

WILLIG, WILLIAMS, AND DAVIDSON

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PHILADELPHIA FIRE FIGHTERS' UNION, LOCAL 22,
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-
CIO, by its guardians ad litem, WILLIAM GAULT,
PRESIDENT, TIM McSHEA, VICE PRESIDENT, KELVIN
FONG, VICE PRESIDENT; CITY COUNCIL PRESIDENT
ANNA C. VERNA; CITY COUNCILMAN JAMES KENNEY;
and CITY COUNCILWOMAN JOAN L. KRAJEWSKI

Plaintiffs,

v.

THE CITY OF PHILADELPHIA, et al.

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2010

NO.

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NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias, de plazo al parti de la fecha de la demanda y la notification. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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One Reading Center
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COURT OF COMMON PLEAS
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TERM, 2010

NO.

Plaintiffs,

v.

THE CITY OF PHILADELPHIA, its Officials, Agents,
Employees and Assigns; and

MICHAEL A. NUTTER , individually and in his capacity as
Mayor of the City of Philadelphia; and

RICHARD NEGRIN, individually and in her capacity as
Managing Director of the City of Philadelphia; and

LLOYD AYERS, individually and in his capacity as Fire
Commissioner of the City of Philadelphia,

Defendants.

COMPLAINT

I. INTRODUCTION

The Philadelphia Fire Fighters Union, Local 22, International Association of Fire
Fighters, AFL-CIO ("Local 22" or "Union") seeks injunctive relief to protect the rights of

Local 22 and the Fire Service Paramedics (“FSPs”) working in the City of Philadelphia Fire Department. The Union and the FSPs have been victims of a series of unilateral actions taken by the City of Philadelphia **after** Local 22 filed a Representation Petition under Act 195 with the Pennsylvania Labor Relations Board. These unilateral actions include the following: (1) refusing to pay any further step increments for the FSPs; (2) refusing to allow these employees from receiving their health benefits from the Health and Welfare Fund of Local 22 after November 1, 2010; (3) refusing to deduct and remit union dues from the FSPs paychecks despite their individual authorization that the City do so; and (4) ending payroll deductions from the FSPs paychecks to fund the legal services benefits plan. Additionally, the City threatened the possibility of future changes in wages, premium pay, overtime pay, pension benefits, and leave benefits.

These unilateral changes were announced after the Pennsylvania Labor Relations Board (“Board”) issued a Final Order which effectively granted a Unit Clarification Petition (“Petition”) seeking to remove Fire Service Paramedics (“FSPs”) from the bargaining unit of Local 22. Local 22 challenged that decision on multiple legal fronts, including by filing a Motion for Reconsideration with the Board and a Petition for Review with the Commonwealth Court. Local 22 also requested the Board issue a stay of the Final Order pending appeal of the decision.

On or about September 28, 2010, Local 22 sent via overnight mail to the Board a Representation Petition seeking to act as the bargaining agent of the FSPs under Act 195. The Board filed the Representation Petition on September 30, 2010. Despite challenging the Final Order and filing a Representation Petition under Act 195, the City proceeded to make and threatened to make in the future unilateral changes to the terms

and conditions of employment for the FSPs. Plaintiffs contend that the City's actions constitute unfair labor practices against Local 22 and the FSP employees who are engaged in protected activities under Act 195. Specifically, the City's actions constitute interference in or retaliation for Local 22 and the FSPs' protected union activity in trying to have the Union become the exclusive bargaining agent of the FSPs in an Act 195 unit.

IAFF Local 22 seeks injunctive relief pending the scheduling of a hearing on the unfair labor practice charge that it has filed against the City, and to maintain the status quo pending resolution of that unfair labor practice charge with the Board. The balance of equities in this instance strongly favors plaintiffs, as the harms likely to be caused by the unilateral changes to the terms and conditions of employment prior to a union election will be substantial loss in standing to Local 22 that can never be reversed or made whole by a Hearing Examiner at a subsequent date. Therefore, under the authority of applicable Pennsylvania law, this Honorable Court is asked to enjoin and restrain the Defendants from taking any action to implement any changes to terms and conditions of employment until the unfair labor practice charge is fully and completely disposed of on its merits.

II. JURISDICTION

This Court has jurisdiction pursuant to § 931 of the Judicial Code.

III. PARTIES

2. Plaintiff Philadelphia Fire Fighters Union, Local 22, is an unincorporated labor organization with offices located at 415-427 North Fifth Street, Philadelphia, PA 19123. Its guardians ad litem are its President, William Gault, and its Vice Presidents,

Tim McShea and Kelvin Fong.

3. Plaintiff Anna Verna is Council President to the Philadelphia City Council. Her office is located in City Hall, Room 405, Philadelphia, PA 19107-3290.

4. James Kenney is a Councilman of the Philadelphia City Council. His office is located in City Hall, Room 330, Philadelphia, PA 19107-3290.

5. Joan L. Krajewski is a Councilwoman of the Philadelphia City Council. Her office is located in City Hall, Room 591, Philadelphia, PA 19107-3290.

6. Defendant City of Philadelphia ("City") is a City of the First Class within the meaning of the First Class City Code, 53 P.S. §§ 13101 et seq., and in accordance with the Philadelphia Home Rule Charter, 351 Pa. Code §§ 1.1-100 et seq. The City also is a public employer within the meaning of the Act of June 24, 1968, P.L. 237, No. 111 ("Act 111"), 43 P.S. § 217.1 et seq.

7. Defendant Michael A. Nutter is the Mayor of the City of Philadelphia in accordance with the duties and powers set forth in Chapter 1 of Article IV of the Philadelphia Home Rule Charter, 351 Pa. Code § 4.4-100, et seq. Defendant Nutter's Office is located at Room 215 City Hall, Philadelphia, Pennsylvania 19107.

8. Defendant Richard Negrin is the Managing Director of the City of Philadelphia. His office is located at Room 1430, 1401 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19102.

9. Defendant Lloyd Ayers is the Commissioner of the Philadelphia Fire Department. Defendant Ayers' office is located at Fire Administration Building, 240 Spring Garden Street, Philadelphia, Pennsylvania 19123-2991.

IV. FACTUAL ALLEGATIONS

A. Background

10. I.A.F.F. Local 22 is a labor organization within the meaning of Act 111, 43 P.S. §§ 217.1-217.10, and has historically served as sole collective bargaining representative for all non-civilian Philadelphia Fire Department employees, from the ranks of Firefighter and Paramedic up to and including Deputy Fire Chief. The bargaining unit has been comprised of approximately 200 Fire Service Paramedics ("FSPs") who provide a variety of services for the Fire Department, including fire rescue, emergency medical services, including the provision of such services at fire scenes, and, on occasion, fire abatement activities. Thus, they perform crucial services in meeting the Fire Department's critical mission of saving lives and property of the citizens of Philadelphia.

11. The City of Philadelphia and Local 22 are parties to a collective bargaining agreement ("Agreement") derived pursuant to Act 111, which governs the wages, hours, health care, pension benefits, legal services plan benefits, and other working conditions of Local 22's bargaining unit members. The current collective bargaining agreement is in effect until June 30, 2009. For the past year, the City and Local 22 have been engaged in interest arbitration to determine the terms and conditions of a new collective bargaining agreement. The City and the Union are currently awaiting the issuance of award from the interest arbitrator.

B. Unit Clarification Petition

12. On or about March 12, 2009, prior to proceeding to hearings on the interest arbitration, the City filed a Unit Clarification Petition ("Petition") with the

Pennsylvania Labor Relations Board. In its Petition, which the Board docketed as Case No. PF-U-09-25-E, the City challenged the historic composition of the Local 22 bargaining unit by arguing that the approximately 200 FSPs should be stripped from the bargaining unit of their uniformed fire service peers because, it argued, they are not "firemen" as defined by Act 111.

13. Hearings on the City's Petition were held on July 15, 2009, September 2, 2009, October 20, 2009, and October 29, 2009 before a Hearing Examiner of the Board ("Hearing Examiner").

14. To reach a conclusion on the City's Petition, the Hearing Examiner was required to apply the two-prong test for determining if police or fire personnel fall under the protections of Act 111 (hereinafter denoted the "Act 111 test"). In order for uniformed employees to be determined to be police or fire personnel under Act 111 they must (1) be legislatively authorized to act as police or fire personnel; and (2) in fact act as police or fire personnel. Hartshorn v. County of Allegheny, 460 Pa. 560, 333 A.2d 914 (1975); County of Lebanon v. PLRB, 873 A.2d 859 (Pa. Cmwlth Ct. 2005); Venneri v. County of Allegheny, 12 Pa. Cmwlth Ct. 517, 316 A.2d 120 (1974).

15. On February 22, 2010, the Hearing Examiner issued a Proposed Order of Unit Clarification ("Proposed Order") in which he concluded that the FSPs are not employees under Act 111 "because they are not statutorily authorized to fight fires. Moreover the [FSPs] do not perform firefighting activities, but rather, provide emergency medical services." (A copy of the Proposed Order is attached to this Complaint as Exhibit "A."). In reaching his conclusion regarding legislative authority, the Hearing

Examiner considered the Philadelphia Fire Code, but found that it did not support the Union's position.

16. The Hearing Examiner admitted that FSPs do, "on rare occasions, perform some *de minimis* duties associated with fire fighting." However, he stated that those duties are "of no moment" because, he argued, they are not legislatively authorized to engage in fire abatement. (See Exhibit A, at p. 6.)

17. On March 12, 2010, the Union filed Exceptions to the Proposed Order of Unit Clarification, and the Local 22 and the City filed briefs in support and in opposition respectively.

18. In its Exceptions, Local 22 challenged the two legal conclusions of the Hearing Examiner. First, the Union argued that the Hearing Examiner erred in determining that Fire Service Paramedics are not legislatively authorized to act as fire personnel. Specifically, the Union argued that the Philadelphia Home Rule Charter and the Philadelphia Fire Code legislatively authorized Fire Service Paramedics to perform fire abatement activities.

19. Second, the Union argued that the Hearing Examiner erred in determining that Fire Service Paramedics do not, in fact, act as fire personnel. The Union noted that the Hearing Examiner admitted that the Fire Service Paramedics do perform *de minimis* fire abatement activities, which is sufficient under prior rulings by the Pennsylvania Supreme Court and the Board to find they do, in fact, engage in fire abatement duties.

20. After the parties filed their respective briefs to the Board, the Philadelphia City Council, on or about May 6, 2010, passed an amendment to the Philadelphia Fire Code that undoubtedly gives Fire Service Paramedics the legislative authority to act as fire personnel.

21. The amendment, which passed by a vote of 17-0, reads as follows:

The fire department official in charge at the scene of a fire or other emergency involving the protection of life or property or any part thereof, shall have the authority to direct uniformed Fire Department personnel, including but not limited to Firefighters and Fire Service Paramedics, to engage in such actions that are necessary in order to complete the assignment, including but not limited to fire rescue, fire abatement, and emergency medical services. Because of their legislative authority to act and actual participation in such operations, Fire Service Paramedics shall continue to be considered firemen for the purposes of the act of June 24, 1968 (P.L. 237, No. 111), referred to as the Policemen and Firemen Collective Bargaining Act.

Philadelphia Fire Code, § F-104.2 ("Authority at fires and other emergencies").¹

22. On or about May 19, 2010, Philadelphia Mayor Michael Nutter vetoed the amendment to the Philadelphia Fire Code.

23. On or about May 20, 2010, the Philadelphia City Council overrode the Mayor's veto in a 16-0 vote with one council member absent from the vote. The amendment is now law.

24. Based on the passage of this amendment, Local 22 filed a Motion to Dismiss as Moot the City's Petition, arguing that the FSPs now had legislative authority to act as "firemen" under Act 111, and that the Hearing Examiner's decision already conceded that they did in fact act as "firemen."

25. On or about September 21, 2010, a two-member majority of the three-member Board wrongly denied the Exceptions of Local 22 and dismissed its Motion to Dismiss as Moot the City's Petition, and issued a Final Order affirming the Proposed Order of the Hearing Examiner granting the Petition of the City. The Chairperson of the

¹ A copy of newly-enacted Philadelphia Fire Code is attached to this Complaint as Exhibit "B".

Board filed a vigorous dissent in support of Local 22's legal position that the FSPs are "firemen" under Act 111. (A copy of the Final Order is attached to this Complaint as Exhibit "C.")

26. With the issuance of the Final Order, the FSPs were no longer within the Act 111 bargaining unit of Local 22, unless and until either a stay of the Final Order is issued or the decision is reversed or overturned.

C. Local 22 Legally Challenges the Final Order

27. The Final Order is incorrectly decided as it erroneously relies upon a ruling by the Pennsylvania Supreme Court's decision in Commonwealth v. PLRB, 502 Pa. 7, 463 A.2d 409, 412-13 (1983) ("Capital Police")—a case involving police officers, rather than fire personnel.

28. There remains a considerable difference between determining if police officers as opposed to fire personnel meet the two-prong test for inclusion within an Act 111 unit. State statutes legislatively enumerate the specific duties that constitute the functions of a police officer. Thus, it is more easily determinable whether a police officer acts as such by a comparison of those legislatively created functions and the actual functions the employees in question perform.

29. In comparison, no state statute, Board decision, or appellate decision has specifically enumerated the duties of fire personnel. In fact, the Board in its Final Order does not add clarity to the issue. Thus, it remains unclear what set of duties constitute acting as a "firefighter." Instead, it has been presumed that "firefighting" constitutes putting water on a fire. But that presumption, unlike with the case of police, is not based on any law.

30. Given the lack of clarity in the law, the Board should have taken the opportunity to clarify what specific duties constitute “firefighting” for purposes of meeting the test under Act 111.

31. For reasons outlined in the Union’s briefs in this matter, “firefighting” should constitute an array of duties that assist the Fire Department in its mission of protecting lives and property.

32. Clearly, under such an understanding, the FSPs act as fire personnel, and, therefore, should be included in the bargaining unit of Local 22.

33. For these and other reasons, on or about September 28, 2010, Local 22 challenged the erroneously decided Final Order by filing with the Board a Motion for Reconsideration and Motion for a Stay Pending Appeal, as well as an Emergency Motion for a Stay Pending a Decision on the Union's Motion for Reconsideration.

34. On or about October 4, 2010, Local 22 also filed amended versions of those motions.

35. On or about September 28, 2010, the Union filed a Petition for Review of the Final Order with the Commonwealth Court.

D. Local 22 Files a Representation Petition Under Act 195

36. On or about September 28, 2010, Local 22 filed via overnight mail a Representation Petition under Act 195 seeking to be the bargaining agent for the FSPs. Attached to the Representation Petition were over 120 union authorization cards from FSPs requesting that Local 22 be their bargaining agent. The Board filed the Representation Petition on September 30, 2010. (A copy of the Representation Petition is attached to this Complaint as Exhibit “D”.)

37. Prior to filing the Representation Petition, Local 22, asked Mayor Nutter in a letter dated September 28, 2010 to recognize Local 22 as the exclusive bargaining agent of the FSPs under Act 195. At the time of the filing of this Complaint, Mayor Nutter has refused that request.

38. With the filing of the Representation Petition, the Board will schedule an election sometime later this year to allow the FSPs to determine through an election which, if any, union will be their bargaining agent.

39. After filing that Representation Petition, the City has since taken the following enumerated, unilateral actions against Local 22 and the FSPs.

a. On or about October 1, 2010, the City announced its intention to no longer make contributions on behalf of the FSPs towards the Health and Welfare Fund of Local 22 beyond the month of October, 2010. The City argued it had the authority to refuse immediately to make any further contribution, and would no longer make such contributions beginning in November 1, 2010.

b. On the same day, the City indicated its refusal to deduct or remit monies from the FSPs paychecks for their union dues or for their legal services benefits plan. This unilateral action will result in the loss by Local 22 of union dues collection for the FSPs who have voluntarily requested such dues collection from the City. Additionally, the City's unilateral action will result in the loss of benefits provided by the legal services plan otherwise available to all Local 22 members.

c. On October 4, 2010, the City issued a memorandum to all the FSPs announcing their intention to freeze their longevity pay and allow no further step increments "until the Mayor determines that economic conditions permit increases to be

made.” The memorandum also threatens possible future changes to wages, premium pay, overtime pay, pension benefits, and leave benefits. (A copy of the City's memorandum is attached to this Complaint as Exhibit “E”.)

d. On October 5, 2010 and October 7, 2010, the City informed the FSPs in meeting held with them that they were required by October 14, 2010 to make a selection of health care benefits under the City's plan for unrepresented employees or choose no health care benefits at all. The health care benefits for unrepresented employees are far inferior to the those offered by the Health and Welfare Fund of Local 22.

40. Based on the City's unilateral actions taken before October 4, 2010, Local 22 filed an unfair labor practice charge alleging that the City is interfering in and retaliating for Local 22 and the FSPs union organizing activities. On October 8, 2010, Local 22 filed an amended unfair labor practice charge based on the additional unilateral actions the City has taken or has threatened to take in its memorandum. (A copy of the amended unfair labor practice charge is attached to this Complaint as Exhibit “F”.)

41. The City has since failed or refused to respond favorably to the Union's request that it make no changes to the terms and conditions of employment of the FSPs pending appeal of the Board's Final Order. In fact, after this request was made, the City has enumerated other unilateral changes it will make or intends to make.

42. The City has also failed or refused to respond to the Union's request that it recognize Local 22 as the exclusive bargaining agent of the FSPs under Act 195.

43. On or about October 6, 2010, City Council passed a Resolution supporting Local 22's position that the City should continue to recognize the FSPs as bargaining unit employees of Local 22 and should not make any changes to their terms and conditions of employment during the pendency of the appeal of the Final Order. The Resolution also authorized City Council to join in any litigation with Local 22 against the City to ensure that the FSPs remain bargaining unit employees of Local 22 and keep their terms and conditions of employment unchanged. (A copy of the Resolution is attached to this Complaint as Exhibit "G.")

COUNT I

44. Paragraphs 1 through 43 are incorporated herein as though set forth in their entirety.

45. In violation of Sections 1201(a)(1) and 1201(a)(3) of Act 195, the City has engaged in unfair labor practices when it interfered in and retaliated for Local 22 and the FSPs' protected union activities.

46. In order to challenge these unfair labor practices, the Union has filed charges under Act 195 challenging the City's unilateral actions taken against the FSPs following Local 22's filing of a Representation Petition on their behalf.

47. The unfair labor practice charge will eventually culminate in a hearing before a Hearing Examiner of the Board. No such hearing is currently scheduled.

48. The Union has requested that the City refrain from making unilateral changes to the terms and conditions of employment pending the Board processing and handling the Representation Petition filed by Local 22 on behalf of the FSPs.

49. The Union has also requested that the City refrain from making unilateral changes to the terms and conditions of employment pending the Union's appeal of the Board's Final Order.

50. The Union, its bargaining unit members, and the FSPs are outraged by the City's interference in and repudiation of Local 22 and the FSPs protected union activities, in particular their right to a union election free from the taint of anti-union activity.

51. The City's conduct demonstrates utter contempt and disrespect for the Union as an employee organization seeking to become the exclusive bargaining agent of the FSPs, as well as for the rights and interests of the FSPs seeking such representation. The City's conduct demonstrates coercive conduct against Local 22 and the FSPs who are simply engaging in the legally protected right to seek union representation for employees who have made clear their desire to have such representation.

52. The Union has suffered irreparable loss of esteem and respect of its bargaining unit members and the FSPs occasioned by the City's refusal to suspend implementation of any changes to the terms and conditions of employment of the FSPs pending the appeal of the Board's Final Order and the completion of the election process.

53. As a result of the City's conduct, Local 22, its bargaining unit members and the FSPs have been and will continue to be deprived of their rights to engage in protected union activities under Act 195.

54. The City's conduct has deprived and will deprive a Hearing Examiner the ability to exercise effective remedial jurisdiction over the unfair labor practice dispute currently pending before the Board regarding the City's interference in and retaliation for Local 22 and FSPs protected union activities.

55. Continued implementation of the City's unilateral changes to the terms and conditions of employment of the FSPs will unreasonably endanger the health and safety of Philadelphia Firefighters and Paramedics. The City's actions have already caused, and threaten further to cause, imminent and irreparable harm to the Union, its bargaining unit members, and the citizens of Philadelphia.

56. The Union and its members have no adequate remedy at law.

57. The Union and its members are likely to prevail on the merits of this dispute before Hearing Examiner.

58. The public interest favors issuance of a preliminary injunction, to prevent the City of Philadelphia from engaging in violations of the public employee labor statutes of this Commonwealth. closing neighborhood fire companies, as evidenced by the widespread public demonstrations to protest the closures.

59. Neither the City nor the public interest would suffer any injury from the granting of a preliminary injunction, which will have only the limited effect of delaying the City's precipitous actions pending the conclusion of the grievance and arbitration process.

WHEREFORE, Plaintiffs respectfully request that the Court order the following relief:

Preliminarily and temporarily enjoin the City of Philadelphia, its officials, agents, employees and assigns from making any unilateral changes to the terms and conditions of employment, and to otherwise maintain the status quo pending the outcome of unfair labor practice charge filed by Local 22 against the City and to be heard by a Hearing Examiner of the Board.


Award Plaintiffs reasonable attorney's fees and costs; and

Grant such other relief as may be deemed necessary and proper.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

BY:



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Association of Fire Fighters, AFL-CIO

Dated: October 8, 2010