

AND NOW, this 1st day of February, 2011, comes Petitioner, AFSCME District Council 47, by its attorneys, Willig, Williams & Davidson, and sets forth the following Petition to Set Aside Arbitration Award, and in support thereof, alleges the following:

1. This Petition is filed pursuant to Section 933(b) of the Judicial Code, 42 Pa. C.S. § 933(b), and the provisions of the Uniform Arbitration Act, 42 Pa. C.S.A. §§ 7301 *et seq.*

2. Petitioner is AFSCME District Council 47 (“District Council 47” or “Union”), an employee organization under the Public Employee Relations Act (“PERA”), 43 P.S. § 1101.101 *et seq.*, representing the administrative, technical and professional workers of the City of Philadelphia, as well as the first level supervisors of the City of Philadelphia. District Council 47’s principal place of business is 1606 Walnut Street, Philadelphia, Pennsylvania, 19103.

3. Respondent, City of Philadelphia (“City”), is a first-class city in the Commonwealth of Pennsylvania, with its principal place of business at Penn Square, Philadelphia, Pennsylvania, 19107.

4. The City and the Union were parties to a collective bargaining agreement (“CBA”) covering the period of July 2008 to June 2009. See Arbitration Award, attached as Exhibit “A” to this Petition, at 2.

5. Following the expiration of the CBA, the parties were required by law to maintain the status quo pending execution of a new agreement. See Arbitration Award, attached as Exhibit “A” to this Petition, at 6.

6. Up until July 6, 2009, the City paid earned step increments and longevity payments to the Union’s bargaining unit members according to the Philadelphia Civil Service Regulations, as incorporated into the CBA. See Arbitration Award, attached as Exhibit “A” to this Petition, at 2-3.

7. Article 6, Section B of the CBA provides that “both parties acknowledge that the Civil Service Regulations apply to all employees under this agreement.” See Arbitration Award, attached as Exhibit “A” to this Petition, at 10.

8. The Philadelphia Home Rule Charter (“Charter”), 351 Pa. Code § 7.7-100, provides for the adoption of a Civil Service System to be established and maintained for all employees of the City. The Charter likewise provides that the Civil Service System is governed by Civil Service Regulations that set forth the terms and conditions of public employment. Id. at § 7.7-401.

9. The Civil Service Regulations have the force and effect of law. See Arbitration Award, attached as Exhibit “A” to this Petition, at 10.

10. PERA, 43 P.S. § 1101.703, provides that “[t]he parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.”

11. Civil Service Regulation 6.0725(a) defines the term “rate of pay” to include “the sum of base salary, longevity pay as provided by Section 6.22, shift differential as provided by Section 6.17, and incentive payments as provided by Section 6.13.” See Arbitration Award, attached as Exhibit “A” to this Petition, at 2; see also Civil Service Regulation 6.0725(a), attached as Exhibit “B” to this Petition.

12. Civil Service Regulation 6.099 defines “earned pay step increases,” stating that “[p]ay step increases, within an established pay range, are granted to employees based on a combination of at least satisfactory work performance and length of service in a class.” See Arbitration Award, attached as Exhibit “A” to this Petition, at 2; see also Civil Service Regulation 6.099, attached as Exhibit “B” to this Petition.

13. Civil Service Regulation 6.0994 provides that “[e]arned pay step increases shall become effective on the date on which the employee is eligible for an earned pay step increase,” meaning that a member is eligible for an increase on his or her anniversary date. See Arbitration Award, attached as Exhibit “A” to this Petition, at 2; see also Civil Service Regulation 6.0994, attached as Exhibit “B” to this Petition.

14. Civil Service Regulation 6.223 provides that members represented by District Council 47 shall receive a longevity increase every five (5) years, beginning with a payment of \$625 after five (5) years of service and ending with a payment of \$2,225 after forty-five (45) years of service. See Arbitration Award, attached as Exhibit “A” to this Petition, at 2; see also Civil Service Regulation 6.223, attached as Exhibit “B” to this Petition.

15. In July 2009, the City sought and received from the Civil Service Commission a temporary regulation providing that no earned pay step increases or longevity payments would be paid to any non-represented employee until a declaration was made by the City’s Mayor that the City’s fiscal situation was sufficiently stable to allow for reinstatement of payments. The temporary regulation provided that “[t]he rights of represented employees shall be determined by the applicable collective bargaining agreement and state law.” See Arbitration Award, attached as Exhibit “A” to this Petition, at 11.

16. On July 6, 2009, the City ceased moving bargaining unit members to the next earned pay step and ceased increasing their longevity pursuant to the CBA and the Civil Service Regulations. See Arbitration Award, attached as Exhibit “A” to this Petition, at 3.

17. On July 7, 2009, the Union filed a grievance under the CBA regarding the City’s decision to cease paying step increases and longevity payments to bargaining unit members. See Arbitration Award, attached as Exhibit “A” to this Petition, at 3.

18. Two days of hearing were held before Arbitrator J. Joseph Loewenberg, one on June 7, 2010 and one on August 12, 2010. The parties filed post-hearing briefs on December 7, 2010. See Arbitration Award, attached as Exhibit “A” to this Petition, at 1.

19. The Arbitrator rendered his decision on January 4, 2011. Arbitrator Loewenberg’s Award was as follows:

1. The grievance is arbitrable.
2. The City did not violate the collective bargaining agreement and Civil Service Regulations when it did not award pay step increments and longevity increases after July 6, 2009. The grievance is denied.

See Arbitration Award, attached as Exhibit “A” to this Petition, at 15.

20. To the extent the Arbitration Award finds that the City did not violate the CBA and Civil Service Regulations when it unilaterally suspended pay step increases and longevity increases after July 6, 2009, such Arbitration Award should be set aside for the following reasons:

a. The Arbitration Award does not draw its essence from the CBA. In particular, the CBA expressly incorporates the Civil Service Regulations. The Civil Service Regulations, which have the force and effect of law, are binding on the parties. By finding that the Civil Service Regulations pertaining to earned step increases and longevity payments do not apply to the relationship between the parties during the “status quo” period, the Arbitrator seeks to modify the plain terms of the CBA, terms that were mutually bargained for. Such a modification of the CBA certainly does not draw its essence from the CBA, as it is contrary to the plain terms of CBA.

b. The Arbitration Award is contrary to law and public policy. The Award condones the City’s illegal behavior by permitting the City to ignore the Civil Service Regulations. The Philadelphia Home Rule Charter gives to the City the authority to enact the Civil Service Regulations. Once those Regulations are enacted, the City is not permitted to contravene them. Further, the Arbitrator’s interpretation of the CBA results in a CBA that violates Act 195. Act 195 recognizes that the parties to a collective bargaining agreement cannot implement a provision of the agreement that is contrary to statute. The Arbitrator interprets the CBA in a way that results in a conflict

between the CBA and the Civil Service Regulations, thus forcing the parties to violate Act 195.

WHEREFORE, District Council 47 requests that this Court, after due consideration, set aside the Arbitrator's Award and/or grant such other relief as it deems fair and appropriate.

Respectfully submitted,

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