COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 27 DELAWARE	:	
	:	Case. No. PF-C-10-96-E
v.	:	
	:	
SPRINGFIELD TOWNSHIP	:	

FINAL ORDER

Springfield Township (Township) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on December 14, 2010, to a Proposed Decision and Order issued on November 24, 2010, in which the Hearing Examiner concluded that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relation Act (PLRA) as read in *pari materia* with Act 111. The Fraternal Order of Police, Delaware Lodge 27 (FOP) filed a timely response to the Township's exceptions and a supporting brief on December 30, 2010.

The unfair labor practice found by the Hearing Examiner involves the Township's changes to the Civil Service Regulations, which are inconsistent with the terms of a grievance settlement and a settlement of a prior unfair labor practice charge. For purposes of the exceptions, the Hearing Examiner's Findings of Fact are summarized as follows.

On February 1, 1996, the parties entered into an agreement in settlement of a grievance concerning qualifications for promotion to detective. The agreement provides, in relevant part, that in order to be eligible for promotion to detective "an officer must have completed four (4) years of service as a Springfield Township Police Officer." (FF 2).

A month later, on March 6, 1996, the parties entered into an agreement in settlement of a charge of unfair labor practices,[1] which had alleged that the Township's unilateral changes to the criteria for promotion to lieutenant and sergeant were unlawful. In relevant part, the agreement in settlement of that charge provided that applicants for promotion to sergeant must have four years of experience as a patrolman, and that for promotion to lieutenant, the applicant needed four years of experience as a sergeant. In the settlement agreement, the parties further agreed to the testing for promotion, agreeing that the written examination shall comprise 65% of the total score and an oral component would comprise 35% of the score. (FF 3).

Without having bargained for changes to the 1996 agreements, (FF 5), on May 11, 2010, the Township unilaterally amended its civil service regulations with respect to the promotional criteria for detective, sergeant, and lieutenant. The new civil service regulations eliminated the four year service requirements that were agreed to for promotion to detective and lieutenant. The new civil service regulation further altered the agreed upon scoring requirements for promotion, providing that for a promotion to detective and sergeant the written component would be 45%, while the oral portion would be 55% for the total score, and providing that the examination for the position of lieutenant will be prescribed by the Township's civil service commission. The new regulations further provided that testing would be pass/fail, with a minimum passing score of 70% on the written test. (FF 4).

Based on a stipulation that the FOP and the Township did not reach an agreement on the changes to the civil service regulations, and the documents submitted by the Association, including the settlement agreements and the 2010 civil service regulations, the Hearing Examiner found that the FOP established a prima facie case of an unlawful unilateral change to the parties' agreements. The Hearing Examiner also sustained the FOP's objection to the Township's proffer of testimony to support its claim that the promotional criteria were a managerial prerogative, or that the FOP had allegedly refused to bargain over the changes to the civil service regulations, noting that such evidence

[1] Case No. PF-C-95-112-E.

would be irrelevant to the finding of an unfair labor practice for an alleged failure to abide by the terms of a binding settlement agreement. Accordingly, the Hearing Examiner concluded that the Township violated Section 6(1)(a) and (e) of the PLRA by unilaterally altering the agreed upon civil service regulations contrary to binding grievance and unfair labor practice settlement agreements.

On exceptions, the Township first argues that the Hearing Examiner erred in failing to grant its motion to dismiss on the basis that the FOP did not prosecute its charge. The Township cites to Section 8(f) of the PLRA, which provides, in part, that "[a]ll cases in which complaints are actually issued by the board, shall be prosecuted before the board or its examiner, or both, by the representatives of the labor organization or employe filing the charge…." Apparently, the Township asserts that a complainant may only present its case through *viva voce* testimony. We disagree. Indeed, oftentimes documents are far more reliable than witnesses' memory. Furthermore, there was no objection here to the FOP's introduction of the Township's business records in the form of the agreements and Civil Service Regulations. Moreover, to the extent that any testimony would have been necessary to establish unilateral action, the Township conceded that point by stipulation. Accordingly, the Hearing Examiner did not err in denying the Township's motion to dismiss.

The Township next argues that the settlement of a grievance is unlike the settlement of an unfair practice, and asserts that the Hearing Examiner erred in finding that the unfair labor practice settlement agreement was binding because it involved criteria for promotions, which is a managerial prerogative. The Township also claims that the settlement agreement was nonbinding because it was for an indeterminate amount of time. The Township further argues that the Hearing Examiner abused his discretion in refusing to allow the Township to present testimony to support its assertions that the changes to the civil service regulations were a managerial prerogative, and that the FOP refused to bargain for changes to the settlement agreements and civil service regulations.

Initially, we note that the Township's exceptions overlook the fact that the promotional criteria for detectives were set forth in a grievance settlement, whereas the criteria for sergeant and lieutenant were set forth in an unfair practice settlement. The 2010 changes to the Civil Service regulations altered both of these agreements. There is fundamentally no difference, for purposes of assessing an unfair labor practice, between the enforcement of a grievance settlement or the enforcement of a settlement of an unfair labor practice charge. An employer fails to bargain in good faith when it declines to abide by the terms of a settlement agreement in either a grievance matter, AFSCME, District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005), or an unfair labor practice charge. Avery v. PLRB, 509 A.2d 888 (Pa. Cmwlth. 1986); New Castle Township Police Employees v. New Castle Township, 25 PPER ¶25101 (Final Order, 1994). Indeed, under either type of settlement agreement, an unfair practice may be found where "1) a settlement agreement exists, 2) the parties' intent is apparent from the settlement agreement, and 3) the party has failed to comply with the agreement's provisions." City of Philadelphia, 36 PPER at 359.

Here, the record evidence establishes that agreements in settlement of a grievance and an unfair labor practice charge exist. (FOP Exhibits C and D). The terms of those agreements clearly establish an intended four year service requirement and promotional testing requirements. (FF 2 and 3). The record also establishes that the Township is failing to comply with those promotional service and testing requirements, as evidenced by the 2010 amendments to the civil service regulations. (FOP Exhibit D). Accordingly, there is substantial evidence of record supporting the Hearing Examiner's finding of an unfair labor practice.

The Township nevertheless argues that the 1996 settlement agreements are nonbinding because they concern criteria for promotion, which is a managerial prerogative. However, it is well established in Board law that even where a settlement agreement concerns a matter that is not a mandatory subject of bargaining, once the employer agrees to the terms of the settlement, the employer is bound by its agreement. AFSCME, Council 13 v. State System of Higher Education (Edinboro University), 32 PPER ¶32080 (Final Order, 2001); Philadelphia School Police Association v. Philadelphia School District, 9 PPER ¶29131 (Proposed Decision and Order, 1998); Coatesville Area School District v.

Coatesville Area Teachers' Association, 978 A.2d 413 (Pa. Cmwlth. 2009). Indeed, in New Castle Township, quoting Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 81 Pa. 66, 74 391 A.2d 1318, 1322 (1978), the Board held as follows:

> To permit an employer to enter into agreements … and to include terms which raise the expectations of those concerned, and then to subsequently refuse to abide by those provisions … would invite discord and distrust and create an atmosphere wherein a harmonious relationship would be virtually impossible to maintain.

New Castle Township 25 PPER at 258-259. Accordingly, even if the grievance settlement and unfair labor practice settlement agreements involve matters that are managerial prerogatives, this does not render those agreements nonbinding on the Township.

Similarly, the fact that a settlement agreement does not specify a duration or expiration, does not render the agreement nonbinding. Edinboro University, supra; Philadelphia School District, supra. Instead, where there is no express expiration of the agreement, the Board will permit evidence of changed circumstances to establish an intervening event that supersedes the agreement. Edinboro Univerity, supra; PLRB v. School District of Bristol Township, 12 PPER ¶12136 (Final Order, 1981); AFSCME, Council 13 v. Department of Public Welfare, 41 PPER 99 (Proposed Decision and Order, 2010) (holding that the terms of a subsequent collective bargaining agreement provided the employer with a sound arguable basis defense that superseded prior settlement agreement).[2] However, as noted by the Board in School District of Bristol Township, the changed circumstances must be an intervening event and not something contemplated by the parties when reaching the agreement. See North Hills Education Association v. North Hills School District, 38 PPER 78 (Final Order, 2007).

Here, the Township proffered no evidence of any changed circumstance.[3] The Township entered into the record documentary evidence of its rationale for changing the civil service regulations, however in its offer of proof, the Township made no suggestion that any testimony or evidence that it would introduce would support an intervening changed circumstance. Accordingly, the Hearing Examiner did not abuse his discretion in rejecting the Township's testimony seeking to establish that the 2010 changes to the civil service regulations involved a managerial prerogative.

Similarly, the Hearing Examiner did not err in dismissing the Township's assertion that the FOP refused to bargain changes to the grievance and unfair labor practice settlement agreements. As correctly noted by the Hearing Examiner, the PLRA does not provide an unfair labor practice against the employe representative for a refusal to bargain. 43 P.S. §211.6(b). The employer's recourse, where the employe representative refuses to bargain changes to an existing settlement agreement, is to compel interest arbitration under Act 111. See Borough of Nazareth v. PLRB, 534 Pa. 11, 17; 626 A.2d 493, 496 (1993)("under the language of Section 4 of Act 111, both employee and employer have the right to file an unfair labor practice petition … to compel the other party to proceed to interest arbitration"). As recognized by the Board and the Commonwealth Court, even where the subject matter of the agreement is a managerial prerogative, the employer's statutory obligation is to maintain the *status quo* with respect to the agreement until the parties' negotiate new terms and conditions of employment. Coatesville Area School District, supra; Crestwood Education Association v. Crestwood School District, 37 PPER 105 (Final Order, 2006).

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[2] No collective bargaining agreement was introduced by the Township to support changed circumstances. While not of record, the Township argues in its brief on exceptions that the current collective bargaining agreement provides that "no officer will be appointed to a new rank … except through competitive examination". However, this language would not amount to an effective waiver, nor would it support a sound arguable basis defense that supersedes the terms of the settlement agreements.

[3] The Township's allegation that the settlement agreements are nonbinding because the Board did not determine that criteria for promotion are a managerial prerogative until after the parties entered into the 1996 agreements is unavailing. The issue in the 1995 charge of unfair practices was whether promotional criteria are a managerial prerogative, and thus the Board's determination of that issue would not have been a circumstance beyond the control of the parties at the time the agreement was reached. Indeed, instead of litigating that issue at the time, the parties voluntarily entered into a binding agreement.

The Township's final exception is that the Hearing Examiner erred in awarding make-whole relief because no employes had yet been affected by the 2010 civil service regulations. This exception has been rejected by the Board and Courts numerous times. Indeed, the Commonwealth Court in Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998) stated as follows:

> [T]he Township contends that the PLRB's order to make all bargaining unit members whole for any monetary losses suffered is improper and has no sound remedial purpose because the PLRB did not find that the police officers suffered any pecuniary losses that are rationally related to their police duties. However, the fact that the Union has not proved economic loss due to unfair labor practices is of no consequence; the PLRB concedes that if, in fact, the police officers suffered no monetary losses, then the Township's liability will be limited to reinstatement of the … policy and collective bargaining over the matter.
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> In sum, the Township's challenge to the PLRB's "make whole" directive is unwarranted. The PLRB's order that the Township "make all bargaining unit members whole for any monetary losses suffered" is in the purest sense remedial and not punitive. *See* [Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978)]. In fact, the PLRB's final order directs no more than the usual and customary remedy …. Accordingly, we conclude that the PLRB's order is proper in that it is reasonable, remedial in nature and furthers the PLRA's policy of promoting mutual resolution of labor disputes.

Id. at 736-737.

After a thorough review of the exceptions and all matters of record, we find that the Hearing Examiner did not err in concluding that the Township violated Section 6(1)(a) and (e) of the PLRA, as read in *pari materia* with Act 111, when it unilaterally amended its Civil Service Regulations contrary to the express terms of grievance and unfair labor practice settlement agreements. Accordingly, we shall dismiss the Township's exceptions and make the November 24, 2010 PDO final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Springfield Township are hereby dismissed, and the November 24, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of February, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.