

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CARBON COUNTY SHERIFFS ASSOCIATION :
:
v. : Case No. PERA-A-22-225-E
:
CARBON COUNTY :

ORDER DIRECTING REMAND FOR FURTHER PROCEEDINGS

The Carbon County Sheriffs Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a Request for Panel of Neutral Interest Arbitrators on August 22, 2022, concerning an alleged impasse in contract negotiations with Carbon County (County), for a bargaining unit of court-related employees necessary to the functioning of the courts, as set forth under the provisions of Section 805 and 806 of the Public Employee Relations Act (PERA). The Association alleged in its August 22, 2022 Request for Panel of Neutral Interest Arbitrators that its Collective Bargaining Agreement (CBA) with the County is to expire December 31, 2022, that the County's budget submission date is also December 31, 2022, that mediation through the Pennsylvania Bureau of Mediation commenced on August 1, 2022, and that the Association made a demand to arbitrate with the County on August 19, 2022.

Upon review of the Association's Request for Panel of Neutral Interest Arbitrators and based on the notice received from the Bureau of Mediation under Section 802 of PERA, the Secretary determined that the request did not comport with the statutory requirements of mediation prior to commencing interest arbitration under Section 805 of PERA. Accordingly, by letter issued September 1, 2022, the Secretary of the Board administratively declined to provide a panel of neutral interest arbitrators, stating, in accordance with the Board's policy in AFSCME, District Council 47, Local 810 v. City of Philadelphia, 52 PPER 49 (Final Order, 2021), that the parties have a statutory obligation to fulfill the mediation requirements of Section 801 prior to requesting a list of neutral arbitrators.

On September 12, 2022, the Association filed timely exceptions to the Secretary's September 1, 2022 administrative decision. On September 19, 2022, the County filed a response to the exceptions. Following the filing of exceptions, the Board was notified by the Bureau of Mediation that the parties had, in fact, first met with the assigned mediator and commenced mediation on September 1, 2022.

In City of Philadelphia, supra, the Board announced that going forward, the Board would take a more proactive role in issuing arbitration panels under Section 805 and 806 of PERA. The Board stated as follows:

Article VIII of PERA is clear. The parties must notify the Bureau of Mediation of a dispute in negotiations over wages, hours or working conditions no later than 150 days prior to the employer's "budget submission date." 43 P.S. §1101.801. Thereafter, mediation must commence. The date mediation commences is when the parties have their first meeting with the mediator. See FOP, Lodge No. 5 v. City of Philadelphia 27 PPER ¶ 27249 (Final Order, 1996). Twenty days must pass after mediation has commenced before a demand for interest arbitration can be made no later than 130

days prior to the employer's "budget submission date". 43 P.S. §1101.802. Only then shall the impasse be submitted to a panel of arbitrators. 43 P.S. §1101.805. To submit the dispute to a tripartite panel of arbitrators, each party is to choose their "partial" arbitrator, who then have ten days to agree upon a neutral third arbitrator. 43 P.S. §1101.806. If the "partial" arbitrators are unable to agree to a third arbitrator, the parties may then request the Board to provide a panel of neutral interest arbitrators from which the parties are to select the third member, and chair, of the interest arbitration panel...

[A] request for a list of neutral interest arbitrators that is made before mediation has commenced, or during the twenty days of mediation, is counter to not only the express process under Article VIII, but also the purposes and policies of PERA.

City of Philadelphia, 52 PPER at 268.

As recognized in City of Philadelphia, the prerequisite for arbitration under Section 805 that "mediation as required in section 801 of this article has not resolved the dispute". 43 P.S. §1101.805; City of Philadelphia, *supra*. As reiterated in City of Philadelphia, mediation under Section 801 and 805 of PERA is not merely one party contacting the Bureau of Mediation for the assignment of a mediator, but requires that an actual meeting take place with the assigned mediator with both parties present. FOP, Lodge No. 5 v. City of Philadelphia 27 PPER ¶ 27249 (Final Order, 1996). Furthermore, to allow mediation to have any efficacy, the Board had grafted the mandatory 20-days of mediation in Section 802 to the requirements of mediation under Section 801 of PERA.¹ Teamsters Local 429 v. Lebanon County, 29 PPER ¶ 29108 (Final Order, 1998). Thus, to fulfill the statutory prerequisite of mediation necessary to obtain interest arbitration under Section 805, there must be an actual mediation session, involving both parties and the mediator, that occurs at least twenty days before a demand upon the other for interest arbitration.

As alleged on exceptions, collective bargaining timely commenced between the parties on July 12, 2022,² and 150 days prior to December 31, would have been August 3, 2022. Thus, on August 1, 2022, the Association timely notified the Bureau of Mediation that the parties had not yet reached an agreement. 43 P.S. §1101.801.

¹ Section 802 of PERA provides, in relevant part as follows:

Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than one hundred thirty days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact.

43 P.S. §1101.802.

² Section 801 of PERA provides that bargaining between the parties commence twenty days prior to calling in the services of the Bureau of Mediation.

Per the Bureau of Mediation, on August 4, 2022, the assigned mediator, Carl R. Graziano, emailed the parties to provide his contact information. Thereafter, the parties agreed to an initial mediation session on September 1, 2022. At the September 1, 2022 meeting hosted by the assigned mediator, both the Association and the County's bargaining representatives were present. Thus, mediation pursuant to Section 801 commenced on September 1, 2022. City of Philadelphia, supra.; FOP Lodge 5, supra.

As such, facially, the Association had not satisfied the statutory prerequisite of mediation under Section 805 before making a demand to the County for interest arbitration for the upcoming fiscal year within 130 days prior to the County's December 31, 2022 budget submission date. City of Philadelphia, supra. Accordingly, per City of Philadelphia, the Secretary did not err in dismissing the Association's August 22, 2022 Request for Panel of Neutral Arbitrators under Section 806 of PERA where the request on its face, and as confirmed by the Bureau of Mediation, alleged that mediation had not commenced twenty-days prior to August 23, 2022, for a timely demand to arbitrate within 130-days before the County's December 31 budget submission date for the 2023 fiscal year.

However, the Board has recognized that if, as here, a timely notice of an impasse is provided to the Bureau of Mediation, that under limited circumstances involving dilatory conduct or acquiescence in extensions of the bargaining timetable occurring during bargaining and mediation, that a party's right to arbitration may be preserved. FOP, Lodge #5 v. City of Philadelphia, 27 PPER ¶27126 (Final Order, 1996). Here, the County filed a Response to Petitioner's Exceptions, attached to which were emails and correspondence between the parties concerning the scheduling of collective bargaining sessions and mediation. We cannot, on exceptions and on this record, pass on the veracity or weight of those documents. However, based on all matters of record, this case presents a factual and legal issue of first impression for the Board in the application of the City of Philadelphia (2021) decision, and whether the Association's right to arbitration can be, and was, preserved as recognized in City of Philadelphia (1996).

After a thorough review of the exceptions, all matters of record, the Association's exceptions are granted in part, and the Secretary's September 1, 2022 decision dismissing the Association's August 22, 2022 Request for Panel of Neutral Interest Arbitrators under Section 805 of PERA will be vacated and set aside. The Association's exceptions are denied insofar as we shall remand this matter for further proceedings and a hearing to ascertain whether the Association's right to arbitration was preserved through the County's dilatory conduct or acquiescence in extensions of the bargaining timetable, and therefore a Panel of Neutral Interest Arbitrators should be issued for 2023.³

ORDER

³ This order directing a hearing shall not be construed by the parties as a determination that the September 1, 2022 decision of the Secretary was in error. Neither does this order operate to toll or stay the parties ongoing obligations to negotiate in good faith for fiscal year 2023, or to timely demand arbitration for fiscal years 2024 and thereafter.

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 Carbon County Sheriffs Association are hereby sustained in part and denied in part. The Secretary's September 1, 2022 decision administratively declining to process the Request for Panel of Neutral Interest Arbitrators, be and hereby is vacated and set aside, and this matter is remanded for further proceedings and a hearing consistent with this order.

Pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this fifteenth day of November, 2022, 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.