

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BOROUGH OF GLASSPORT	:	
	:	
v.	:	Case No. PERA-C-18-137-W
	:	
TEAMSTERS LOCAL UNION No. 205	:	
	:	
and	:	
	:	
MICHAEL DeSUE	:	

FINAL ORDER

The Borough of Glassport (Borough) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 5, 2018, from an August 16, 2018 determination of the Secretary of the Board. By letter dated August 16, 2018, the Secretary declined to issue a complaint on the Borough's Amended Charge of Unfair Practices, which had alleged that Teamsters Local Union No. 205 (Teamsters) violated Section 1201(b)(3) of the Public Employee Relations Act (PERA), because Michael DeSue refused and continues to refuse to sign a settlement agreement concerning a grievance filed over his termination from employment with the Borough.

On exceptions, in assessing the merits of a charge to determine whether a complaint should be issued, the Board accepts as true the facts alleged in the charge. The Board will not direct that a complaint be issued if the facts alleged in the charge, taken as true, could not support a showing that an unfair practice as defined by PERA may have been committed. Pennsylvania Social Services Union Local 668 v. Pennsylvania Labor Relations Board, 481 Pa. 81, 392 A.2d 256 (1978); Homer Center Education Association v. Homer Center School District, 30 PPER ¶30024 (Final Order, 1998).

On June 18, 2018, the Borough filed an unfair practice charge alleging as follows. On January 16, 2018, the Borough terminated the employment of Mr. DeSue, an employee in the Borough's Public Works Department. On January 18, 2018, Jonathan Winters, a Business Agent for the Teamsters, filed a grievance under the collective bargaining agreement challenging the dismissal of Mr. DeSue. In an email sent on January 26, 2018, Mr. Winters indicated that Mr. DeSue would settle the grievance for the sum of \$15,000. On February 14, 2018, the Borough's legal counsel advised Mr. Winters that the Borough had accepted the offer to settle Mr. DeSue's grievance for \$15,000. On February 16, 2018, the Borough's legal counsel sent Mr. Winters a Settlement Agreement and Release. On February 20, 2018, Mr. Winters advised the Borough that Mr. DeSue would not consummate the settlement. The Borough's charge names Mr. DeSue as an additional respondent, and alleges that Mr. DeSue has refused and continues to refuse to sign the settlement agreement.

By letter dated July 6, 2018, the Secretary of the Board requested an amendment and clarification of the Charge of Unfair Practices. Specifically, the Secretary requested a copy of the alleged

February 16, 2018 grievance settlement agreement. On July 26, 2018, the Borough filed an Amended Charge, including copies of the email exchanges between Mr. Winters and the Borough's legal counsel, and a copy of the February 16, 2018 Settlement Agreement and Release that was emailed to Mr. Winters.

On August 16, 2018, the Secretary of the Board declined to issue a complaint on the charge as amended. Citing to the Board's dismissal of a similar charge in Radnor Township v. Radnor Association of Township Employees, 46 PPER 1 (Final Order, 2014), the Secretary noted that the "Charge alleges that the failure to finalize the alleged settlement agreement is due to Mr. DeSue's refusal to sign the agreement, and not because of any action by the [Teamsters]", and declined to issue an unfair practice complaint alleging a violation of Section 1201(b)(3) of PERA. On September 5, 2018, the Borough filed timely exceptions to the Secretary's August 16, 2018 determination.

On exceptions, the Borough argues that the Secretary erred in relying on Radnor Township, *supra*, and argues that Radnor Township is distinguishable because in that case the employee had the ability to pursue arbitration with her own legal counsel. However, upon review of the February 16, 2018 Settlement and Release Agreement drafted by the Borough, the Secretary properly relied on Radnor Township.

The eight page, twenty-five paragraph, Settlement Agreement and Release prepared by the Borough's legal counsel was sent to Mr. Winters, and included release of statutory claims by Mr. DeSue that were beyond the confines of the Teamsters' grievance. For example, for the sum of \$15,000, the Borough requested, not only the withdrawal of the grievance by the Teamsters, but also the following release from Mr. DeSue:

Mr. DeSue, for himself and his heirs, administrators, successors and assigns, releases and discharges the Borough and its affiliated entities and its/their officers, directors, Council, Mayor, and other elected or appointed official, employees, trustees, agents, representatives, servants, insurers, attorneys, predecessors, successors and assigns, from any and all claims, causes of action, suits, debts, demands and claims for damages (including attorney's fees, expenses and costs) for which Mr. DeSue had actual or constructive knowledge of at the time of the signing of this Agreement, including but not limited to any claims under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, as amended, the Older Workers Benefit Protection Act, the Pennsylvania Human Relations Act, the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act, as amended, the Family Medical Leave Act, the Pennsylvania Wage Payment and Collection Law, the Pennsylvania Borough Code, or any other federal, state or local labor or equal employment statute, regulation, ordinance or order with respect to any issues that may have arisen out of or been related in any way to Mr. DeSue's employment with the Borough or the termination of his employment

(Unsigned Settlement Agreement and Release at ¶9). Additionally, the Borough requested an agreement that Mr. DeSue assume liability to "reimburse the Borough for the costs, including attorney's fees, of defending" any future or pending litigation filed by Mr. DeSue against the Borough. (Unsigned Settlement Agreement and Release at ¶20). Moreover, the Borough's proffered Settlement Agreement and Release requested indemnification from Mr. DeSue, should Mr. DeSue recover any monetary relief in any collateral litigation, or in lieu thereof the Borough's ability to sue Mr. DeSue for the return of the \$15,000. (Unsigned Settlement Agreement and Release at ¶21). As recognized in Paragraph 14 of the Settlement Agreement and Release, Mr. DeSue was entitled to "consult with ... legal counsel of his own choosing prior to executing this Agreement."

Although on exceptions the Borough argues that Teamsters are failing to bargain in good faith, there are no allegations in either the Charge or Amended Charge, that the Teamsters are acting in bad faith with regard to contractual wages, hours and working condition matters within the Board's exclusive purview under PERA. Indeed, there are not even any allegations in the Charge that the purported settlement agreement is only for the withdrawal of the Teamsters' grievance that is within the Teamsters' exclusive control.¹ Instead, the Borough alleges as the unfair practice that Mr. DeSue has refused, and continues to refuse, to sign a settlement agreement waiving any and all individual statutory rights that he may have against the Borough that are outside the scope of the Teamsters' representation of the collective bargaining unit in the contractual grievance procedure. Simply put, the Borough's legal counsel is seeking to consummate Mr. DeSue's waiver of his individual statutory rights through compulsion of Mr. Winters, a Teamsters' Business Agent. See Pennsylvania State Corrections Officers Association v. State Civil Service Commission (Jenkins), 939 A.2d 296 (Pa. 2007) (union, through collective bargaining with the employer, could not waive an employee's ability to individually pursue his statutory rights under the State Civil Service Act). Accordingly, upon review of the Amended Charge of Unfair Practices, the Secretary did not err in determining that the "Charge alleges that the failure to finalize the alleged settlement agreement is due to Mr. DeSue's refusal to sign the agreement, and not because of

¹ The cases cited by the Borough in its exceptions illustrate the limitation on the union's ability to agree with the employer over employee wage, hour and working condition matters within the union's exclusive representation of the collective bargaining unit. See Port Allegany Police Officers v. Port Allegany Borough, 34 PPER 149 (Final Order, 2003) (agreement reached between union and employer to adjust employees' working schedules and shifts through collective bargaining); Pennsylvania State Corrections Officers Association v. Commonwealth, Department of Corrections (SCI Rockview), 47 PPER 43 (Final Order, 2015) (negotiated agreement over employee staffing levels at correctional institution reached in settlement of grievance over contractual staffing levels); see also Mountain View Education Association v. Mountain View School District, 44 PPER 48 (Proposed Decision and Order, 2012) (result of grievance mediation limited to duration and removal of disciplinary letters in employee's personnel file).

any action by the [Teamsters],” and declining to issue a complaint on that basis.

Moreover, this case is closely analogous to Radnor Township, supra., for a second reason. In Radnor Township, the alleged grievance settlement agreement drafted by the township provided that the agreement would be null and void if not signed by the employee. The Board noted that “[r]egardless of whether the Association signed the settlement agreement, it was not binding until [the employee] signed the agreement as well and became null and void when she failed to execute it within twenty-one days. Therefore, the allegations in the Township's Charge, even if proven, cannot support a finding that the Association bargained in bad faith or refused to sign a binding agreement....” Radnor Township, 46 PPER at 2. Similarly here, Paragraph 19 of the unsigned Settlement Agreement and Release provides that “Mr. DeSue acknowledges and agrees that he has been given the opportunity to take twenty-one (21) calendar days to consider the terms of this Agreement and to consult with an attorney of his choosing It is further understood and agreed that Mr. DeSue shall have the right to revoke this Agreement within seven (7) calendar days following the date he signs the Agreement....” As in Radnor Township, by the express terms of the purported Settlement Agreement and Release, drafted by the Borough, the agreement, if unsigned by Mr. DeSue, is ineffectual, and there is no settlement agreement in the absence of Mr. DeSue's execution of the document. Accordingly, and for this additional reason, the Secretary did not err in relying on Radnor Township in declining to issue a complaint on the Borough's Amended Charge of Unfair Practices.

Finally, to the extent that the Borough may be alleging that it had reached a binding agreement with Mr. DeSue to pay him \$15,000 for the waiver of any and all statutory or contractual claims, which included the settlement of the grievance filed by the Teamsters, such a claim is not cognizable as an unfair practice against either the Teamsters or Mr. DeSue. As the Board has consistently held, a dispute over “whether the settlement agreement is binding ... appears to the Board to be a question reserved for an arbitrator's resolution after examination of the underlying facts and relevant contractual provisions. It is settled that such procedural issues are reserved for an arbitrator's determination.” AFSCME, District Council 47, 13 PPER ¶13248 at 473 (Final Order, 1982). Indeed, defenses raised to the arbitrability of a grievance, including questions of whether there is a binding settlement of the grievance, must be presented and addressed to an arbitrator in accordance with Section 903 of PERA. See Pennsylvania State System of Higher Education v. Association of Pennsylvania State College and University Faculties, 39 PPER 101 (Final Order, 2008); see also Police Advisory Board of the Penn Hills Police Department v. Penn Hills Municipality, 29 PPER ¶29105 (Proposed Decision and Order, 1998) (holding that the employer's alleged defense to arbitrability of grievance because of a prior settlement was question for the arbitrator, and therefore the employer's refusal to submit to arbitration was an unfair labor practice).

After a thorough review of the exceptions and all matters of record, the Borough's Charge of Unfair Practices alleging, *inter alia*, that Mr. DeSue has refused and continues to refuse to sign a February 16, 2018 Settlement Agreement and Release, does not allege a violation of the Teamsters' obligation to bargain in good faith under Section

1201(b)(3) of PERA. As such, the Secretary did not err in declining to issue a complaint. Accordingly, the exceptions filed by the Borough shall be dismissed, and the decision of the Secretary made absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Borough of Glassport are hereby dismissed, and the August 16, 2018 decision of the Secretary of the Board declining to issue a complaint, 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, James M. Darby, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this sixteenth day of October, 2018. 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.