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M E M O R A N D U M

TO: The Donegal Township Board of Supervisors
FROM: Phillip J. Binotto, Esquire
DATE: April 24, 2024
RE: Report from Special Labor Counsel on Status of Labor Negotiations with Union and Areas of Dispute

I. BACKGROUND

In January of 2022, I was asked by you to review the current Collective Bargaining Agreement ("CBA") the Township had with IUOE, Local 66 and offer suggestions and guidance for the upcoming labor negotiations that would occur at the end of 2022. After a preliminary review of the CBA, I advised you that in my 45 plus years of serving as a labor negotiator, and negotiating collective bargaining agreements with nearly every major union in Southwestern Pennsylvania, the Township's CBA with Local 66 was one of the most one-sided collective bargaining agreements I had ever reviewed. In my opinion Management's rights had been severely eroded in the CBA by the negotiated terms and conditions and with the alleged past practices you informed me about and needed restored.

The CBA strongly favored the Union in nearly all areas, resulting in my opinion the inability of the Township Supervisors to effectively and fiscally manage and operate the road department for the benefit of the citizens they served. Additionally, the five-year Agreement that commenced in 2018 was in my opinion outrageous, and excessive in terms of the wages and benefits it provided to the Township Road Crew working in rural Donegal Township. This

Agreement in the year 2018 provided for an 8% wage increase in the first year of the CBA, 3% increases for the next three years, and a 5% increase in 2022 or the last year of the CBA. This amounted to a 22% increase over the five-year term of the Agreement that was front loaded at 8% making the economic effect on the Township dramatic. These wage increases in my opinion were excessive, and substantially greater than anything being bargained for during those years in Southwestern Pennsylvania and nationally.

The Health Insurance Plan in the CBA was a “Rolls Royce” plan for the employees, with the Township paying 100% of the insurance premiums and all deductibles and co-pays. I had never seen anything like this before in any CBA. The insurance premium rates of course were also among the highest I had ever seen due to the extremely rich plan design that had little or no incentives for savings.

The Union’s sponsored defined benefit pension plan provided for contributions in excess of the maximum amount being reimbursed to the Township by the Commonwealth of Pennsylvania, despite being already a very fair and high-quality Union defined benefit pension plan without this unnecessary add-on. Most of my clients and employers nationally have been transitioning to profit sharing and other types of defined contribution plans that are portable for the employees, and more affordable. The current trend nationally is away from defined benefit pension plans.

The wage rates were high and very competitive with much larger municipalities in Pennsylvania, so these bargained for excessive wage increases and benefits in my opinion were not justified as a “catch-up” for the employees and cost the Township hundreds of thousands of dollars in excessive wages and benefits during the five-year term of the soon to expire CBA.

To make matters worse this CBA had been negotiated during a time period when I and other skilled labor negotiators had negotiated wage freezes, or very modest wage increases that averaged less than 2% at the bargaining table due to the status of the economy during these years. For example, the Washington Health System, which is one of the largest employers in Washington County and Southwestern Pennsylvania negotiated wage increases that totaled only 9% during this same five-year period, or 2.5 times less that what was negotiated by Donegal Township with the IUOE Local 66.¹

The Township was paying each Road Crew employee approximately \$42.00/hour in wages and benefits, or around \$87,000.00 per year, per person, due to the failure of the previous regime to effectively negotiate a fiscally sound and responsible labor agreement. To make matters worse, I was told the employees lacked appreciation for their jobs; displayed a poor attitude towards the new supervisors; refused to cooperate or work with the Supervisors on any issues; took time off from work literally at will and without the advance scheduling the same; and essentially were operating the Road Department as "they" deemed appropriate, under what they declared to be "past practices" and entitlement issues. The employees refused to take direction from the Supervisors or agree to modify any of the means or methods of operations without grieving the same.

In November of 2022, we scheduled negotiations with the Union for a successor contract to try and address key issues, with the goal of reaching a fair and equitable Agreement with the

¹ The Washington Health System negotiated a 1% wage increase with the Service Employees International Union (SEIU) for 2018; a 1% wage increase for 2019; a 2% wage increase for 2020; a 2% wage increase for 2021 and a 3% wage increase for 2022 for its union employees. These increases totaled just 9% during this same 5 year period and were consistent with negotiated labor settlements in SW Pennsylvania and nationally.

Union that resulted in a restoration of some of the Township's management rights that had been bargained away.

II. NEGOTIATIONS WITH LOCAL 66

The Negotiations with Local 66 went well at first, and were quite cordial and both sides in my opinion negotiated in good faith and reached a number of tentative agreements to improve the contract language and assist the Township with the running of the Road Department going forward. This is not to imply the negotiations were easy. However, significant progress was being made and numerous tentative agreements were reached. It appeared the parties would reach an agreement for a successor CBA. The Tentative Agreements included the following changes:

a. The Township agreed to deduct from the employee wages 10 cents per hour to be contributed to the Union's training fund to enable the union to provide updates and training to the Township's Road Department employees and assure these employees maintained the highest skills. This was a win for both sides.

b. The Township and the Union agreed that the Township could change the shift starting and quitting times, by providing the Union with at least 5 days' notice, to enable the Township to take advantage of having the workers do work during daylight hours and to make the most efficient use of the shift times. Again, another win for both sides.

c. The Township and the Union agreed to discontinue the practice of misusing compensable time off as a method of pyramiding overtime improperly and agreed that compensable time off taken would not count as hours worked for purposes of overtime.

d. The Township and the Union agreed to substitute Veterans Day as a holiday in place of the day after Thanksgiving.

e. The Township and the Union agreed to clarify and revise the Road Department written Classifications and requirements for pay increases for ease of understanding and for the benefit of everyone.

f. The Township and the Union agreed all Road Department employees must have their Class A CDL licenses within 120 days following the ratification of the new CBA to assure all Road Crew members would be paid at the top of the pay scale and have the highest of skills. It should be noted, regrettably despite this tentative agreement, and the passage of nearly one and one half years, all the Road Crew members still have not taken the initiative to upgrade to a Class A license.

g. The Township and the Union agreed on a fairer method of scheduling vacation days and time off to enable the Township to better manage and schedule the department and its work.

III. AREAS OF DISPUTE AND CAUSING AN IMPASSE AT THE BARGAINING TABLE

a. **Layoffs and Promotions by Job Classifications.** Notwithstanding the aforesaid, there remains several open areas of dispute preventing the parties from reaching an agreement at this time. The Township is proposing layoffs and promotions by job classification instead of by straight department seniority. This would protect the Crew Leader who is appointed by the Supervisors and who serves in a leadership position at a higher negotiated pay rate. This individual is deemed the most valuable and skilled member of the Road Crew. The Union will not agree to this change, despite the fact it is not uncommon for collective bargaining agreements to provide for layoffs and promotions by job classifications.

b. **Elimination of Compensatory Time Off.** Because the Township is a public employer, it is permitted to offer employees one- and one-half hours of compensatory time off for each hour of overtime worked, in lieu of paying time and one half for overtime hours. However, Road Crew employees were taking the position they can bank comp time anytime they are asked to work overtime, and the Township has no option to just pay them overtime wages. The employees took the position that they can count the comp time they use in any given week as "time worked" for purposes of calculating overtime. This was clearly an attempt to pyramid overtime and is not permitted under the FLSA. I advised the Township to cease this practice. Additionally, the Union has taken the position that the Road Crew members can take a day off and use comp time whenever they want, and that they do not have to schedule the same in advance with the Township or the Road Crew Leader as a matter of past practice. The Union has even filed grievances seeking to confirm this right.

Accordingly, the Township supervisors during negotiations have demanded that comp time be entirely eliminated from the Collective Bargaining Agreement. In the Supervisors' opinion comp time serves no legitimate purpose, except to allow employees to bank time off; and interferes with the efficient running and scheduling of the road crew. It does not save the Township money. The Supervisors have currently stopped virtually all overtime work to eliminate the further accumulation of comp time by employees. The Supervisors agree to pay employees time and one half for all hours worked in excess of 40 hours in a work week. The supervisors have offered to also pay out all accrued, and unused comp time to employees prior to the end of last year, but the Union refused to accept this offer. The Road Crew employees want to use comp time to enable them to take time off work whenever they feel they need the same and want to have an unlimited bank of comp time at their disposal.

c. **Wages.** The Township has proposed a three (3) year contract with **3%** wage increases each year. The Union refuses to accept this offer and proposes a three (3) year contract with a wage increase of **5%** in the first year; **4.5%** in the second year and **4%** the third year or **13.5%** over three years that is front loaded at **5%**. The Township believes that its offer of a 3% wage increase each year for a three year contract is fair in light of the current wages of the Road Crew compared to similar Townships in the area and the excessive wage and benefit increases granted to them in the previous contract.

d. **Health Insurance Benefits.** The Township substituted the *UPMC Advantage Gold PPO* plan with a significantly less-expensive *Municipal Benefits Services (MBS) Performance Blue plan*. The MBS plan design is the same or superior to the UPMC plan but costs the Township significantly less money annually. Under the expired CBA, the Township pays all premiums, all co-pays, and all deductibles. The Township continues to do this with the new MBS plan. Going forward with a new CBA, the Township proposes that Union employees share in the premium cost by paying **10%** of the applicable premium cost for the first year of the contract; **12%** in year two; and **15%** in year three. It is also proposing that the Union employees pay all co-pays and deductibles. This is consistent with the trend in health care benefits for municipal employees in Pennsylvania, and far superior to what is offered to employees in the private sector.

The Union refuses to accept the Township's health care proposal, and instead proposes that Employees pay only **7%** of the premium costs during the first year of the CBA; **7.5%** in the second year; and **8%** in the third year. The Union also proposes that the Township pay one half the plan deductibles, with the employee paying all the co-payments for office visits.

e. **Health Insurance Opt Out Payment.** Under the expired CBA if an employee elects not to take health insurance coverage he or she receives a stipend equal to 30% of

the amount of the monthly health insurance premium. This has resulted in a windfall for employees who do not need health insurance in the opinion of the Supervisors. It is believed this incentive is unnecessary if the employee premium contributions paid by the employees are increased to discourage an employee electing unnecessary health insurance. The Union refuses to eliminate this windfall provision from the CBA.

f. **Pension Plan – Eliminate Fifty Cent (\$0.50) Add Over Maximum State Reimbursement.** The Township agrees to contribute to the Union's defined benefit pension plan the maximum amount of State reimbursement it receives for non-uniform employees. The Union is demanding the maximum amount, *plus* 50 cents per hour. During the last contract negotiations, where the Township agreed to an 8% wage increase during the first year of the contract, the Union bargained in lieu of an even greater wage increase and windfall during the first year of the contract, that the Township contribute 50 cents an hour into the Union's pension plan, over and above the maximum reimbursement rate. The Union is insisting that this additional 50 cents per hour continue in the new Agreement, and the Township wants it eliminated. The Union's current pension plan is more than adequate without this add-on, and this costs the Township a significant sum of money each year that is not reimbursed from the State. The Union refuses to give up this pension add-on or have the employees pay the same on their own if they believe it is needed. In my opinion, the Supervisors' position on this issue is fair and fiscally sound.

g. **Management Rights.** The Township proposes the right to subcontract work if it can be performed reasonably and efficiently by a subcontractor for less money than having the work performed by Union employees. The supervisors owe a fiduciary duty to the taxpayers to have the work performed as economically as possible. The current union hourly wages are very high, and competitive with much larger Townships in Pennsylvania and are not

consistent with wage rates and subcontractor rates in Donegal Township's rural and low-income area. The supervisors merely want the right to take advantage of cost savings they might achieve by subcontracting out work, such as grass mowing or snow plowing, if the opportunity arises. This would also assist with the elimination of unneeded overtime from the budget. The Union refuses to agree to this proposal if it affects the members' wages or overtime opportunities or results in a layoff. The Union wants guaranteed full time wages and hours for its membership. In my opinion, the Supervisors should have the right to achieve economic savings through subcontracting for the benefit of the citizens they serve.

h. The New CBA Should Contain All Important Agreements Between the Township and the Union. The Union has filed numerous grievances where it alleges that the issues are controlled by alleged past practices not contained in the Collective Bargaining Agreement. The Township has demanded that the Union incorporate and bargain over any material past practices it believes are relevant to the terms and conditions of employment for its membership and include them in the CBA. The Union has refused to provide a list of these alleged important past practices and refuses to agree to a "zipper clause" which states the Agreement contains all practices of the parties. Zipper clauses are common in collective bargaining agreements. To avoid surprises, the Township wishes to have all terms and conditions of employment set forth in writing in the CBA and have an opportunity to bargain over them. The Township does not wish to be surprised in the future by alleged practices it has no knowledge of or has not bargained for at the table. In my opinion the Supervisors' position on this issue is reasonable and consistent with good labor management practices.

IV. UNFAIR LABOR PRACTICE CHARGES

In an effort to resolve issues and move grievance to a decision, the Township has had to file several unfair labor practice charges against the Union with the Pennsylvania Labor Relations Board. The following is a summary of the pending unfair labor practice charges the Township has filed against the Union;

a. **Grievances.** The Union continues to file grievances over nearly every issue it disagrees with or has a different position. Currently there are pending over a dozen unresolved grievances. The purpose of the grievance and arbitration procedure in the Collective Bargaining Agreement is to resolve disputes in a timely and efficient manner. However, the Union as a matter of practice advises the Township that it intends to arbitrate a grievance but refuses to request an arbitration panel so an arbitrator can hear the issue and make a decision. The Township has filed an unfair labor practice charge asking the Pennsylvania Labor Relations Board to make the Union go to arbitration on any issue it says it intends to arbitrate or drop the grievance in question as being resolved with the Township's last position.

b. **Part Time Employees.** The Union refuses to recognize the Township's right to hire part-time employees, despite express language in the Collective Bargaining Agreement and the Union Recognition Clause that states the Union represents "all full-time and regular part-time non-professional employees" and also despite the fact the wage scale lists a wage rate for a part-time laborer. This is because the Union fears part-time employees, such as the Township's clerical employees, and police secretary may not support it 100%. The Township has filed an Unfair Labor Practice Charge against the Union and is asking the Pennsylvania Labor Relations Board to rule that it must comply with the certification issued to the Union years ago on this issue that states the Union represents regular part-time employees including the part-time

clerical employees employed by the Township and that the Township has the right to hire part-time employees.

c. **Township Secretary.** The previous Township Secretary was a member of the Union and the Union filed numerous grievances on her behalf before she was terminated for cause. During negotiations we proposed to modify the Union's recognition clause and eliminate the Township Secretary from the Union, and the Union refused to accept this offer. Accordingly, the Township dropped the issue and agreed to continue with the union recognition clause unchanged which specifically included the Township Secretary in the Union. The Union now takes the position she is not in the Union and a confidential employee. Again, this is because it fears the Township Secretary does not support it 100%. We have filed an unfair labor practice charge against the Union to make it comply with its obligation to represent and bargain with the Township on behalf of the Township Secretary's terms and conditions of employment.

d. **Provide the Township with Back Pay Information.** The Township terminated a Road Crew member for telling a racial joke at work that did not coincide with the Township's values and the core community values held by the citizens of Donegal Township. An Arbitrator found that the joke was inappropriate but reinstated this individual. The Township has appealed the decision of the Arbitrator. The Township has demanded the Union provide it with its calculations of back pay and lost wages and benefits for this individual, in the event it loses the appeal and must pay the same. The Union has refused to provide this information to the Township despite repeated demands. The Township has filed an unfair labor practice charge with the Pennsylvania Labor Relations Board asking it to make the Union comply with its obligation to provide this information to the Township so it can make an intelligent decision on whether to call

this individual back to work or try and settle the matter. The Union has refused to provide the requested information.

e. **Telephone Conference and Hearing.** On April 19, 2024, the Pennsylvania Labors Relations Board issued a formal Complaint and Notice of Hearing against the Union based on the unfair labor practice charges the Township has filed. We have a telephone conference scheduled with the Pennsylvania Labor Relations Board's Conciliator, Dennis Bachy on **Wednesday, May 22, 2024, at 1:00 P.M.**, via Teams to try and resolve the above issues. A formal hearing on the Township's unfair labor practices charges is scheduled before the Pennsylvania Labor Relations Board for Friday, **August 2, 2024, at 10:00 A.M.**, if the issues are not resolved.

V. REDUCTION IN HOURS

Currently the Union has filed a grievance over the Township decision to reduce the hours of Road Crew employees from 40 hours per week to 32 hours per week. In essence the Union says the Township cannot exercise its managements' right to reduce employee hours as a cost-saving measure for the taxpayers. This was not an easy decision for the Supervisors, because the expired CBA clearly provides that certain benefits, such as health care are not applicable to employees who work less than 35 hours per week. Prior to making this decision, the Supervisors obtained an advisory opinion from Arbitrator William Miller, who is one of the most respected labor arbitrators in Pennsylvania and possibly nationally. Arbitrator Miller reviewed the CBA and advised the Supervisors that in his opinion that they had the management right to reduce the hours of the Road Crew from 40 hours per week to 32 hours per week under the terms of the expired CBA. We gave a copy of Arbitrator Miller's decision to the Union and requested it meet with us and discuss the issue before a decision was made to reduce employee hours.

Part of the reason we are at an impasse at the table is because the Union refuses to agree to have its members pay any share of the health care costs and the Township has continued to pay 100% of the same, including all premiums, co-pays, and deductibles, since the contract expired in December of 2022 or for nearly a year and a half. This has cost the Township significant sums in excess of what it was willing to pay for health care after the CBA expired.

We gave the Union several proposed meeting dates, to discuss this reduction in hours issue before it went into effect, but the Union would not agree to meet with us on any of the suggested meeting dates. We are still willing to meet with the Union on this issue and for it to suggest meeting dates.

In my opinion, and in the opinion of Arbitrator Miller, the Township has the management right to decide what hours and shifts the Road Crew employees work and may reduce their hours and shifts if in its opinion this meets the needs and best interest of the Township. The supervisors, and not the employees, were elected to run the Township. This is a cost-saving measure and is not designed to punish anyone. The Township remains willing to meet and discuss the health care issues resulting from this reduction in hours with the Union.

VI. CONCLUSION

The above represents a factual summary of the status of the negotiations and current issues in dispute causing an impasse in bargaining. The Union and the Township are at an impasse, despite bargaining in good faith. Bargaining in good faith does not mean that either side must succumb to the others' demands but requires each side to consider in good faith the other side's proposals and try to bargain an agreement or compromise if possible. Both sides are solidified in their respective positions. The issues of compensable time off; health care; layoffs by job

classification; the hiring of part-time employees, and subcontracting seem insurmountable at this time, unless the Union is willing to move or compromise on some of these issues. The Union's continued refusal to move grievances to arbitration makes it impossible to timely resolve disputes with a neutral party that pertain to some of the key issues, such as the Township's right to hire part-time employees, that might bring the parties closer to an agreement. It is hopeful that the Pennsylvania Labor Relations Board will assist in bringing the parties closer to an agreement and that eventually the parties will settle their respective differences and reach a compromise for a successor collective bargaining agreement.