

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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

**FINAL ORDER**

Teamsters Local 636 (Teamsters) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on June 24, 2013, from a Proposed Decision and Order (PDO) issued on June 3, 2013.<sup>1</sup> The Teamsters except to the Hearing Examiner's conclusion that West Mifflin Borough (Borough) did not violate Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by enacting an ordinance in 2011 amending the pension plan to provide an early retirement option for non-bargaining unit employees contrary to an unfair practice settlement in 2000. Following an extension of time granted by the Secretary of the Board, the Borough timely filed a brief in response to the exceptions on July 26, 2013. After a thorough review of the exceptions and all matters of record, the Board makes the following

**ADDITIONAL FINDINGS OF FACT**

16. The Teamsters filed an Unfair Practice Charge in 2000 at Case No. PERA-C-00-325-W, in which the Teamsters alleged that the Borough violated its duty to bargain by unilaterally providing an early retirement incentive for management employees only.
17. On November 13, 2000, Lawrence Chaban, Esquire, counsel for the Teamsters, sent a draft of a proposed settlement to the Borough's counsel Michael Adams, Esquire and Tammy Ribar, Esquire. The proposed settlement included a provision at Paragraph 2 that "[t]he employer promises that in the future there will be no early retirement incentives or options for any employees covered by the Pension Plan absent express consent of the Union to any such incentives or options following negotiations with regard thereto." (Union Exhibit 21).
18. On November 14, 2000, Ms. Ribar, counsel for the Borough, sent a counter-draft to Mr. Chaban, making changes to the proposal, but leaving untouched the language in Paragraph 2. (Union Exhibit 22).
19. On November 22, 2000, Ms. Ribar requested additional changes to Paragraphs 3 and 4 of the proposed settlement. (Union Exhibit 24).
20. On November 29, 2000, Mr. Chaban forwarded the settlement agreement, with the Borough's changes, to Robert Ewanco, Secretary/Treasurer of the Teamsters. (Union Exhibit 25).
21. On December 7, 2000, Howard J. Bednar, Borough Manager, wrote Mr. Ewanco, stating "[e]nclosed please find for your file the signed copy of the settlement agreement between the Borough and the Teamsters 636 regarding the unfair labor practice." (N.T. 234).
22. On December 20, 2000, Attorney Ribar, counsel for the Borough, wrote to Attorney Chaban, requesting that the Teamsters withdraw the charge at PERA-C-00-325-W in accordance with the settlement agreement. (Union Exhibit 26).

---

<sup>1</sup> The Teamsters' exceptions are timely because June 23, 2013, the twentieth day following issuance of the Hearing Examiner's proposed decision was a Sunday and is therefore excluded from the computation of the twenty-day period for filing exceptions. 34 Pa. Code §95.100(b).

23. On December 26, 2000, Mr. Chaban filed with the Board a request for withdrawal of the Charge of Unfair Practices. A Nisi Order of Withdrawal in Case No. PERA-C-00-325-W was issued by the Board Secretary on January 10, 2001.

24. Subsequent to the withdrawal of the charge in Case No. PERA-C-00-325-W, the Borough, on December 28, 2000, enacted Ordinance No. 1109, amending the pension plan consistent with the terms of the settlement agreement, as follows:

Section 1.

The following changes are made for any Class I employee of the Nonuniformed Pension plan effective January 1, 1999:

1. Monthly accrued benefit of \$45.00 times the years of service.
2. Only a spouse of any deceased employee will receive a pension at one hundred percent (100%) of such employee's pension benefit at time of retirement for as long as such spouse lives.
3. An employee shall be fully vested after five (5) years of service; any age requirement for vesting is eliminated.
4. Early retirement at age 60 with 15 years of service; accrued benefit is reduced five percent (5%) per year before normal retirement.
5. Employee contributions accumulated at the actuarial interest rate.
6. Employee members who are members of Teamsters Local 636 agree to increase their pension contribution to \$40.00 per month.

Section 2.

The following change is effective January 1, 2001:

One (1) member of the Nonuniformed Pension Plan Committee shall be reserved for a representative appointed by the Union (Teamsters Local #636). The Union representative shall have all rights, duties and obligations of any member of the Pension plan committee.

Section 3.

The following shall be effective as of July 31, 2000:

Any Class I employees who were at least 57 years of age and had 12 years of service as of July 31, 2000 shall be eligible to retire under an "Early Retirement Incentive Plan" providing the following:

1. Monthly accrued benefit of \$45.00 times years of service
2. Special Incentive of \$25.00 times years of service for a period of thirty six (36) months.
3. The early retirement penalty of five percent (5%) per year prior to normal retirement age is waived.
4. Borough will provide Keystone Health Insurance coverage to the employee and spouse until the employee reaches or would have reached age 65. The Borough cost is set at \$461.53 per month. Future increases must be paid for by the retiree.

## DISCUSSION

Since at least 1996, the Borough has had a pension plan for non-uniformed employees, covering both management employees and the bargaining unit members represented by the Teamsters. The plan excludes uniformed police officers and firemen and other employees who are covered by another retirement plan or program sponsored by the Borough.

The Teamsters filed an unfair practice charge in 2000 at Case No. PERA-C-00-325-W, in which it alleged that the Borough violated its duty to bargain by unilaterally providing an early retirement incentive for management employees only. On November 13, 2000, Lawrence Chaban, Esquire, as counsel for the Teamsters, sent a draft of a proposed settlement of the Charge of Unfair Practices to the Borough's counsel Michael Adams, Esquire and Tammy Ribar, Esquire. The proposed settlement included a provision at Paragraph 2 that "[t]he employer promises that in the future there will be no early retirement incentives or options for any employees covered by the Pension Plan absent express consent of the Union to any such incentives or options following negotiations with regard thereto." Attorney Ribar countered, making changes to the Teamsters' proposal, but leaving untouched the language in Paragraph 2. Mr. Chaban made the Borough's requested changes and sent a copy to the Teamsters for signatures. On December 7, 2000, Howard J. Bednar, Borough Manager, wrote Mr. Ewanco, stating "[e]nclosed please find for your file the signed copy of the settlement agreement between the Borough and the Teamsters 636 regarding the unfair labor practice." Thereafter, Attorney Ribar, as counsel for the Borough, wrote to Attorney Chaban, requesting that the Teamsters withdraw the charges at PERA-C-00-325-W in accordance with the settlement agreement. On December 26, 2000, Mr. Chaban filed with the Board a request for withdrawal of the Charge of Unfair Practices in Case No. PERA-C-00-325-W.

Subsequent to the withdrawal of the charge in Case No. PERA-C-00-325-W, the Borough, on December 28, 2000 enacted Ordinance No. 1109 amending the pension plan, consistent with the unfair practice settlement, as follows:

### Section 1.

The following changes are made for any Class I employee of the Nonuniformed Pension plan effective January 1, 1999:

1. Monthly accrued benefit of \$45.00 times the years of service.
2. Only a spouse of any deceased employee will receive a pension at one hundred percent (100%) of such employee's pension benefit at time of retirement for as long as such spouse lives.
3. An employee shall be fully vested after five (5) years of service; any age requirement for vesting is eliminated.
4. Early retirement at age 60 with 15 years of service; accrued benefit is reduced five percent (5%) per year before normal retirement.
5. Employee contributions accumulated at the actuarial interest rate.
6. Employee members who are members of Teamsters Local 636 agree to increase their pension contribution to \$40.00 per month.

### Section 2.

The following change is effective January 1, 2001:

One (1) member of the Nonuniformed Pension Plan Committee shall be reserved for a representative appointed by the Union (Teamsters Local #636). The Union

representative shall have all rights, duties and obligations of any member of the Pension plan committee.

### Section 3.

The following shall be effective as of July 31, 2000:

Any Class I employees<sup>[2]</sup> who were at least 57 years of age and had 12 years of service as of July 31, 2000 shall be eligible to retire under an "Early Retirement Incentive Plan" providing the following:

1. Monthly accrued benefit of \$45.00 times years of service
2. Special Incentive of \$25.00 times years of service for a period of thirty six (36) months.
3. The early retirement penalty of five percent (5%) per year prior to normal retirement age is waived.
4. Borough will provide Keystone Health Insurance coverage to the employee and spouse until the employee reaches or would have reached age 65. The Borough cost is set at \$461.53 per month. Future increases must be paid for by the retiree.

Thereafter, the parties negotiated a successor collective bargaining agreement, effective January 1, 2009 through December 31, 2010. Article 18 (3) of the CBA pertains to pensions and 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 an employe contribution of \$40 per month.

In the Fall of 2011, the parties were in the midst of negotiating a successor agreement, when 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 incentive. The Borough proposed that both union and non-union employees be eligible for early retirement. In October of 2011, Borough Manager Brian Kamauf presented a proposed ordinance to Barry Clapperton of Teamsters Local 636, for review and approval. 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. Mr. Clapperton refused to approve the ordinance unless it was to be offered in conjunction with a new collective bargaining agreement. The Teamsters did not consent to the Borough's early retirement incentive. Nevertheless, on December 20, 2011, the Borough passed an ordinance providing an early retirement incentive for the non-union Borough employes.

The Teamsters argue on exceptions that the Hearing Examiner erred by failing to acknowledge the terms of the settlement reached in the 2000 unfair practice proceeding, and by rejecting evidence of an agreement signed by Robert Kostelnik, who was President of Borough Council at the time. With respect to the 2000 settlement agreement, the Hearing Examiner stated as follows:

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. Kotelnik testified that he did not sign the agreement, testifying that it was not his signature on the document. Kostelnik testified credibly. There was no

---

<sup>2</sup> Under the pension plan, Class I Participants are all employees except Special School Police. Class II Participants are the Special School Police.

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.

(PDO at 4). However, upon examination of the record as a whole, we need not decide whether or not Mr. Kostelnik signed the 2000 unfair practice settlement agreement. His signature is simply irrelevant to the finding of a binding unfair practice settlement in this case.

To establish a binding agreement resolving an unfair practice charge, it is sufficient that the complainant show that the public employer had previously authorized an attorney to represent its interests in the unfair practice proceeding and that the attorney on behalf of the employer entered into a settlement agreement.<sup>3</sup> **PLRB v. West Greene School District**, 5 PPER 8 (Final Order, 1974); **New Castle Township Police Employees v. New Castle Township**, 25 PPER ¶ 25101 (Final Order, 1994), *affirmed unreported, sub nom. New Castle Township v. PLRB*, 1415 C.D. 1994 (Pa. Cmwlth., January 5, 1995). Contrary to the arguments of the Borough, it is in situations where the settlement agreement was entered into by someone other than the employer's attorney that the Board has required subsequent ratification by the public employer's governing body. **Teamsters Local 107 v. Upper Moreland-Hatboro Joint Sewer Authority**, 30 PPER ¶30220 (Final Order, 1999); **Capitol City Lodge No. 12 v. PLRB**, 30 A.3d 1241 (Pa. Cmwlth. 2011), *petition for allowance of appeal denied*, 44 A.3d 1162 (Pa. 2012). Thus, even though it is undisputed that the Borough did not formally ratify an agreement obligating it to bargain with the Teamsters over early retirement incentives for non-bargaining unit employees,<sup>4</sup> the Board has consistently held that the public employer's appointment of an attorney to act on its behalf before the Board will bind the employer to a settlement reached by its attorney in an unfair practice proceeding. **West Greene School District**, *supra.*; **New Castle Township**, *supra.*<sup>5</sup>

On this record, there is overwhelming evidence of a binding settlement reached by the Borough's attorneys in the 2000 unfair practice proceeding before the Board, even in the absence of Mr. Kostelnik's signature.<sup>6</sup> Following Board conciliation for the Charge of Unfair Practices at Case No. PERA-C-00-325-W, the attorney for the Teamsters, Mr. Chaban, sent a draft of a proposed settlement agreement to the Borough's counsel of record, Michael Adams, Esquire and Tammy Ribar, Esquire. The proposed settlement included a provision at Paragraph 2 that "[t]he employer promises that in the future there will be no early retirement incentives or options for any employees covered by the Pension Plan

---

<sup>3</sup> The Board has reached a similar holding concerning grievance settlements, where the public employer's governing body, through ratification of grievance procedures in a collective bargaining agreement (CBA) formally appoints its representative to resolve disputes arising under the CBA. **Moshannon Valley School District v. PLRB**, 597 A.2d 229 (Pa. Cmwlth. 1991) (school district bound by settlement of grievance by its delegated representative in grievance procedure); **Pennsylvania State Corrections Officers Association v. Commonwealth, Department of Corrections, Fayette SCI**, 40 PPER 104 (Final Order, 2009) (same).

<sup>4</sup> After the withdrawal of the Charge of Unfair Practices in Case No. PERA-C-00-325-W, the Borough did enact Ordinance No. 1109 to amend the pension plan in accordance with the 2000 settlement. However, in the Ordinance the Borough did not adopt the contested provision that the Borough negotiate with the Teamsters over future changes in the pension plan for non-bargaining unit members. The Teamsters' present charge of Unfair Practices does not allege that the Borough has failed to comply with any of the adopted settlement provisions as ratified by the Borough in Ordinance No. 1109.

<sup>5</sup> In **New Castle Township**, the Board expressly held as follows:

The Employer's after the fact allegation that [the] solicitor was without authorization to enter into the agreed upon settlement is inconsistent with the facts surrounding the settlement award on June 2, 1992. Initially, we note that [the solicitor] formally entered his Order For Appearance which bears his signature on June 2, 1992, and states that he is, "counsel of record for New Castle Township." When an attorney enters his appearance and consequently performs legal duties for his client, "there is a presumption that he acted by authority. He is an officer of the court, and what he does in the course of his business is presumed to be by authority of his client...."

**New Castle Township**, 25 PPER at 258.

<sup>6</sup> Thus, the Board need not address the Hearing Examiner's credibility determination regarding Mr. Kostelnik's signature on the settlement agreement.

absent express consent of the Union to any such incentives or options following negotiations with regard thereto." Attorney Ribar offered a counter-proposal making handwritten edits to the Teamsters' draft. In the Borough's proposed settlement, Attorney Ribar retained the language in paragraph 2 exactly as set forth in the Teamsters' draft. Mr. Chaban made the Borough's requested changes to Paragraphs 3 and 4 and sent a copy to the Teamsters for signatures. On December 7, 2000, Howard J. Bednar, Borough Manager, wrote Mr. Ewanco, stating "[e]nclosed please find for your file the signed copy of the settlement agreement between the Borough and the Teamsters 636 regarding the unfair labor practice." Thereafter, Attorney Ribar, as counsel for the Borough, wrote to Attorney Chaban, requesting that the Teamsters withdraw the charge at PERA-C-00-325-W in accordance with Paragraph 1 of the settlement agreement. On December 26, 2000, Mr. Chaban filed with the Board a request for withdrawal of the Charge of Unfair Practices in Case No. PERA-C-00-325-W.

After a thorough review of the exceptions, and all matters of record, the undisputed evidence of record compels the finding that the Borough's attorney in Case No. PERA-C-00-325-W agreed, on behalf of the Borough, to a settlement of the unfair practice charge which included a provision that "[t]he employer promises that in the future there will be no early retirement incentives or options for any employees covered by the Pension Plan absent express consent of the Union to any such incentives or options following negotiations with regard thereto." See **West Greene School District, supra.**; **New Castle Township, supra.**<sup>7</sup> Thus, the Borough's failure to obtain the Teamsters' consent to the early retirement incentive program offered to non-bargaining unit employees in 2011 constituted a violation of its good faith bargaining obligation under Section 1201(a) (1) and (5) of PERA. Accordingly, the Teamsters' exceptions to the Hearing Examiner's dismissal of its Charge of Unfair Practices shall be sustained, and an appropriate order issued.<sup>8</sup>

#### CONCLUSIONS OF LAW

CONCLUSIONS numbers 1 through 3, inclusive, as set forth in the June 3, 2013 Proposed Decision and Order in Case No. PERA-C-12-24-W, are affirmed and incorporated herein by reference and Conclusion number 4 is vacated and set aside and the following additional conclusion is made:

5. That West Mifflin Borough 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 Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by Teamsters Local 636 are hereby sustained, that the Order on page 5 of the June 3, 2013 Proposed Decision and Order is vacated and set aside, and

---

<sup>7</sup> Moreover, while the agreement was entered into in 2000, there was no indication in the record that the Borough made any attempt to disavow the agreement before 2011. Indeed, the Borough's actions in 2011 to seek the Teamsters' approval of the early retirement incentive is consistent with the Board's conclusion that the parties agreed in 2000 that no early retirement incentive would be offered to any employee without the consent of the Teamsters.

<sup>8</sup> The Board recognizes that the early retirement incentive unilaterally implemented in this case was offered to only non-bargaining unit employees and was offered for a closed period of time which has since expired, and that only one managerial employee accepted the early retirement incentive. Given these circumstances, the Board finds that only a limited "cease and desist" order directing posting of the Final Order is required to remedy the unfair labor practice. PLRB v. Martha Company, 359 Pa. 347, 59 A.2d 166 (1948).

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that West Mifflin Borough shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action, which the Board finds necessary to effectuate the policies of PERA:
  - (a) Post a copy of this Final Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and
  - (b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Final Order by completion and filing of the attached affidavit of compliance.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this twentieth day of August, 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.

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 636

v.

WEST MIFFLIN BOROUGH

:  
:  
:  
:  
:  
:

Case No. PERA-C-12-24-W

**AFFIDAVIT OF COMPLIANCE**

The West Mifflin Borough hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of PERA; that it has posted a copy of the Final Order as directed and that it has served an executed copy of this affidavit on Teamsters, Local 636.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature of Notary Public