

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION :
LOCAL 668 SERVICE EMPLOYEES :
INTERNATIONAL UNION :
 :
v. : Case No. PERA-C-12-389-E
 :
LACKAWANNA COUNTY :

FINAL ORDER

The Pennsylvania Social Services Union, Local 668, Service Employees International Union (PSSU) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 5, 2013. PSSU's exceptions challenge a January 16, 2013 decision of the Secretary of the Board declining to issue a complaint and dismissing PSSU's Charge of Unfair Practices filed against Lackawanna County (County).

PSSU alleged in its Charge that the County failed to bargain in good faith in violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by withdrawing two of the County's proposals concerning retroactivity and term of agreement that had been tentatively agreed to by PSSU and failing to give its negotiator sufficient authority to engage in meaningful bargaining. In declining to issue a complaint, the Secretary stated that an examination of the totality of the circumstances did not reveal that the County's actions violated its duty to bargain in good faith under Section 1201(a)(5) of PERA, citing **PLRB v. Appalachia Intermediate Unit 08**, 6 PPER 125 (Decision of the Board, 1975) (employer's refusal to ratify tentative agreement reached by negotiating team was not an unfair practice where parties recognized that agreement was subject to ratification by School Board), **PLRB v. County of Erie**, 10 PPER ¶ 10174 (Nisi Decision and Order, 1979) (no unfair practice found where chief executive rejected tentative agreement reached by County's negotiators) and **PLRB v. West Branch Area School District**, 14 PPER ¶ 14001 (Proposed Decision and Order, 1982) (employer's alteration of two provisions in tentative agreement was not an unfair practice where employer had not ratified tentative agreement before altering the provisions). The Secretary further stated that PSSU failed to allege sufficient facts to establish an independent violation of Section 1201(a)(1). Therefore, the Secretary dismissed the Charge.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. **Pennsylvania Social Services Union, Local 668 v. PLRB**, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. **Homer Center Education Association v. Homer Center School District**, 30 PPER ¶ 30024 (Final Order, 1998).

In its exceptions, PSSU alleges that it detrimentally relied on the authority of the County's negotiators to make the proposals concerning retroactivity and term of agreement and that it would not have agreed to other proposals without the proposals at issue. PSSU cites to **United Food and Commercial Workers Local #1776 v. Luzerne County Valley Crest Nursing Home**, 33 PPER ¶ 33110 (Proposed Decision and Order, 2002) and **St. Clair Area Education Association v. St. Clair Area School District**, 18 PPER ¶ 18116 (Final Order, 1987), *aff'd sub nom.*, **St. Clair Area School District v. PLRB**, 552 A.2d 1133 (Pa. Cmwlth. 1988), *aff'd*, 525 Pa. 236, 579 A.2d 879 (1990), as supporting its allegation that the County violated its duty to bargain in good faith under Section 1201(a)(5) of PERA.

Section 1201(a)(5) of PERA provides that public employers are prohibited from refusing to bargain in good faith with an employee organization. 43 P.S. §1101.1201(a)(5). The courts have held that bargaining in good faith means that the parties must make "a serious effort to resolve differences and reach a common ground.'" **Upper Moreland**

Township District v. PLRB, 695 A.2d 904, 908 (Pa. Cmwlth. 1997) (quoting **Appeal of Cumberland Valley School District**, 483 Pa. 134, 142, 394 A.2d 946, 950 (1978)). The Board will look to the totality of the circumstances to determine whether a party has bargained in good faith. **Commonwealth Bar Association v. Commonwealth of Pennsylvania Public Utility Commission**, 35 PPER 113 (Final Order, 2004). A party will be found to have bargained in bad faith where it can reasonably be concluded that the party never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy. **Id.**

PSSU alleged in its Charge that the County presented the proposals for retroactivity and term of agreement at the parties' July 30, 2012 negotiation session. PSSU further alleged that at the September 28, 2012 negotiation session, the County refused to sign the tentative agreements that the parties had reached during the previous four bargaining sessions and that the County withdrew its proposals concerning retroactivity and term of agreement. The County issued a letter to PSSU dated October 17, 2012, stating, in pertinent part, as follows:

The length of the collective bargaining agreement is ultimately going to depend on the economic terms reached later in the bargaining. As you know, to date, we are still discussing non-economic issues and economic proposals have yet to be exchanged. In reflection, it is the County's belief that for the parties to have tentatively committed to a given length of a collective bargaining agreement, before even beginning economic negotiations, is not in the best interest of either party or the bargaining process. Whether a contract would be of a shorter or longer term, to accommodate the changing projected economic situation, would be far more appropriate. Given the fact that the economic climate may change dramatically following the upcoming election in November, the County believes that this is far more appropriate. In addition, the uncertainty of the impact of health insurance implementation in 2013 and 2014 should be more carefully considered before determining the length of the contract. Again, having the term remain open is in the best interest of both parties.

The same rationale holds true for retroactivity. Depending on the length of the negotiations, retroactivity, which is a mandatory subject of bargaining, may become an issue which it is in the best interest of both parties to address at that time.

These are the basis which has caused the County to reconsider its earlier proposals and to attempt to deal with them in this early stage of the bargaining process. The County believes that it is in the best interest of both parties, and the bargaining process itself, to decline to actually "sign off" on these two proposals. At this time, the County is not presenting any other proposals covering the length of the contract and/or retroactivity except to leave them open until we proceed with the economic aspects of bargaining. It is clear that only when we arrive at a tentative agreement on **all** of the myriad of items in this negotiation, will a contract be ready to be submitted for ratification. The County urges you to continue with the collective bargaining process. We look forward to seeing you at the next scheduled meeting on Monday October 22, 2012.

(Attachment E to PSSU's Charge). Viewing the totality of the circumstances presented here, including the fact that the County withdrew the proposals at issue shortly after making them (within two months), the County's stated reasons for withdrawing the proposals, and the County's willingness to continue negotiations with PSSU for a successor collective bargaining agreement, the Board does not find that PSSU's allegations in its Charge established that the County never intended to achieve an

agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy. **See West Branch Area School District, supra.**

Further, PSSU's reliance on **Luzerne County Valley Crest Nursing Home is misplaced. In Luzerne County Valley Crest Nursing Home**, the Board concluded that the employer violated its duty to bargain under Section 1201(a) (5) by, *inter alia*, failing to give its negotiator authority to make changes to the employer's proposals or to agree to the union's proposals at the negotiating table and by raising new issues well after negotiations began, even though the employer had previously agreed to withdraw those proposals. Such facts are not present here where there is no indication that the County's negotiator lacked the authority to come to an agreement with PSSU and the County did not raise new issues well after negotiations began. Rather, the County determined that any proposals for retroactivity and term of agreement should be made later in the bargaining process once economic proposals had been tentatively agreed upon.

Similarly, the Board's decision in **St. Clair Area School District** is inapplicable to the facts of the present case. In **St. Clair Area School District**, the Board found that the employer violated its duty to bargain when a majority of the school board members who had signed a tentative agreement changed their position and voted against the agreement during the ratification process. That is simply not the case here where there are no allegations that the County Commissioners approved the tentative agreements for retroactivity and term of agreement and thereafter rejected those agreements during a ratification vote. Indeed, no ratification vote has taken place because the parties are still bargaining over other terms to be included in a successor collective bargaining agreement.

Further, the County Commissioners have the authority to ratify or reject any tentative agreement made between the parties' negotiators where the tentative agreement has not been agreed to by a majority of the County Commissioners. The Board has held that an employer does not violate its duty to bargain where its governing body rejects a tentative agreement that is subject to ratification. **Appalachia Intermediate Unit 08, supra; County of Erie, supra.** Therefore, PSSU cannot claim that it detrimentally relied upon the County's proposals made by its negotiators because any tentative agreement made by the parties' at the bargaining table is subject to ratification by the County Commissioners.

Finally, PSSU has not made any further factual allegations in its exceptions concerning its Charge under Section 1201(a) (1) of PERA. Absent new factual allegations, PSSU has failed to state an independent or derivative violation of Section 1201(a) (1). Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Pennsylvania Social Services Union, Local 668, Service Employees International Union are dismissed and the Secretary's January 16, 2013 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Robert H. Shoop, Jr., Member, this eighteenth day of June, 2013. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.