF No. 66)

73. Councilman McLaughlin specifically cites Martin's letter as the Borough's grounds for suspending him. He says the letter was:

Engaging in conduct unbecoming an officer and neglect of an official duty due to Martin's actions of:

- a. Encouraging, sanctioning, supporting, and suggesting a secondary boycott which interferes with the normal work of the department.
- b. Calling, instituting, maintaining or conducting an unlawful strike or boycott against the Borough.
- c. Neglect of duty to properly control, manage, and direct volunteer firefighters.
- d. Improper exercise of supervisory and personnel management over the subordinate volunteer firefighters.

(PFF No. 66)

74. On February 2, 2012, President Martin received a copy of Councilman McLaughlin's letter. (PFF No. 67)

75. On February 10, 2012, Mr. Martin appealed the Chambersburg Town Council's decision to the Borough of Chambersburg Civil Service Commission. (PFF No. 68)

76. On February 27, 2012, the Chambersburg Borough Civil Service Commission held a hearing to review the discipline imposed on Mr. Martin by Chambersburg Town Council. The Commission upheld the charges in a decision dated May 25, 2012. (PFF No. 69)

77. On March 1, 2012, the Local informed the Borough that it was requesting binding grievance arbitration regarding the Borough's decision to suspend Martin. A hearing has been scheduled for August 30, 2012. (PFF No. 70)

78. On or around April 21, 2012, Scott McNew, Vice President of the Local and a paid firefighter within the Chambersburg Fire Department, sent letters to at least 11 members of the Franklin Fire Company who are also members of the IAFF, preferring internal IAFF charges against such members, in furtherance of Martin's October 26, 2011 letter. (PFF No. 71)

79. McNew sent approximately another five (5) such letters to other IAFF members who were volunteering at volunteer fire companies other than Franklin Fire Company. (N.T. 57)

80. President Martin neither encouraged or directed Vice President McNew to file the charges. In fact, President Martin believed that an attempt to prevent Vice President McNew from filing internal union charges would constitute a violation of the IAFF Constitution and Bylaws and also an unfair labor practice charge. (N.T. 10-11).

81. The internal union charges filed by Vice President McNew were filed pursuant to the IAFF Constitution and Bylaws which allows any IAFF member to file internal union charges against another IAFF member who violates the IAFF Constitution and Bylaws. (N.T. 10, 57, 96.).

82. The internal union charges filed by Vice President McNew allege that the volunteer firefighters (who are also IAFF members) violated the IAFF Constitution and Bylaws by providing volunteer fire services despite receipt of the October 26, 2011 letter from President Martin informing IAFF members that the Borough was considering layoffs of its paid, full-time firefighters. (Joint Stipulation ¶5; Exh. A).

83. All of the internal union charges indicate that the IAFF member "responded to a multitude of incidents in his off-duty time as a volunteer officer for his volunteer organization ... within the operational jurisdiction of IAFF Local 1813." (Joint Stipulation ¶5; Exh. A).

84. On May 8, 2012, the Chambersburg Town Council filed for preliminary injunctive relief in the Franklin County Court of Common Pleas against the Local, Martin, and McNew, seeking the court to require the Defendants to cease encouraging, sanctioning, and supporting a secondary boycott of volunteer fire fighting services of the Chambersburg Fire Department. (PFF No. 72)

85. On May 8, 2012, the Honorable Richard J. Walsh granted the motion and ordered the Local, Martin, and McNew to "cease and desist from encouraging, sanctioning, and supporting a secondary boycott of volunteer fire services in the Chambersburg Fire Department." (PFF No. 73)

86. On May 10, 2012, the preliminary injunction hearing was continued by joint motion of the parties with the preliminary injunction order remaining in effect. (PFF No. 74)

87. On June 18, 2012, the Hearing Examiner held a hearing on the Borough and Local's respective unfair labor practice charges (Case Nos. PF-C-174-E and PF-C-12-40). At the hearing, over the objection of the Union, the Borough presented testimony regarding the internal union charges filed by Vice President McNew as part of their support of the Borough's unfair labor practice charge. (N.T. 41-47 from the 6/18/12 hearing).

88. In June, 2012, President Martin became aware that the Chambersburg Fire Department had been granted a Staffing for Adequate Fire and Emergency Response ("SAFER") grant from the Federal Emergency Management Agency ("FEMA"). (N.T. 18-19).

89. In late June, following the hearing on the Borough and Local's respective unfair labor practice charges, the Borough informed the public at a press conference that it had obtained a SAFER grant. (N.T. 18).

90. President Martin wrote the grant to FEMA on behalf of the Borough, and the Borough was aware he had done so. (N.T. 18).

91. The SAFER grant provided \$1.6 million to the Chambersburg Fire Department over a two (2) year period of time. (N.T. 18)

92. Under the terms of the SAFER grant, the Borough was prohibited from laying off any of its paid firefighters. (N.T. 20).

93. On July 3, 2012, the President Martin and Vice President McNew submitted their written answers to several Borough questions regarding the filing of the internal union charges by Vice President McNew, including the fact that President Martin did not encourage or direct Vice President McNew to file those charges. (Joint Stipulation ¶7; Exhibits D and E).

94. On the same day, David Finch sent letters to President Martin and Vice President McNew informing them that the date of their Loudermill hearing before the Borough Council was scheduled for July 9, 2012. (Borough Exhibit 2).

95. On July 5, 2012, President Martin sent a letter to the same IAFF members to whom he sent his October 26, 2011 letter, informing them that given the fact that the Borough had announced that it will not lay off its full-time, paid firefighters, it no longer constituted a violation of the IAFF Constitution and Bylaws to provide volunteer fire services to volunteer fire companies who provide fire suppression and other emergency services. (Joint Stipulation ¶8; Exhibit F; N.T. 20-21).

96. On the same day, Vice President McNew sent a letter to the sixteen (16) IAFF members against whom he filed internal union charges, informing them he was withdrawing those charges for the same reason outlined in President Martin's letter. (Joint Stipulation ¶9; Exh. G; N.T. 62-63).

97. The July 5, 2012 letters of President Martin and Vice President McNew were forwarded to counsel to the Borough. Vice President McNew's letter constituted an effective withdrawal of the internal union charges. (N.T. 63, 101-02, 127).

98. On July 9, 2012, the Borough held a Loudermill hearing in executive session before the Borough Council regarding possible discipline against President Martin and Vice President McNew. (Joint Stipulation ¶10; N.T. 22).

99. At the Loudermill hearing for President Martin and Vice President McNew, President Martin read a prepared statement. (Joint Stipulation ¶11; N.T. 22).

100. At the public meeting of the Borough Council on the same day as the Loudermill hearing, the Borough Council announced that it would accept the SAFER grant and would not layoff any of its full-time, paid firefighters. (Joint Stipulation ¶12; N.T. 126).

101. The Borough did not make a decision on discipline regarding President Martin or Vice President McNew at the July 9, 2012 meeting. (N.T. 22).

102. Two weeks later, on July 23, 2012, the Borough Council decided to terminate Vice President McNew and impose a written warning and last chance warning against President Martin. (Joint Stipulation ¶13).

103. On July 25, 2012, Borough Assistant Manager David Finch sent a letter to President Martin informing him that the Borough was imposing a written warning and last chance warning. (Joint Stipulation ¶14; Exhibit 14).

104. Mr. Finch's July 25, 2012 letter states that President Martin's alleged inappropriate conduct was "failing to attempt to dissuade Mr. McNew from sending the

April 21, 2012 letters [preferring internal union charges] ..." He further states that "[t]he absence of action to dissuade Mr. McNew from sending the letters is a **tacit sanctioning or supporting of a secondary boycott** which interferes with the work of the Department." Additionally, Mr. Finch's letter stated, in pertinent part:

You failed to exercise proper supervision and leadership over a subordinate firefighter by allowing such firefighter to engage in the following conduct which created a dangerous condition for residents, visitors and taxpayers of Chambersburg and his fellow fighters:

- a. **Encouraging, sanctioning, supporting and suggesting a secondary boycott** which interferes with the normal work of the department.
- b. Failing to promote and support the efficient operation of the department by not attempting to dissuade **the calling, instituting, maintaining or conducting of an unlawful strike or boycott** against the Borough.

...

(Joint Stipulation ¶14; Exhibit 14(emphasis added)).

105. On July 26, 2012, Council President William McLaughlin sent a letter to Vice President McNew terminating his employment, effective immediately. (Joint Stipulation ¶15; Exhibit I; N.T. 64)

106. The July 26, 2012 letter listed the following reasons for Vice President McNew's termination:

Engaging in conduct unbecoming an officer and neglect of an official duty to Mr. McNew's actions of:

- a. **Encouraging, sanctioning, supporting, and suggesting a secondary boycott** which interferes with the normal work of the department.
- b. **Calling, instituting, maintaining or conducting an unlawful strike or boycott** against the Borough.
- c. **Engaging in, encouraging, sanctioning, supporting, and suggesting any strike, slowdown mass resignation, mass absenteeism, picketing or similar actions** which would involve suspension of or interference with the normal work of the department or other Borough departments.
- d. Neglect of duty in exhibiting a willingness to become part of a disciplined team.

(Joint Stipulation ¶15; Exhibit I(emphasis added)).

107. Both the July 25, 2012 letter and the July 26, 2012 letter states that the alleged actions of President Martin and vice President McNew constitute violations of Article 20 and Article 2(F) (5) and (6) of the CBA.

108. President Martin testified that Article 20 was part of the contract since the first collective bargaining agreement in 1968 and was only meant only to prohibit bargaining unit members from engaging in a strike, slow down, mass resignation, mass absenteeism, picket or similar conduct. It was not meant to apply to actions involving volunteers at volunteer fire companies. (N.T. 25)

109. Articles 2(F) (5) and (6) are nearly identical to language found in the Pennsylvania Employe Relations Act ("PERA").

110. The Franklin Fire Company has the only heavy rescue squad in the Borough. The squad is capable of extricating occupants from burning buildings or trapped vehicles. (PFF No. 75)

111. The volunteer members of the Franklin Fire Company, who are IAFF members, generally are better trained than the other volunteer members of Franklin Fire Company. (PFF No. 77)

112. The 12 IAFF members who are members of the Franklin Fire Company are also paid employes of fire departments at federal installations and at municipal departments in Virginia and the District of Columbia. (PFF No. 78, N.T. 172)

113. Chief Trace testified that there are 74 volunteers who are actively engaged in providing fire fighting services for the Franklin Fire Company. (PFF No. 79)

114. In the event that there are insufficient volunteers from the Franklin Fire Company to handle an emergency within the Borough, the Chambersburg Fire Department would get assistance through an automatic aid response from other fire companies. (N.T. 111).

115. Chief Trace is one IAFF member who is also a member of the Franklin Fire Company. He is also a paid firefighter for the District of Columbia. (N.T. 136).

116. He has been the volunteer chief for seven (7) years, and lives in the Borough. (N.T. 139, 151.)

117. He wanted to continue volunteering because his mother's house and his own house are close to the Franklin Fire Company. (N.T. 140).

118. While Chief Trace claims he "was taken aback" at the filing of internal union charges against him, he did not stop volunteering after receiving Vice President McNew's internal union charge. (N.T. 140, 149).

119. Chief Trace admitted that he was proud to provide volunteer fire service after receipt of the October 26, 2011 letter and the filing of internal union charges against him by Vice President McNew. (N.T. 156).

120. Jason Kuehler is one IAFF member who is also a member of the Franklin Fire Company. He is the assistant chief of the Franklin Fire Company. He is also a paid firefighter for the Alexandria, Virginia. He lives in Green Township, which is north and east of Chambersburg, partially surrounding it. He had been a volunteer at Franklin for ten years and wanted to continue to be a volunteer because the Franklin Fire Company is the first fire company for his house. (PFF No. 80)

121. Mr. Keuhler did not stop volunteering after receiving Vice President McNew's internal union charge. (N.T. 153).

122. Nicholas Stefany is one IAFF member who is also a member of the Franklin Fire Company. He is also a paid fire fighter in the City of Baltimore. (N.T. 172).

123. While Mr. Stefany claimed that he felt "astonishment" at the filing of the internal union charges against him, he did not stop volunteering at the Franklin Fire Company. (N.T. 155, 175).

124. Mr. Stefany testified that the filing of internal union charges had "no actual effects during that time, but the perception was that there could be a negative effect as a result." (N.T. 182.)

125. Mr. Trace and Mr. Stefany both acknowledged that if the municipalities for which they work as paid firefighters threatened to conduct layoffs and use volunteer firefighters to perform that work, they would expect their respective locals to take action. (N.T. 148, 195).

DISCUSSION

The Union's charge of unfair labor practices alleges that the Borough violated Section 6(1)(a) and (c) the PLRA as read *in pari materia* with Act 111 on July 23, 2012, when the Borough Council terminated the employment of the Union's Vice President Scott McNew and imposed a written warning and last chance warning against President Martin in retaliation for their exercise of protected activity. The Union alleges that the discipline was retaliation for McNew filing internal union charges against sixteen (16) volunteer firefighters who also were IAFF members at other IAFF locals. McNew filed the internal union charges against the volunteer firefighters because they continued to provide volunteer firefighting services within the Borough after the Borough announced its intention to layoff eight (8) of its twenty-one (21) paid firefighters and have those services performed by volunteers.

This case is an outgrowth of a continuing labor dispute first discussed in **IAFF, Local 1813 v. Chambersburg Borough**, Case No. PF-C-12-40-E, 44 PPER 77 (Proposed Decision and Order, 2013), *aff'd* 45 PPER 50 (Final Order, 2013). In that case I found that the Borough violated the PLRA as read *in pari materia* with Act 111 when it suspended fire officer and Union President Patrick Martin for 240 hours because he engaged in protected activity as president of IAFF, Local 1813. Martin, on October 26, 2011, sent a letter to volunteer firefighters in the Chambersburg area, reminding them that the IAFF by-laws to which they were bound prohibited them from volunteering in a firefighter job with the Borough if those services are detrimental to the IAFF or its locals. The Borough had recently notified the IAFF that due to budget difficulties, it decided to use volunteers to replace eight paid firefighters, over one-third of the force of 21 paid firefighters.

The Borough's Termination of Vice President McNew

The first issue is the Borough's July 26, 2012 termination of Union Vice President Scott McNew for filing internal union charges against other union members in April, 2012. McNew's filing of charges was a follow-up of president Martin's warning, six months earlier, in October, 2011, that such internal union charges could be brought.

The Borough defends McNew's termination by arguing that the discipline was not for protected activity and not because of anti-union animus but was because he engaged in a secondary boycott.

However, in the earlier case, **IAFF v. Chambersburg Borough, supra.**, the Board rejected the Borough's argument that Martin's letter was a secondary boycott. The Board, citing **Dudek v. Pittsburgh City Fire Fighters, Local No. 1**, 425 Pa. 233, 228 A.2d 752 (1967), held that it was protected activity for Martin to send a warning letter to Union members about volunteering for firefighting services in the middle of a labor dispute and that "a union's notice of, or imposition of disciplinary sanctions on, recalcitrant members would not be a secondary boycott." **IAFF v. Chambersburg Borough**, 45 PPER at 213.

The Borough also defends its actions by arguing that its motivation was to stop a threat to the safety of Borough residents. The Borough presented the testimony of several witnesses that McNew's action interfered with the operation of the Borough's fire department. Borough Manager Jeffrey M. Stonehill testified that the department cannot perform its functions in a safe manner without the support of the volunteer firefighters.

The Borough's argument that McNew's termination was motivated out of a desire to protect the public safety is not persuasive. The Borough proceeded with McNew's termination even after McNew rescinded the Union charges he filed. Additionally, two weeks before it decided to terminate McNew, the Borough received notice that it secured a \$1.6 million federal SAFER grant that would prevent the layoffs that were at the root of the labor dispute and the reason for McNew's charges in the first place.

In light of all the evidence in this case, and in light of the Board's decision in the earlier case, the Borough's termination of McNew must also be found to violate Section 6(1)(a) and 6(1)(c) of the PLRA and the Act 111.

The Borough's Warning to President Martin

The second issue is the Union's allegation that the Borough Council's imposition of a written warning and last chance warning against President Martin violated the PLRA as read *in pari materia* with Act 111 because it was an act of retaliation for Vice President McNew's filing charges against the IAFF members who volunteered their services during a labor dispute.

On July 25, 2012, Borough Assistant Manager David Finch sent a letter to President Martin informing him that the Borough was imposing a written warning and last chance warning. Finch's letter states that President Martin's alleged inappropriate conduct was "failing to attempt to dissuade Mr. McNew from sending the April 21, 2012 letters [preferring internal union charges] ..." He further states that "[t]he absence of action to dissuade Mr. McNew from sending the letters is a **tacit sanctioning or supporting of a secondary boycott** which interferes with the work of the Department." Additionally, Mr. Finch's letter stated, in pertinent part:

You failed to exercise proper supervision and leadership over a subordinate firefighter by allowing such firefighter to engage in the following conduct which created a dangerous condition for residents, visitors and taxpayers of Chambersburg and his fellow fighters:

- a. **Encouraging, sanctioning, supporting and suggesting a secondary boycott** which interferes with the normal work of the department.
- b. Failing to promote and support the efficient operation of the department by not attempting to dissuade **the calling, instituting, maintaining or conducting of an unlawful strike or boycott** against the Borough.

...

(Joint Stipulation ¶14; Exhibit 14(emphasis added)).

The Board has held in the earlier case that Martin's first warning letter was not a secondary boycott and was a form of protected activity. **IAFF v. Chambersburg Borough**, 44 PPER at 213. As discussed above, McNew's filing of charges was not a secondary boycott and was protected activity. Therefore, it follows that for the Borough to discipline Martin for not stopping McNew from filing charges also is interference and retaliation for engaging in protected activity and constitutes a violation of Section 6(1)(a) and (c) of the PLRA and Act 111.

Furthermore, this action is an improper interference with the operation of a labor organization. The Borough is interfering with the Union by disciplining Union President Martin for not properly supervising the Union's vice president, Scott McNew. Art Martynuska, president of the Pennsylvania Professional Fire Fighters Association, testified that it is appropriate for an IAFF official such as McNew to charge an IAFF member with a bylaw violation for volunteering inside a work jurisdiction of a local affiliate in which the municipality is considering layoffs. President Martin testified credibly that under his reading of the Union's bylaws, he could not prevent McNew from filing charges against members who were not following Martin's earlier warning. The Borough's discipline of Martin is an inappropriate interference with the union's internal affairs, is coercive in violation of Section 6(1)(a) of the PLRA and a form of anti-union discrimination in violation of Section 6(1)(c) of the PLRA.

CONCLUSIONS

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

1. The International Association of Fire Fighters, Local 1813 is a labor organization under Section 3(f) of the PLRA as read *in pari materia* with Act 111.

2. Chambersburg Borough is an employer under Section 3(c) of the PLRA as read *in pari materia* with Act 111.

3. The Board has jurisdiction over the parties.

4. Chambersburg Borough has committed unfair labor practices under Sections 6(1) (a) and (c) 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 as read *in pari materia* with Act 111, the hearing 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 as read *in pari materia* with Act 111.

2. Cease and desist from discriminating against employes in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

3. Take the following affirmative action:

(a) Immediately rescind the termination of Vice President Scott McNew and the written warning and last chance warning against President Patrick Martin;

(b) Make McNew whole for all wages and benefits he would have earned had he not been terminated;

(c) Remove the discipline from the personnel files of McNew and Martin;

(d) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days;

(e) 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

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-first day of August, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner