

SPEAR WILDERMAN, P.C.
BY: SAMUEL L. SPEAR, ESQUIRE
ATTORNEY I.D. NO. 30370
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Philadelphia, PA 19102
(215) 732-0101

Attorneys for Plaintiff

**AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES
DISTRICT COUNCIL 33,**

Plaintiff,

v.

CITY OF PHILADELPHIA,

Defendant.

: COURT OF COMMON PLEAS

:

: PHILADELPHIA COUNTY

:

: SEPTEMBER TERM, 2011

: NO.

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CIVIL ACTION - EQUITY (INJUNCTION)

1. American Federation of State, County & Municipal Employees, District Council 33, AFL-CIO (“DC 33”) is an unincorporated labor organization whose purposes include advancing the interests of employees of the City of Philadelphia (“City”). DC33 is, pursuant to law, the recognized exclusive bargaining representative of the City’s non-professional, non-uniformed Civil Service employees. DC33 maintains its principal office at 3001 Walnut Street, Philadelphia, Pennsylvania 19104. DC33 is an “employe organization” within the meaning of section 301(3) of the Public Employe Relations Act, 43 P.S. §1101.301(3) (“PERA”).

2. The City of Philadelphia (“the City”) is a municipal corporation, a City of the First

Class and a political subdivision of the Commonwealth of Pennsylvania, operating pursuant to its Home Rule Charter, 351 Pa. Code § 1.1-100 *et seq.*, maintaining its principal office at City Hall, 2nd Floor, Philadelphia, PA 19102. The City is a “public employer” within the meaning of section 301(1) of PERA.

3. The parties have had a collective bargaining relationship for many decades. Their most recent collective bargaining agreement had a stated term of July 1, 2008 through June 30, 2009.

4. The parties have been engaging in collective bargaining negotiations since 2009 in an attempt to reach a new agreement. During that time, the employees represented by the DC33 have continued working and have not exercised their right to strike.

5. On September 15, 2011, the City enacted an Ordinance which changed the City’s Deferred Retirement Option Program (“DROP”), a component of the pension program in which the members of the DC33 bargaining unit participate. A copy of the DROP Ordinance is attached as Exhibit A.

6. DROP has been a term and condition of employment of members of the DC33 bargaining unit since the 1990's.

7. The Ordinance changes substantive terms of the DROP, including delaying the time when employees can enroll in DROP, and reducing the interest rate earned by employees’ individual DROP accounts.

8. The DROP Ordinance goes into effect by its terms ninety days after it became law.

9. On September 15, 2011, the Union wrote to the City, requesting that the City not enforce the new DROP Ordinance as it applies to the employees in the DC33 bargaining unit, and asking the City to acknowledge that enforcing the DROP Ordinance would illegally alter the status

quo in violation of the City's obligation to engage in collective bargaining regarding terms and conditions of employment. The Union also requested that the City continue to negotiate issues involving employees' pension rights, including their rights under the DROP.

10. There was no response to this letter until the parties met at a collective bargaining negotiating session on September 23, 2011, at which the Union again requested that the City clarify its position regarding the breach of the status quo and the City's willingness to negotiate pension issues including issues pertaining to DROP.

11. Joseph Tolan, the City's chief negotiator, responded that the City considered DROP to be a non-bargainable issue, notwithstanding the City itself has proposed other significant changes to employees' existing pension rights during these negotiations.

12. On September 28, 2011, DC33 filed a charge of unfair practices with the Pennsylvania Labor Relations Board, alleging that the enactment of the Ordinance changing terms and conditions of DROP unlawfully altered the status quo which is to be maintained during the time negotiations continue and bargaining unit members continue working. A copy of the charge is attached as Exhibit B.

13. The charge alleges that the unilateral imposition of new DROP conditions "has disrupted the status quo in violation of the City's obligation to engage in good faith collective bargaining with the Union . . . improperly undermines the collective bargaining process, and has the tendency to weaken the Union in the eyes of its members." The charge also asserts that the City's actions "violate the City's obligation to bargain in good faith and otherwise improperly coerces employees' exercise of their rights protected by the Act."

14. The expired collective bargaining agreement contains provisions related to pensions,

entitling bargaining unit members to participate in the City's existing pension program, which includes the right to enroll in DROP.

15. During the current round of collective bargaining negotiations, the City has made proposals to the Union to substantially alter the existing pensions to which bargaining unit members are entitled.

16. The unilateral implementation of new terms and conditions of employment violates the City's obligation to bargain in good faith, threatens to undermine the confidence of the employees in their bargaining representative and to destroy the solidarity of the unit needed to insure the Union's full effectiveness in negotiations, and upsets the level playing field between the parties PERA requires.

17. Plaintiffs do not possess an adequate at law.

18. Plaintiffs are entitled to an injunction to prevent implementation of the DROP Ordinance and to return the parties to the status quo, pending resolution on the merits of the unfair practices charge before the PLRB..

19. Significantly greater harm will befall plaintiff and its members if no relief is granted by the Court than will befall the City of Philadelphia if an injunction, preserving the status quo, is issued.

20. The unilateral change in terms and conditions of employment and the resulting disruption of the bargaining process will cause plaintiffs immediate and significant irreparable harm because it will demonstrate that the City is free to disregard long-standing terms of employment regarding bargaining unit members' pension rights, and will convey to the Union's membership that it is impotent and incapable of enforcing its members' legal rights or securing acceptable terms for

a new agreement. It will also endanger the ability of the parties to agree to terms of a new agreement in an atmosphere untainted by the City's illegal actions, contrary to the requirement of PERA.

21. The public will be harmed if PERA is violated by altering the parties' relative bargaining strengths and economic weapons in violation of PERA.

22. There is no pressing need for the City to implement the changes wrought by the Ordinance with respect to a program which has been in place for more than a decade, pending resolution of the pending charges before the Board.

WHEREFORE, plaintiff respectfully requests the following relief:

(a) that a preliminary injunction, followed by a permanent injunction, be issued preventing the City of Philadelphia from implementing the DROP Ordinance and changing the conditions related to participation in the DROP program by employees in the bargaining unit represented by District Council 33, unless authorized by a final order of the PLRB or a court of competent jurisdiction, or by the provisions of a collective bargaining agreement between the parties;

(b) that plaintiffs be awarded their costs and counsel fees;

(c) that this Court grant such other and further relief as it may deem just and proper.

Respectfully submitted,

SPEAR WILDERMAN, P.C.

BY: 

SAMUEL L. SPEAR

ID No. 30370

Suite 1400

230 South Broad Street

Philadelphia, PA 19102

(215) 732-0101



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 110443
(As Amended, 6/8/11)

Introduced May 26, 2011

Councilmember Tasco for Council President Verna, Councilmembers Sanchez, DiCicco, Greenlee, Green, Miller, Krajewski, Clarke, O'Neill, Kelly, Reynolds Brown and Jones

**Referred to the
Committee of the Whole**

AN ORDINANCE

Amending Title 22 of The Philadelphia Code, entitled "Public Employees Retirement Code," by amending the options for retirement benefits; in particular, amending Section 22-310, entitled "Deferred Retirement Option Plan (DROP)," by making various changes to DROP to reduce its costs, including, but not limited to, changing eligibility requirements and the interest credited to DROP accounts; adding a new option for retirees to take a lump sum benefit at retirement, in exchange for an actuarial reduction of their regular monthly pension; and making conforming amendments to other provisions; all under certain terms and conditions.

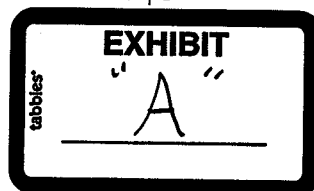
THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 22-310 of The Philadelphia Code is hereby amended to read as follows:

§22-310. Deferred Retirement Option Plan (DROP).

* * *

(4) Eligibility. In order to be eligible to participate in this program, a member must be an active employee of the City and be otherwise eligible to retire under Section 22-301 and must have a minimum of ten (10) years of credited service, all as of the DROP entry



City of Philadelphia

BILL NO. 110443, as amended continued

date. In lieu of separating from employment and commencing receipt of service retirement benefits, any such member may enter into this program (“the DROP”) *(i) in the case of Police Employees and Fire Employees, on or after the date the member attains his or her “minimum retirement age,” as that term is defined in Section 22-105(25); or (ii) in the case of all other members, on or after the second anniversary of the date the member attains his or her “minimum retirement age” as that term is defined in Section 22-105(25), provided in either case that the member’s DROP entry date shall meet the requirements in Section 22-310(5)(a) below. For participation in the DROP to be effective, the application must be approved by the Board pursuant to Section 22-309.*

(a) Eligibility of Elected Officials. No elected official shall be eligible to participate in the DROP, except: (i) this provision shall not affect the DROP eligibility of an elected official who entered the DROP before this subsection became law; and (ii) an official elected to office before September 18, 2009 shall remain eligible to participate in the DROP during such term in office and during any successive term or terms of office to which such official is reelected.

(5) Benefit Requirements and Calculation.

(a) Except as otherwise provided by this Section, an election to participate in the DROP is irrevocable. The effective date of a member’s participation in the DROP shall be the date provided on the member’s application, provided that such date shall only be the beginning of a full pay period and shall not be earlier than ninety (90) days *nor more than one hundred eighty (180) days* after the date the application is filed with the Board nor earlier than *(i) in the case of Police Employees and Fire Employees, the date*

City of Philadelphia

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the member attains his or her “minimum retirement age,” as that term is defined in Section 22-105(25); or (ii) in the case of all other members, the second anniversary of the date the member attains his or her [member’s] “minimum retirement age” as that term is defined in Section 22-105(25).

(b) Credits to a DROP participant’s DROP account consist of:

* * *

(.2) interest on the member’s DROP account balance [computed at a rate determined by the Board and] compounded monthly. [The rate shall be 4.5% upon the effective date of the ordinance amending this Title to provide for this test DROP and shall be reviewed not less than annually by the Board at the beginning of each plan year. The Board may adjust the interest rate prospectively or retrospectively following such review, provided that the rate shall not exceed 10% and shall not fall below 4.5%.] *Until January 1, 2012, interest shall be credited at the yield on one year United States Treasury bonds in effect on the date the ordinance adding this sentence to the Code took effect. On January 1, 2012 and each January 1 thereafter, the interest rate shall be recalculated to equal the lesser of: (i) the yield then in effect on one year United States Treasury bonds; or (ii) one-half of the then-effective interest rate used to calculate the earnings of the reserves of the Retirement System, as adopted by the Board under §22-1002(2).*

* * *

SECTION 2. Chapter 22-300 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 22-300. RETIREMENT BENEFITS.

* * *

City of Philadelphia

BILL NO. 110443, as amended continued

§22-306. Retirement and Survivorship Benefit Options.

(1) Election of options. Any member may at any time prior to retirement elect in writing one of the following options pursuant to which retirement benefits and survivorship benefits will be paid.

* * *

Option 5 – Under this option, the member shall choose one of Options 1 through 3 (or, if eligible, Option 4), and in addition, the member shall receive a partial lump sum benefit under the provisions of §22-312. The member's retirement benefits shall be governed by §22-312. This Option shall not be available to a member who at any time has elected to participate in the Deferred Retirement Option Plan under §22-310. A member who elected Option 5 and is subsequently rehired shall not, after such rehire, be eligible to elect Option 5 again, nor be eligible to participate in the Deferred Retirement Option Plan.

* * *

§22-312. Partial Lump Sum Option.

(1) Definitions.

(a) *Partial Lump Sum Beneficiary.* An employee who has chosen Option 5 under §22-306(1).

(b) *Regular Benefit Option.* Either Option 1, Option 2, Option 3 or Option 4, as elected by a Partial Lump Sum Beneficiary when he or she elects Option 5.

(c) *Unadjusted Benefit.* The monthly benefit a Partial Lump Sum Beneficiary would have received had he or she chosen the Regular Benefit Option rather than Option 5.

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(d) *Lump Sum Months.* A whole number between six and thirty-six, representing the number of months of Unadjusted Benefits a Partial Lump Sum Beneficiary elects to receive as a lump sum benefit upon retirement. A Partial Lump Sum Beneficiary must specify the Lump Sum Months as part of his or her Option 5 election.

(e) *Partial Lump Sum.* The Unadjusted Benefit multiplied by the Lump Sum Months.

(2) *A Partial Lump Sum Beneficiary shall, upon retirement, receive the Partial Lump Sum and a monthly pension payment which shall be actuarially reduced so that the Partial Lump Sum plus the monthly pension payments are the actuarial equivalent of the Unadjusted Benefit.*

* * *

SECTION 3. Section 22-204 of The Philadelphia Code is hereby amended to read as follows:

§22-204. Reemployment of Retired Members.

* * *

(3) Reemployment for three (3) or more years. If the period of reemployment under Plan A, Plan B, Plan L, or Plan Y is three (3) years or more, then when the reemployed member retires from City employment, the member's retirement benefits are redetermined to include credited service earned both before and after reemployment.

(i) *If a reemployed member previously received an Option 5 partial lump sum benefit, then the redetermination under this subsection (3) shall include an actuarial reduction so that the following two amounts are actuarial equivalents:*

City of Philadelphia

BILL NO. 110443, as amended continued

(I) *the Partial Lump Sum (as defined in §22-312(1)) and all monthly pension benefits received by the member prior to reemployment, plus the value of all redetermined pension benefits as actuarially reduced; and*

(II) *the monthly pension benefits the member would have received prior to reemployment had the member elected the Regular Benefit Option (as defined in §22-312(1)) rather than Option 5, plus the value of all monthly pension benefits as they would have been redetermined under this subsection without actuarial reduction.*

(4) Reemployment of retired members of Plan D, Plan J or Plan X. Any member who becomes reemployed by the City following retirement and who is receiving benefits under Municipal Revised Coverage Plan 60 or Police- Fire Coverage Plan 50, shall become a member of the appropriate plan as if the member were first employed on the date of reemployment. Notwithstanding the foregoing, such member shall be entitled to retire thereafter under the age and service provisions of the plan covering such member's employment at the time of the prior retirement. Such member shall continue to accrue service credit during the period of subsequent employment. Upon subsequent retirement, the member shall be entitled to receive the accrued benefit earned under the member's original plan together with any additional accrued benefit earned for the period of subsequent employment under the plan which covers the member upon reemployment. If a retired member reenters the service of the City and remains an employee of the City continuously for three (3) or more years after reemployment, the member may elect to retire thereafter under the age and service provisions applicable at the time of subsequent retirement with full credit for the entire service with the City both before and after the first retirement, *provided that if such retired member previously received an Option 5*

City of Philadelphia

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lump sum benefit, then the member's recalculated pension benefits under this sentence shall be actuarially reduced in the same manner as provided in subsection (3)(i).

* * *

SECTION 4. Effective Date; Applicability.

(a) This Ordinance shall take effect ninety (90) days after it becomes law, provided that the amendments to §22-310 of The Philadelphia Code, as set forth in Section 1, shall not apply to any employee who attained eligibility to participate in the Deferred Retirement Option Program under the provisions of §22-310 as it existed before such amendments took effect, and such employees shall continue to be governed by the provisions of §22-310 as it existed prior to such amendments.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

City of Philadelphia

BILL NO. 110443, as amended continued



CHARGE OF UNFAIR PRACTICE(S) UNDER THE PUBLIC EMPLOYE RELATIONS ACT

AFSCME District Council 33
COMPLAINANT

v.

City of Philadelphia
RESPONDENT

DO NOT WRITE IN THIS SPACE	
CASE NO.	
DATE FILED	

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

COMPLAINANT INFORMATION

<u>AFSCME District Council 33</u>		
Public Employee, Employee Organization or Public Employer		
<u>Herman J. Matthews, Jr.</u>	<u>President</u>	
Name of Person filing charge on behalf of Complainant	Title	
<u>3001 Walnut Street - 9th Floor</u>		
Address		
<u>Philadelphia</u>	<u>PA</u>	<u>19104</u>
City	State	Zip
Telephone		

HEREBY CHARGES THAT:

RESPONDENT INFORMATION

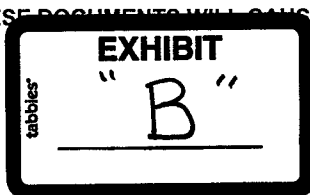
<u>City of Philadelphia</u>		
Public Employer, Employee Organization or Public Employee alleged to have committed unfair practice(s)		
<u>Mayor's Office -- 2nd Floor City Hall</u>		
Address		
<u>Philadelphia</u>	<u>PA</u>	<u>19107</u>
City	State	Zip
Telephone		

HAS ENGAGED IN UNFAIR PRACTICE(S) CONTRARY TO THE PROVISIONS OF THE
PUBLIC EMPLOYE RELATIONS ACT, SECTION 1201 AS FOLLOWS:

Choose one:	Choose all that apply:		
<input checked="" type="checkbox"/> subsection (a)	<input checked="" type="checkbox"/> clause (1)	<input type="checkbox"/> clause (4)	<input type="checkbox"/> clause (7)
<input type="checkbox"/> subsection (b)	<input type="checkbox"/> clause (2)	<input checked="" type="checkbox"/> clause (5)	<input type="checkbox"/> clause (8)
	<input type="checkbox"/> clause (3)	<input type="checkbox"/> clause (6)	<input type="checkbox"/> clause (9)

- Check here if more than one respondent and list on separate sheet.
- Check here if a grievance relating to this issue has been filed and enclose three (3) copies of the grievance and one (1) copy of the Collective Bargaining Agreement to assist in review of this charge.

FAILURE TO ENCLOSE THESE DOCUMENTS WILL CAUSE A DELAY IN PROCESSING.



SPECIFICATION OF CHARGES

Set forth all of the events alleged to constitute the unfair practice(s). Include specific facts, dates, names, addresses, place of occurrence, and other relevant facts. If additional space is needed, please continue on additional sheet(s).

SEE ATTACHED SHEET

WHEREFORE, the Complainant respectfully requests the Pennsylvania Labor Relations Board to enter the charge upon the Docket of the said Board and to issue and cause to be served upon the Respondent above named a Complaint stating the charge(s) of unfair practice(s).

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Philadelphia : ss

On this 28th day of September, 2011, before me, a notary public, in and for said County and State, personally appeared Herman J. Matthews, Jr. who being duly sworn according to law, deposes and says that he/she is the person filing the foregoing CHARGE OF UNFAIR PRACTICE(S) and is aware of the contents hereof and that the matters and facts set forth herein are true and correct to the best of his or her knowledge, information and belief.

SWORN AND SUBSCRIBED TO before me the day and year first aforesaid.

Joann E. Groves
Signature of Notary Public

[Handwritten Signature]
Signature of Complainant or Representative

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL FAILURE TO FILE AN ORIGINAL AND THREE (3) COPIES OF THE CHARGE
JOANN E. GROVES, Notary Public ALL ACCOMPANYING EXHIBITS MAY CAUSE A DELAY IN PROCESSING.
City of Philadelphia, Phila. County
My Commission Expires May 15, 2015
Pennsylvania Labor Relations Board | 651 Boas Street, Room 418 | Harrisburg, PA 17121-0750
717.787.1091 | Fax 717.783.2974 | www.dli.state.pa.us

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

AFSCME District Council 33 v. City of Philadelphia
Specification of Charges

The Union represents the city-wide unit of blue collar employees of the City of Philadelphia. The Union's Collective Bargaining Agreement with the City expired July 1, 2009. The parties have been engaged in negotiations since that time.

Since the 1990's, DC33-represented employees have been eligible to participate in a Deferred Retirement Option Program (DROP). In 2011, Philadelphia City Council held hearings to consider altering the DROP. In June 2011, at a City Council hearing considering a Bill to change substantive aspects of the DROP, the Union's President, Pete Matthews, reminded City Council that the Union was engaged in collective bargaining negotiations with the City, and that changing the DROP would illegally disrupt the status quo. On June 16, 2011, City Council passed an Ordinance changing the DROP, which the Mayor disapproved consistent with his veto powers under the City's Home Rule Charter. City Council overrode the Mayor's veto on September 15, 2011, at which time the DROP Bill became law. The DROP Ordinance goes into effect by its terms ninety days after it became law.

On September 15, 2011, the Union wrote to the City, requesting that the City not enforce the new DROP Ordinance as it applies to the employees in the DC33 bargaining unit, and asking the City to acknowledge that enforcing the DROP Ordinance would illegally alter the status quo in violation of the City's obligation to engage in collective bargaining regarding terms and conditions of employment. The Union also requested that the City continue to negotiate issues involving employees' pension rights, including their rights under the DROP. There was no response to this letter until the parties met at a collective bargaining negotiating session on September 23, 2011, at which the Union again requested that the City clarify its position regarding the breach of the status quo and the City's willingness to negotiate pension issues including issues pertaining to DROP. The City's chief negotiator responded that the City considered DROP to be a non-bargainable issue, notwithstanding the City itself has proposed other significant changes to employees' existing pension rights during these negotiations.

The City's passage of an Ordinance changing substantive terms of the DROP, including delaying the time when employees can enroll in DROP, and reducing the interest rate earned by employees' individual DROP accounts, has disrupted the status quo in violation of the City's obligation to engage in good faith collective bargaining with the Union. DROP rights are matters of substantial concern to the Union and members of the bargaining unit, and unilaterally imposing new terms and conditions of employment with regard to DROP improperly undermines the collective bargaining process and has the tendency to weaken the Union in the eyes of its members. The City's unilateral imposition and expressed refusal to bargain over the DROP violate the City's obligation to bargain in good faith and otherwise improperly coerces employees' exercise of their rights protected by the Act.

VERIFICATION

I, **Herman J. Matthews, Jr.**, hereby declare that I am the President of District Council 33, AFSCME, the plaintiff in the foregoing action, and that I am authorized to make this verification, and that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.


HERMAN J. MATTEWS. JR.

DATE: September 27, 2011