

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DC 88 :
 :
 :
 v. : Case No. PERA-C-17-333-E
 :
 WARMINSTER TOWNSHIP :

PROPOSED DECISION AND ORDER

On November 27, 2017, the American Federation of State, County and Municipal Employees, District Council 88 (AFSCME or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Warminster Township (Township or Employer), alleging that the Township violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) by unilaterally negotiating a side agreement with a bargaining unit employee, which differs from the pension benefits set forth in the collective bargaining agreement. On December 6, 2017, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation, and directing a hearing on February 23, 2018, in Harrisburg, if necessary.

After two continuances, the hearing ensued on May 14, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Township filed a post-hearing brief on July 13, 2018. AFSCME filed a post-hearing brief on July 16, 2018.

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. The Township is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)

2. AFSCME is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6)

3. AFSCME represents a unit of white-collar nonprofessional employees at the Township. (N.T. 13, 17-18; Union Exhibit 1, 3)

4. George Mullen has worked for the Township since 1996. At that time, Mullen was an employee in the blue-collar bargaining unit, whose members were eligible for full retirement benefits at 55 years of age with 20 years of service. (N.T. 27-29; Union Exhibit 3)

5. In 1998, Mullen took a management job outside of the blue-collar unit as the Township's Public Works Director. Prior to accepting the position, Mullen requested that the Township allow him to keep his pension and life insurance benefits from his job in the blue-collar unit, and the Township agreed. (N.T. 27-31)

6. Mullen served as Public Works Director until 2012, at which time he entered negotiations with the Township's Board of Supervisors to move into the newly created position of Licenses and Inspections Superintendent in the AFSCME white-collar unit. Mullen went before the Board of Supervisors and requested that he maintain his current pension and life insurance benefits, along with his salary. The Township agreed to the request. (N.T. 31-32, 49-50)

7. As a result of the deal, Mullen became the highest paid employee in the AFSCME white-collar unit. When he began his position as Licenses and Inspections Superintendent, Mullen was questioned about his pay rate and benefit deal by several members of the unit, including Mary Schultz who was the Union president, shop steward, and member of the negotiating team for the AFSCME white-collar unit. Specifically, Schultz asked Mullen if he was going to be running the Licenses and Inspections department in light of his higher wages. Mullen also described how Schultz and two other bargaining unit employees talked openly about his retirement deal. (N.T. 14, 32-34, 44-45)

8. Facing the prospect of a layoff in 2016, Schultz approached Mullen and stated that she hoped she would receive the same deal Mullen had; namely, full retirement at age 55 and 20 years of service, because she was not old enough for full retirement under the AFSCME white-collar unit's collective bargaining agreement. (N.T. 34-36)

9. The "Normal Retirement Date" for the AFSCME white-collar unit is 62 years of age with five years of service. (N.T. 17-18; Union Exhibit 3)

10. In 2016, Mullen requested a copy of his agreement with the Township from Megan Weaver, the Human Resources Manager. The Township was unable to locate a copy of the agreement. As a result, Mullen and the Township executed a new copy of the agreement in March 2016, which provided that Mullen would be eligible for full retirement at age 55 with 20 years of service. Mullen testified that it was the same agreement he has had since 1998. (N.T. 36-37, 53-54, 61-63; Township Exhibit 1)

DISCUSSION

AFSCME's charge alleges that the Township violated Section 1201(a)(1) and (5) of PERA¹ by unilaterally negotiating a side agreement with a bargaining unit employee, which differs from the pension benefits set forth in the collective bargaining agreement. The Township contends that the charge should be dismissed because it is untimely, and Mullen was not a member of the bargaining unit when the Township initially made the agreement with him.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements that were made more than four months prior to the filing of the charge." 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair

¹ Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act...(5) 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. 43 P.S. § 1101.1201.

practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER 24 (Final Order, 2004). The statute of limitations begins to run when the union receives notice of the employer action that is the subject of the unfair practice charge. Upper Gwynedd Township, supra. However, notice to employees is not considered notice to the union unless it is shown that the employees are the union's agents. Teamsters Local 77 v. Delaware County, 29 PPER ¶ 29087 (Final Order, 1998), aff'd sub nom., County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999), appeal denied, 561 Pa. 679, 749 A.2d 473 (2000); AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Military Affairs, 22 PPER ¶ 22205 (Final Order, 1991).

In this case, the record shows that AFSCME had notice of the agreement between Mullen and the Township as far back as 2012. Indeed, the record shows that Schultz, who was the Union president, steward, and member of the negotiating team, specifically questioned Mullen about the terms of his deal with the Township in 2012 when Mullen moved into the newly created position within the AFSCME white-collar unit, and talked openly about his retirement deal. Likewise, Schultz also approached Mullen in 2016 when facing the prospect of a layoff and stated that she hoped she would receive the same deal Mullen had; namely, full retirement at age 55 and 20 years of service, because she was not old enough for full retirement under the AFSCME white-collar unit's collective bargaining agreement. As such, AFSCME clearly had notice of Mullen's deal in 2012, and in 2016 at the latest. However, AFSCME did not file the instant direct dealing charge until November 2017, well beyond the four-month limitations period set forth in the Act. Accordingly, the charge is untimely as a matter of law and must be dismissed.

CONCLUSIONS

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

1. The Township is a public employer under Section 301(1) of PERA.
2. AFSCME is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The charge is untimely pursuant to the statute of limitations in Section 1505 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 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 11th day of October, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner