

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 115 :
 :
v. : Case No. PERA-C-12-92-E
 :
 :
PHILADELPHIA PARKING AUTHORITY :

PROPOSED DECISION AND ORDER

On April 5, 2012, Teamsters Local 115 (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Philadelphia Parking Authority (Authority or Respondent) alleging that the Authority violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA).

On April 23, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and October 24, 2012 in Harrisburg was assigned as the time and place of hearing if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board. The conciliator did not resolve the dispute, making a hearing necessary.

On October 9, 2012, the examiner continued the hearing to March 27, 2013 on the Authority's motion without objection from the Union.

The hearing was held on the rescheduled day, at which time the parties were afforded a full opportunity to present testimony, introduce documentary evidence and cross-examine witnesses.

At the conclusion of the hearing, the parties requested an expedited decision and waived closing arguments and the filing of post-hearing briefs.

The examiner, on the basis of the evidence presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The parties stipulated and agreed that the Philadelphia Parking Authority is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6 -7)
2. The parties stipulated and agreed that Teamsters Local 115 is a employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. The Teamsters Local 115 is the exclusive representative of employes of the Authority at the Philadelphia International Airport. (N.T. 10)
4. The Teamsters and the Authority are parties to a collective bargaining agreement for these employes that expired on June 1, 2010. (N.T. 8, Union Exhibit 1)
5. On March 17, 2010, James E. Smith, Jr. the Union's business manager, wrote to Vincent J. Fenerty, the Authority's Executive Director, stating that this was the "formal notification of Local No. 115's desire, in accordance with Article XXXVII-Duration, to negotiate a renewal agreement with **Philadelphia Parking Authority.**" (N.T. 11, 19, Union Exhibit 1, Bold type in original)
6. When Fenerty received the Union's letter, he asked the City of Philadelphia's Deputy Mayor Rita Cutler for direction because Mayor Michael Nutter had ordered

that the Parking Authority follow the lead of the City in all contract negotiations. (N.T. 13)

7. Cutler instructed Fenerty not to negotiate or bargain with the Union because the Mayor is taking the lead on all negotiations regarding city workers. Fenerty understood that the Authority was not to bargain with the Union "until the Mayor settled the other contracts." (N.T. 13-14)
8. Since March, 2010, the Union and the Authority have had no negotiations for a successor collective bargaining agreement, with the exception of negotiations that resulted in a side agreement "for one lump-sum payment to the Teamsters Health and Welfare Fund." (N.T. 11-12, 14)
9. No new collective bargaining agreement has been negotiated. (N.T. 8, 16-17)
10. Fenerty acknowledged that the Parking Authority employes are not City of Philadelphia employes. (N.T. 14)

DISCUSSION

The Union's charge of unfair practices alleges that the Philadelphia Parking Authority committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA by not bargaining with the Union for a successor agreement. The Authority is refusing to negotiate with the union for a successor collective bargaining agreement until the Mayor of the City of Philadelphia, another employer, settled other contracts with the City of Philadelphia bargaining units.

The charge's main focus is on the allegation that the Authority violated Section 1201(a)(5) of PERA, which states that "[p]ublic employers, their agents or representatives are prohibited from.....(5) [r]efusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." 43 P.S. 1101.1201(a)(5)

A public employer violates Sections 1201(a)(5) of PERA if the employer imposes conditions on bargaining.

In **Bethlehem Area School District**, 3 PPER 102 (Nisi Decision and Order, 1973), the Board held that an employer's insistence upon press coverage at negotiations as a precondition to collective bargaining violated Section 1201(a)(5) since this precondition would compel the union to negotiate before a "public monitor" and was an imposition upon the collective bargaining process.

In **Red Lion Area School District**, 9 PPER ¶ 9200 (Final Order, 1978), aff'd 10 PPER ¶ 10288 (Court of Common Pleas, 1979), the school district bargained in bad faith when it conditioned future bargaining on the union's withdrawing Section 702 non-mandatory subjects of bargaining.

In **Port Authority of Allegheny County**, 21 PPER ¶ 21023 (Final Order, 1989), the employer unlawfully conditioned future bargaining on the union removing a member of its negotiating team not to the employer's liking.

In **City of Wilkes-Barre**, 25 PPER ¶ 25164 (Proposed Decision and Order, 1994), the mayor stated that police union would have to justify its economic proposals before citizens in a public budget forum and implied that officers would otherwise suffer adverse consequences if they did not. This examiner found that the City engaged in an unfair labor practice in violation of Section 6(1)(e) of the Pennsylvania Labor Relations Act (PLRA), the analogous section to Section 1201(a)(5).

In **City of Philadelphia**, 27 PPER ¶ 27125 (Proposed Decision and Order, 1996), 27 PPER ¶ 27249 (Final Order, 1996), the Board held that the City had unlawfully conditioned negotiation and commencement of mediation upon the union's provision of certain

information, which was subject to a dispute. Accordingly, the Board held that the union had perfected its demand for interest arbitration by demonstrating that the parties were at an impasse and that mediation was utilized without success.

Bethlehem School District, supra. and **City of Wilkes-Barre, supra.** are particularly relevant to the present dispute. Those cases stand for the proposition that when an employer conditions bargaining on a third party's actions or approvals, the employer places an unacceptable imposition on the collective bargaining process that constitutes bad faith bargaining. In the present case, the Authority acted in a similar fashion. The Authority conditioned bargaining on approval by the Mayor of the City of Philadelphia reaching settlements with City unions. The City of Philadelphia is a separate public employer from the Philadelphia Parking Authority. They are separate governmental entities with separate collective bargaining agreements with their employees.

It has been three years since the Union offered to begin bargaining with the Authority for a successor collective bargaining agreement, yet no bargaining has occurred. The Authority's deference to the City of Philadelphia reaching agreement with its unions is an unlawful condition that the Authority has placed on bargaining that constitutes a violation of Section 1201(a) (5) of PERA. The Authority's actions also constitute a derivative violation of Section 1201(a) (1) of PERA.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Philadelphia Parking Authority is a public employer within the meaning of Section 301(1) of PERA.
2. That Teamsters Local 115 is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the Philadelphia Parking Authority has committed unfair practices in violation of Sections 1201(a) (1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the Authority shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in article IV of the PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action:
 - a. Submit to the Union a written offer to bargain which states that bargaining will be without conditions;
 - b. Post a copy of this decision and order within five days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten consecutive days; and

- c. Furnish to the Board within twenty days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of April, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner