

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 33 :
LOCAL NO. 1637 :
v. : Case No. PERA-C-12-335-E
PHILADELPHIA PARKING AUTHORITY :

PROPOSED DECISION AND ORDER

On October 31, 2012, AFSCME Local 1637, affiliated with District Council 33, (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 November 19, 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 7, 2013 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 April 4, 2013, the examiner continued the hearing to June 6, 2013, at the request of the Authority, without objection from the Union.

On the morning of the hearing, June 6, 2013, the Parking Authority's Executive Director, Vincent J. Fenerty, faxed a letter to the hearing examiner stating that the Authority had reached agreement with District Council 33 to begin bargaining and that a hearing was not necessary.

The hearing examiner called the Authority's counsel to ask whether the Authority was going to appear at the hearing. The counsel informed the examiner that there would be no one in attendance at the hearing. The examiner informed Authority's counsel that the hearing would be held. Following the hearing, on July 5, 2013, the Union filed a brief. On August 5, 2013, the Authority filed a brief.

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 Philadelphia Parking Authority is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME District Council 33 is an employe organization within the meaning of Section 301(3) of PERA.
3. Local 1637 affiliated with District Council 33 is an employe organization within the meaning of Section 301(3) of PERA.
4. The Authority and District Council 33 are parties to a collective bargaining agreement for the term September 1, 2008 to August 31, 2009. Article I, PREAMBLE, states

This agreement between the Philadelphia Parking Authority, hereinafter "Authority" or "Employer," and District Council 33 of the American Federation of State, County and Municipal Employee, AFL-CIO, Philadelphia and Vicinity, hereinafter referred to as the "Union," shall continue in full force and effect from September 1, 2008, until midnight August 31, 2009.

(N.T. 12, Complainant's Exhibit 1)

5. Article II of the CBA, RECOGNITION OF THE UNION, provides:

The Authority agrees to recognize the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining in any and all matters relating to wages, hours, and working conditions on behalf of all full-time or part-time (regularly working 20 hours or more per week) Parking Enforcement Officers, Parking Meter Coin Collectors, Parking Meter Mechanics, Pole Crew Mechanics, Labor Sub-Foremen, Tow Truck Operators, Booters, Dispatchers, Automotive Mechanics, Automotive Mechanic Helpers, Lead Automotive Mechanics, Automotive Painters, Automotive Body and Fender Repair Workers, Smart Card Clerks, Red Light Camera Clerks, Heavy Duty Equipment Operators and Flatbed Tow Operators employed in the Authority's Bureau of On-Street Parking, excluding supervisors, professionals and confidential employees.

(N.T. 12, Complainant's Exhibit 1)

6. On the last page of the CBA, page 38, the signers of the CBA are Herman Matthews, President of AFSCME, District Council 33, "For District Council 33, AFSCME AFL-CIO, Locals 403, 696, and 1637" and Joseph T. Ashdale, Board Chairman, Philadelphia Parking Authority, for the Authority. (N.T. 12, Complainant's Exhibit 1)

7. Article V of the CBA, LABOR RELATIONS, acknowledges that Local 1637 is the designated Union local to represent a group of employees in the following job classifications:

Parking Enforcement Officers
Booters
Tow Truck Operators
Flatbed Tow Operators
Heavy Duty Equipment Operators
Impoundment Lot Officers I
Dispatchers
Automotive Mechanics
Automotive Painters
Automotive Body and Fender Repair Workers
Automotive Mechanic Helpers
Lead Automotive Mechanics

(N.T. 12, Complainant's Exhibit 1)

8. Frank Halbherr has been the President of Local 1637 since April 5, 2011. In that time, the Authority has honored the terms of the expired CBA and continued to recognize Local 1637 as the bargaining representative on behalf of the approximately 450 members of Local 1637 in the various job classifications denoted in the CBA as falling within Local 1637's jurisdiction. Specifically, the Authority has recognized Local 1637's standing to enforce the terms of the CBA, to file and resolve grievances and pursue arbitrations if necessary on behalf of its members. (N.T. 11, 17-19)

9. On August 20, 2012, Halbherr and the presidents of two other locals, Local 696 and Local 403, wrote to Vincent J. Fenerty, the Authority's Executive Director, demanding that the Authority bargain for a successor the CBA that expired in 2009. (N.T. 12, Complainant's Exhibit 2)
10. On or about September 12, 2012, Fenerty responded that the Authority would "yield to the City of Philadelphia's labor agreements with District Council 33 and the City's other labor organizations." Fenerty's letter contended that because most of the work performed by Local 1637 members related to Philadelphia on-street parking enforcement functions, the Authority must obtain the City of Philadelphia's approval of the Authority's annual on-street parking regulation budget and also the City Finance Director's review of any contract "in excess of \$50,000. (N.T. 12, Complainant's Exhibit 3)
11. Since that exchange of letters, Local 1637 and the Authority have had no negotiations for a successor collective bargaining agreement. (N.T. 11-12, 14)
12. As of the date of this unfair practice hearing, no new collective bargaining agreement has been negotiated. (N.T. 8, 16-17)
13. The Authority employees are not employees of the City of Philadelphia. They are not covered by the City of Philadelphia's Civil Service Regulations. They receive no payments, wages or salaries from the City. The City plays no role in the labor relations between Local 1637 and the Authority. (N.T. 19-20)

DISCUSSION

The Union's charge of unfair practices alleges that the Philadelphia Parking Authority violated Sections 1201(a)(1) and (5) of PERA by refusing to bargaining with the Union for a successor agreement to the collective bargaining agreement which expired on August 31, 2009. Local 1637 alleges that the Authority is refusing to bargain a successor CBA until it receives approval from the City of Philadelphia finance director.

A public employer violates Section 1201(a)(1) and (5) if it imposes conditions on bargaining a CBA such as obtaining the approval of another employer. **Teamsters Local 115 v. Philadelphia Parking Authority**, 44 PPER ¶ 101 (Proposed Decision and Order, 2013).

The Authority raises a procedural defense to this charge, that Local 1637 lacks standing to pursue this particular unfair practice charge because the CBA at issue is an agreement between the Authority and District Council 33, not Local 1637. The Authority contends that Local 1637 cannot bargain alone for a successor CBA covering only its members.

In support of this contention, the Authority points to two sections of the CBA. First, Article I, Preamble, states that the CBA is "between the Philadelphia Parking Authority and District Council 33." Second, the signer for the Union on the last page of the document is the District Council 33's president, Herman Matthews, who signed on behalf of Local 1637 and the other two locals.

These sections of the CBA demonstrate that the Authority's prior negotiations for the CBA that is now in place were with District Council 33 as representative of its affiliates, not with Local 1637. In light of this clear contract language, Local 1637, by itself, has no standing to file a charge alleging a refusal to bargain a successor CBA.

Frank Halbherr, the President of Local 1637 since April 5, 2011, testified in this unfair practice hearing that since he has been president, the Authority has honored the terms of the expired CBA and continued to recognize Local 1637 as the bargaining representative on behalf of the approximately 450 members of Local 1637 in the various job classifications denoted in the CBA (Article V). The Authority has recognized Local 1637's standing to enforce the terms of the CBA, to file and resolve grievances and pursue arbitrations if necessary on behalf of its members. However, this recognition clause does not constitute a recognition that Local 1637 serves as the employe

organization to negotiate for a successor CBA. Local 1637 cannot negotiate a successor CBA without District Council 33, as the discussion above sets forth.

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 AFSCME Local 1637 affiliated with District Council 33 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 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 PERA, the examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint is rescinded.

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 eleventh day of February, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner