

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 636 :
 :
v. : Case No. PERA-C-12-24-W
 :
 :
WEST MIFFLIN BOROUGH :

PROPOSED DECISION AND ORDER

On January 24, 2012, Teamsters Local 636 (Complainant or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against West Mifflin Borough (Borough or Respondent) alleging that the Borough violated sections 1201(a)(5) of the Public Employe Relations Act (PERA) by failing to follow the terms of a settlement of 2000 unfair practice charge and unilaterally amending the pension plan to grant an administrative employee an early retirement benefit.¹

On February 15, 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 May 31, 2012 in Pittsburgh was assigned as the time and place of hearing if necessary.

A hearing was necessary and was held as scheduled. On July 9, the hearing examiner wrote to the parties that Union Exhibit 7 would not be admitted. A second day of hearing was held on August 3, 2012. A third day of hearing was scheduled for October 9, 2012 to allow the Borough the opportunity to present a handwriting expert witness to support its contention that Union Exhibit 7 should not be admitted. On September 13, 2012, the Borough informed the examiner that it did not want to spend the money for a handwriting expert and that a hearing was not necessary. On September 19, the examiner cancelled the October 9, 2012 hearing.

The parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. West Miffln Borough is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act.
2. Teamsters Local 636 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Union is the exclusive representative of a unit of "all blue collar, non-uniformed employees, excluding office and clerical employees, management-level employees, supervisors, first level supervisors and confidential employees" as certified by the Board on November 16, 1981, at Case No. PERA-R-116-W. (N.T. 81, Union Exhibit 8).
4. Since at least 1996, the Borough has had in place a pension plan for non-uniformed employees, covering both management employees and the Union members represented by Teamsters Local 636. There have been several amendments. The plan defines "Employee" as "any individual employed by the Employer as a regular full-time Employee who is entitled to receive a regular stated salary or wage..." The plan excludes uniformed police officers, firemen or other individuals who are covered by another retirement plan or program sponsored by

¹ The charge originally included two other allegations relating to the use of subcontractors for snow removal. In its brief, Union's counsel stated, "The Union is not pursuing those other issues, restricting the question before the Hearing Officer to the unilateral changes in the pension."

the Borough. (N.T. 20, 24, 81, Union Exhibits 1 and 8)

5. Under the pension plan, Class I Participants are all employees except Special School Police. Class II Participants are the Special School Police. (N.T. 20, 24, 81, Union Exhibits 1 and 8)
6. The pension plan at Article III, Section 3.01, sets the required employee contributions for Teamsters Local 636 members, who are Class I Participants, at \$40 a month while all other Class I Participants contribute \$21 a month. (N.T. 81, Union Exhibits 1 and 8 at 7)
7. The pension plan at Article XII, Section 12.03, requires that an "Approved Actuary" shall provide the Council with a cost estimate of any proposed benefit plan modification. (N.T. Union Exhibit 1)
8. The Borough and the Union are parties to a collective bargaining agreement that includes a provision for pensions at Article 18 (3). The pension article provides, inter alia, for a benefit of \$45 times the years of service; "early retirement at age 60 with 15 years of service accrued benefit reduced five percent (5%) per year before normal retirement" and employee contribution of \$40 per month. (N.T. 81, Union Exhibit 8)
9. In the Fall of 2011, the Borough was facing the prospect of having to lay off employees. In order to minimize layoffs and save money for the Borough, the Borough decided to offer an early retirement ordinance. (N.T. 95)
10. The Borough proposed that both union and non-union employees be eligible for early retirement under the ordinance. Borough manager, Brian Kamauf presented this ordinance to Barry Clapperton of Local 636 in October of 2011, so that he might review and approve the proposal for the union employees. (N.T. 95)
11. Subsequently, Mr. Clapperton refused to approve the ordinance, unless it was to be offered in conjunction with a new contract. Mr. Kamauf and Mr. Clapperton exchanged several letters between November and December of 2011. (N.T. 99)
12. Mr. Kamauf informed Mr. Clapperton that the ordinance had to be approved before the end of the year due to the expiration of the requisite actuarial study. (N.T. 101)
13. Mr. Kamauf repeatedly attempted to have Local 636 approve the ordinance for their employees before the deadline, knowing that the ordinance could only be enacted on behalf of union employees with union approval. Mr. Kamauf even rescheduled Borough voting meetings to accommodate Local 636, recognizing that the union would have to approve the ordinance for the union employees in order for it to be voted on as it related to them. (N.T. 105)
14. On December 2, 2011, Mr. Kamauf wrote a letter to Mr. Clapperton to encourage union approval of the ordinance by the deadline in order for the early retirement to be offered to union employees and informing them that he could not guarantee when another similar proposal could be offered. (N.T. 27, Union Exhibit 3)
15. In response, Mr. Clapperton wrote a letter denying union approval of the early retirement ordinance one final time. On December 20, 2011, the Borough passed the ordinance for non-union Borough employees. One management employee was eligible for the early retirement incentive. (N.T. 30-31, 53, Union Exhibit 6)

DISCUSSION

The Union's charge of unfair practices alleges that the Borough violated Section 1201(a) (5) of PERA when Borough Council voted to make a unilateral change to the Borough

of West Mifflin Non-Uniformed Employees' Pension Plan. Specifically, the charge stated, "12/13/2011 The Borough of West Mifflin issued an ordinance to administrative employees for early retirement, this goes completely against the settlement agreement reached (sic) PLRB in December 2000."

Pensions are a mandatory subject of bargaining under Section 701 of PERA and a public employer commits an unfair practice if it makes a unilateral change that affect the members' rights under an existing plan. **Pleasant Ridge Manor (Erie County)**, 44 PPER ¶ 100 (Proposed Decision and Order, 2013) and cases cited therein.

The present case involves a pension plan covering both union and management employees. As alleged in the specification of charges and as shown at the hearing, the Borough's ordinance only changed the pension benefits of one management level employe, making that employee eligible for an early retirement incentive. The ordinance did not result in a change to the pension obligations or benefits of any union members of the plan.

To establish a violation of the duty to bargain, the Union first argues that the Borough broke a 2000 agreement settling a similar unfair practice charge, filed to Case No. PERA-C-00-325-W, in which the Union had alleged that the Borough violated its duty to bargain by unilaterally providing an early retirement incentive for management employes only. The Union withdrew that charge and asserts that it did so in exchange for the Borough's agreement to provide no future early retirement incentives or options to any employee covered by the non-uniformed employees' pension plan without express consent of the union.

The Union did not satisfy its burden of proving the existence of a 2000 agreement. First, a search of the Board's own records produced no evidence of such an agreement. After hearing the Union's evidence in support of an agreement and examining a purported written agreement, I concluded that there was no agreement. I found the purported written agreement (Union Exhibit 7) that the Union alleges was signed by Robert Kostelnik was not admissible. Kostelnik testified that he did not sign the agreement, testifying that it was not his signature on the document. Kostelnik testified credibly. There was no other credible evidence to support the claim that an agreement existed. Accordingly, the Union could not sustain a charge that the breaking of an agreement resulted in a violation of the duty to bargain.

The Union next argues that the Borough's decision to enact the pension amendment ordinance violated Section 1201(a) (5) because it made a unilateral change to a matter that required bargaining. There are no Board decisions exactly on point with the facts of this case.

The Union contends that **City of Pittsburgh v. Pa. Labor Relations Board**, 539 Pa. 535, 653 A.2d 1210, (1995) provides precedent. Although stating that a change in pension benefits is a mandatory subject of bargaining, the court rejected the Union's claim of a violation of the duty to bargain. The union had alleged that the City violated its duty to bargain by unilaterally establishing a revised pension plan for new employees when it entered the program under the Municipal Pension Plan Funding Standard and Recovery Act (Act 205). However, the Union's argument was rejected at all levels of review, from the hearing examiner to the supreme court because the decision to take advantage of Act 205 was managerial in nature and Act 205 expressly permitted the City to merely consult the union when adopting the new pension plan.

The present case does not deal with Act 205 or a statutory mandate, as the Union suggests. Furthermore, the Borough correctly argues that this is a case that does not involve a mandatory subject of bargaining because it was a decision that affected no union employees.

The Union argues that the Ordinance has an indirect impact on the employees that makes the pension plan amendment a mandatory subject of bargaining. The Union argues that the Borough's ordinance indirectly impacted union employees because it potentially threatened the solvency of the pension plan. The Union argues that plan's requirement that the Borough must first have an actuarial study before amending the plan is evidence

that the Borough itself recognized the importance of solvency. The Union's argument continues that solvency of the plan is important to the Union members because any pension payment from the plan includes funds contributed by the bargaining unit members.

The Union cites no cases in support of its argument that an employer's decision that indirectly and potentially affects a union employee, over issues of solvency or other issues, must first be bargained. The test for determining whether a matter is a mandatory subject of bargaining is set forth in **PLRB v. State College Area School District**, 461 Pa. 494, 337 A.2d 262 (1975), where the court held that "[i]t is the duty of the Board in the first instance...to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole." 337 A.2d at 268.

Under the **State College Area School District** balancing test, the indirect, potential impact of this particular Borough decision on the employees' pension obligations and benefits is the possibility of the pension fund's insolvency. However this impact does not outweigh the impact of the change on the Borough's budgetary decision to offer early retirement to one management level employee. Possible insolvency is not sufficient evidence to show that the matter should have been bargained before the Borough Council enacted the early retirement ordinance.

CONCLUSIONS

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

1. That West Mifflin Borough is a public employer within the meaning of Section 301(1) of PERA.
2. That Teamsters Local 636 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 West Mifflin Borough has not 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 charge of unfair practice is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this third day of June, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner