

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF FIRE :
FIGHTERS, LOCAL 60 :
v. : Case No. PF-C-21-24-E
CITY OF SCRANTON :

FINAL ORDER

On January 3, 2023, the International Association of Fire Fighters, Local 60 (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) challenging a Proposed Decision and Order (PDO) issued on December 14, 2022. In the PDO, the Board's Hearing Examiner concluded that the City of Scranton (City) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968, when the City assigned Firefighter Caroline Janczak to a light duty position. Pursuant to an extension of time granted by the Secretary of the Board, the Association filed its brief in support of exceptions on February 13, 2023. The City filed its brief in opposition to the exceptions on March 17, 2023, after an extension granted by the Secretary.

The relevant facts of this case are summarized as follows. The parties are governed by a collective bargaining agreement (CBA) effective January 1, 1996 through December 31, 2002, along with subsequent arbitration awards and memoranda of understanding. (FF 5). Article XXIV of the January 1, 1996 through December 31, 2002 CBA provides as follows:

1. Subsequent to the effective date of this Agreement, the parties shall meet in an effort to reach agreement on whether and under what circumstances the bargaining unit shall be subject to a "light duty" policy for both work-related and non-work related injuries and illnesses.
2. If the parties are unable to agree on these issues within sixty (60) days of the effective date of this Memorandum, either party may submit the issues to arbitration in accordance with the procedure set forth herein.

(FF 6). In the parties' 2015 Memorandum of Understanding, the Association and City again agreed to bargain over a light duty policy and, if an agreement could not be reached, either party could file for arbitration. (FF 7).

As of January 2018, the parties had not agreed to a light duty policy nor submitted the matter to arbitration. From February through October 2018, the parties attempted to negotiate a light duty policy due to Ms. Janczak's first pregnancy. (FF 9, 16). Because the parties were unable to agree to a light duty policy in 2018, Ms. Janczak had to use all her accrued sick leave for the duration of her pregnancy. (FF 13).

On or around March 24, 2021, Ms. Janczak met with Fire Chief John Judge and informed him that she was pregnant with her second child. Ms. Janczak indicated that she wanted to work in the office for the duration of her pregnancy and did not want to use her sick leave. (FF 22). Ms. Janczak subsequently provided medical documentation from her physician specific to her pregnancy. (FF 23).

On March 30, 2021, Chief Judge spoke to Association President Jim Sable about Ms. Janczak's request for a light duty position. (FF 22). On March 31, 2021, President Sable emailed Chief Judge and indicated that a memorandum of understanding concerning Ms. Janczak's request was necessary. However, the parties never reached an agreement on Ms. Janczak's request. (FF 24). On that same date, Chief Judge notified Ms. Janczak's duty chief of her new office assignment. Chief Judge did not negotiate with the Association over the terms of Ms. Janczak's light duty assignment. (FF 25). Ms. Janczak worked in her light duty assignment for the duration of her pregnancy, approximately 8 or 9 months, beginning on April 3, 2021. (FF 26).

On April 29, 2021, the City filed a demand for arbitration concerning the creation of a light duty policy pursuant to the parties' CBA. An arbitration hearing was held on October 20, 2021. On February 23, 2022, the arbitrator issued an award implementing a light duty policy. (FF 34).

The Association filed its Charge of Unfair Labor Practices on April 6, 2021, alleging that the City violated Section 6(1)(a) and (e) of the PLRA when Chief Judge directly dealt with Ms. Janczak over a light duty position to accommodate her pregnancy. On June 3, 2021, the Secretary of the Board issued a letter dismissing the Charge, stating that the creation of a light duty policy was within the City's managerial prerogative. After the filing of exceptions, the Board issued an Order Directing Remand to the Secretary for Further Proceedings on August 17, 2021.

On September 14, 2021, the Secretary issued a Complaint and assigned this matter to a Hearing Examiner. The hearing was held before the Board's Hearing Examiner on June 23, 2022, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner concluded in the PDO that the City's temporary transfer of Ms. Janczak to a light duty position as an accommodation under the Americans With Disabilities Act for her pregnancy was within its managerial authority to assign personnel. Additionally, the Hearing Examiner stated that exigent circumstances relieved the City of any bargaining obligation it may have had as time was of the essence to remove Ms. Janczak and her unborn child from exposure to toxins and other hazards related to her firefighting duties. The Hearing Examiner further concluded that, in any event, the Charge was rendered moot by the February 23, 2022 arbitration award creating a light duty policy applicable to the City's firefighters. Accordingly, the Hearing Examiner held that the City did not violate its duty to bargain under Section 6(1)(a) or (e) of the PLRA, rescinded the complaint and dismissed the Charge of Unfair Labor Practices.

In its exceptions, the Association alleges, among other things, that the Hearing Examiner erred in concluding that its Charge of Unfair Labor Practices is moot. Specifically, the Association asserts that the light duty policy created by the February 23, 2022 arbitration award does not contain a specific provision concerning pregnancy and, therefore, the possibility that

the City will deal directly with a pregnant employe over a light duty position could occur again.

The Board will dismiss as moot an unfair labor practice charge alleging a violation of an employer's duty to bargain in good faith where the parties have resolved the issues forming the basis for the charge through bargaining and a subsequent agreement. APSCUF v. PLRB, 8 A.3d 300 (Pa. 2010), reargument denied, 70 MAP 2009 (January 24, 2011). The Board's policy in this regard is intended to move beyond past allegations of misconduct which have no present effects and focus instead on a cooperative future. APSCUF, supra; Medical Rescue Team South Authority v. Association of Professional Emergency Medical Technicians, 30 PPER ¶ 30063 at 136 (Final Order, 1999) ("[c]ontinued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future.") (quoting Ramapo-Indian Hills Regional High School District, 16 NJPER ¶ 21255 at 582 (Decision and Order, 1990)). However, the Board, within its discretion, may decide a moot charge if it presents an issue that is of great public importance or is capable of repetition yet likely to evade review. Id.

Here, the parties agreed to bargain over a light duty policy and that either party could file for arbitration if an agreement could not be reached. This agreement formed the basis of the Association's Charge, i.e., whether the City violated its statutory bargaining obligation by assigning a light duty position to Ms. Janczak to accommodate her pregnancy. After the filing of the Charge and prior to the hearing in this matter, the parties participated in arbitration over the issue of a light duty policy and an arbitration award was issued on February 23, 2022. The February 23, 2022 arbitration award specifically created a light duty policy applicable to the City's firefighters thereby rendering the underlying Charge of Unfair Labor Practices moot. APSCUF, supra; Hempfield Education Association PSEA/NEA v. Hempfield School District, 34 PPER 75 (Proposed Decision and Order, 2003) (direct dealing charge dismissed as moot due to ratification of successor agreement). The Association has failed to establish that the underlying issue, the City dealing directly with an employe seeking a light duty position during their pregnancy, is capable of repetition yet likely to evade review. Indeed, the light duty policy now in existence contains specific light duty positions that can be assigned to a pregnant employe. Further, now that a light duty policy is in place, any alleged direct dealing by the City that violates the light duty policy could be remedied through the filing of a grievance, and thus would not evade review.¹

Accordingly, the Hearing Examiner did not err in finding that the Association's Charge of Unfair Labor Practices is moot.² After a thorough

¹ On exceptions, the Association does not assert that the matter is one of great public importance. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived"). Moreover, we agree that in this case it is not in the public interest to focus on alleged past misconduct that no longer affects the parties. APSCUF, supra; Medical Rescue Team South Authority, supra.

² Based upon the disposition of this matter, the Board need not address the Association's remaining exceptions.

review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the International Association of Fire Fighters, Local 60 are hereby dismissed, and the December 14, 2022 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this fifteenth day of August, 2023. 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.