

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
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 :
 v. : Case No. PERA-C-14-31-W
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 CHARTIERS TOWNSHIP :
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 :

PROPOSED DECISION AND ORDER

On January 28, 2014, Teamsters Local 205 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Chartiers Township (Township or Employer), alleging that the Township violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by refusing to participate in the grievance procedure provided for in the collective bargaining agreement between the parties.

On March 12, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 4, 2014, in Harrisburg as the time and place of hearing, if necessary. On March 19, 2014, the Township filed an Answer and New Matter.

The parties subsequently agreed to submit factual stipulations in lieu of participating in a hearing. On June 2, 2014, the Board received the jointly executed stipulations of fact between the parties, as well as exhibits submitted in support thereof. The Township filed a post-hearing brief in support of its position on June 23, 2014. The Union did not file a post-hearing brief in support of its position.

The Examiner, based on all matters of record, makes the following:

FINDINGS OF FACT

1. The Township is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The parties entered into a Collective Bargaining Agreement (CBA) on January 12, 2012 for the period of January 1, 2012 through December 31, 2014. (Joint Exhibit 2)
4. Curtis Main was a Township employe at all relevant times. (Joint Exhibit 2)
5. The parties are subject to the grievance procedure set forth in the CBA. (Joint Exhibit 2)
6. Main was off work and on workers' compensation from September 23, 2013 to December 9, 2013, at which point he returned to work. (Joint Exhibit 2; Township Exhibit A; Union Exhibits 3-4)
7. On December 18, 2013, the Township terminated Main's employment. (Joint Exhibit 2; Township Exhibit A)
8. On January 2, 2014, the Union via John Winters filed a Grievance Form with the Township on behalf of Main with the following details:

I am filing this grievance on behalf of Mr. Curtis Main. Mr. Main feels he has been unjustly terminated from his position with Chartiers Township. He is requesting to be reinstated to his former position and be made whole for all lost wages, benefits and work opportunities. Additionally, he is requesting to have all record of this discipline removed from his personnel file and not to be used against him in any future disciplinary action.

(Joint Exhibit 2; Union Exhibit 1)

9. On January 3, 2014, the Township notified the Union that the grievance was received on January 2, 2014 and advised that the grievance was not timely filed. Therefore, the Township considered the grievance satisfactorily resolved. (Joint Exhibit 2)

10. On January 6, 2014, the Union notified the Township that they were attempting to schedule a First Step grievance meeting and requested the Township indicate whether it would proceed with the grievance procedure or proceed directly to arbitration. (Joint Exhibit 2)

11. On January 8, 2014, the Township acknowledged receipt of the January 6, 2014 letter from the Union and advised that the grievance was untimely and the Township considered the grievance satisfactorily resolved. (Joint Exhibit 2)

12. On January 28, 2014, the Union filed a charge of unfair practices pursuant to PERA. The charge alleged that the Township violated the Act as follows:

Employer refused to participate in the Grievance procedure provided for in the Collective Bargaining Agreement between Employer and Union. By letter dated January 6, 2014, Employer has indicated that it will not participate in the next step in the procedure.

These allegations shall be proven through the testimony of various Chartiers Township employers as well as the testimony of other witnesses and documentary evidence.

Said actions were done by the Employer with the intent of interfering with, restraining or coercing employees in the exercise of the rights guaranteed under the Public Employee (sic) Relations Act and/or refusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(Joint Exhibit 2)

13. The Township filed a timely and responsive answer to the complaint denying the allegations contained therein and alleging the grievance was untimely. The Township further alleged that the grievance was satisfactorily resolved and the grievance procedure contained in the CBA had been satisfied. (Joint Exhibit 2)

14. The parties stipulated and agreed that the Board has jurisdiction over this complaint and the parties herein. (Joint Exhibit 2)

DISCUSSION

In its charge, the Union alleged that the Township violated Section 1201(a)(1) and (5) of the Act by refusing to participate in the grievance procedure provided for in the CBA between the parties. The Township, on the other hand, contends in its post-hearing brief that it did not violate the Act because Main was discharged as of December 18, 2013 and did not file a grievance until January 2, 2014, some 15 days after the alleged contract violation. The Township asserts that a grievance under the CBA must be filed within five days of the alleged violation, and therefore, the grievance was untimely as a matter of law.

Section 903 of the Act provides, in pertinent part, as follows:

Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted...

43 P.S. § 1101.903.

Pursuant to Section 903 of PERA, the arbitration of grievances arising out of interpretation of the provisions of a collective bargaining agreement is mandatory. International Union of Operating Engineers, Local 66 v. Connoquenessing Township, 41 PPER 47 (Final Order, 2010) *citing* 43 P.S. § 1101.903. Further, it is well settled that issues concerning the arbitrability of a grievance, including the timeliness of the grievance, must first be presented to the arbitrator for determination. Connoquenessing Township, citing PLRB v. Bald Eagle Area School District, 451 A.2d 671 (Pa. 1982); Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995, *aff'd per curiam*, 675 A.2d 1211 (Pa. 1996); Public Service Employees Union, Local 1300 v. Luzerne County, 19 PPER ¶ 19111 (Final Order, 1988)(timeliness of grievance is for arbitrator to determine). Accordingly, as a general proposition, where an employer refuses to process a grievance to arbitration, it commits an unfair practice, and neither the Board nor the courts on appeal from a Board order finding a refusal to arbitrate may decide the merits of the parties' dispute over arbitrability. Teamsters 776 v. Susquehanna Township School District, 45 PPER 95 (Final Order, 2014).

On this record, the Union has sustained its burden of proving that the Township violated the Act. Indeed, the record clearly shows that the Township has refused to participate in the grievance procedure with regard to Main's termination of employment after the Union filed a grievance on his behalf, protesting the discharge pursuant to the CBA. Although the Township contends that the grievance is untimely pursuant to the terms of the parties' CBA, this argument has been rejected repeatedly throughout the Board's decisions. As previously set forth above, the timeliness of the Union's grievance is for an arbitrator to determine. As such, the Township has committed an unfair practice in contravention of Section 1201(a)(1) and (5) of PERA.

Finally, although the Township does not directly argue that Main and the Union waived the right to process his grievance to arbitration, the Township does make reference to a November 14, 2012 Last Chance Agreement (LCA) signed by the parties. The LCA provides, in pertinent part, as follows:

The following agreement is a commitment to the conditions of employment between Chartiers Township and Curtis Main.

I, Curtis Main, understand that as a result of my violation of the Chartiers Township Personnel Policy and Procedure Manual, I have been formally informed by Chartiers Township that my employment as of this date is conditional regarding my compliance with the conditions below.

I agree to (sic):

Not to engage in absenteeism after my vacation, personal days and sick time is used.

Not to violate any work rules in Section V of the Chartiers Township Personnel Policy and Procedure Manual of which I have acknowledged receipt and be subject to all other work rules including, but not limited to attendance, tardiness, job performance and drug and alcohol related issues.

Failure to comply with these conditions will be just cause for my immediate termination...

(Township Exhibit A).

This LCA is presumably the basis for the Township arguing for an exception to the general rule mandating the arbitration of grievances. The Board recognizes, that in certain LCA's, there is a limited exception to the general rule that disputes concerning the arbitrability of a grievance must be submitted to an arbitrator. Teamsters 776 v. Susquehanna Township School District, 45 PPER 95 (Final Order, 2014) *citing* Municipal Employees Organization of Penn Hills v. Municipality of Penn Hills, 876 A.2d 494 (Pa. Cmwlth. 2005), appeal denied, 890 A.2d 1062 (Pa. 2005). In doing so, the Board will not decide whether a grievance is arbitrable under a collective bargaining agreement. Instead, the Board determines whether an employe and the exclusive bargaining representative have clearly, expressly, and unmistakably waived any right to challenge the employe's discharge in an LCA settling prior disciplinary action against the employe, which only covered the particular employe and not the entire bargaining unit. Susquehanna Township School District, *supra*. Where an LCA provides that a rule violation is grounds for discharge, but does not expressly waive the right to arbitrate the penalty imposed as well as the threshold question of whether the employe's actions constituted a violation of the LCA, the grievance must be submitted to arbitration. Penn Hills, *supra*.

In this case, the November 14, 2012 LCA does not contain any express waiver of the Union or Main's right to arbitrate the penalty imposed or the threshold question of whether Main's actions constituted a violation of the LCA. To the contrary, the LCA simply contains language referencing Main's agreement not to engage in absenteeism or violate any work rules, and that failure to comply will be just cause for immediate termination. Such an LCA falls well short of the limited exception recognized in Penn Hills. Therefore, the dispute must be submitted to an arbitrator.

CONCLUSIONS

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

1. The Township is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Township has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Process the Union's grievance filed on behalf of Main through the parties' contractual grievance procedure up to and including arbitration;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place, readily accessible to its employees, and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of June, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205

v.

CHARTIERS TOWNSHIP

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Case No. PERA-C-14-31-W

AFFIDAVIT OF COMPLIANCE

Chartiers Township hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public