

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF :
MACHINISTS AND AEROSPACE WORKERS :
LOCAL 243 :
 :
v. : Case No. PF-C-12-18-E
 :
STEWARTSTOWN BOROUGH :

FINAL ORDER

The International Association of Machinists and Aerospace Workers, Local 243 (Union) filed timely¹ exceptions with the Pennsylvania Labor Relations Board (Board) on March 13, 2012. The Union's exceptions challenge a February 22, 2012 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Labor Practices filed against Stewartstown Borough (Borough).

The Union alleged in its Charge, as amended, that the Union and the Borough ratified a tentative collective bargaining agreement on November 4 and 7, 2011, respectively, to be effective January 1, 2012 through December 31, 2014. The Union further alleged that the parties approved an Addendum to the successor agreement on December 19, 2011, which prohibits the Borough from disbanding, consolidating, merging, or regionalizing the police department for the duration of the successor collective bargaining agreement. The Union asserted that the Borough rescinded the Addendum on January 3, 2012, as evidenced by a letter dated January 12, 2012, attached to the Union's Charge, in which the Borough's Solicitor justified the Borough's rescission by claiming that the Addendum was entered into by a "lame duck"² Council. The Union alleged that the Borough's rescission was in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA).

The Secretary declined to issue a complaint, stating that the Union failed to allege sufficient facts to support a finding that the Borough violated its duty to bargain under Section 6(1)(e) of the PLRA because the successor Borough Council was not obligated to abide by the terms of the Addendum that was approved by a "lame duck" Borough Council, citing Fraternal Order of Police, E.B. Jermyn Lodge #2 v. Hickey, 499 Pa. 194, 452 A.2d 1005 (1982)(an agreement entered into by a "lame duck" administration which attempts to handcuff its successor is not binding on the successor board); Lobolito, Inc. v. North Pocono School District, 562 Pa. 380, 755 A.2d 1287 (2000)(successor school board not bound by agreement approved by "lame duck" school board); Falls Township v. McManamon, 537 A.2d 946 (Pa. Cmwlth. 1988)(employment contract with police chief approved by "lame duck" supervisors not binding on successor board); Borough of Pitcairn v. Westwood, 848 A.2d 158 (Pa. Cmwlth. 2004)(employment contract with police chief approved by "lame duck" council not binding on successor council); Teamsters Local Union No. 205 v. Borough of Plum, 33 PPER ¶ 33077 (Proposed Decision and Order, 2002)(borough did not commit an unfair practice by refusing to abide by the terms of a collective bargaining agreement approved by "lame duck" council). The Secretary further indicated that the Union failed to state a cause of action under Section 6(1)(a). Therefore, the Secretary dismissed the Charge.

¹ Although the Board received the Union's exceptions on March 16, 2012, a United States Postal Service postmark indicates that the exceptions were deposited in the mail on March 13, 2012. Thus, the Union has substantially complied with Section 95.98(a)(1) of the Board's Rules and Regulations concerning timely filing of exceptions. 34 Pa. Code § 95.98(a)(1); see Pennsylvania Social Services Union Local 668, SEIU, AFL-CIO v. Commonwealth of Pennsylvania, Department of Public Welfare, 33 PPER ¶ 33174 (Order of the Board, 2002)(the Board will accept a timely United States Postal Service postmark or postmark cancellation in lieu of a United States Postal Form 3817 Certificate of Mailing).

² In Chichester School District v. Chichester Education Association, 750 A.2d 400, 404 (Pa. Cmwlth. 2000), appeal denied, 568 Pa. 668, 795 A.2d 980 (2000), the Commonwealth Court explained that "lame duck" status arises "in instances of last-minute contracts or contracts executed near the end of the board members' terms."

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair labor practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair labor practice as defined by the PLRA. Hamburg Police Officers Association v. Borough of Hamburg, 37 PPER 121 (Final Order, 2006).

The Union alleges in its exceptions that the Addendum is binding on the successor Borough Council because the Public Employee Relations Act (PERA)³ authorizes the "lame duck" Borough Council to enter into the Addendum with the Union, citing Chichester School District, supra, and Union Township v. Union Township Police Association, 81 Pa. D. & C.4th 186 (2007). The Union further alleges that the Supreme Court's holding in Hickey actually supports the notion that the Addendum is enforceable upon the successor Borough Council. The Union additionally asserts that Lobolito and McManamon are inapplicable because these cases concern the general powers of municipalities to enter into contracts.

Ordinarily after a collective bargaining agreement is ratified by the employer at a public meeting, the employer's ratification of that agreement cannot be subsequently revoked. Athens Area School District v. PLRB, 760 A.2d 917 (Pa. Cmwlth. 2000). However, as the Board noted in Teamsters Local 107 v. Upper Moreland-Hatboro Joint Sewer Authority, 30 PPER ¶ 30220 (Final Order, 1999), the Pennsylvania Courts have repeatedly stated that "persons who contract with municipalities ... do so at their peril and must inquire into the powers of the municipal officers or agents with whom they are negotiating to reach a binding agreement." 30 PPER at 474 (citations omitted). In Mitchell v. Chester Housing Authority, 389 Pa. 314, 132 A.2d 873 (1957), the Pennsylvania Supreme Court held that agreements approved by a "lame duck" governing body concerning governmental functions⁴ are not binding and, therefore, unenforceable upon their successors. The Supreme Court stated as follows:

The obvious purpose of the rule is to permit a newly appointed governmental body to function freely on behalf of the public and in response to the governmental power or body politic by which it was appointed or elected, unhampered by the policies of the predecessors who have since been replaced by the appointing or electing power. To permit the outgoing body to "hamstring" its successors by imposing upon them a policy-implementing and, to some extent, policy-making machinery, which is not attuned to the new body or its policies, would be to most effectively circumvent the rule.

389 Pa. at 324-325, 132 A.2d at 878.

In Hickey, the Supreme Court similarly stated that an agreement entered into by a "lame duck" administration which attempts to handcuff its successor is not binding on the successor board. See also Lobolito, supra; McManamon, supra; Falls Township v. Scally, 539 A.2d 912 (Pa. Cmwlth. 1988); Westwood, supra. Applying this principle to the facts in Borough of Plum, supra, the Board's Hearing Examiner concluded that the borough did not violate its duty to bargain when it took prompt action to rescind the collective bargaining agreement approved by a "lame duck" borough council.

³ The Union cites to PERA throughout its exceptions. However, this case concerns the bargaining rights of police officers under Act 111 which is to be read *in pari materia* with the PLRA, not PERA. Philadelphia Fire Officers Association v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977); Borough of Nazareth v. PLRB, 534 Pa. 11, 626 A.2d 493 (1993); see also 43 P.S. § 1101.301(2) (police officers are excluded from the definition of public employe under PERA).

⁴ Governmental functions are those functions that are "statutorily entrusted to legislative boards that are indispensable to the proper functioning of government...." Chichester School District, 750 A.2d at 403 n.11.

The present case requires a similar result. Review of the Union's Charge, Amended Charge and attachments reveals that the Addendum was approved on December 19, 2011 by a "lame duck" Borough Council. In its exceptions, the Union does not challenge the "lame duck" status of the Borough Council when it approved the Addendum. Further, the successor Borough Council promptly rescinded the Addendum at its first meeting on January 3, 2012.⁵ Because the "lame duck" Borough Council's approval of the Addendum was a last-minute attempt to handcuff the successor Borough Council concerning a governmental function, it must be concluded that the successor Borough Council did not violate its duty to bargain when it rescinded the Addendum. Hickey, supra; Lobolito, supra; McManamon, supra; Scally, supra; Westwood, supra; Borough of Plum, supra.

The Union's reliance on Hickey and Chichester School District is misplaced. The contracts in those cases were approved by the previous administrations well before "lame duck" status occurred. Additionally, the Court of Common Pleas' decision in Union Township fails to follow Supreme Court and Commonwealth Court precedent holding that contracts encompassing governmental functions approved by "lame duck" administrations are not binding upon successor administrations. Hickey, supra; Lobolito, supra; McManamon, supra; Scally, supra; Westwood, supra. In Union Township, the Common Pleas Court relied on Horvat v. Jenkins Township School District, 337 Pa. 193, 10 A.2d 390 (1940) to conclude that the collective bargaining agreement extension in that case was binding upon the successor administration. However, Horvat did not involve the issue of "lame duck" contracts. Indeed, in Lobolito, the Supreme Court expressly declined to follow Horvat because it did not involve a "lame duck" contract concerning governmental functions. 562 Pa. at 386 n.6; 755 A.2d at 1290 n.6. For the same reason, Horvat is inapplicable here. As such, the Board agrees with the Secretary that the Charge does not state a cause of action under the cited provisions of the PLRA. Accordingly, the Secretary did not err in determining that the Union failed to allege sufficient facts to support a claim under Section 6(1)(a) or (e) of the PLRA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the International Association of Machinists and Aerospace Workers, Local 243 are dismissed and the Secretary's February 22, 2012 decision not to issue a complaint be and the same is hereby 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, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this nineteenth day of June, 2012. 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.

⁵ It should be noted that the Borough did not rescind the underlying collective bargaining agreement as that agreement was ratified by Borough Council prior to the election that created the "lame duck" status.