

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS, LOCAL 29 :
 :
v. : Case No. PERA-C-14-244-W
 :
BEAVER BOROUGH :

FINAL ORDER

The International Brotherhood of Electrical Workers, Local 29 (IBEW) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on September 8, 2014. The IBEW's exceptions challenge an August 20, 2014 decision of the Acting Secretary of the Board (Secretary) declining to issue a complaint and dismissing the IBEW's Charge of Unfair Practices filed against Beaver Borough (Borough).

The IBEW alleged in the Charge that the Borough indicated during negotiations for a successor collective bargaining agreement that the bargaining unit members represented by the Beaver Borough Municipal Employees Association (Association) would, in the future, be subject to the same financial constraints regarding wages and benefits as the clerical bargaining unit represented by the IBEW. The IBEW further alleged that, contrary to the Borough's representations, the Borough and the members of the Association ratified an agreement in which the Association members were not subjected to the same financial constraints as the IBEW members. The IBEW asserted that the Borough's misrepresentations during negotiations violated its duty to bargain under Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

In declining to issue a complaint and dismissing the Charge, the Secretary stated that the Borough's failure to accurately predict its financial condition in negotiations conducted with another union did not establish that the Borough never intended to achieve an agreement, demonstrated unreasonableness or displayed a single-minded purpose to thwart the public policy. Therefore, the Secretary determined that the IBEW did not state a cause of action under Section 1201(a)(5) of PERA. The Secretary also indicated that the IBEW failed to allege sufficient facts for finding a violation of Section 1201(a)(1) of PERA.

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).

The IBEW alleges in its exceptions that the Secretary mischaracterized the IBEW's allegations and failed to assume that all facts as stated in the Charge were true. The IBEW further alleges that the Borough's repeated misrepresentations that the Association members would be subject to the same financial constraints as the IBEW members demonstrates unreasonableness, a single-minded purpose to thwart the public policy and failure to make a serious effort to resolve differences to reach a common ground.

Section 1201(a)(5) of PERA prohibits a public employer from refusing to bargain in good faith with an employe representative. 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.**

The IBEW is essentially arguing that the alleged misrepresentations of the Borough during negotiations induced the IBEW to agree to wages and benefits in the collective bargaining agreement that it otherwise would not have accepted. However, under decisions of the Pennsylvania Supreme Court followed by the Board, the parol evidence rule bars the IBEW's attempt to claim that it was induced to agree to the contract terms by alleged misrepresentations by the Borough. In **New Britain Borough Police Benevolent Association v. New Britain Borough**, 39 PPER 102 (Final Order, 2008) the Board rejected a similar attempt to void contract terms based on alleged statements in negotiations, stating as follows:

Under the parol evidence rule, prior alleged oral representations concerning terms specifically covered by the parties' written contract are inadmissible to prove a contrary intent by the parties. **Youndt v. First National Bank of Port Allegheny**, 868 A.2d 539 (Pa. Super. 2005). Further, while the Pennsylvania Supreme Court has recognized an exception to the parol evidence rule where a party alleges fraud in the execution of a contract, it has refused to recognize an exception to the parol evidence rule for alleged fraud in the inducement of a contract. **Toy v. Metropolitan Life Insurance Company**, 593 Pa. 20, 928 A.2d 186 (2007); **Yocca v. Pittsburgh Steelers Sports, Inc.**, 578 Pa. 479, 854 A.2d 425 (2004). In **Toy**, the Supreme Court noted that in **Yocca**:

We stated that "while parol evidence may be introduced based on a party's claim that there was fraud in the execution of a contract, *i.e.*, that a term was fraudulently omitted from the contract, parol evidence may not be admitted based on a claim that there was fraud in the inducement of the contract, *i.e.*, that an opposing party made false representations that induced the complaining party to agree to the contract."

928 A.2d at 205. The Court then explained its refusal to adopt the fraud in the inducement exception to the parol evidence rule as follows:

First, the policy that the parol evidence rule aims to serve, which is to uphold the integrity of the written contract because that writing is considered the embodiment [of] the parties' true agreement ... is not furthered by a refusal to recognize the fraud in the execution exception, as it is in refusing to recognize an exception for fraud in the inducement ... Second, if a party were allowed to introduce representations made prior to contract formation that contradicted or varied the terms of his written contract by merely alleging that the representations were fraudulent, the fraud exception could swallow the rule ... And third, a party to a contract has the ability to protect himself from fraudulent inducements by insisting that those "inducements" be made part of the written agreement, and refusing to contract if they are not.

Id. at 206 n.24.

Accordingly, the Board held that the complainant's reliance on alleged statements made in negotiations was barred by the parol evidence rule and could not be relied upon to establish that the employer failed to bargain in good faith.

Similarly, in **AFSCME District Council 83 v. Indiana Area School District**, 40 PPER 95 (Proposed Decision and Order, 2009), the union alleged that it ratified a collective bargaining agreement requiring the nonprofessional employees to pay health care contributions because the district had misled the union during negotiations to believe that the District's professional and management level employees would also be required to pay health care contributions. When the union discovered that the professional and management employees were not required to pay health care contributions, it requested the Board find that the district violated its duty to bargain under Section 1201(a)(5) of PERA and rescind the parties' agreement. However, the union's charge was dismissed because it was barred from relying on parol evidence to prove that it was fraudulently induced to agree to the terms in the agreement.

Likewise, the IBEW's Charge is based solely upon the alleged misrepresentations of the Borough and the parol evidence rule bars such evidence from being considered for a fraud in the inducement claim. Therefore, the IBEW cannot rely on the alleged statements made by the Borough in negotiations to establish that the Borough violated its duty to bargain under Section 1201(a)(1) and (5) of PERA. **New Britain Borough, supra; Indiana Area School District, supra.** 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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the International Brotherhood of Electrical Workers, Local 29 are dismissed and the Secretary's August 20, 2014 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 Albert Mezzaroba, Member, this twenty-first day of October, 2014. 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.