

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 47, :
LOCAL 2187, AFL-CIO :
 :
v. : Case No. PERA-C-17-43-E
 :
CITY OF PHILADELPHIA :

FINAL ORDER

The American Federation of State, County and Municipal Employees District Council 47, Local 2187, AFL-CIO (Local 2187) filed timely exceptions with the Pennsylvania Labor Relations Board on January 10, 2019, challenging a Proposed Decision and Order (PDO) issued on December 27, 2018. In the PDO, the Board's Hearing Examiner concluded that the City of Philadelphia (City) did not violate Section 1201(a)(5) of the Public Employee Relations Act (PERA) when it changed the Deferred Retirement Option Plan (DROP) pension benefits per the terms of a settlement agreement with the President of AFSCME District Council 47 (District Council 47). Pursuant to an extension of time granted by the Secretary of the Board, Local 2187 filed a brief in support of its exceptions on March 11, 2019. The City filed a response and brief in opposition to the exceptions on January 29 and April 1, 2019, respectively. After a thorough review of the record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

23. The City Mayor signed the bill on December 9, 2016.¹ (N.T. 41, Union Exhibit 1; Union Exhibit 7).

24. On November 23, 2016, Local 2187 President Robert Coyle sent a letter to Cherelle Parker, Chair of the City's Committee on Labor and Civil Service, indicating that the Local 2187 membership needed to ratify the DROP settlement agreement between the City and District Council 47. (N.T. 39-40, 51, Union Exhibit 21).

DISCUSSION

The facts of this case are summarized as follows. AFSCME District Council 47, Local 2187 is the certified bargaining representative for a unit of professional, administrative and technical employees of the City. On October 28, 2011, District Council 47 filed a Charge of Unfair Practices with the Board, alleging that the City violated Section 1201(a)(1) and (5) of PERA by unilaterally amending the DROP pension benefits.² The charge was docketed

¹ The Board notes that Finding of Fact 23 contains a typographical error mistakenly stating that the City Mayor signed the DROP ordinance on December 9, 2010. The record as a whole indicates that the Mayor signed the DROP ordinance on December 9, 2016. Therefore, Finding of Fact 23 is hereby amended to reflect the correct date that the Mayor signed the DROP ordinance.

² District Council 47 filed the charge on behalf of Locals 810, 2186, and 2187, which are affiliated organizations of District Council 47. Affiliate Local 2186 represents first-level supervisory professional and

at case number PERA-C-11-387-E. On July 21, 2015, the Board issued a Final Order, concluding that the City violated its duty to bargain under Section 1201(a)(1) and (5) of PERA when it unilaterally implemented changes to the DROP pension benefits for employes represented by District Council 47.³ The City subsequently filed a Petition for Review with the Commonwealth Court, contesting the Board's finding of an unfair practice.⁴

In early August 2016, Jonathan Walters, counsel for District Council 47, contacted Shannon Farmer, counsel for the City, to determine whether the City was willing to resolve the DROP litigation with District Council 47. The City and District Council 47 were not negotiating for a successor agreement at that time because their contract was effective until June 30, 2017. Counsel for District Council 47 and counsel for the City negotiated a proposed settlement that offered the same benefits to Local 2186 members as Local 810 and 2187 members would receive and reduced the interest rate that applied to the DROP pension benefits. On October 12, 2016, Frederick Wright, President of District Council 47, and Mr. Walters, as counsel for District Council 47, met with the leadership of Locals 810, 2186, and 2187, including Robert Coyle, President of Local 2187, to discuss the proposed settlement.

On November 2, 2016, the City entered into a settlement agreement with District Council 47, which resolved the DROP litigation. President Wright signed the agreement on behalf of District Council 47 and its local affiliates. Counsel for District Council 47 had represented that District Council 47 President Wright had the authority to sign the agreement as it constituted settlement of litigation. In addition, counsel for District Council 47 indicated that AFSCME's Region Director had sent a letter to District Council 47 President Wright detailing this authority. During the settlement discussions, no one from District Council 47 or Local 2187 told counsel for the City that the settlement agreement required ratification by union membership.

Indeed, counsel for the City had no reason to doubt that District Council 47 President Wright was authorized to enter into the settlement agreement. In nearly two decades of negotiations with District Council 47, the District Council president was the chief negotiator for the locals. In December 2015, counsel for the City negotiated an agreement regarding pension rights of certain Local 2187 employes that was signed by the District Council 47 President. Local 2187 did not challenge the agreement or claim that it required ratification by its members. Counsel for the City also witnessed

nonprofessional employes of the City and the First Judicial District. Affiliate Local 810 represents the rank and file professional employes of the First Judicial District.

³ The Board further concluded that the City did not violate Section 1201(a)(9) of PERA because the City satisfied its meet and discuss obligations with respect to Local 2186.

⁴ AFSCME District Council 33, who represents City employes in a separate bargaining unit, filed a parallel Charge of Unfair Practices challenging the City's unilateral changes to the DROP pension benefits. In the summer of 2016, the City began negotiating for a successor agreement with AFSCME District Council 33, whose contract expired on June 30, 2016. On or about July 25, 2016, the City resolved the outstanding DROP litigation with District Council 33 by including settlement terms in their new contract.

District Council 47 President Wright eject Local President Coyle from a grievance arbitration in 2015 or 2016 on the basis that it was District Council 47's grievance, and not that of Local 2187.

After the settlement agreement was reached and executed by District Council 47 President Wright and the City, per the terms of the November 2, 2016 settlement agreement, on November 17, 2016, the City filed an application to the Commonwealth Court to discontinue its appeal of the Board's July 2015 Final Order. On November 23, 2016, Local President Coyle sent a letter to Cherelle Parker, Chair of the City's Committee on Labor and Civil Service, indicating that the Local 2187 membership needed to ratify the DROP settlement agreement between the City and District Council 47. On December 8, 2016, the City Council passed an ordinance implementing the DROP pension benefit changes consistent with the November 2, 2016 settlement agreement. The City Mayor signed the DROP ordinance on December 9, 2016.

Local 2187 filed its Charge of Unfair Practices on February 17, 2017, alleging that the City violated Section 1201(a)(5) of PERA by unilaterally reducing the DROP pension benefits without the agreement of Local 2187 or ratification of the settlement agreement by its members. On March 2, 2017, the Secretary of the Board issued a Complaint and Notice of Hearing. After several continuances, a hearing was held before the Board's Hearing Examiner on November 29, 2017, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner concluded that the City did not violate its duty to bargain in good faith under Section 1201(a)(5) of PERA because it had entered into a settlement agreement with District Council 47, whom it was advised had authority to resolve the matter concerning the DROP pension benefits. In concluding that District Council 47 President Wright had the authority to enter into the settlement agreement with the City on behalf of its local affiliate, Local 2187, the Hearing Examiner stated, in relevant part, as follows:

In this case, the record shows that [President] Wright had apparent authority to bind Local 2187 to the terms of the settlement agreement. First of all, as the City persuasively notes, [District Council 47] was the charging party in PERA-C-11-387-E and represented the interests of all three locals in that case, including 2187.... Likewise [District Council 47] was party to the City's appeal of the Board's July 2015 Final Order in the Commonwealth Court, not Local 2187. Furthermore, [Attorney] Farmer credibly and persuasively testified that she had no reason to doubt [President] Wright's authority to enter the agreement. She described how [Attorney] Walters initially represented to her that [President] Wright had authority to sign the agreement because it constituted settlement of litigation. In addition, [Attorney] Walters told [Attorney] Farmer that AFSCME's Region Director had sent a letter to [President] Wright detailing this authority. [Attorney] Farmer also explained that, in nearly two decades of negotiations experience with [District Council 47], the District Council president was the

chief negotiator for the locals. In December 2015, [Attorney] Farmer negotiated an agreement regarding pension rights of certain Local 2187 employees that was signed by the [District Council 47] president, and Local 2187 never challenged the agreement or claimed that it required ratification by its members. [Attorney] Farmer also witnessed [President] Wright eject [Local President] Coyle from a grievance arbitration in 2015 or 2016 ... on the basis that it was [District Council 47's] grievance, and not that of Local 2187. [Attorney] Farmer convincingly testified that nobody from the Union told her that the settlement agreement required ratification. As a result, there can be little doubt that the City genuinely believed that [President] Wright had the authority to enter the agreement regarding DROP pension benefits.

(PDO at 4-5). Accordingly, the Hearing Examiner found that the City did not unlawfully unilaterally change the DROP pension benefits, dismissed Local 2187's Charge and rescinded the complaint.

In its exceptions, Local 2187 argues that the Hearing Examiner erred in concluding that District Council 47 President Wright had apparent authority to enter into a settlement agreement with the City concerning the DROP pension benefits because its constitution and bylaws require ratification of such an agreement by its members. The Board has held that unless there is a reservation of the right of ratification expressly made to the bargaining counterpart during negotiations, an agreement made between agents of the employer and union are binding if the agent has apparent authority to negotiate on behalf of the principal. AFSCME Local #394 v. City of Philadelphia, 27 PPER ¶ 27185 (Final Order, 1996). The Board has found that union presidents, Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, 24 PPER ¶ 24055 (Final Order, 1993), and chief negotiators, Lehigh Area Educational Support Personnel Association, ESPA/PSEA/NEA v. Lehigh Area School District, 23 PPER ¶ 23133 (Proposed Decision and Order, 1992), entering into agreements with the employer possess apparent authority to bind the union to those agreements. Further, in instances where the agent for the principal has previously negotiated settlements with its bargaining counterpart, that agent will be found to have apparent authority to bind its principal. City of Philadelphia, supra; Pennsylvania State Corrections officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Fayette SCI, 40 PPER 67 (Proposed Decision and Order, 2009). The principle of apparent authority is premised upon the need of the parties to the bargaining process to be able to rely on the promises and commitments of their bargaining counterpart. Id. Further, the reservation of the right of the parties to return the negotiated agreement to the principal for ratification must be expressed affirmatively, clearly and timely to the other party to be effective.⁵ Upper Merland Public Works Association v. Upper

⁵ Unlike unions and the settlement agreement involved in this case, a public employer's obligation for ratification of a collective bargaining agreement by its legislative body is reserved by law. Teamsters Local 107 v. Upper Merland-Hatboro Joint Sewer Authority, 30 PPER ¶ 30220 (Final Order, 1999) (where public employer's enabling legislation statutorily requires that its governing body ratify collective bargaining agreements, employe

Moreland Township, 29 PPER ¶ 29156 (Proposed Decision and Order, 1998); Richland Education Association v. Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991); see also World Kitchen, LLC, 2019 WL 561328 (Decision January 25, 2019), adopted, 2019 WL 1242714 (Order, March 15, 2019).

Here, there is ample evidence in the record to support the Hearing Examiner's finding that District Council 47 President Wright possessed apparent authority to enter into the settlement agreement with the City on behalf of Local 2187 and that the City had no reason to doubt that authority. Specifically, the record shows that, for nearly two decades, the District Council 47 President was the chief negotiator for the locals, that counsel for District Council 47 indicated that President Wright had authority to sign the agreement in that it constituted settlement of litigation and that AFSCME's Region Director had sent a letter to President Wright detailing this authority. Further, counsel for the City previously negotiated an agreement regarding pension rights of certain Local 2187 employees that was signed by the District Council 47 president, and Local 2187 never challenged the agreement or claimed that it required ratification by its members. Indeed, counsel for the City credibly testified that no one from District Council 47 or Local 2187 indicated that the settlement agreement required ratification and that she had no reason to doubt District Council 47 President Wright's authority to enter the agreement. Local 2187 has failed to present compelling reasons warranting reversal of the Hearing Examiner's findings and credibility determination.⁶ As such, the Hearing Examiner properly concluded that District Council 47 President Wright possessed the authority to enter into the settlement agreement with the City on behalf of its local affiliate, Local 2187.

Local 2187 further asserts that it notified the City prior to enactment of the changes to the DROP pension benefits of the need for ratification of the settlement agreement by its members and therefore, the settlement agreement was not binding. However, at no time between August 2016, when District Council 47 and the City started settlement negotiations, and November 2, 2016, when the settlement agreement was executed by both parties, did Local 2187 notify the City of the alleged need for ratification of the settlement agreement. Indeed, Local 2187 did not notify the City of the alleged requirement until Local President Coyle's letter dated November 23,

representative is on notice of need for ratification by public employer's governing body).

⁶ Absent the most compelling circumstances, the Board defers to the credibility determinations of its hearing examiners who are able to observe the manner and demeanor of the witnesses during their testimony. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). The hearing examiner may accept or reject the testimony of any witness in whole or in part. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections Pittsburgh SCI, 34 PPER 134 (Final Order, 2003). Based on the credited evidence and testimony, the Hearing Examiner is permitted to make relevant findings of fact, which need only be supported by such relevant record evidence that a reasonable person would accept as adequate to support the conclusion or finding reached. PLRB v. Kaufman Department Stores, 29 A.2d 90 (Pa. 1942).

2016, which was after the City had withdrawn its appeal in the Commonwealth Court on November 17, 2016 in reliance on the settlement agreement. Further, it would not serve the purpose and policy of PERA to allow District Council 47, Local 2187 to avoid agreements entered into by the City in good faith on the ground that, unbeknownst to the City, the union had allegedly failed to follow its own internal union procedures. See Teamsters Local Union No. 251, 299 NLRB 30 (Decision and Order, 1990) (union bound by representations of its representative made to the employer where union failed to follow its internal procedures and employer had no way of knowing that a mistake had been made); Blair County v. PSSU Local 668 SEIU AFL-CIO-CL, 35 PPER 102 (Proposed Decision and Order, 2004) (same); Lehigh Area School District, supra (same). Therefore, Local 2187's belated attempt to notify the City that the settlement agreement allegedly required ratification by its members was not timely nor effective.⁷ Upper Moreland Township, supra; Richland School District, supra.

Contrary to the allegations of Local 2187, the City did not unilaterally change the DROP pension benefits; rather, the City and District Council 47 entered into a binding agreement resolving the DROP litigation. Therefore, after a thorough review of the exceptions and all matters of record, the Board finds that the Hearing Examiner properly concluded that the City did not violate its duty to bargain in good faith under Section 1201(a)(5) of PERA. Accordingly, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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 American Federation of State, County and Municipal Employees, District Council 47, Local 2187 are hereby dismissed, and the December 27, 2018 Proposed Decision and Order 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, James M. Darby, Chairman and Albert Mezzaroba, Member, this sixteenth day of July, 2019. 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.

MEMBER ROBERT H. SHOOP, JR. DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.

⁷ Local 2187's reliance on the City's treatment of AFSCME District Council 33 concerning the DROP pension benefits is misplaced because resolution of the DROP litigation in that instance was in conjunction with negotiations for a successor collective bargaining agreement. The mere fact that District Council 33's successor collective bargaining agreement was subject to ratification does not equate to the City having knowledge that resolution of the DROP litigation through a settlement agreement with District Council 47 required ratification, especially where the union did not notify the City of such a requirement during negotiations.