

THE CHARTER BOARD OF THE CITY OF READING

IN RE: City Residency Requirement : Request Filed: April 26, 2006
For Union Employees :
: Advisory Opinion No. 2

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

On April 26, 2006 Mr. Neil Nemeth requested that the City of Reading Charter Board (“Board”) issue an advisory opinion (“Request for Advisory Opinion”) with respect to the following issue: “Is a new City employee required to move into the City within one year from the date of hire if the position is covered by a Union contract?” This Request for Advisory Opinion necessarily requires the Board to review the City of Reading’s (“City”) four existing union contracts in conjunction with the Charter of the City of Reading (“Charter”) and the Personnel Code. After review of the aforementioned documents and the relevant law, it is also apparent that the answer to the Request for Advisory Opinion is not the same with respect to all union employees, as will be more fully set forth below.

II. DISCUSSION

A. Pertinent Provisions of the Charter and the Personnel Code

1. Charter

Section 704 of the Charter, relating to collective bargaining agreements, provides:

“No personnel procedures or policies established under the provisions of this Charter shall conflict with acts of the General Assembly providing for collective bargaining and labor agreement administration. Nothing in this Charter or any ordinances passed by City Council shall interfere with any lawful collective bargaining agreement entered into between the City and representatives of its employees.”

The Board interprets the pertinent part of this language to mean that the Charter and City ordinances may not interfere with any existing collective bargaining agreement, and, of course,

the Charter is limited by Pennsylvania law as to what matters may and may not be legislated by the City. *See* 53 Pa.C.S. § 2962(c)(5) (prohibiting the enactment of any provision inconsistent with any statute affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth).

43 P.S. § 217.1, part of what is popularly known as Act 111, permits fire and police personnel to collectively bargain with their public employers concerning the terms and conditions of their employment. Act 111 applies to every political subdivision in Pennsylvania, regardless of the adoption of a home rule charter by that political subdivision. 43 P.S. § 217.9. Furthermore, in interpreting the Public Employee Relations Act (“PERA”) courts have held that residency is a mandatory subject of collective bargaining for non-uniformed public employees and that this subject may not be foreclosed from contract negotiations even if a municipality has already enacted an otherwise valid residency ordinance. *See Harrisburg v. American Federation of State, County, and Municipal Employees*, 12 Pa.D.&C.3d 185 (Dauph. Co. 1979) and 43 P.S. § 1101.701.

The Charter is clear that all heads of departments, offices and agencies need not be residents of the City at the time of appointment, but after appointment shall reside within the City. Residency is required within twelve (12) months of being appointed. The Charter’s residency requirement only governs the heads of departments, offices and agencies under the direction of the Mayor. Charter at § 706. Next we must turn to the Personnel Code.

2. Personnel Code

Rank and file employees are not covered by the residency requirement found in Section 706 of the Charter. Rather, the residency requirement for those employees is found in the Personnel Code, Section 1-207. The Charter Board Ordinance, at Section III(B) limits the

Board's advisory powers to interpreting the Charter and the Administrative Code. Thus the Board should not issue an advisory opinion with respect to the Personnel Code. However, Section 1-207 of the Personnel Code must be reviewed and interpreted to determine if it is in compliance with the Charter's mandate that "[n]othing in this Charter or any ordinances passed by City Council shall interfere with any lawful collective bargaining agreement entered into between the City and representatives of its employees." Charter, § 704.

Section 1-207 of the Personnel Code provides in pertinent part: "All employees hired by the City of Reading following the effective date of this Personnel Code, shall become residents of the City within 1 year of date of hire and shall remain so during their period of employment with the City."

The question then becomes: "Does a City Ordinance, in this case, Section 1-207 of the Personnel Code, interfere with any lawful collective bargaining agreement, in violation of Section 704 of the Charter?"

B. Conclusions of Law

Within the scope of 43 P.S. § 217.1 and 43 P.S. § 1101.701, residency is a term and condition of employment which is a mandatory subject of collective bargaining. *Moon Twp. V. Police Officers of Moon Twp.*, 508 Pa. 495, 510-11, 498 A.2d 1305, 1312-13 (1985); *City of Wilkes-Barre v. City of Wilkes-Barre Police Benevolent Association*, 814 A.2d 285, 290 (Pa. Commw. 2002); *Harrisburg v. American Federation of State, County and Municipal Employees*, 12 D.&C.3d 185, 190-91 (Dauph. Co. 1979).

In *City of Wilkes-Barre*, the police and Wilkes-Barre submitted the issue of residency to the arbitrators of an interest arbitration. The City of Wilkes-Barre home rule charter required all city employees to reside in the city. The arbitrators declined to require residency in Wilkes-

Barre, but did not include any residency requirements in the resulting arbitration award. The arbitration award was completely silent on the issue of residency, despite the parties' submission of that issue to the arbitrators. Wilkes-Barre argued that by not including residency in the award, the arbitrators were requiring it to perform an illegal act, contrary to its home rule charter. The Pennsylvania Commonwealth Court held that neither a home rule charter nor an enactment by a home rule municipality may modify an employee's statutory right to bargain residency requirements. *See City of Wilkes-Barre*.

Although it is mandatory that employees be permitted to bargain about residency, certainly employees may choose to not bargain about residency. If a residency requirement exists by home rule charter or municipal ordinance, and the employees do not bargain on that issue, the failure to bargain is at their own peril.

The validity of appropriately defined and uniformly applied residency requirements for municipal employees is well-established. *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645, 96 S.Ct. 1154, 47 L.Ed.2d 366 (1976); *City of Meadville, Firemen's Civil Service Com'n v. Neff*, 69 Pa. Commw. 259, 263, 450 A.2d 1078, 1080 (1982) (Pa.Cmwlt. 1982); *Nevitt v. Board of Supervisors of Logan Township*, 32 Pa.Commonwealth Ct. 474, 379 A.2d 1072 (1977). So long as the right to bargain about the issue of residency is respected and observed, the residency requirement of the Personnel Code, § 1-207, is enforceable. Violation of a municipality's residency requirement may be valid grounds for termination, and may be considered willful misconduct. *Rodgers v. Com., Unemployment Compensation Bd. of Review*, 40 Pa. Commw. 552, 397 A.2d 1286 (1979).

1. The Reading Lodge No. 9, Fraternal Order of Police

The Reading Lodge No. 9, Fraternal Order of Police, current Act 111 Interest Arbitration Award, amending the 1998 to 2000 Collective Bargaining Agreement, specifically provides that “[t]here shall be no requirement for any employee to reside within the City of Reading.” 1998 to 2000 Collective Bargaining Agreement at Article XXXII. The issue of residency has been bargained, and residency may not be required with respect to those police forces.

2. International Association of Fire Fighters, Local 1803

The 2006 to 2010 Labor Contract between the City of Reading and the International Association of Fire Fighters, Local 1803, incorporates the terms of the 1978 to 1980 Collective Bargaining Agreement. However, at the time of the issuance of this Advisory Opinion, the 1978 to 1980 Collective Bargaining Agreement was unavailable for review. Therefore, no opinion is given with respect to fire fighters.

3. American Federation of State, County and Municipal Employees, Locals 2763 and 3799

The 2003 to 2007 Agreement between the City of Reading and the American Federation of State, County and Municipal Employees, Local 2763 (“Local 2763”), does not address residency, nor does the 2006 to 2009 Agreement between the City of Reading and the American Federation of State, County and Municipal Employees, Local 3799 (“Local 3799”). However, it is unknown to the Board whether or not Local 2763 and 3799 bargained the issue of residency.

If Local 2763 and 3799 had bargained the issue of residency and it was rejected, then the Charter and Personnel Code may not impose an enforceable residency requirement on them. *See City of Wilkes-Barre*, 814 A.2d at 290.¹ If on the other hand, residency was not bargained, or

¹ The case *City of Wilkes-Barre* teaches that merely because the issue of residency is not included in an arbitration award or a collective bargaining agreement, it does not necessarily mean that residency was not bargained by the parties.

bargained and accepted by these two Locals, then the Charter and Personnel Code create a valid and binding residency requirement.²

IV. OPINION OF THE BOARD

The Opinion of the Board is as follows:

A. Neither the Charter nor the Personnel Code, § 1-207, interfere with any lawful collective bargaining agreement, in as much as the residency requirement of the Personnel Code is, correctly, treated as secondary to the right of police, fire and other unionized public employees to bargain the issue of residency within the City of Reading.

B. Under the current interest arbitration award, police personnel need not adhere to the City's residency requirement.

C. Under the current collective bargaining agreement, the Board is without sufficient information to render any opinion respecting fire personnel.

D. It is unknown whether Local 2763 and 3799 bargained the issue of residency.

E. If the issue of residency was not bargained by Local 2763 and 3799, or bargained and accepted, then the residency requirement of § 1-207 of the Personnel Code applies to the membership of those Locals.

² However, the Board notes that § 1-207 of the Personnel Code was in effect and operable on the effective date of the 2003 to 2007 Agreement and the 2006 to 2009 Agreement, and because those agreements are silent on residency, it might be presumed that Locals 2763 and 3799 either did not bargain residency or did bargain that issue, and ultimately accepted it as codified in the Personnel Code. Further supporting this conclusion is Article 25 of each Local's current collective bargaining agreement. Article 25 of each agreement provides:

Nothing in this Agreement nor the Agreement itself shall be considered requiring the Employer to continue any past practices unless they are specifically set forth in this Agreement. This Agreement supersedes any past practice otherwise not covered by this Agreement and it supersedes any previous Agreement, verbal or written between the Employer, and employees covered hereby and any labor organization which may have represented employees or any of them heretofore.

This clause essentially provides that the 2003 to 2007 and the 2006 to 2009 Agreements are the final understanding between the parties, and that the Agreements supersede all past practices and prior agreements. Further investigation, within the context of an actual case, would be required to determine whether residency was bargained by the Locals or not. This level of investigation exceeds the scope and time limitations of an advisory opinion.

F. If the issue of residency was bargained and rejected, then the residency requirement of § 1-207 of the Personnel Code may not be enforced against Local 2763 and 3799.

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: 5/25/2006