

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GENERAL TEAMSTERS, CHAUFFEURS & :
HELPERS LOCAL 249 :
 :
v. : Case No. PF-C-11-59-W
 :
OAKMONT BOROUGH :

FINAL ORDER

Oakmont Borough (Borough) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 9, 2011, to a Proposed Decision and Order (PDO) issued on August 22, 2011, finding that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111 of 1968. The General Teamsters, Chauffeurs and Helpers Local 249 (Teamsters) filed a response to the exceptions on September 29, 2011, and following an extension of time granted by the Secretary of the Board, submitted a brief on October 10, 2011. The facts found by the Hearing Examiner are not in dispute on exceptions, and are summarized as follows.

The Borough and the Teamsters engaged in interest arbitration pursuant to Act 111 to reach a successor agreement to the contract expiring December 31, 2007. By letter dated August 21, 2009, the chair of the interest arbitration panel sent to the other members of the panel a draft interest arbitration award covering the bargaining unit. In his cover letter, the chair wrote as follows:

"You will see that I did not deal with the [Deferred Retirement Option Plan (DROP)] issue. I reviewed the Union's proposals and I did not find a specific proposal on the DROP. This finding does not preclude the parties from meeting after this award is issued to attempt to resolve this matter outside the Act 11[1] process."

Both parties concurred with the draft, and the award was issued September 21, 2009. Thereafter the parties entered into a five-year collective bargaining agreement retroactively, effective January 1, 2008. Article VII of the parties' 2008 collective bargaining agreement addresses the issue of retirement and pensions, and provides in paragraph C that "[t]he parties agree that Article VII concerning pensions may be re-opened for negotiations in the event that the Legislature amends existing statutes or enacts any new statutes governing Police Pensions."

By letter dated November 22, 2010, the Teamsters wrote to the Borough's manager that "Local 249 hereby invokes its right under Article VII (C) of the CBA to immediately reopen Article VII for negotiations" to bargain a DROP. By letter dated March 2, 2011, the Teamsters again wrote to the Borough referencing Act 44 of 2009, which amended Act 205 governing municipal pension plans, and the reopener under Article VII(c), asserting that "the Union hereby submits this matter to binding interest arbitration." The Borough did not respond to the Teamsters' March 2, 2011 letter demanding interest arbitration. Based on the findings of fact, the Hearing Examiner concluded that the Borough committed an unfair labor practice by refusing to proceed with the interest arbitration process under Act 111.

The Borough filed exceptions to the Hearing Examiner's PDO arguing that it had no mid-term obligation to bargain over a DROP, because the contract provision allowing reopening of negotiations over pension provisions was not properly invoked by the Teamsters.¹ The Borough argues that a determination of whether the reopener was properly invoked under Article VII(c) is a question of contract interpretation for a grievance arbitrator.

It is now well-established by the Board and the Courts that questions of arbitrability and jurisdiction are to be answered by arbitrators in the first instance. Office of Administration v. PLRB, 528 Pa. 472, 598 A.2d 1274 (1991). This is so even where arbitrability or jurisdiction in an

¹ Specifically, the Borough asserts that the contractual reopener under Article VII(c) does not apply where Act 44, upon which the Teamsters rely as a basis for reopening the contract, took effect before the interest award and collective bargaining agreement were executed, but after their effective date.

interest arbitration proceeding is premised on an interpretation of an existing collective bargaining agreement. See Salisbury Township v. PLRB, 672 A.2d 385 (Pa. Cmwlth. 1996).²

The sound labor policy that procedural and jurisdictional questions of arbitrability should be addressed in the first instance by the interest arbitration panel, even if those issues involve contract interpretation, is consistent with Act 111. Indeed, nothing in Act 111 precludes arbitration panels under Act 111 from interpreting collective bargaining agreements to address jurisdictional questions. Requiring arbitrability and jurisdiction to be decided in the first instance by the interest arbitration panel is consistent with the just and speedy resolution of disputes outlined by the Supreme Court in Washington Arbitration Case, 436 Pa. 168, 259 A.2d 437 (1969). In Office of Administration, *supra*, our Supreme Court was faced with the argument that an interest arbitration panel could not make an initial determination on whether particular subjects were matters for resolution through interest arbitration. The Supreme Court rejected the notion that this Board should decide the issue before submission of the bargaining dispute to the interest arbitration panel. In so doing, the Supreme Court stated as follows:

A protracted litigation process [before the Board], the alternative required by the court below, contravenes the express policy behind resolving labor disputes, and also conflicts with our clearly stated admonition against the practice of engaging in preliminary litigation to resolve in "one forum the power of another forum to decide the substantive issue." [PLRB v. Bald Eagle Area School District, 499 Pa. 62, 68, 451 A.2d 671, 674 (1982)].

Office of Administration, 528 Pa at 481, 598 A.2d at 1278. Thus, the question raised here by the Borough, of whether the Teamsters properly invoked the contractual reopener provision, is one of arbitrability and jurisdiction that must be decided in the first instance by the Act 111 interest arbitration panel. See Salisbury Township, *supra*.

After a thorough review of the exceptions and all matters of record, we find that the Hearing Examiner did not err in finding that the Borough violated Section 6(1)(a) and (e) of the PLRA by refusing to proceed before the interest arbitration panel under Act 111, where it may raise its jurisdictional claims and issues of procedural arbitrability. Accordingly, the Board shall dismiss the Borough's exceptions, and make the PDO final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Oakmont Borough are hereby dismissed, and the August 22, 2011 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this fifteenth day of November, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

² Salisbury Township did not involve the question of whether grievance arbitration was the exclusive means to resolve disputes concerning the interpretation of a contractual reopener provision. Nevertheless, the Court in that case affirmed the Board's Final Order directing the employer to submit its contractual, procedural and jurisdictional questions to the interest arbitration panel.

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AFFIDAVIT OF COMPLIANCE

The Borough hereby certifies that it has ceased and desisted from its violation of Sections 6(1)(a) and (e) of the PLRA, as read in *pari materia* with Act 111, that it has submitted to the Teamsters in writing an offer to proceed to interest arbitration, that it has posted a copy of the Proposed Decision and Order and Final Order as directed, and that it has served an executed copy of this affidavit on the Teamsters.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year aforesaid.

Signature of Notary Public